



European Investment Bank,  
Secretary General,  
100, boulevard Konrad Adenauer,  
L-2950 Luxembourg.

8<sup>th</sup> September 2014

**Re: Complaint to European Investment Bank  
in relation to its funding mechanisms  
for renewable energy in Ireland**

Environmental Action Alliance- Ireland (EAA-1), wish to register the following complaint on the grounds that the European Investment Bank (EIB), is not complying with the Treaty of European Union; Treaty of Function European Union; its Statute or the relevant legislative and regulatory framework of the European Union. In other words, the EIB concerning the renewable energy programme in Ireland is granting funding for projects that are infringing European Directives and violating European Court of Justice Judgements and findings of the United Nations Economic Commission for Europe's (UNECE).

EAA-I was formed in 1990 and is a Non- Governmental Environmental Organisation (NGEO). The fundamental objectives of EAA-I is to promote sustainable development and the rule of Law in Europe through the use of European Law and exchange of information. In order to achieve its objectives EAA-I networks with other NGO's working for better Legislation and implementing of environmental Law on a National and European level.

Since 1990, EAA-I has drafted and registered over 250 complaints with the European Commission with regard to infringements of several European Directives. The Court of Justice of the European Union (CJEU) has successfully prosecuted Ireland on numerous occasions as a result of the detail and scope of these complaints.

County Offaly, Ireland

Email: [REDACTED]

Mobile: [REDACTED] Home [REDACTED]



## 1. SUMMARY

The European Investment Bank has provided more than a billion Euros in loans to support the renewable energy programme in Ireland. This programme has never been subject to the legally required process of Strategic Environmental Assessment and associated public participation. In July 2014, the United Nations Economic Commission for Europe's (UNECE) Aarhus Convention endorsed the findings and recommendations of the Aarhus Convention Compliance Committee in relation to the National Renewable Energy Action Plans (NREAPs)<sup>1</sup>. As a result, compliance proceedings are currently proceeding in relation to the EU as a Party to the Convention and the requirement to:

- *Adopt a proper regulatory framework and / or clear instructions for implementing Article 7 of the Convention with respect to the adoption of NREAPs. This would entail that the Party concerned ensure 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.***

*In addition, such a regulatory framework and/or clear instructions must ensure 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.** Moreover, the Party concerned must adapt the manner in which it evaluates NREAPs accordingly;*

The decision of the Meeting of the Parties is binding in International Law, Community Law and National Law. Authorities in the EU and Ireland are refusing to ensure that the renewable programme, which the European Investment Bank is funding, complies with Community and National Legislation on assessment and public participation, the Aarhus Convention for instance being a key component of the Environmental Acquis, the EU's body of law related to the environmental sector. This is leading to the circumstances where community groups faced with unsuitable developments in their vicinity, have to turn to the Irish Courts<sup>2</sup> to seek to enforce the law themselves. Unfortunately, there are major problems with the Access to Justice in Ireland, not least in terms of legal costs, which are in excess of €50,000.

As regards the European Investment Bank's (EIB) procedures, your "Environmental and Social Handbook" clarifies<sup>3</sup>:

- *The EIB also recognises the need for a proactive approach to ensure that environmental and social considerations are taken into account during the early stages of strategic decision-making by promoters so as to have a real influence on the choice of alternative developments. To this end, the EIB promotes the application of strategic environmental assessment as a tool for identifying and evaluating potential impacts of plans and programmes. The EIB requires the application of the precautionary principle through the mitigation hierarchy in order to promote more sustainable patterns of developments in the regions it operates in.*

<sup>1</sup> As adopted by the Meeting of the Parties without alteration on the 2<sup>nd</sup> July 2014 by CE/MP.PP/2014/CRP.9/Rev.1:

[http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category I documents/ECE MP.PP 2014 L.16 ENG.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_I_documents/ECE_MP.PP_2014_L.16_ENG.pdf)

<sup>2</sup> <http://www.rte.ie/news/2014/0906/641915-anti-pylon/>

<sup>3</sup> [http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf)

- *The assessment of environmental and social impacts and risk, including their significance and materiality, as well as the development of adequate management plans and programmes are key tools for achieving sound environmental and social performance. In this respect, all EIB-financed operations shall comply with national legislation and international conventions and agreements ratified by the host Country.*

According to Section A.5 "Environmental and Social Assessment – Guiding Principles" of the above handbook:

*All EIB-supported operations, independently of the form of financial commitment, i.e. lending, blending or advising, should:*

- *Comply with host country laws and regulations;*
- *Comply and / or align with the EU environmental acquis;*

***27. According to its own policy requirements, the EIB shall satisfy itself that projects to be financed (including related ancillary/associated infrastructure and facilities and the area of influence) comply with its environmental and social principles, standards and requirements, as framed in the EIB Statement of Environmental and Social Principles and Standards and its 10 E&S Standards, in particular that:***

- ***Projects to be financed within the EU, Candidate and potential Candidate countries comply with the EU acquis for the protection of the environment and human well-being;***

***52. PJ should record the main national, EU and international legal instruments that are relevant to the project and identify any other actual or foreseen legal issues, for example, compliance issues (at both project and competent authority level), future legislation.***

***53. Strategic Environmental Assessment: In the EU, Candidate and potential Candidate countries, if the project results from a programme or a plan of which the first formal preparatory act is subsequent to 21 July 2004 or which began before that date but was not adopted or submitted to the legislative procedure by 21 July 2006, the relevant plan or programme may fall within the scope of the Strategic Environmental Assessment (SEA) according to the EU Directive on SEA 2001/42/EC (henceforth referred to as the SEA Directive).***

