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26<sup>th</sup> April 2015

Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10  
Switzerland

Email: aarhus.compliance@ unece.org

**Re: Communication to the Aarhus Convention Compliance Committee regarding Ireland's non-compliance with Article 9.1, 9.4, 6.1 (b) and 6.2 of the Aarhus Convention.**

**Communicants:** Jim & Mary Redmond  
**Permanent address:** [redacted], London [redacted]  
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**Party Concerned:** Ireland

This communication is filed in relation to Ireland and alleges its non-compliance with Article 9.1, 9.4, 6.1 (b), 6.2 of the Aarhus Convention.

Ireland's non-compliance of Article 9.1 and 9.4 relate to Ireland's non provision of access to an environmental review procedure through the Office of the Commissioner Environmental Information that is expeditious as defined in Article 9 Access to Justice.

Ireland's non-compliance of Article 6.1(b) and 6.2 relate to the fact the wholly owned state company Coillte Teoranta failed to provide for public participation in the decision making process of the sale of 402.92 hectares of a land lease and forestry at Kilcooley Abbey Estate in County Tipperary, Ireland.

## Facts of the Communication

1. On 22<sup>nd</sup> May 2014 we made a request to Coillte Teoranta (Coillte), The Irish Forestry Board Limited, for information under S.I. No. 133 of 2007 to 2011 European Communities (Access to Information on the Environment), hereon referred to as AIE Regulations, in relation to the sale of a land lease and timber harvesting rights of 950 acres (402.92 hectares) of forestry land in December 2013 at Kilcooley Abbey Estate, Thurles, Co Tipperary, Ireland. The land lease was for 150 year, commencing in 1934, Coillte had approximately 70 years left to run on the lease. Kilcooley Abbey, a listed monument of historical importance, is located within several hundred meters of the forestry land.
2. The sale of the land lease and timber was not through public auction nor was there any public consultation or participation on the sale of the land or forestry. Information on the sale only became public through press articles in April 2014 after Coillte sold its interest in the land and forestry.
3. Under the AIE Regulations we sought information from Coillte in relation to 8 items.
4. On the 11<sup>th</sup> June 2014 Coillte responded to our request providing information on item 1 and partial information in relation to item 2 and they requested more specific information in relation to point 8, which we supplied to Coillte on 23<sup>rd</sup> June. Coillte refused to disclose any further information on the other points, on the basis that it is commercially sensitive, under Section 9 of the AIE Regulations.
5. On the 4<sup>th</sup> July 2014 we wrote to Coillte requesting an internal review of this decision. In our request for an internal review, we argued against the decision to refuse us the information on the ground that it was commercially sensitive and asked Coillte to advise us what the legitimate economic interest was for their grounds of refusal is and how it relates to the AIE regulations.
6. On 16<sup>th</sup> July 2014 we were advised by Coillte that they agreed with the original decision to withhold the information sought but not under Section 9, 'commercial sensitivity' as originally stated. Coillte advised us that the information would not be disclosed because the information sought does not fall within the interpretation of Section 3(1) of the AIE Regulations, ie the information sought is not environmental information. However part 2 of item 2 was answered. Coillte did not advise us of our rights of appeal to the Commissioner for Environmental Information.
7. On 7<sup>th</sup> August 2014 we made a written/on-line appeal to the Office of the Commissioner for Environmental Information (OCEI) to request a review of Coillte's decision not to provide us with the information under AIE Regulation as we believe that Coillte had wrongfully refused to provide us with the

information sought. We paid the €150.00 standard appeal fee, although we do believe that this fee constitutes a barrier to access to justice.

