To: EU Ombudsman Complaint 181/2013/(RT)AN
From: Joe Caulfield
Date: 13/7/2014
Re: Response to Letter Received from EU Ombudsman on 17/06/2014 and request for observations

1.1 Section 3.2 of the EU Commission's Reply – Absence of Confirmatory Application

With regard to the letter you received from the EU Commission dated 3rd June 2014 and forwarded with your correspondence, it is first necessary to point out in Section 3.2:

- *On 22 April 2013, the complainant received partial access to the said questionnaires. DG ENER explained that it had redacted (i) personal data and (ii) certain commercially sensitive information from the questionnaires. The complainant did not submit a confirmatory application but instead decided to directly pursue this issue in the context of the present complaint before the Ombudsman.*

The manner in which the EU Commission has abused the principles of environmental democracy and the UNECE Aarhus Convention in particular[1], is now the subject of a Communication, ACCC/C/2013/96[2], at the Aarhus Convention Compliance Committee in relation to these Projects of Common Interest. This Communication documents the sequence of events related to the Commission's refusal to provide environmental information relating to these Projects of Common Interest, which began in 30th July 2012 with an initial approach for information. When this was refused it was followed up by myself with a formal request for information under the Aarhus Regulation 1367 of 2006 on the 20th August 2012. There was a repeated refusals to provide this information despite a confirmatory information, which ultimately reached what only can be described within the context of the citizen's rights as an insulting situation, when on the 28th February 2013, the Secretary General of the Commission responded with a blank questionnaire form and a refusal to provide the environmental information connected to those forms.

In good faith I then lodged a second formal request on the 5th March 2013 for the same environmental information, in this case specifying access to the filled in questionnaires. There was a failure to provide full access to these as key sections had been redacted. As a result a confirmatory application was made on the 28th April 2013; see Section 1.5 of Communication ACCC/C/2013/96. As Section 1.6 of Communication ACCC/C/2013/96 documents, a reply to this was received on the 24th May 2013 from Catherina Sikow-Magny, Head of Unit, DG Energy. Therefore, the statement above that the '*complainant did not submit a confirmatory application'* is nothing short of a bold face lie.

[1] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters as ratified by the EU in Council Decision 2005/370. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005D0370&from=EN

[2] http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envpppubcom/eu-acccc201396.html

It is also necessary to point out that in the findings and recommendations related to Communication ACCC/C/2007/21 concerning compliance by the European Community[3] it was stated in Point 31(d):

- *"When refusing to provide environmental information, a public authority is required under the Convention (art. 4, para. 7) to provide information on access to the review procedures available in accordance with article 9. As EIB did not treat the request as concerning environmental information as such, it appears that the Bank did not provide such information to the communicant".*

There was no effort in the letter of the 28th April 2013 in response to the confirmatory application to provide details on review procedures or state the grounds for partial refusal. This once more demonstrates that Commission staff, at the highest level (Head of Unit), do not in the slightest take their obligations in relation to access to information on the environment seriously or demonstrated that they have been properly trained with regard to legal compliance, note Article 8(1) of Regulation 1049 of 2001 below:

- *A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and / or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.*

1.2 Section 3.3 of the Commission's Reply concerning personal data

We have now reach the situation with ourselves in Ireland, where all these massive projects are to be built, that we are somehow expected to take an enormous leap of imagination and accept that companies, which applied for access to the €5.85 billion budget and accelerated planning procedures under the "Projects of Common Interest", did not do so as legal corporate entities, but rather as private individuals with 'personal data'. Of course given that such multi-million Euro projects are now being run and presumably privately funded by these mysterious individuals, then Article 4(1) of Regulation 1049 must of course apply:

- *The institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

For instance, if one cares to read the relevant Communication ACCC/C/2013/96, if we take the Natural HydroEnergy Scheme, which the EU Commission is promoting, and it wouldn't be the only case, where these companies are completely and utterly shady and have no proper contact point nor dialogue with the citizens in areas where these massively obtrusive developments are to be built. So it is more than interesting

[3] ECE/MP.PP/C.1/2009/2/Add.1
http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2007-21/Findings/ece.mp.pp.c.1.2009.2.add.1_as_resubmitted.pdf

to see the lengths that the Commission is going, including a confirmatory letter from President Barrosso, to deny the people of Ireland access to as much as the contact details of these companies.

However, to clarify what can be only described as blindly obvious to those who do not work in the EU Commission, the "Aarhus Convention: An Implementation Guide"[4] second edition in relation to Article 4(4)(f) of the Convention "the confidentiality of personal data" states:

- *The exception does not apply to legal persons, such as companies or organizations. It is meant to protect documents such as employee records, salary history and health records.*

Again to reiterate, the issue is so blindly obvious that the those companies are not acting as private individuals, that the only issue of relevance is as to why yourselves in the EU Ombudsman's office have not taken action in this regard a long time ago.