***54. Though the SEA Directive applies to plans or programmes fulfilling certain criteria included in their definition as laid down in the Directive, and modifications to them, the requirements and guidance of the SEA should be taken to include all relevant plans or programmes regardless of their formal title. Therefore it is important to verify if the plans or programmes have been screened to determine whether they are likely to have significant environmental effects, and, as a result, if an SEA has to be performed or not.***

An Access to Information on the Environment Request in July 2014 under Regulation 1367 of 2006 has since confirmed that the Bank's Project Directorate (PJ) has failed to carry out the above assessments in relation to the renewable programme in Ireland, a breach of the Bank's procedures.



Secondly your Bank's "Energy Lending Criteria EIB and Energy: Delivering Growth, Security and Sustainability -EIB's Screening and Assessment Criteria for Energy Projects<sup>4</sup>" states:

- *In the energy sector projects it finances, the Bank undertakes a cost benefit analysis (CBA) applying methods drawing on international best practice, as described in the handbook "The Economic Appraisal of Investment Projects at the EIB". The CBA relies on a number of sources, including documentation provided by promoters – such as feasibility studies, widely available statistical tools and information, and the Bank's own expertise and databases. The CBA includes, wherever quantifiable, expected environmental externalities, namely the cost of carbon emissions and other non-greenhouse gas pollutants, as well as other externalities such as the costs/benefits of security of energy supply.*

An examination of the relevant documentation generated by the EIB and the project promoters demonstrates clearly that the above claim is completely false. To put it bluntly, zero analysis has ever occurred of the Irish renewable programme in terms of what environmental protection is being achieved, what the costs are and what alternatives were available. In fact, when analysed, no such benefit is actually being achieved.

This demonstrates that at one hand we have a total failure in assessment, as identified previously at the plan and programme level, which is being carried through to the individual projects being financed by the EIB, which when raised repeatedly by the relevant environmental groups in Ireland, is answered by a blunt instruction to go to Court, as the development is now approved.

As to what should be the outcome of this complaint, i.e. as the EIB complaint process puts it - What do you expect to achieve? There should be a complete suspension of funding by the EIB of any activities related to the renewable energy programme in Ireland until full legal compliance is ensured by the programme, as determined by the progress reports of the UNECE Compliance Reports on "*Decision V/9g concerning compliance by the European Union with its obligations under the Convention*".

Furthermore, there should be an internal review completed, as to why the EIB procedures highlighted above were not complied with in relation to the funding already allocated to the Irish renewable programme. This should also include a proper and transparent analysis of the environmental effectiveness of the over one billion Euro's worth of funding, which has been allocated to date.

Finally, this is the first contact with your Complaints group on this matter and there is no requirement or intent by any of the environmental groups in Ireland to maintain any part of this Complaint confidential.

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<sup>4</sup> [http://www.eib.org/attachments/strategies/eib\\_energy\\_lending\\_criteria\\_en.pdf](http://www.eib.org/attachments/strategies/eib_energy_lending_criteria_en.pdf)



## 2. BACKGROUND TO THE SUBJECT TO THE COMPLAINT

The Irish Republic is in the process of a massive roll out of thousands of wind turbines and thousands of kilometres of new high voltage lines, to achieve a target of 40% of the electricity to be achieved from renewable sources, almost exclusively wind energy. In the period 1998 to 2002 the Republic underwent a major investment in new and modernised thermal power plants. It did not require any additional investment in electricity infrastructure to ensure a highly reliable, secure and affordable supply of electricity. To clarify, as featured in the Irish Independent back as far as mid-2009<sup>5</sup>:

*Ideology is driving our energy policy instead of economic reality. Last week the Irish Academy of Engineering (IAE) called for a halt on a proposed €30bn spend on the national energy infrastructure, so that a proper assessment of future energy needs, as well as the economic benefit of the massive investment in renewable power, could be addressed.*

This glaring absence of proper assessment and the outright refusal to comply with the legal requirements in relation to both assessment and public participation continues to this day, aided by the non-compliant lending pursued by the EIB.

In 2007, the Government adopted "Delivering a Sustainable Energy Future for Ireland: The Energy Policy Framework 2007 -2020"<sup>6</sup>. This included:

- *The Government is committed to delivering a significant growth in renewable energy as a contribution to fuel diversity in power generation with a 2020 target of 33% of electricity consumption. Wind energy will provide the pivotal contribution to achieving this target.*

To facilitate this roll out of wind energy there was an additional grid upgrade component:

- *We will ensure completion of the ongoing capital investment programme in transmission and distribution networks by 2010 and oversee further extensive investment in a programme expected to total €4.9bn up to 2013.*

No Regulatory Impact Assessment with a cost benefit of this occurred; no Strategic Environmental Assessment was ever completed.

