



European Platform Against Windfarms

Follow-up information on Petition No. 1338/2012 of July 2016

As the original petition was made in September 2012, it is necessary to update the Petitions Committee with some important occurrences since then.

EPAW now represents 1,250 member organisations in 31 European countries. The aim of **EPAW** is to defend the interests of its members, which are either:

- opposing one or more wind farm proposals;
- or questioning the effectiveness of wind farms as a tool for solving the problems of man and the planet;
- or defending the flora, fauna and landscapes from damage caused by wind farms;
- or generally fighting against the damaging effects of wind farms on tourism, the economy, people's quality of life, the value of their properties and, increasingly often, their health;
- or a combination of the above.

The purpose of the European Parliament's Committee on Petitions (PETI) is to conduct an ongoing reality check on the way in which European legislation is implemented and measure the extent to which the European institutions are responding to the concerns raised¹. In this regard an overriding pre-condition is, as per Article 2 of the Lisbon Treaty, that the Union is founded on the rule of law and respect for human rights. The original petition of 2012 made frequent references to non-compliance with the UNECE Aarhus Convention, which links both environmental rights and human rights. This International Treaty is, since its ratification by the EU in 2005², an integral part of Community legal order.

The reply by the Commission of September 2014³ concluded:

- *“The Commission considers that, in setting up and implementing the EU renewable energy policy, the principles of EU law have been thoroughly observed and respected”.*

¹ <https://petiport.secure.europarl.europa.eu/petitions/en/main>

² Council Decision 2005/370: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005D0370>

³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-539.533%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

This could not be further than the truth. The PETI committee meeting of the 21st June 2006 obtained a briefing from Prof Jonas Ebbesson, chair of the Aarhus Convention Compliance Committee. This was supported by the briefing document commissioned by the Policy Department on Citizens Rights and Constitutional Affairs for the PETI committee entitled: *“The EU and the Aarhus Convention: Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”*⁴.

Of the four key findings in this document, the two central ones were:

- *“The Aarhus Convention Compliance Committee has found several EU Member States as well as the EU itself non-compliant with the Convention”.*
- *“Currently eight EU Member States and the EU are on the list of non-compliant Parties, decided by the Meeting of Parties when endorsing Committee findings. The Committee follows up and reports on whether these Parties are taking sufficient measures to get in compliance”.*

Further examination of the document finds the following in bold text:

- ***“The Committee found that the EU had failed to have in place a proper regulatory framework or clear instruction to ensure the implementation by a Member State of the Convention requirements on public participation with respect to National Renewable Energy Action Plans”.***
- ***“The Committee also concluded that the EU, by way of its monitoring responsibility, failed to ensure the implementation of the Convention by one of its Member States concerning these plans.”***

This decision V/9g of Non-Compliance in International Law is automatically a breach of Community Law, while the on-going compliance proceedings at UNECE can be found on their website⁵. The second progress report by the Compliance Committee on these compliance proceedings is due in autumn 2016. However, the first progress report of October 2015 was very clear:

- *“13. The Committee expresses its concern that the activities described in the Party concerned's report are not sufficient to address any of the recommendations set out in paragraph 3 of decision V/9g nor does the report provide any plan of action, list of proposed activities or explanation as to how the Party concerned proposes to fully implement those recommendations prior to its final progress report due on 31 October 2016. The Committee therefore finds that the Party concerned has not yet fulfilled the requirements of decision V/9g nor has taken any significant steps in that direction”.*

The situation has not improved since then, as the Commission has taken absolutely zero steps to comply with UNECE's requirements, namely that in relation to the National Renewable Energy Action Plans (NREAPs):

⁴[http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI\(2016\)571357](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI(2016)571357)

⁵<http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fifth-meeting-of-the-parties-2014/european-union-decision-v9g.html>

- *“10. In order to fulfil the requirements of the decision V/9g, the Party concerned would need to provide the Committee with evidence that:*
 - (a) It had adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs;*
 - (b) It ensures that the arrangements for public participation in its Member States are transparent and fair and that within those arrangements the necessary information is provided to the public;*
 - (c) It ensures that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation;*
 - (d) It had adapted the manner in which it evaluates NREAPs accordingly”.*

To reiterate, the Aarhus Convention is an integral part of Community order and when secondary legislation, such as the Directive 2009/28/EC on 20% renewable energy by 2020, is not in compliance with the relevant overarching International Treaty, then according to established case law of the European Court of Justice⁶:

