**RATIFIED RULING OF UNECE’S ÅARHUS CONVENTION COMPLIANCE COMMITTEE.**

CASE REF. ACCC/C/2012/68

In its decision on the above case, the ruling of the Committee is that the UK is non- compliant with the UN and EU’s legal framework and the UK’s own international treaty arrangements with regard to the implementation of its renewable energy programme, where that programmes requires renewable energy targets.

This involves the UK’s NREAP (National Renewable Energy Action Plan). As the Plan says ‘Member States have notified their national renewable energy action plans to the EC by 30 June 2010. Member States set out the sectorial targets, the technology mix they expect to use, the trajectory they will follow and the measures and reforms they will undertake to overcome the barriers to developing renewable energy.’

This will clearly impact upon the current policy particularly in the field of public participation as thousands of turbines have been installed prior to programmes and consultations being finalised.

Past Communications at UNECE have shown that it is rare to see any major alterations to the draft decisions by the time they are finalised by the Committee at its next quarterly meeting.

This issue has also become as much about democracy as it is about the the technology itself. Wind power has had several clearly identified negative effects on the population via the now recognised non-compliance with this Convention. These are rising in severity as more developments are consented. The strengths of the ‘grass roots’ of democracy are now legitimised by the Committee’s decision on admissibility of the complaint. The Committee have permitted the complaint to have been made on behalf of a Community Council - despite the UK’s attempt made at the Hearing to prevent this. The importance of this cannot be underestimated should other Community Councils wish to follow a similar route in the future.

The ruling demonstrates that permitting or consent of any further developments to implement the content of the NREAP would be potentially legally invalid, until such time as the NREAP is fully compliant with the requirements defined under EU and National law, in conformity with existing Treaty Arrangements with regard to environmental democracy and public participation, as enshrined in the Åarhus Convention.

**Explanatory Notes.**

As this is of such importance, there is a need to understand the implications and reasons for the decision. In case it is needed, following is a brief guide to events and the process.

It is very important to have a look at the UK NREAP, which has now been ruled to have failed

to have undergone the necessary public participation:

https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/47

871/25-nat-ren-energy-action-plan.pdf

Points to note:

On pages 152 and 153, is the expected installed capacity, which by 2020 reaches 14,890

MW of installed onshore and 12, 990 MW of offshore wind.

On page 4 it states: "This National Renewable Energy Action Plan provides details on a

set of measures that would enable the UK to meet its 2020 target". On Page 7: "ORED is

currently undertaking a programme of work to develop a coordinated delivery plan to

implement the commitments made in this National Renewable Energy Action Plan".

The UK keep claiming that "NREAP does not set the framework for the determination of

consent applications for renewable energy projects and an SEA is not required". This

really is playing with words, as the NREAP really determined what was to be built to

achieve the 15% target, and then, in its own words provided the financial and

administrative model to deliver it.

Everything else was secondary to this including the various Scottish “Routemaps”. The

NREAP was the foundation stone for what was to be built and how to deliver it.

The Committee ‘chastised’ the EU again for not providing sufficient measures within the

process of adopting individual Member States’ NREAPs for public participation. (Main

Findings 107)

In the UK this NREAP was rushed through; Article 7 of the Convention requires that the

'necessary information be provided to the public'. Article 7 in the new implementation

guide starting at page 178 is below:

http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus\_Implementation\_Gui

de\_second\_edition\_-\_text\_only.pdf

The word “necessary” should be understood in the context of effective participation.

If we go to the objectives of the Convention in the Preamble, it is stated:

Recognizing the importance of fully integrating environmental considerations in

governmental decision-making and the consequent need for public authorities to be

in possession of accurate, comprehensive and up-to date environmental information, The NREAP never assessed what was the impact of building some 14,890 MW onshore and 12, 990 MW offshore, which represents some 12,000 turbines to be installed in the UK landscape.

Neither, for that matter, did the Renewable Energy Strategy which predated it, a point which was well addressed in the first question of the reply of September last year, see below: http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-68/Communication\_with\_Communicant/frCommC68\_response2questions\_24092012.pdf

So was the UK public provided with the necessary information? The answer is No. Furthermore, the Committee ruled:

100. NREAPs are plans or programmes under article 7 of the Convention (see findings on ACCC/C/2010/54 (ECE/MP.PP/C.1/2012/12), para. 74) and as such are subject to public participation. The fact that the UK’s Renewable Energy Strategy, which informed the NREAP, was subject to public participation does not affect this conclusion, given their different legal status and functions in the EU and UK legal framework respectively.

101. The Committee concludes that because the UKs NREAP was not subjected to public participation, the Party concerned (UK) failed to comply with article 7 of the Convention, in this regard.

So the Strategy was just another aspirational type of document, while the NREAP was binding and between the UK and EU. To reiterate Article 7 applied to the NREAP, in which : Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with Article 6 paragraph 2 and for the public to prepare and participate effectively during the environmental decision-making. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

Instead, it was all rushed through and set in motion, which, as can be seen in a multitude of cases, has lead to real problems.

Finally, Prof Aine Ryall is the leading Irish legal expert on the Åarhus subject matter having written the relevant reports for the EU on the situation there. Professors Ryall's article can be found at: http://environmentaljustice.ie/wp-content/uploads/2013/04/Ryall-Beyond-Aarhus-Ratification-IPELJ-2013.pdf

However, the key point is: The (Åarhus)Convention is an 'integral part of EU legal order', as confirmed by the European Court of Justice (Case C-240/09). Therefore these rights are part of EU law, and it follows that the Convention has legal force in domestic law by virtue of a Member State's obligations under EU law.

Furthermore, as decided already by the Irish High Court, Article 7 of the Convention is not time limited. Therefore, there is a clear potential for an injunction to be sought in the UK courts on the further continuation of the UK NREAP until such time as Article 7 is complied with.

See further details and comments at :- http://bishophill.squarespace.com/blog/2013/8/9/hearing-rules-against-uk-renewables-programme.html Error was highlighted re. energy & installed power (should be 14,890 MW onshore and 12, 990 MW offshore, which represents some 12,000 turbines to be installed in the UK landscape) - but the final paragraph raises yet another potential failure re. public participation & the possibility that the figures may yet be correct