All that the public was left with was an aspirational statement of opinion:

- *We are setting very ambitious targets for expanding the role of renewable energy notably the target of 33% of electricity consumption to come from renewable resources by 2020. There are considerable challenges inherent in realising these ambitious targets. The growth of emerging technologies remains constrained by their relative cost. (Offshore wind which is capital intensive and technologically challenging is a case in point). High fossil fuel prices have contributed to making renewables more cost competitive but investment costs do remain a key challenge.*

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<sup>5</sup> <http://www.independent.ie/business/irish/ideology-is-driving-our-energy-policy-instead-of-economic-reality-26547887.html>

<sup>6</sup> <http://www.environ.ie/en/Publications/Environment/Atmosphere/FileDownload,1519,en.pdf>



- *The Government considers that the balance of social costs and benefits must be recognised as positive and that is our starting point.*

This target was increased to 40% by the Minister for the Environment, Heritage and Local Government in his Second Carbon Budget delivered to the Oireachtas on 15 October 2008. The Minister stated<sup>7</sup>:

*"One of the most effective ways of reducing our national greenhouse gas emissions is to generate as much electricity as possible from renewable sources rather than from fossil fuels. The previous Government adopted a target that 33% of electricity consumed would be from renewable sources by 2020. Today I can confirm that the Government has now agreed...to increase this target to 40%. The target is underpinned by analysis conducted in the recent All Island Grid Study which found that a 40% penetration is technically feasible, subject to upgrading our electricity grid and ensuring the development of flexible generating plant on the electricity system."*

*"The Government will be conducting further analysis to ensure that the higher renewable electricity target supports competitiveness, is delivered on time and at least-cost to consumers and businesses, while maximising sustainable socio-economic benefits".*

No such actual further analysis occurred, there was no cost benefit analysis or Strategic Environmental Assessment completed with regard to the sizeable increase in the target from 33% to 40%. As regards the claim related to 'technical feasibility', as the Irish Academy of Engineering has repeatedly pointed out with regard to this 'All Island Grid Study', not least in submissions to the Irish administration that<sup>8</sup>:

- *The study itself contains many serious inconsistencies and flaws; the study authors themselves recognise that it has been under resourced and that the results are not reliable for large renewables penetration.*
- *The All Island Grid Study is quite clearly not a sufficiently robust exercise on which to base Ireland's future energy policy*
- *The All Island Grid Study should be redone by a properly resourced independent and experienced consultant and should be based on realistic assumptions and proven methodologies.*

On June 30<sup>th</sup> 2010 the Irish State adopted a National Renewable Energy Action Plan (NREAP) and notified it to the EU Commission. This contained the 40% target identified above and what is now called the GRID25 strategy, the roll out of the grid investment programme identified above to facilitate this wind energy.

No Strategic Environmental Assessment of the NREAP or Regulatory Impact Assessment of the impact of the associated Directive 2009/28/EC, with its 16% overall renewable energy target for the Republic of Ireland, was ever completed. Indeed the farce of this can be seen that in the Irish NREAP, the Section 5.3 of the EU's NREAP template on impacts, see below, was simply skipped; the Irish NREAP went directly from Section 5.2 to Section 5.4. The necessary information relevant to the Table below, which must be considered highly minimal given the massive impacts of this programme, not least financial and environmental, was simply a complete and utter unknown.

<sup>7</sup> <http://www.eirgrid.com/media/Carbon%20Budget.pdf>

<sup>8</sup> <http://www.iae.ie/publications/publication/review-of-irelands-energy-policy-june-2009/>



### 5.3. Assessment of the impacts (Optional)

Table 13: Estimated costs and benefits of the renewable energy policy support measures:

Measure	Expected renewable energy use (ktoe)	Expected cost (in EUR) – indicate time frame	Expected GHG reduction by gas (t/year)	Expected job creation

#### Section 5.3 of the EU's NREAP Template<sup>9</sup>

Indeed as recital (15) to Directive 2009/28/EC<sup>10</sup> demonstrates, the EU just unilaterally adopted a 20% by 2020 target and then shared it out among the Member States based on what percentage of existing renewables they had and a fudge factor based on GDP. This can only be seen as completely stupid and irresponsible in that it was never known what was to be built, where it was to be built, how much it would cost, what would be the impacts, what would be the benefits, etc. Neither was any public participation conducted with the citizens in the countryside where all these obtrusive developments were to be built or indeed with all the citizens and industry who were to fund it.

As Ireland had not ratified the UNECE Aarhus Convention, the only Member State not to do so, the option of a Communication to the UNECE Compliance Committee in respect of Ireland was not available. However, the Convention was part of Community law, since its ratification by the EU in February 2005, and as such was a binding part of Irish Law. Therefore, a more complex approach was adopted in which a Communication related to the Irish renewable programme with respect to the failures of the EU as a party to the Convention was submitted. This led to the findings and recommendations of August 2012 on Communication ACC/C/2010/54, where were endorsed by the Meeting of the Parties in July 2014:

- (a) *That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement article 7 of the Convention with respect to the adoption of National Renewable Energy Action Plans (NREAPs) by its member States on the basis of Directive 2009/28/EC, has failed to comply with article 7 of the Convention;*
- (b) *That the Party concerned, by not having properly monitored the implementation by Ireland of article 7 of the Convention in the adoption of Ireland's NREAP, has also failed to comply with article 7 of the Convention;*
- (c) *That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement and proper measures to enforce article 7 of the Convention with respect to the adoption of NREAPs by its member States on the basis of Directive 2009/28/EC, has failed to comply also with article 3, paragraph 1, of the Convention;*

<sup>9</sup> [http://ec.europa.eu/energy/renewables/doc/nreap\\_adoptedversion\\_30\\_june\\_en.pdf](http://ec.europa.eu/energy/renewables/doc/nreap_adoptedversion_30_june_en.pdf)