1.3 Section 3.3 of the Commission's reply concerning commercially sensitive information

First of all yet again one can only remark at the complete lack of legal training or maybe it is just pure brazenness, which goes right to the top of the Commission, including President Barrosso, in particular the statement that:

- *According to Regulation 1049/2001 and its implementing rules, it is the Commission who takes the final decision whether to disclose the documents in its possession.*

As part of the Article 9(1) of the Aarhus Convention and its implementing procedures in EU law, the final decision on whether to disclose the documents in the Commission's possession rests not with the Commission, but with those 'access to justice' procedures, i.e. Article 8(3) of Regulation 1049 of 2001.

Furthermore, as the Projects of Common Interest are most certainly subject to public participation procedures, the first pillar of which is access to information, the Commission should have clarified this on initiation of this programme, after all as Article 5(7) of the Convention requires each party to:

(a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;

(b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention;

Instead as the Commission failed miserably to comply with its legal duties, it is now hiding behind 'company confidentiality' to prevent disclosure of key environmental information in relation to these Projects of Common Interest. For instance, on the Natural Hydro Energy Scheme we are to be denied access to; "the project cost, the cost per unit power and the energy storage cost", despite the definition of environmental information in the Aarhus Convention and implementing Regulation 1367 of 2006 being clear on:

[4] http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf

- *cost-benefit and other economic analyses and assumptions*

One can only conclude that the Irish and UK public are expected to blindly fund what are increasingly obvious as madcap schemes, i.e. flooded valleys, wind turbines in every farmer's field and thousands of kilometres of new high voltage lines, but like mushrooms are to be kept totally in the dark as to what it costs? One can also refer to the established principle and case law of cumulative impact of projects with multiple phases or interconnection or indeed the definition of environmental information in the Convention and implementing Regulation, namely:

- *measures (including administrative measures), such as policies, legislation, **plans, programmes**, environmental agreements, and activities affecting or **likely to affect** the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements.*

So in the case of Project E151 the developer had three project phases in mind, as is clear in the original questionnaire, but the third one is 'blacked out'. One can only presume that the Commission is in the position to demonstrate that the third project phase is not likely to affect the relevant 'elements and factors' although no such evidence is actually provided.

One could go on in relation to these issues, but why should one, in particular as one has rights in legislation, rights which are clearly being violated. In this regard it is necessary to highlight the fact that in the Commission's reply, it is now evident that there were two filled in questionnaires in relation to Project E151, but the second one was never provided at the time of request. A request which occurred initially on the 20Th August 2012 in respect of environmental information on these projects and then when this was not complied with again on the 5th March 2013 with respect to access to the project questionnaires related to the Irish electricity projects. So what other information is the Commission hiding?

Clearly the Commission values its relationship with the commercial companies it has engaged with on these Projects of Common Interest far greater than that of its relationship with its legal framework and citizens, which naturally results in many citizens now starting to question as to whose interest these so called 'Projects of Common Interest' are actually in. With regard to the Commission's reference to the below:

- *A special confidentiality requirement was laid down in Regulation 347/2013 on guidelines for trans-European energy infrastructure. More specifically, Annex III, point 2(2) of Regulation 347/2013 provides that "[a]ll recipients shall preserve the confidentiality of commercially sensitive information"*

Two things immediately jump out. Firstly, this regulation dates to 2013, while the public participation on the Projects of Common Interest and associated requests for environmental information dates back to the summer of 2012[5]. It is of course more than ridiculous that President Barrosso considers it his entitlement to apply legislative powers adopted in 2013 to the situation in 2012. However, it is reaching the situation where nothing really surprises anymore, when it comes to DG Energy and their plans to turn Ireland into a wind farm and pylon hedgehog and get the citizens to pay for it.

