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ОБЪЕДИНЕННЫЕ НАЦИИ

ЕВРОПЕЙСКАЯ ЭКОНОМИЧЕСКАЯ
КОМИССИЯ

UNITED NATIONS

ECONOMIC COMMISSION
FOR EUROPE

Palais des Nations, Room 429-4
CH-1211 GENEVA 10

27 September 2016

Dean Blackwood
River Faughan Anglers Ltd
Belfast
Northern Ireland

Dear Mr. Blackwood,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with the Convention on public participation in connection with the River Faughan (ACCC/C/2013/90)

In your correspondence of 9 December 2015 and 8 March 2016 you indicated that you intended to provide more detailed comments on the Party concerned's response dated 27 November 2015 to your communication. In the light of the Party concerned's submissions concerning the admissibility of your communication in its response, the Committee asks you to address the following questions:

Article 3, paragraph 2

1. By what specific action(s) or omission(s) did the officials or authorities of the Party concerned in your opinion fail to assist and provide guidance to you with respect to the procedures subject to your communication?

Article 4

2. With reference to the information requests listed in Annex III and IV of the Party concerned's response to the communication:
 - (a) For which of these requests do you allege that you were unjustifiably denied the requested information contrary to the requirements of the Convention?
 - (b) For each such request that you consider was unjustifiably denied, please specify whether you exhausted all available domestic remedies to challenge the failure to provide the requested information? If so, which domestic remedies did you use? If not, why not?

Article 6

3. At paragraph 57 of its response to the communication, the Party concerned states that "It is denied that the development activity in question fell within the ambit of article 6 by being listed in annex I to the Convention or by being an activity which may have a significant effect on the environment". Do

you consider that the activity or activities in question fell within the scope of annex I of the Convention, and if so, which paragraph of the annex and why? Alternatively, do you consider that the activity or activities are within the scope of article 6, paragraph 1(b)? If so, please point the Committee to the Party concerned's determination that the activity was to be subject to the provisions of article 6.

Article 9

4. At paragraphs 8 and 9 of its response to the communication, the Party concerned argues that already before the substantive hearing of your appeal before the High Court, the Planning Permission in question was time expired, and therefore incapable of implementation. Do you agree and if so, for what reason(s) did you proceed with the case before the High Court?
5. Please comment on the Party concerned's submissions in paragraph 64-77 of its response to the communication that the Convention does not require the possibility of third party rights of appeal. In responding to the Party concerned submissions on this point, please do not focus on the issue of the costs of judicial review in Northern Ireland but on the other arguments made by the Party concerned in paragraphs 64-77 of its response.
6. Do you allege that the costs of your case before the High Court were prohibitively expensive in the meaning of article 9, paragraph 4 of the Convention? If so, for what reason(s)? Please respond to the Party concerned's submissions in this respect and in particular the following submissions:
 - (a) The communicant had earlier decided not to pursue any application to the Court for costs protection (para. 12 (a) of the Party concerned's response);
 - (b) The communicant could have chosen to resist any order for costs before the Court but instead chose to accept the Department's proposal (paragraph 12(c) of the response);
 - (c) The communicant does not raise any new issues regarding expenses that are not already being considered by the Committee in the context of its review of the Party concerned's costs regime under decision V/9n of the Meeting of the Parties (para. 83 of the response);
 - (d) Costs of £6,000 for the High Court proceedings cannot be considered prohibitively expensive in this case (para. 91 of the response);
 - (e) The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 provide that in any appeal in an Aarhus Convention case, including an appeal from judicial review, the court may make an order limiting the recoverable costs. In deciding the costs limit to be imposed, the Regulations provide that the court must have regard to the means of both parties, all the circumstances of the case and the need to facilitate access to justice. Pursuant to the findings in *Edwards* the assessment of what is prohibitively expensive cannot differ depending on whether the court in adjudicating first instance or appeal proceedings (paras. 92 and 93 of the response).
 - (f) The level of a claimant's own costs for legal representation are not relevant to whether proceedings are prohibitively expensive (para. 94 of the response).

Please provide your replies to the above questions by **1 November 2016**. If, in addition to your replies to the above questions, you wish to comment on other aspects of the Party concerned's response and/or to inform the Committee of further developments relevant for your communication, you are able to do so, but please bear in mind that the original scope of the alleged non-compliance of the Party concerned with the Convention should not be extended.

The Committee will consider your replies to the above questions and any other comments you wish to make by the above deadline when deciding how to proceed with respect to your communication at its fifty-fifth meeting (Geneva, 6-9 December 2016). In this regard, the Committee has asked me to inform you that it may discuss the admissibility of your communication, or the admissibility of specific allegations within it, at that meeting in the light of the information received.

Please do not hesitate to contact the secretariat if you require any further information.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva
Mr. Ahmed Azam, Department of Environment, Food & Rural Affairs (Defra), United Kingdom