8. On 11<sup>th</sup> August 2014 the OCEI wrote to us confirming receipt of our correspondence and the €150 appeal fee with a case reference no of CEI/14/0011.
9. On 15<sup>th</sup> August 2014 the OCEI wrote to us to confirm that our appeal had been accepted and that the Commissioner will carry out a review of the decision of Coillte not to provide us with the information. We were advised that we were entitled to make submissions, which the commissioner will take into account in their review and that any such submission should be received by there Office by 5<sup>th</sup> September 2014. We made no further submissions.
10. At no time during this application process did the OCEI advise us that there were considerable delays and backlogs of cases which would delay the allocation of our case. There is no explicit information on the OCIE website to suggest that there are considerable delays in processing AIE appeals.
11. On 19<sup>th</sup> September 2014 we emailed the OCEI asking for an indication of the process that now takes place and the timescales involved. That afternoon we were advised by email that:
12. *“This case is currently awaiting allocation. However, there is a backlog of cases awaiting allocation and it is not possible to say when this will occur. The delay is mainly due to the number and complexity of cases we are currently examining and I apologise for the effect this may have. I can assure you that every effort is being made to clear the backlog to the extent that the Office can activate your case, and I would like to take this opportunity to apologise for the delay and thank you for your forbearance. I can also assure you that this Office will contact you as soon as your case has been reached and an Investigator assigned.”*
13. We again email the OCEI on several occasions between October 2014 and January 2015 requesting information on when our appeal would be allocated to an investigator. We received similar responses to that of the 19<sup>th</sup> September 2014 - that the OCEI was not in a position to determine when our appeal would be allocated to an investigator due to lack of resources and staff. .
14. On 24<sup>th</sup> January 2015 we lodged a complaint with the OCEI due to their inability to deal with our case in a timely manner, informing them that we believed it is an infringement of our rights to access to environmental information.
15. On 28<sup>th</sup> January 2015 we received a letter from the Office of the Information Commissioner (OIC) acknowledging our ground for complaint to the OCEI. The OIC points out in their letter that although the OCEI is a legally independent Office it relies entirely upon the resources within OIC:

16. In the letter the OIC advises us that “The OIC has limited resources to spare and is currently making preparations for the expected increase in demand now that the FOI Act 2014 has been signed into law, enacted October 2014. The Commissioner decided that he had no option but to focus on clearing the OIC backlog during 2014 and investigators concentrated on that FOI work, especially in the latter half of the year.” (see appendix 1)
17. We believe that the decision to the Commissioner to divert resources away from OCEI appeals of focus on clearing the FOI backlog amounts to a virtual suspension of an environmental appeal process. This is non-compliant with Article 9 of the Aarhus Convention.
18. At the time of filing this communication with the Aarhus Convention Compliance Committee the OCIE has not allocated an investigator to our appeal which is over eight months since we first lodged the appeal with the OCEI and over 11 months since we first wrote to Coillte requesting information under AIE Regulations.

### **Background information about Coillte**

19. Coillte, the Irish Forestry Board, is a wholly owned state limited company that was set up by the Irish Government under the Forestry Act 1988. Coillte started commercial activity on 1<sup>st</sup> January 1989 and inherited much of the land previously owned by the Irish state on behalf of the Irish people. Coillte remains a state owned company with all shares in the company held by Minister for Public Expenditure and Reform (majority shareholder) and the Minister for Agriculture, Food and the Marine (minor shareholder) on behalf of the Irish State.
20. Coillte holds over 445,000 hectares of land, about 7% of the land of Ireland, of which approximately 80% is in forest. Its main commercial business is operating in forestry, land based businesses, renewable energy and panel products. According to Coillte website [www.coillte.ie](http://www.coillte.ie) its ‘core purpose is to enrich lives locally, nationally and globally through the innovative and sustainable management of natural resources’. How it achieves this core purpose is difficult to understand as the Forestry Act 1988 compels Coillte to develop a commercial forestry model based on profit and the decisions of the company are not open to public scrutiny and generally public participation in its decision making process does not happen. Coillte as a state owned company has an ‘exempt agency’ status under the Freedom of Information Act 2014 so the company is not subject to freedom of information requests. As a result the confidence in Coillte to act as guardians of Irish forest land is not as it should be
21. Despite being Ireland’s largest land owner with the significant environmental responsibility that this carries, Coillte’s exemption from the FOI requests allows the company to operate in secrecy in relation to the management of these public resources. Although Coillte is subject to the AIE Regulations, we

would suggested that the delay by the OCEI in dealing with appeals in an expeditious manner they are allowing state companies like Coillte to act with absolute impunity when it comes to responding to AIE requests. We would suggest that Coillte's legal team are aware that the OCEI does not have the capacity to deal with AIE requests and can refuse a request for information knowing that by the time the OCEI get around to dealing with the appeal, the impact of the information sought may have diluted with the passage of time. The OCEI annual report 2013 points out that the average time for an appeal to be allocated is 12.3 months, so getting the environmental information requested can take years.

22. In June 2013 the Irish Government proposed privatisation and sell off Coillte land, forestry harvesting rights and natural resources to private enterprise was shelved following public protest. Despite the shelving of the privatisation of Coillte lands the landlease and forest harvesting rights at Kilcooley Abbey were sold privately without any public knowledge or consultation in December 2013.