- *“Such agreements take precedence over legal acts adopted under the EC Treaty (secondary Community law). So if there was a conflict between a Directive and a Convention, such as the Aarhus Convention, all Community or Member State administrative or judicial bodies would have to apply the provision of the Convention and derogate from the secondary law provision. This precedence also has the effect of requiring Community law texts to be interpreted in accordance with such agreements”.*

The original petition also made extensive reference to the failures of the NREAPs to undergo Strategic Environmental Assessment (SEA), prior to their adoption, according to the requirements of Directive 2001/42/EC. As the Compliance Committee in their findings and recommendations highlighted⁷:

- *“77. The Party concerned should have in place a regulatory framework to ensure proper implementation of the Convention. The Party concerned chose not to apply the SEA Directive to the adoption of NREAPs by its member States; instead it chose to incorporate a process for public participation in Directive 2009/28/EC. While this is a choice for the Party concerned, it is the task of the Committee to examine whether the Party concerned has indeed properly implemented article 7 of the Convention. The Committee in this respect notes that a framework for implementing the Convention with respect to plans and programmes concerning the environment, including plans and*

⁶ See documentation agreed between UNECE and the EU Commission on 21.11.2007: <http://www.unece.org/env/pp/compliance/Compliancecommittee/17TableEC.html>

⁷ http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Findings/ece_mp.pp_c.1_2012_12_eng.pdf

programmes related to renewable energy, should have been in place since February 2005, when the EU became a Party to the Convention.”

Article 7 of the Convention on ‘public participation concerning plans and programmes related to the environment’ is broader in scope than the SEA Directive, but somewhat less specific, namely, in that it does not require a detailed environmental assessment report to be prepared, but rather the provision of the necessary information for effective public participation in decision-making. However, as the NREAPs set the ‘framework for future development consent’ of renewable projects falling under the 2011/92/EC Directive on Environmental Impact Assessment, such an SEA procedure with associated public participation should have been completed before adoption of these NREAPs in June 2010.

This never happened and EPAW would like to draw the PETI committee’s attention to the following:

Firstly, in the article published in 2015 Journal of Energy & Natural Resources Law⁸ *“In sowing the wind, how Ireland could reap the whirlwind’ – a case against Irish wind development(s)”* Eva Barrett highlights:

- *“Ireland's wind policy and most of its commercial wind developments (namely those constructed before 2011) are open to legal challenge for having breached EU law. Although the case law that supports this proposition will be considered solely in relation to the threat it poses to Ireland's wind policy and developments, the jurisprudence has broad-ranging implications for renewable energy across the EU, and for environmental lawyers and policy-makers in all 28 of the EU's Member States”.*

The central thesis of this position is based on; *“Ireland's NREAP (and most likely numerous other NREAPs) should have undergone such an [SEA] assessment, and why the NREAP was in breach of the provisions of the SEA Directive”.* As the article then goes on to highlight in relation to the ‘Swords decision’, which is now the UNECE decision V/9g of non-compliance:

- *Overall, what the Swords decision demonstrates (particularly when considered in the broader context of EU law) is the lack of stability underlying Ireland's overall wind policy up until 2020, the lack of analysis supporting the decision to promote onshore wind and the risk inherent in investing in such a legally unstable market.*

Secondly, while the jurisprudence at the European Court of Justice in relation to the SEA Directive was at the time the above was written very limited, in Case C-290/15 “D’Oultremont and Others v Région Wallonne” a reasoned opinion was obtained from Advocate General Kokott on the 14th July 2016 in relation to the failure to complete an SEA for wind energy planning guidelines. As the Advocate General pointed out, the objective of the SEA Directive is *“to ensure that decisions on plans or programmes, which are liable to have significant effects on the environment, are first subject to an environmental assessment”.* This obligation cannot be circumvented by; *“splitting such comprehensive measures into a number of part measures each of which, considered in isolation, would not be comprehensive and would not therefore require an assessment”.* This is exactly what the Commission did by not subjecting the NREAP to an SEA procedure. While, the final decision of the Court is awaited,

⁸ Volume 33, Issue 1, January 2015, pages 59-81:
<http://www.tandfonline.com/doi/abs/10.1080/02646811.2015.1008847>

from a legal perspective the position of the EU Commission in their reply of September 2014 that the NREAPs did not require an SEA is completely untenable, as this latest position of the European Court greatly strengthens the conclusions already reached in the above legal article.