<sup>10</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0028>



Indeed the EU has already clarified to UNECE in its first Aarhus Convention Implementation Report for the 2008 Meeting of the Parties, ECE/MP.PP/IR/2008/EC 6 June 2008<sup>11</sup>:

- 2. According to Article 300(7) of the Treaty establishing the European Community ("EC Treaty"), **international agreements concluded by the European Community are binding on the institutions of the Community and on Member States. In accordance with the European Court of Justice's case-law, those agreements prevail over provisions of secondary Community legislation. The primacy of international agreements concluded by the Community over provisions of secondary Community legislation also means that such provisions must, so far as is possible, be interpreted and applied in a manner that is consistent with those agreements.**
- 3. In addition, according also to settled case-law, a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. **Such provisions constitute rules of Community law directly applicable in the internal legal order of the Member States, which can be relied on by individuals before national courts against public authorities.** There is no case-law yet of the Court of Justice of the European Communities or of the Court of First Instance (hereinafter: "Community judicature") on the direct effect of any of the provisions of the Aarhus Convention.

Unfortunately the current incumbents in the EU administration, including yourselves in the EIB, see an entitlement to act outside the legislative structure legally binding on you.

If we consider present circumstances in Ireland, where what can be only described as an avalanche of planning applications for renewable projects continues to progress through the planning system, then the 'case law' of the Planning Appeals Board, An Bord Pleanála<sup>12</sup> is insightful. Naturally given the enormous negative impacts, both financial and environmental, associated with the roll out of massive turbines and high voltage systems, what exactly is the environmental benefit used to offset this? For instance in appeals PL16 241592 and PL16 241506 in relation to the approval of wind farms:

- *With regard to the operational impact of the proposed development, I would concur with the findings of the EIS that the generation of renewable electricity by the proposed turbines **will have a wider positive impact on climatic considerations** in terms of reducing carbon emissions thereby contributing to the achievement of national and international emission reduction objectives through the displacement of traditional methods of energy generation by the unsustainable combustion of fossil fuels such as coal and oil.*

One may well consider such statements to be acceptable when thrown around in general conversation, such as off the bar stool, but in no uncertain terms do they meet the requirements of assessment, which is inherently connected with quantification of the environmental impact and is obligatory under the legislation.

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<sup>11</sup>[http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece\\_mp\\_pp\\_ir\\_2008\\_EC\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_ir_2008_EC_e.pdf)

<sup>12</sup> <http://www.pleanala.ie/>



In reality in 2011 the global emissions of carbon dioxide<sup>13</sup> were 34,000 million tonnes, while Ireland's carbon dioxide emissions were 57 million tonnes per annum and those from electricity generation nearly 12 million tonnes. As was pointed out on many submissions to the authorities, with the inefficiencies induced on the grid by wind power, one would, with a 40% renewable target derived predominately from wind energy, save not much more than 2 million tonnes of carbon dioxide; in other words less than 0.01% of the global amount. This also has also to be taken into account with the 'cold fact' that global temperatures have not risen since the EU initiated its renewable energy programme in 1998<sup>14</sup>.

The only rational conclusion to be drawn, in relation to the above statements by An Bord Pleanála justifying their approval of the above developments on the basis of 'wider' or 'major' positive climatic impacts, is that they are irrational statements. Even if the EU's claimed for greenhouse savings for its renewable programme were to materialise, and they most certainly haven't, we would only be looking at a circa 1% reduction in global emissions, which given above wouldn't have had a slightest bit of an impact on climate, in particular given that the turbines would be falling apart after 15 years.

One can be reasonable and point out these matters in a quantitative manner to the authorities, such as in appeal PL05E.242074:

- *The applicant and the appellant dispute the extent to which the development would obviate the need to burn fossil fuels and so reduce the emission of greenhouse gases. However, even if the more sanguine estimates provided by the applicant are accepted, the impact of this particular development on air quality and climate change will be marginal and insignificant. Its benefits would only arise in cumulation with other similar developments, which is why the matter is better addressed as a matter of general policy rather than in relation to an individual application for permission.*

So it comes down to the below – we have a politically agreed plan and if you don't like it 'feck off' and take us to Court.

- *The appeal extensively criticised public policy that governs consideration of proposals for wind energy development. Planning policy is made by elected politicians, either the minister or local councillors. Energy and climate change policy is made by the government or its members, who are accountable to the Dáil for their decisions. The policies set down by European legislation have to be adopted by representatives of national governments and endorsed by European Parliament. None these decision makers are accountable to the board and none of their policies are open to review by the board.*

*Therefore much of the content of the appellant's submission is not relevant to the consideration of the appeal. The board may have to decide how to apply a planning or government policy in a specific case, or it may have to weigh one policy provision against another, or against some clear public interest or established planning principle.*

*It cannot decide, however, that a particular policy is wrong and so set it aside when considering a planning appeal. If some illegality, unreasonableness or gross unfairness arises from a policy, then it can be challenged and set aside by a court. If the appellant is of the opinion that a particular policy is wrong, then he can lobby elected representatives or the people who elect them to change that policy. The board may not change or set aside policy on wind energy. It must apply the policy as best it can.*

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<sup>13</sup> Expressed as carbon dioxide equivalent, i.e. greenhouse gases

<sup>14</sup> See fig 1.4: [http://www.climatechange2013.org/images/report/WG1AR5\\_Chapter01\\_FINAL.pdf](http://www.climatechange2013.org/images/report/WG1AR5_Chapter01_FINAL.pdf)