[5] http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_en.htm

The second issue which jumps out is the 'confidentiality of commercially sensitive information', so what exactly does that mean and who decides that? As the UNECE Compliance Committee has already confirmed to the European Union in the findings and recommendations related to Communication ACCC/C/2007/21[6]:

- *30 (c): In paragraph 23 of its submission of 5 August 2008, the position of the Party concerned implies that the condition for environmental information to be released is that no harm to the interests concerned is identified. The Party concerned apparently bases this statement on article 4, paragraph 4 (d), of the Convention, which states that a request for information may be refused if the disclosure would adversely affect "the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest". The Committee wishes to point out that this exemption may not be read as meaning that public authorities are only required to release environmental information where no harm to the interests concerned is identified. Such a broad interpretation of the exemption would not be in compliance with article 4, paragraph 4, of the Convention which requires interpreting exemptions in a restrictive way, taking into account the public interest served by disclosure. Thus, in situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure.*

Furthermore, as the "Aarhus Convention: An Implementation Guide" second edition confirms:

- *In its findings on communication ACCC/C/2008/30 (Republic of Moldova), the Compliance Committee referred to article 4, paragraph 4, in its finding, inter alia, that the adoption of a Government regulation "On Rent of Forestry Fund for Hunting and Recreational Activities", which set out a broad rule with regard to the confidentiality of information received from rent-holders, constituted a failure by the Party concerned to comply with article 3, paragraph 1, and article 4, paragraph 4, of the Convention.*

These findings were then endorsed by the Meeting of the Parties at its fourth session through decision IV/9d[7].

One could also point out as the EU stated in their first implementation report on the Convention to UNECE[8]:

- *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***

[6] Conclusions adopted by the Meeting of the Parties in 2008: http://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_e.pdf

[7] http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp_pp_2011_CRP_7_Compliance_Moldova_e.pdf

[8] http://ec.europa.eu/environment/aarhus/pdf/sec_2008_556_en.pdf

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.

- *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.***

So what we have is President Barrosso writing to highlight that secondary legislation has been adopted by the Community in Regulation 347/2013, which is in direct conflict to the provisions mandatory in International Law through the ratification of the Aarhus Convention with UNECE. No doubt of course it doesn't bother him that I and others are now expected to reclaim our rights by extremely expensive and long drawn out legal cases in the Courts.

1.4 Section 3.3 of the Commission's reply concerning overriding public interest in disclosure and the issue of an 'environmental information' in the sense of the Aarhus Convention

I simply don't know how the great minds in the EU Commission, including President Barrosso, came up with in relation to the Aarhus Convention and its implementing Regulation 1367 of 2006 that it *"obliges the divulgation of information only when it is information on emissions*". Clearly once again they have access to developing a whole new jurisprudence to suit the occasion, such as already highlighted miserably failing to complete the public interest test and state the grounds for partial refusal in their 'response' to the confirmatory application.

If we take the issue of "*justified in order to safeguard the commercial interests and the intellectual property of the legal entities concerned*", in addition to what has been discussed previously, the "Aarhus Convention: An Implementation Guide" second edition states:

- *The Convention does not provide specific guidance on how to balance the "public interest". One issue is whether Parties may choose to consider the public interest (a) categorically across an entire issue; (b) case by case in each decision on whether to release information; or (c) may provide some latitude for case-by-case determinations within the framework of policies or guidelines. In Case C-266/09 (Commission v. the Netherlands) the ECJ held that article 4 of Directive 2003/4/EC should be interpreted to require that the balancing exercise it prescribes between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities, even if the national legislature were by a general provision to determine criteria to facilitate that comparative assessment of the interests involved.*

One can also reiterate that the balancing test, which the authorities must go through to weigh the public interest served by disclosure against an interest protected under one of the exceptions in Article 4 (4) subparagraphs (a) to (h) of the Convention, was noted by the Compliance Committee in its findings on communication ACCC/C/2007/21 (European Community). In that case the Committee rejected the position of the Party concerned that the identification of any harm to one of the protected interests would be sufficient to keep the information from being disclosed. As the Committee stated, *"in situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure."*

Two other issues now need to be highlighted, firstly safeguarding "*the Commission's decision-making process*". The Projects of Common Interest fall under Article 7 of the Aarhus Convention, which in turn is implemented by Regulation 1367 of 2006. In connection with Article 7 of the Convention, Article 5 (7)(a) applies in that "*each party shall publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals*". As the "Arhus Convention: An Implementation Guide" second edition confirms:

- *Paragraph 7 (a) requires Parties to publish background information underlying major environmental policy proposals. If a Party* ***considers that certain facts and analyses of facts are relevant and important in framing such proposals, it must publish them.***

- *"Facts" may be interpreted to cover factual information like water and air quality data, natural resource use statistics, etc.* ***"Analyses of facts" includes cost-benefit analyses****, EIAs and other analytical information used in framing proposals and decisions. Since article 7 provides for public participation during the preparation of policies relating to the environment, the publication of facts and analyses of facts under article 5, paragraph 7 (a), will help to ensure that the public has the relevant information it needs to make its participation in policymaking as effective as possible.*

Obviously Irish citizens are expected to reach the conclusion that the environmental information related to cost-benefits and other economic analysis is not relevant to the Commission's decision making-process? Therefore, as it is not relevant, we are of course not entitled to it? One could also point out that there has been a refusal by the EU Commission under a separate access to information on the environment request to provide information on the "*reasons and considerations upon the decision is based*"[9] in relation to the selection of the Projects of Common Interest, unless of course one considers completely blanked out forms sufficient 'reasons and considerations'.