It is not intended to reiterate the considerable technical and legal detail in the original 2012 petition. However, there are now some 142 GW of installed wind energy capacity in the EU, representing at least 70,000 large turbines at an investment cost of some €260 billion. Yet at the same time there is effectively zero information on the effectiveness of this investment or an assessment of their merits. That the EU's energy policy is a mess is well established in many articles in respected publications, such as *The Economist* in Jan 2014⁹: "European climate policy: Worse than useless"

That scepticism was perfectly encapsulated during the June 2016 **Financial Times Energy Transformation Strategies event in London**, when speakers questioned the data surrounding renewable penetration and the ability of wind and solar power to replace baseload capacity¹⁰.

- *"The greatest risk to the world economy today is that the (fossil power) sector becomes so battered that it doesn't invest enough to maintain. There is a populist belief in renewables, but are we considering the unbelievable risk of holding that position? We may destroy a system without something sustainable in the aftermath."*

Costs are soaring, many so called 'first world' Member States simply no longer have sufficient reserves of reliable base load generation capacity and will experience significant blackouts with a return of the winter weather similar to that experienced in 2010. Furthermore, right around the EU rural communities are enraged about the massively obstructive and intrusive developments being forced upon them. This is what you get when the EU implements an energy policy based on populism, completely without analysis of merits and impacts, and completely by-passing the legal framework for public participation in decision-making.

Finally, the position of EPAW was articulated in May 2009 in an **Open Letter to European Commissioners and Members of the European Parliament**¹¹. It is still highly valid, if not more so given the increasing failure of the EU to comply with legal due process, and is included overleaf as an attachment.

⁹ <http://www.economist.com/news/leaders/21595002-current-policies-are-mess-heres-how-fix-them-worse-useless>

¹⁰ <http://www.powerengineeringint.com/articles/2016/06/sceptical-power-industry-urged-to-change.html>

¹¹ <http://epaw.org/legal.php?lang=en&article=c1>

Open letter to the European institutions

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May 26th, 2009

**To the European Commissioners,
To Members of the European Parliament,**

Dear Sir or Madam

The European Platform Against Windfarms (**EPAW**) was founded in Paris on 4 October 2008 through an initiative by French, German, Spanish and Belgian organisations. Since then, they have been joined by over 300 European and pan-European associations and groups based in the United Kingdom, Italy, the Netherlands, the Czech Republic, Slovakia, Poland, Ireland, Sweden, Romania, Denmark, Bulgaria, Greece and two non-EU countries, Norway and Switzerland. A list of these groups is available on the **EPAW** website: www.epaw.org.

Messages of support have been received from countries as far afield as, amongst others, Canada, Australia, the USA, Mexico or Puerto Rico. These can also be found on the **EPAW** website.

EPAW supports renewable energy schemes when it can be demonstrated that they are effective and socially, economically and environmentally acceptable. In order to meet these criteria, it is imperative that affected communities are fully consulted about each proposal.

EPAW finds it deplorable that renewable energy installations are often deployed within the European Union after pressure from financial or ideological interest groups. The disturbing consequence is that such projects do not fulfill the basic criteria for sustainable development.

EPAW maintains that wind farms represent the worst case scenario. Their effectiveness remains unproven and yet for decades they have absorbed the greatest proportion of funding ring-fenced by governments for renewable energy projects. Worse still, they contribute to the degradation of the environment.

EPAW wishes to draw your attention to the fact that wind farms have been shown repeatedly to be completely at odds with European policy for sustainable development, in that:

- the contribution of wind farms to the reduction of CO₂ emissions is insignificant because of the need to resort to thermal power plants to compensate for the intermittent nature of electricity generated by wind turbines. This also means that wind energy does not significantly reduce the costly and increasingly politically sensitive importation of fossil fuels;
- the growing number of wind farms makes it necessary to upgrade the high voltage transmission system across Europe and to build more control installations because experience shows that grid stability is threatened by the

erratic nature of wind energy. The new high tension lines incur high costs and cause further unacceptable damage to the environment;

- even after several decades of technical development, wind energy remains economically unviable. Thus, wind farms devour colossal amounts of public money leading to their dependence upon an artificial market for their very existence. Moreover, the excesses of this artificial market allow scandalous personal fortunes to be amassed at taxpayers' and consumers' expense with no ecological benefit. In fact, real damage is done;
- wind farms are significantly altering Europe's natural and cultural heritage by their harmful effect on landscapes and historic buildings. They have a severe impact on property values which for homeowners often represent the fruits of a lifetime of work;
- wind farms degrade the local residents' quality of life, even damaging the health of some;
- wind farms imperil wildlife and destroy natural habitats which have hitherto escaped the destructive powers of earth-moving equipment, concreting operations and other highly invasive human activities.