However, if we take politics out of it and consider the law, which paid officials in Member State and EU are duty bound to uphold, then Article 7 of the Aarhus Convention requires effective public participation 'when all options are open', which simply didn't happen as the ruling of UNECE demonstrates. At the Meeting of the Parties of the Aarhus Convention on the 30<sup>th</sup> June 2014, the following was adopted<sup>15</sup>:

- 2. Takes note of the Maastricht recommendations on promoting effective public participation in decision-making (ECE/MP.PP/2014/8) developed under the auspices of the Task Force, and invites Parties, Signatories, other interested States and stakeholders to use them as a guidance to improve implementation of the second pillar of the Convention;

If we consider those Maastricht recommendations<sup>16</sup>:

- The "zero option" means the option of not proceeding with the proposed activity, plan or programme at all nor with any of its alternatives.

The Recommendations further clarify in Point 16 on *Public participation on the "zero option"*

- In line with the Convention's requirement for the public to have an opportunity to participate when all options are open,<sup>17</sup> the public should have a possibility to provide comments and to have due account taken of them, together with other valid considerations required by law to be taken into account, at an early stage of decision-making when all options are open, on whether the proposed activity should go ahead at all (the so-called "zero option").<sup>18</sup>

*This recommendation has special significance if the proposed activity concerns a technology not previously applied in the country and which is considered to be of high risk and/or to have an unknown potential environmental impact. The opportunity for the public to provide input into the decision-making on whether to commence use of such a technology should not be provided only at a stage when there is no realistic possibility not to proceed.*<sup>19</sup>

Prior to the implementation of the EU's renewable energy programme through Directive 2001/77/EC in the mid-2000s, large scale industrial wind turbines (larger than 1 MW) did not essentially exist as a technology in the Irish landscape. The Irish public, particularly the 'public concerned', who live in rural Ireland where this technology was to be implemented, were never provided with the necessary environmental information or the opportunity to participate in decision-making at the "zero option" phase of this renewable programme.

<sup>15</sup> [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/In-session\\_docs/ece.mp.pp.2014.crp.1\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/In-session_docs/ece.mp.pp.2014.crp.1_e.pdf)

<sup>16</sup> [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category\\_II\\_documents/ece.mp.pp.2014.8.eng\\_adv\\_edited\\_copy\\_01.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ece.mp.pp.2014.8.eng_adv_edited_copy_01.pdf)

<sup>17</sup> Article 6, paragraph 4 of the Convention.

<sup>18</sup> Compliance with regard to Lithuania, ECE/MP.PP/2008/5/Add.6, para. 74; Compliance with regard to the European Commission, ECE/MP.PP/2008/5/Add.10, para. 51; Compliance with regard to Slovakia, ECE/MP.PP/2011/11/Add.3, ECE/MP.PP/2011/11/Add.3, para. 61 and 63.

<sup>19</sup> Compliance with regard to Lithuania, ECE/MP.PP/2008/5/Add.6, para 74



In particular, the consideration of environmental impacts related to the scattered nature of rural housing in Ireland and the inability to maintain adequate separation between such large scale industrial scale turbines and these residential developments.

As point 78 of the same recommendations clarifies in relation to: *Early public participation when all options are open (Article 6, paragraph 4)*

- *Information about the decision-making in the earlier tiers should be available in order for the public to understand the justification of those earlier decisions – including the rejection of the zero option and other alternatives.*

Despite the binding requirements of the Convention in relation to public participation, what is happening in Ireland is that directly conflicting and irrational information is used as reasons and considerations for planning approval of wind farms and associated renewable developments, which demonstrates that environmental considerations are not being integrated into the decision making.

The same issues occur in relation to public participation on regional development plans and the review of guidance documentation, which will be used as the decision criteria for approving wind energy projects. This is the result of public authorities not being in possession of transparent environmental information relevant to the justification of a renewable programme of this nature.

If we consider the GRID25 programme and the resulting Strategic Environmental Assessment for it, not only was the justification for this the NREAP and the Energy Policy Framework 2007 -2020, neither of which are legally compliant, but the public participation essentially didn't happen.

An examination of the document shows that only three of the twenty two submissions could be attributed to the public<sup>20</sup>, who were completely unaware of what was going on. When these individual projects became known at a later date, there was a storm of outrage, such that the downstream Gridlink project has received over 35,000 submissions<sup>21</sup>.

The fact that the GRID25 Strategic Environmental Assessment was so inadequate is illustrated by the fact that the government has since had to set up an 'independent commission'<sup>22</sup>, as the alternatives were never addressed at the Strategic Environmental Assessment stage.