So we are to be kept completely in the dark about all these massive financial costs or 'no pun intended' to be blacked out of our rights to that information? One can only recycle the words of the commission "*they prevail over the public interest in transparency in this case*". In no uncertain terms the sums of money being poured into these projects and dubious developers is simply staggering, in particular when there is no need for these massively obtrusive and financially staggering developments, as Ireland's electricity system already works fine without them, as it does each day when the wind speed is less than double the average. The glaring

[9] Article (5) of Regulation 1367 of 2006:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1367&from=EN

lack of transparency and evident breaches of legal due process leads one to the simple conclusion that corruption is occurring, which as history tells us is inevitable when decisions are being made behind completely closed doors.

The other second issue that needs to be raised is the statement by the EU Commission *"the fact that the documents concern an administrative procedure, and not a legislative procedure for which wider openness is presumed to exist, only reinforces this conclusion".* So where did President Barrosso and his officials in the EU Commission get this new legal framework? Article 4 of the Convention, its jurisprudence and that of Regulation 1367 of 2006 make no distinction between environmental information related to administrative procedures or legislative procedures. The public have rights, which must be respected, a fact which might be news to the Commission as they seem to be spending more time making up 'new laws' to suit the occasion than complying with what is clearly prescribed in International Law and Community Law.

1.5 Section 4 of the Commission's Reply on Proposal to Settle the Case

Article 9(1) of the Aarhus Convention provides:

- *Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.*

- *In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.*

- *Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.*

In addition Article 9(4) of the Convention applies in that:

- *In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.*

If we consider Regulation 1049 of 2001 and Article 8 then this defines the remedies available in relation to access to justice as: *"instituting court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty"*.

If we first of all take the Court proceedings and the recent case of the European Platform Against Wind Farms (EPAW) in the European General Court, an

environmental organisation I fully support, then in case T-168/13[10] the Court recently denied them access to justice proceedings. This was despite it being already established in the Irish High Court and Supreme Court in the Sandymount Residents case that "an unincorporated association with no legal personality[11]" had rights to access to justice proceedings in environmental matters. However, the General Court, on application no less from the Commission, ruled in a completely contrary manner.

So do I have access to the European General Court to deal with the matters raised here? Clearly not and as regards Article 9(5) of the Convention:

- *In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.*

Your office didn't remotely provide me with such information, it is not on your website and neither is such information on the Europa website. Indeed as Communication ACCC/C/2008/32[12] has established, the door in relation to access to the European Court on environmental issues is firmly slammed shut and the EU Commission and European Parliament are actively pursuing appeals in the European Court to keep it that way.

So in that case the only provisions available to me are an appeal to your office of the EU Ombudsman. In other words either your office complies with Article 9(1) of the Convention or the European Union is once more in breach of its International legal obligations. If we take the simple things first, namely Article 9(4) and as regards 'timely': Firstly it is nearly two years since this information was initially requested back in July 2012 with a formal Aarhus request which followed in August 2012. Secondly Complaint 181/2013/JF was submitted by myself on the 22nd January 2013, essentially a year and a half ago and I still don't have the information I have rights to. So clearly we are not doing so well on timely are we? After all in Communication ACCC/C/2004/1[13] the Compliance Committee pointed out:

- *The Convention, in its article 9, paragraph 1, requires the Parties to ensure that any procedure for appealing failure to access information is expeditious. However, as the time and number of determinations with regard to jurisdiction in this case demonstrate, there appears to be lack of regulations providing clear guidance to the judiciary as to the meaning of an expeditious procedure in cases related to access to information.*

If we take Communication ACCC/C/2007/21 concerning compliance by the European Community, referred to previously, the Committee concluded:

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[10] http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=T-168/13&td=ALL

[11] http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/e57d6ca0f350359280257c31004816ef?OpenDocument

[12] http://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html

[13] http://www.unece.org/fileadmin/DAM/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.1.e.pdf as endorsed at the Meeting of the Parties in at its second session through decision II/5a