### **Provisions of the Convention alleged to be in non-compliance.**

**23. Article 9.1** 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.

24. 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.

25. 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.

**26. Article 9.4** 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.

**27. Article 6.1 (b)** Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties

shall determine whether such a proposed activity is subject to these provisions;

28. **Article 6.2** The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

- (a) The proposed activity and the application on which a decision will be taken;
- (b) The nature of possible decisions or the draft decision;
- (c) The public authority responsible for making the decision;
- (d) The envisaged procedure, including, as and when this information can be provided:
  - (i) The commencement of the procedure;
  - (ii) The opportunities for the public to participate;
  - (iii) The time and venue of any envisaged public hearing;
  - (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
  - (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
  - (vi) An indication of what environmental information relevant to the proposed activity is available; and
- (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

### **Nature of alleged non-compliance**

29. European Communities (Access to Information on the Environment) Regulations, 2007 (S.I. No. 133 of 2007) & 2011 (S.I. No. 662 of 2011) – AIE Regulations, gives legal effect in Ireland to Directive 2003/4/EC of the European Parliament and of the Council of 28, January 2003 on Public Access to Environmental Information.

30. Article 12, Appeal to Commissioner for Environmental Information, of the AIE Regulations sets out the appeal mechanisms by which a person may appeal the decision of a public authority. The decision of the Commissioner is binding on all parties and an appeal to the High Court in relation to the decision of the Commissioner may only be made on a point of law.

31. Article 12 (5) sets out the process for the Commissioner for Environmental Information on receipt of an appeal:

Following receipt of an appeal under this article, the Commissioner shall—

review the decision of the public authority,

affirm, vary or annul the decision concerned, specifying the reasons for his or her decision, and

where appropriate, require the public authority to make available environmental information to the applicant,

(a) in accordance with these Regulations.

32. There is no provision in Article 12 (5) or in the AIE Regulations which requires the Commissioner to carry out the review in an expeditious, timely and efficient, manner. By not setting out in law that a review must be carried out in an expeditious manner and applying timeframes for which the Commissioner must review the decision of the public authority, we believe that Ireland has failed to comply with Article 9(1) and Article 9(4) of the Aarhus Convention.
33. In the letter from the OIC of 28<sup>th</sup> January 2015 (see appendix 1) we were advised that the Information Commissioner who also acts as the Commissioner for Environmental Information had diverted staff and resources away from dealing with AIE appeals to concentrate on FOI appeals. We submit that this amounts to a suspension of Article 12 (5) (a) 'review of the decision of the public authority' of the AIE Regulations. We submit that this suspension of Article 12(5) (a) of the AIE regulations is contrary to and is non-compliant with Article 9(1) of the Aarhus Convention which states that a person 'has access to a review procedure before a court of law or another independent and impartial body established by law'.
34. We believe that this suspension also amounts to a non-compliance of Article 9(4) of the Aarhus Convention as the Irish Government have failed to 'provide adequate and effective remedies' which are 'equitable, timely and not prohibitively expensive'.
35. Article 12 (2) of the AIE regulations states that ' the holder of the office of Commissioner for Environmental Information shall be the person who, for the time being, holds the office of Information Commissioner under the Freedom of Information act 1997 and 2003.
36. Article 12 (10) of the AIE Regulations states that ' The Commissioner shall be assisted by the staff of the office of the Information Commissioner and by such other resources as may, from time to time be available to that office.
37. Ireland is failing to provide the Office of the Commissioner of Environmental Information (OCEI) with adequate staff and resources necessary to carry out a review in an expeditious manner. We would submit that the ability of the appeals mechanism to expeditiously process appeals should not be curtailed or hindered by a lack of resources and therefore Ireland is not complying with Article 9(1) and Article 9(4) of the Aarhus Convention. Correspondence referred to in this Communication, the letter of 28<sup>th</sup> February 2015 (appendix 1), the OCEI Annual Reports of 2013 & 2012 all highlight the growing backlog

of AIE cases and the lack of resources & staff available to carry out AIE appeals. In September 2013 the Commissioner for Environmental Information in response to case number CEI/12/005 (Mr. Pat Swords and the Department of Environment, Community and Local Government) pointed out that the delay's are not in keeping with the States obligations to the Aarhus Convention (see appendix 2):