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<sup>20</sup> <http://www.eirgrid.com/media/Environmental%20Main%20Report.pdf>

<sup>21</sup> <http://www.irishtimes.com/news/environment/just-4-000-grid-link-submissions-receive-responses-1.1849618>

<sup>22</sup> <http://www.dcenr.gov.ie/Press+Releases/2014/Rabbitte+responds+to+Grid+Link+public+consultation.htm>



### 3. FAILURE TO COMPLY WITH THE EIB “ENVIRONMENTAL AND SOCIAL ASSESSMENT – GUIDING PRINCIPLES”

In the Access to Information Request of the 13<sup>th</sup> July 2014 to the EIB it was pointed out: “Since the 2012 Compliance Committee decision on the NREAP the European Investment Bank has conducted considerable funding related to the Irish renewable programme, which is in essence formulated in the above NREAP, your own website shows”:

- €100 million for ESB Networks:  
<http://www.eib.org/projects/loans/2013/20130099.htm>
- €245 million for Bord Gais wind farms:  
<http://www.eib.org/projects/loans/2009/20090748.htm>
- Post the 30th June 2010 adoption of the NREAP you also funded €235 million for ESB Network and E-Cars Infrastructure:  
<http://www.eib.org/projects/loans/2011/20110213.htm>

On the 13<sup>th</sup> August a reply was received from: Juan Manuel Sterlin Balenciaga, Deputy Head of Division and Oliver Cusworth, Head of Division, Corporate Responsibility and Civil Society Division, Communication Department, European Investment Bank. In reply the Bank responded with regard to the request for: “*Copy of the Strategic Environmental Assessment for the Irish Renewable Energy Programme / NREAP and copy of the documentation in which it was assessed as part of the approval of the EIB loans*”.

- *The Bank understands that the NREAP provides an indicative trajectory for the development of renewables in Ireland, tracing a path towards the achievement of the final mandatory target required by the Directive on the promotion of the use of energy from renewable sources (Directive 2009/28/EC). It describes the policy tools available to support the 2020 targets. It does not however make reference to individual projects nor does it provide material support for their financing or implementation.*

This is of course nonsense, both the 2001/42/EC Directive on Strategic Environmental Assessment and its transposition in Irish legislation, namely S.I. No. 435 of 2004<sup>23</sup>, has required such an assessment and public participation for plans and programmes, “*which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications and tourism, and which set the framework for future development consent of projects listed in Annexes I and II to the Environmental Impact Assessment Directive*”.

Wind energy and high voltage lines are of course projects related to those Annexes. As regards setting the ‘framework for future development consent’, if one considers the Opinion of Advocate General Kokott of the European Court, as delivered on 4 March 2010 in *Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne*<sup>24</sup>, where it was necessary to consider the meaning of the terms “plan” and “programme” and the circumstances in which they set a ‘framework for development consent’ of projects, the Advocate General was very clear:

- *60. The term ‘framework’ must reflect the objective of taking into account the environmental effects of any decision laying down requirements for the future development consent of projects even as that decision is being taken.*

<sup>23</sup> <http://www.irishstatutebook.ie/2004/en/si/0435.html>

<sup>24</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CC0105:EN:NOT>



- 61. It is unclear, however, how strongly the requirements of plans and programmes must influence individual projects in order for those requirements to set a framework.
- 62. During the legislative procedure the Netherlands and Austria proposed that it should be made clear that the framework must determine the location, nature or size of projects requiring environmental assessment. In other words, very specific, conclusive requirements would have been needed to trigger an environmental assessment. As this proposal was not accepted, the concept of 'framework' is not restricted to the determination of those factors.
- 63. The view of the Czech Republic is based on a similarly narrow understanding of the setting of a framework. It calls for certain projects to be explicitly or implicitly the subject of the plan or programme
- 64. Plans and programmes may, however, influence the development consent of individual projects in very different ways and, in so doing, prevent appropriate account from being taken of environmental effects. Consequently, the Strategic Environmental Assessment Directive is based on a very broad concept of 'framework'.
- 65. This becomes particularly clear in a criterion taken into account by the Member States when they appraise the likely significance of the environmental effects of plans or programmes in accordance with Article 3(5): they are to take account of the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources (first indent of point 1 of Annex II). The term 'framework' must therefore be construed flexibly. It does not require any conclusive determinations, but also covers forms of influence that leave room for some discretion.
- 66. ... The wording [of point 1 of Annex II] implies that the various characteristics may be concerned in varying intensity and, therefore, possibly not at all. This alone is consistent with the objective of making all preliminary decisions for the development consent of projects subject to an environmental assessment if they are likely to have significant effects on the environment.
- 67. To summarise, it can therefore be said that a plan or programme sets a framework in so far as decisions are taken which influence any subsequent development consent of projects, in particular with regard to location, nature, size and operating conditions or by allocating resources."

Furthermore, the Judgment of the European Court on *Terre Wallonne ASBL v. Région Wallone* [2010] ECR I-5611<sup>25</sup> was very clear on the obligation of the National Courts, when it is determined that the Strategic Environmental Assessment Directive has not been complied with:

- *Where a national court has before it, on the basis of its national law, an action for annulment of a national measure constituting a 'plan' or 'programme' within the meaning of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and it finds that the 'plan' or 'programme' was adopted in breach of the obligation laid down by that directive to carry out a prior environmental assessment, that court is obliged to take all the general or particular measures provided for by its*

<sup>25</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0041:EN:NOT>



*national law in order to remedy the failure to carry out such an assessment, including the possible suspension or annulment of the contested 'plan' or 'programme'.*

The NREAP defines the requirements for the electricity infrastructure development in Section 4.2.6 and the support schemes in Section 4.3. Sectoral targets are laid out in Section 3 and the measures for achieving those targets are defined in Section 4. In Section 5, the contribution of each renewable technology is defined, as the template states: "*For the electricity sector, both the expected (accumulated) installed capacity (in MW) and yearly production (GWh) should be indicated by technology*", while Table 10 in Section 5 of the Irish NREAP specifies for 2020 in the Republic of Ireland, 4,649 MW of wind energy on the non-export scenario, rising to 7,145 MW of wind energy on the export scenario.