- *It does not consider that in every instance where a public authority of a Party to the Convention makes an erroneous decision when implementing the requirements of article 4, this should lead the Committee to adopt a finding of non-compliance by the Party, provided that there are adequate review procedures. The review procedures that each Party is required to establish in accordance with article 9, paragraph 1, are intended to correct any such failures in the processing of information requests at the domestic level, and as a general rule, it is only when the Party has failed to do so within a reasonable period of time that the Committee would consider reaching a finding of non-compliance in such a case. Decisions on such a question need to be made on a case-by-case basis. In the present case, the requested information was provided, albeit with some delay, and thus the matter was resolved even before there was any recourse to the review procedures available to the communicant.*

Which is a fair enough conclusion, but where are those review procedures, after all the Convention was ratified by the European Community back in 2005, nearly a decade ago? In addition to my remarks previously about Article 9(5), I can't find published procedures and case law relating to Article 9(1) of the Convention on your EU Ombudsman's website[14]. Clearly we as citizens lodging the complaint are meant to justify our rights and prepare a legal submission in relation to replies by such bodies as the EU Commission. An EU Commission, who clearly due to completely inadequate enforcement procedures in the past, see an entitlement to 'run amok', ignoring citizen's rights even to the point of developing new legal frameworks contrary to those rights.

Let's face it again going back to the case of EPAW, who already raised with yourselves in the EU Ombudsman the situation in Ireland where the National Renewable Energy Action Plan (NREAP) has been found by the UNECE Compliance Committee to be non-compliant with the terms of the Convention. In the decision on case 1892/2012/VL[15], it was stated with regard to compliance with the Aarhus Convention:

- *With regard to Case ACCC/C/2010/54, the Aarhus Compliance Committee issued its findings to the Commission on 16 August 2012. On 31 August 2012, the Commission informed the complainant that it had commenced to reflect on how to address these findings. The Aarhus Compliance Committee, on 15 July 2013, asked the European Union for information to its follow-up, which is still to be assessed further. Therefore, given that the Aarhus Compliance Committee currently continues dealing with this matter, an inquiry into how the Commission has complied with the Aarhus Compliance Committee's findings would, at this stage, be premature.*

A ruling of non-compliance with the Convention, which is part of Community Legal Order is maladministration. However, you in the EU Ombudsman's office decided to do nothing about it and leave it instead to UNECE and the Communicant / Irish

[14] For instance your own guidance:
http://www.ombudsman.europa.eu/en/atyourservice/whocanhelpyou.faces#/page/1

[15] http://www.ombudsman.europa.eu/de/cases/decision.faces/de/51946/html.bookmark

Public to enforce Community Law. In this regard it is necessary to point out that in the Meeting of the Parties on the Aarhus Convention held on the 30th June 2014[16]:

- *Based on the discussions under the preceding agenda items, the Meeting of the Parties formally adopted the following decisions with the agreed amendments by consensus: Decision V/9(g) on compliance by European Union (ECE/MP.PP/2014/L.16)*[17]

So clearly now it is also expected that the international community at the UN are expected to do your work in relation to non-compliance of the institutions of the European Union with its legal obligations, the failings of which on the NREAPs are now endorsed in International Law?

So if we come back to the Commission's reply of this June, as signed off by President Barroso, and its repeated references to the "*Ombudsman's friendly solution proposal*". Where did this come from? There is nothing in Article 9(1) and 9(4) of the Convention and the rights there in of 'friendly solution proposals'. Instead there is a guarantee of rights which have to be upheld, which going on past performance might be a surprise to you. As the "Aarhus Convention: An Implementation Guide" second edition clarifies:

- *Who carries out the review? Article 9, paragraph 1, specifies that the review procedure must be before a court of law or another "independent and impartial body established by law". "Independent and impartial" bodies do not have to be courts, but must be at least quasi-judicial, with safeguards to guarantee due process, independent of influence by any branch of government and unconnected to any private entity.*

- *The reviewing body must also be competent to make decisions that are binding on the public authority holding the requested information. Thus, advisory findings or non-binding suggestions by the reviewing body are not sufficient. This is essential in determining whether an ombudsman institution suffices to meet the criteria in article 9, paragraph 1, of the Convention.*

So what is going on here? Firstly I can't access the European Court to deal with this issue. Secondly it is increasingly obvious that your office is just a bunch of expensively funded time wasters, who have no regard for my rights and the rights of my fellow citizens and when the push comes to the shove are going to use 'the gift of the gab' to come up with so called 'friendly solutions' to suit yourselves. Sorry; myself and other citizens are just no longer content to put up with this type of nonsense and having our countryside turned into a wind turbine and pylon hedgehog. Either comply with the law or get off the stage.

[16] http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/In-session_docs/Aarhus_MOP-5List_of_key_decisions_and_outcomes_2.7.2014_ENG.pdf

[17] http://www.unece.org/env/pp/aarhus/mop5_docs.html