As I have highlighted in my Annual Reports, since its inception, the OCEI has encountered a number of practical difficulties arising from the operation of the AIE regime. One problem is the matter of resources. Although the OCEI is a legally independent Office, to date, it has not received any funding allocation from the State and must rely entirely on the resources that can be made available from the very limited resources available to the Office of the Information Commissioner. Consequently, there generally are considerable delays in bringing AIE appeals to completion. The delays are certainly regrettable and arguably not in keeping with the State's obligations under the Aarhus Convention, and I apologise for any inconvenience caused. However, it must be acknowledged that the delays will be difficult to overcome given the demands of the AIE regime as it currently operates in Ireland on the one hand and the dearth of available resources on the other.

38. It is also noted that under the Freedom of Information Act 1997/2003 and the new Freedom of Information (FOI) Act 2014 the Commissioner for Information is required to review an FOI application within 4 months of receipt, Part 3, section 22 (3) of FOI Act 2014.
39. With the Office of the Information Commissioner and the Office of the Commissioner for Environmental Information sharing staff & resources and the Commissioner being one and the same although legally bound to review FOI applications within 4 months from date of receipt and with no such legal requirement for dealing with AIE appeals in a timely manner the effect is that FOI appeals carries more weight than a person seeking environmental information and therefore affects a person's rights to seek a review in an expeditious manner as set out in Article 9(1) and Article 9(4) of the Aarhus Convention.
40. Article 6.1(b). Article 6 of the Aarhus convention provides for public participation in decision making, Article 6.1 (b) provides for the 'provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment'. We believe that the sale of the land lease and the forestry is an activity which may have a significant effect on the environment and should therefore have been subject to public participation in the decision to sell the lease and forestry.
41. Coillte have in the past come under severe criticism for selling large tracks of land without providing for public participation in the decision making process examples of this are the 165 hectares (395 acres) of Coillte forestry that the



company sold to Shell Ireland Limited in 2004 to build an on-shore gas refinery terminal at Bellanaboy in Co. Mayo and the subsequent granting of 'wayleave' permission to lay a high pressure raw gas pipeline through 3KM of Coillte forest land adjacent to the Bellanaboy Terminal.

42. In 2003 Coillte sold a 850 acres site to enable construction of a windfarm. Coillte clearfelled 650 acres of forestry at Derrybrien in Co Galway and subsequently sold the land to Saorgus Energy to construct a 71 turbine windfarm. The effects of the clearfelling and the construction caused a massive landslide of 450,000 cubic metres of peat being distributed over a 15km area and the killing of an estimated 50,000 fish in a local river and Lough Cutra as well as effecting local wildlife and damaging habitat
43. We have been advised by Coillte that they have no records on the proposed development of land and forestry at the time of sale. This would suggest that an Environmental Impact Assessment (AIE) was not carried out prior to the sale of the Kilcooley Abbey Forestry. Contracts were first drawn up for the sale of the land lease in 2011 and the sale went through in December 2013. Coillte had adequate time for public participation in their intention to sell the land lease and nearly 1000 acres of forestry. We believe that in this instance Coillte should have provided for public participation in the decision to sell the land and forestry at Kilcooley Abbey and as no public participation or consultation took place in relation to the decision to sell the land and the forestry there is a non-compliance with section 6.1(b) and 6.2 (a-e) of the Aarhus Convention.

### **Use of domestic remedies.**

Application was made to Coillte under the European Communities (Access to Information on the Environment) Regulations, 2007 (S.I. No. 133 of 2007) – AIE Regulations

An internal review of Coillte's decision not to provide us with the information sought was made within one month of their reply in accordance with the AIE Regulations.

Within one month of receiving a reply from Coillte advising that they will not be provide us with the information sought we made a written request to the OCEI for a review of Coillte's decision as laid out in the AIE regulations.

Coillte are not subject to FOI requests.

There are no other domestic remedies available.

### **Use of other international procedures.**

No international procedures have been invoked to address this issue.

### **Confidentiality.**

No confidentiality is sought in relation to this communication

**Supporting documentation.**

Appendix 1 – letter of 28<sup>th</sup> February 2015 from Office of the Information Commissioner to Jim & Mary Redmond.

Appendix 2 – OCEI case ref number CEI/12/005 (Mr. Pat Swords and the Department of Environment, Community and Local Government).

Yours sincerely

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Mr. Jim Redmond

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Mrs Mary Redmond