The NREAP is fundamentally a framework for development consent of projects regulated by the Environmental Impact Assessment Directive, as it defines what wind energy capacity is to be delivered, how it is to be delivered and how it is to be supported. Furthermore, it makes multiple references to GRID 25, the programme to double the high voltage grid by some 6,000 km of lines to facilitate the grid integration of all of this wind energy.

If one examines the files of An Bord Pleanála and those of the local authority planning authorities, one will see multiple references to the NREAP as one of the primary 'Reasons and Considerations' for approval of such infrastructure in Ireland. Indeed, it is also used as the justification for the wind energy section of the County Development Plans and the GRID25 programme itself.

Likewise if one considers; "*Delivering a Sustainable Energy Future for Ireland: The Energy Policy Framework 2007 -2020*", this is repeatedly used as a main 'reason and consideration' for similar planning decisions in the Republic of Ireland. Did this set a "framework for development consent"?

In addition to the fact that it is repeatedly used as the basis for development consent, it allocated considerable resources to the promotion of renewables. For instance, the sum of money allocated to the grid expansion, i.e. *expected to total €4.9bn up to 2013*, has already been raised previously, while the document clarifies:

- *Support, through incentives and accelerated research development and deployment, will continue to reduce the capital costs. There are other constraints to be addressed, including planning, and issues of public acceptance and local community support. These will be tackled through coordinated national, regional and local approaches. The Wind Energy Development Guidelines for Planning Authorities 2006 underline the need for a "plan-led" approach to wind and other renewable projects. Our framework support for renewables must continue to be fully cost effective.*

This "Energy Policy Framework" has clearly allocated resources and set the 'framework for development consent', but unfortunately there were illegalities in that it did not comply with the Directive on Strategic Environmental Assessment.

Therefore, any renewable projects approved for planning post 2007 was done so in a manner which was not legally compliant and funded by the EIB in a manner, which was not legally compliant. This is clear, as the documentation the bank provided in their response, ignored the issue of the glaring lack of Strategic Environmental Assessment, even though it is, as has been identified previously, a requirement for the PJ in respect to Section A.5 of your "Environmental and Social Assessment – Guiding Principles".



As regards the reply to the second question relating to a: *"Copy of the documentation as part of those loan approvals related to ensuring compliance with the [UNECE Aarhus] Convention and Article 7 in particular"*.

- *Article 7 of the Convention refers to policy, plans and programmes and is not relevant for investment loans. However at project level, compliance with Aarhus is integrated into EU EIA Directives which all the schemes have been subjected to. The compliance of projects with applicable EU and national laws are the responsibility of the corresponding national and EU authorities and the degree and extent to which the EIB verifies these aspects will vary, depending of the context and the type of the project.*

This must be a wonderful new interpretation of the Bank's Section A.5 of its "Environmental and Social Assessment – Guiding Principles". So the plan or programme which defines the objectives of the project, which is being financially supported, is now irrelevant and doesn't have to be addressed? Sounds like An Bord Pleanala, and their approach of; we have our plan now so 'feck off'. One could further point out the repeated references to Strategic Environmental Assessment (Directive 2001/42/EC) in the "Environmental and Social Assessment – Guiding Principles" and the position of the EU in their 2008 National Implementation Report to UNECE, referred to earlier, which clarified the interlink with respect to Article 7 of the Convention:

*89. Public participation concerning plans and programmes relating to the environment prepared and adopted by Member States' authorities is ensured through the implementation and application of the following legislation:*

*(a) Article 2 of Directive 2003/35 (already mentioned above) in conjunction with Annex I thereto;*

*(b) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment*

However, the reply from the EIB is even more revealing in stating that *"Aarhus is integrated into EU EIA Directives which all the schemes have been subjected to"*. This is not correct, Article 10(a) of the EIA Directive relating to access to justice and the requirement in terms of 'not prohibitively expensive' has never been transposed nor applied by Irish law.

The cost of legal challenges here in Ireland is huge, a minimum of €50,000 in initial legal fees. Despite the ruling in case C-427/07, Ireland failed to ensure these provisions and there are on-going infringement proceedings No 2012/4028. It's not 'rocket science', Ireland has a dreadful record when it comes to the procedural rights of the citizen under the Aarhus Convention, it was only under duress that it finally ratified the Convention in June 2012, even though it had been part of Community legal order since February 2005.

If there was any Member State, where your PJ should have paid particularly attention to the compliance with this Convention and associated Community legal order, it was in relation to Ireland. Clearly none of this actually happened, your procedures were bypassed.



#### 4. EIB'S SCREENING AND ASSESSMENT CRITERIA FOR ENERGY PROJECTS

The summary already documents the Cost Benefit analysis statements that the EIB make in relation to screening and assessment of energy projects. One can point out, it's not 'rocket science', there are eleven sources of renewable energy recognised by EU legislation, yet the Irish programme is almost exclusively wind, which not only has enormous financial and environmental costs, but has a cost of at least €160 per tonne in terms of reducing carbon emissions. That there has been a multitude of less expensive ways to reduce carbon emissions has long been recognised, even in the specific case of the proposed Irish wind energy programme<sup>26</sup>. So why have we ended up with over a billion of EIB funds being allocated to the Irish wind energy programme?