Confronted with the blatant contradictions between the sustainable development objectives of the EU and the alarming results of its present wind farm policy, **EPAW** formally requests that the European Union:

1. **Places an immediate moratorium on all wind farm projects in the European Union, including those which have already been granted planning consent.**
2. **Commissions an investigation by a panel of truly independent experts into the effects of European Union wind farm policy - a "reality check" - paying particular attention to:**

- **Carbon savings:**

The panel should evaluate the quantities of carbon dioxide emitted during the construction, maintenance, surveillance and complete dismantling of wind farms. It should also assess the indirect effects of grid integration, such as the quantity of extra CO₂ emitted as a result of the need to compensate for the power fluctuations inherent in wind-generated electricity. Back-up generation leads to the unavoidably inefficient operation of fossil-fuel power stations. The actual contribution of EU wind farm policy to the objectives of the Kyoto Protocol should then be estimated and presented in summary form.

- **Economic impact:**

The panel should evaluate the direct and indirect costs of the deployment of wind farms, detailing the impact on overall public expenditure and, over the long term, on electricity charges for households and industrial and commercial consumers. The cost analysis should include:

- subsidies, fiscal advantages, and regulatory tariffs which benefit the wind farm industry;

- the cost of building fossil-fuel power stations to balance unstable wind power, of installing HT power lines to link the wind farms to the grid, of building control centres to regulate the wind's unpredictable variability, and of upgrading electricity networks.

As wind farms absorb considerable amounts of public funds, **EPAW** demands that the EU commissions an audit of the wind power industry's financial transactions and practices. The audit should include an investigation into company structures and the degree to which tax avoidance schemes such as tax havens are employed.

- **Social impact:**

The panel should investigate the impact of wind farms on human health. A representative group of local residents should be invited to participate. The panel should appraise the effects of changes to the environment on local residents and assess the impact of the presence of wind farms on the value of land and buildings and tourism over time.

- **Environmental impact:**

The “reality check” should include an inventory of degraded natural habitats and of landscapes sacrificed as a result of the installation of wind farms in violation of the European Landscape Convention, which stipulates: *“As a reflection of European identity and diversity, the landscape is our living natural and cultural heritage, be it ordinary or outstanding, urban or rural, on land or in water.”*

EPAW considers it unacceptable that European institutions should promote the despoiling of the European landscape by a process of homogenisation into an industrial “brownfield site” with thousands of wind farms stretching from Lapland to Gibraltar, some planted in the heart of nature reserves. These were established at great cost through the EU's Natura 2000 programme.

The EU should therefore set up a panel of independent ornithologists and biologists who are acknowledged by all parties to be impartial. The panel should objectively evaluate the individual and cumulative effects of existing and proposed wind farms and associated HT power lines on European flora and fauna and their habitats. Finally, the “reality check” should include an investigation into the ways in which the construction and operation of wind farms causes pollution of ground cover, topsoil, streams, rivers and groundwater. Particular attention should be paid to the effects on the environment of contamination resulting from lubricants leaking from worn or collapsed wind turbines, detergents used to remove oil and insects from turbine blades, the large-scale use of concrete for their bases and the construction of access roads.

EPAW wishes to emphasise that the ill-conceived and poorly implemented EU wind farm policy adds oil to the fire of euro-scepticism. Many ecologically-conscious and well-informed people in the EU have the feeling that the European institutions have set their hearts on industrial wind power generation without pausing to consider its real impact on the environment and the acceptable limits of its exploitation. In the critical context of building the EU's energy base, observers find it inconceivable that the Union's energy policy can be founded on the wind farm lobby's myth of clean wind-generated electricity.

The negative effects of industrial wind turbines on people, landscapes, tourism, property values, wildlife, and the economy are widely understood and accepted. It will be disastrous if the European Union refuses to perform a “reality check” on its wind farm policy.

Respectfully yours,