Does the EIB actually know what it is doing at all in relation to cost benefits, which not only relates to the alternative available scenarios for carbon reduction, but as to what environmental benefit actual occurs with reducing carbon emissions? A point, which as previously made with regard to An Bord Pleanála and the Irish / EU renewable energy programmes, once evaluated can only lead to one conclusion that there is actually no benefit occurring. So what is actually happening when it comes to the cost benefit analysis claimed to be part of EIBs procedures?

If we consider the EIB's own 2007 document on: "An efficient, sustainable and secure supply of energy for Europe"<sup>27</sup>, then this states:

- *In general, when designing environmental policies in the presence of uncertainty about the costs of environmental damages, one cannot reason simply in terms of cost-benefit analyses or second-best optimal tax policies. Rather, it is more appropriate to conceive policies that achieve a targeted reduction in pollution in a cost-effective manner. **This is also true when it comes to designing policies in support of renewable electricity, mainly because of the enormous difficulty of reliably estimating the benefits of such policies, i.e., the economic value of emissions avoided and other benefits of using renewables for electricity generation.***

So one can only conclude that funding for renewable energy really hasn't got anything to do with cost benefits at all, but is just throwing money at whatever is the latest political fashion in town. A point clarified by your later 2010 publication on: "Public and private financing of infrastructure. Policy challenges in mobilizing finance Infrastructure and infrastructure finance" as:

- *Environmental externalities are multiple – in terms of greenhouse gases, other forms of air pollution, water pollution and runoff, noise and land use and biodiversity.*
- *In theory, the "correct" solution is to price each and every externality. In practice, this is impractical and politically impossible. **The result is that decisions are based on politics and planning, and very much open to political and regulatory failures.***

<sup>26</sup> See for instance Eirgrid's 2004 report:  
[http://www.eirgrid.com/media/2004%20wind%20impact%20report%20\(for%20updated%202007%20report,%20see%20above\).pdf](http://www.eirgrid.com/media/2004%20wind%20impact%20report%20(for%20updated%202007%20report,%20see%20above).pdf)

<sup>27</sup> [http://www.eib.org/attachments/efs/eibpapers/eibpapers\\_2007\\_v12\\_n02\\_en.pdf](http://www.eib.org/attachments/efs/eibpapers/eibpapers_2007_v12_n02_en.pdf)



So a mess gets made and it is not our fault, but that of the politicians? So let's look at what has actually happened in Ireland, the multiple EIB funding arrangements for the Irish renewable energy sector, which has nearly all ended up in the willing pockets of the semi-state companies<sup>28</sup>, has included €300 million for Eirgrid's East West Interconnector.

There was never any financial justification for this project, as several independent studies pointed out<sup>29</sup>. It was built solely to facilitate an increase in wind energy in Ireland. Wind energy, which in the considerable periods when it is produced in excess of Irish demand, could now be dumped through the interconnector onto the UK grid, the UK not paying a penny for this infrastructure.

If we consider the Irish Academy of Engineering's recent submission to the Government's new energy consultation<sup>30</sup>, it is remarkable for two things. First of all that more than 7 cents of our domestic electricity rate, which is now about 20 cent per kWh<sup>31</sup>, can be attributed to the wind energy programme.

Even worse, if the claims of savings in carbon emissions from the Sustainable Energy Authority of Ireland are to be believed, and this requires an enormous 'leap of faith' as they ignore completely the massive inefficiencies induced on the Irish grid, then these carbon savings from wind energy have effectively been wiped out by the importation of cheap coal based electricity from the UK through the new East West Interconnector. These imports from old coal plants, with high carbon content, have been displacing the more expensive, but highly efficient gas fired power stations in Ireland.

One can only conclude the appalling lack of professionalism of those who assessed this project and its so called cost benefits. If one considers all these grid connections that the EIB is funding in Ireland, none of which are needed for the existing electricity system to function, as it has been functioning fine for years, then it's costing each consumer in Ireland more than a €1 per week in additional charges<sup>32</sup>.

Why should they be paying this, what is actually there to show for it? Bottom line is actually zero benefit.

Politics can go astray, that is why we put checks and balances in place to ensure things don't go out of hand with populist agendas. There are procedures in law related to assessment and public participation, which as we now know don't matter to yourselves in the EIB, and then there are your own procedures, which clearly don't matter either. In Ireland children in school learn to be proficient in counting numbers by the age of five or so. However, it takes an adult to understand the value of what is being counted; in this specific case, professional assessment and cost benefit analysis.

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<sup>28</sup> <https://www.kildarestreet.com/wrans/?id=2014-01-28a.180>

<sup>29</sup> <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Communication/CommunicationACCC.pdf>

<sup>30</sup> <http://www.iae.ie/publications/publication/iae-response-to-green-paper-on-energy/>

<sup>31</sup> <http://www.bonkers.ie/compare-gas-electricity-prices/plan/electric-ireland-standard---domestic/LEGJH2>

<sup>32</sup> <http://www.esb.ie/main/press/pressreleaseWS.jsp?id=2074>



Clearly yourselves in EIB 'talk the talk' on this issue, but in reality you have zero standard of professionalism in actually completing and adhering to it. Plus the fact that this 'pork barrel' of funding you have created for the Irish semi-state sector, is really an unacceptable financial burden on the country. Not to mention the mess being left around rural Ireland by the completely unsuitable and unnecessary infrastructure you are providing the funding for, without ensuring compliance with European environmental law or the UNECE.

Yours sincerely,

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