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4th December 2016

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United Nations Economic Commission for Europe
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Dear Fiona

Re: Communication ACCC/C/2015/129 to the Aarhus Convention Compliance Committee.

Thank you for your correspondence of 28th September 2016 and the granting of an extension of time to respond to the two questions raised in your letter and apologies for any inconvenience this delay may have caused.

Before we respond to the questions we would like to update you on our submission to the ACCC under Article 9.1 and 9.4 relating 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. The Commissioner for Environmental Information concluded his investigation in November 2015 and provided us with his decision. We appealed the Commissioner's decision to the High Court on a point of law and were granted leave to take a Judicial Review against the Commissioner decisions. We are now waiting for a date for the hearing.

With regards to the two questions posed, we have set out our explanation as follows in the order they were requested.

Question 1: Please explain how the decision to sell the Kilcooley Abbey Forestry may have a significant effect on the environment, pursuant to article 6, paragraph 1(b) of the Convention.

1. The decision to sell Kilcooley Abbey Estate must be seen in the wider context of forestry in Ireland, where year on year Ireland has failed to meet afforestation targets whilst allowing Coillte Teorante (Coillte), the Irish Forestry Board, to continue to sell large areas of forest. The substantial role of forestry and afforestation in Ireland as a means to counter climate change is of vital importance yet Ireland currently has the lowest forest coverage in the European Union, standing at 9.4% of the land, with a EU average of 38%. The decision by

Coillte to sell Kilcooley Abbey Estate Forest, which at the time was the largest single sale of forestry that Coillte sold since they began publishing sales records must be seen against this backdrop. With no public participation, a wholly inadequate public consultation process and the secretive way in which the Forest was sold, when combined with the other 8000 hectares they have sold in recent years raises concerns on Coillte's forestry strategy for the protection and enhancement of its existing public forests.

2. The estimated area of forest in Ireland is 731,650 hectares (ha) or 10.5% of the land area, excluding inland water bodies. Of this total forested area, 653,980 ha (9.4%) comprises areas occupied by trees or potentially occupied by trees, while permanently un-stocked open area within the forest (roads, ridelines, powerlines, etc.) comprise 77,670ha. Approximately 54.1% (395,760 ha) of Ireland's Forest is in public ownership. Coillte set up under the Forestry Act 1988, manages the majority of the public forests (337,300 ha)¹. Three quarters of the forest in Ireland is less than 30 year old
3. The afforestation target up until the year 2000 was 25,000 ha/year. This target was never met, the average afforestation during the 20 years prior to 2000 was 12,384 with large fluctuations in what was being delivered year on year.
4. From 2001 onwards the target for afforestation was set at 20,000 ha per annum. Growing for the Future, A Strategic Plan for the Development of the Forestry Sector in Ireland, published by the Department of Agriculture, set national planting targets of 20,000 ha per annum from 2001 to 2030, with the promise to raise the level of Irish forestry to 18% by 2030. Between 2001 and 2014 Ireland again failed to meet its target afforestation. The average afforestation during this period was 8,668 ha per annum. In 2013 and 2014 afforestation was 6,252 ha and 6156 ha respectively.
5. The report *'Forestry Programme 2014 to 2020 Ireland'*, published by the Department of Agriculture, Food and the Marine reduced Ireland's afforestation target to its lowest level of 6,000 ha per annum in 2015, rising to 8,290 ha per annum by 2020. The target now is to reach 18% forest coverage by mid-century, with such low levels of annual afforestation planned, it is not clear how Ireland will meet this target.
6. In 2015 the afforestation target of 6,000 ha per annum was met, total afforestation in 2015 was 6,293 ha. However, during 2015, Coillte sold 752 ha of forest land and a further 353 ha of forest land was removed from Coillte's Forest Steward Council (FSC) certification for wind farms, it is not clear from Coillte's excision list if some or all of the 353 ha of forestry was sold or not. The total sale and removal of 1,105 ha of forestry from their FSC Certification when set against Ireland's total afforestation of 6,293 ha in 2015 is significant.
7. It is significant in that Ireland had its lowest target for afforestation in nearly 40 years, Coillte with the approval of the Irish Government, sells and removes 1,105 ha of forestry from its portfolio.

¹ Ireland's Forests – Annual Statistics 2015, Department of Agriculture, Food and the Marine.

8. The recognition of forestry in relation to climate change, preserving biological biodiversity, and as a barrier to flooding caused by climate change is well documented. The placing of forestry centre stage in combating climate change in the Paris Agreement and Ireland's acceptance that forestry and afforestation is the most significant response that Ireland can make towards climate change as a carbon sink and as a barrier to flooding then every acre of forest that Ireland has will be needed to counter Ireland's carbon emissions and make Ireland compliance with the UN climate agreement easier.
9. With such low level of afforestation, public participation, not consultation, on what Ireland does with preserving and enhancing its existing forests is all the more crucial particularly as successive Irish governments seem to treat the national resource of Coillte forests as an easy means for attracting corporate business without looking at alternative and possibly better suited sites on which to set up business.
10. As a public authority set up under the Forestry Act 1988, Coillte Teoranta was set up by the Irish State and entrusted it with specific tasks, consisting principally of managing and developing the national forests and woodland industries, and also of providing various facilities in the public interest. Coillte with responsibility for the management and development of the State's forestry is no longer purchasing new land for afforestation despite achieving record profits in recent years.
11. Since 2002 Coillte has purchased negligible amount of new land for afforestation (unfortunately we cannot provide you with exact details, a recent Access to Environmental Information query to Coillte where we inquired how much land they had purchased in the last 10 years, we were advised that this question does not relate to environmental information) Ireland is now solely reliant on the private sector, and particularly farmers, who make up 85% of Ireland's forestry owners, to develop Ireland's forestry. For many this will be a purely an economic decision to switch from agriculture to forestry and one which in all inevitably will result in a mono-species industrialised forestry sector that is heavily geared on maximising the financial return rather than a forestry sector focused on biodiversity and the environment.
12. Despite the fact that Coillte is not purchasing any new land for afforestation, since the 2002 Coillte has sold and removed over 8,000 ha of forestry from their estate and from their Forest Stewardship Council (FSC) certification. At least 1,500 ha of this land has been removed from Coillte's FSC certification, mainly for wind farm developments and it remains unclear from Coillte's published excision lists if this forestry was sold or not.
13. The cumulative effect is a staggering loss of forestry given the extremely low level of afforestation that is occurring in Ireland during the present period. The lack of transparency that exists around these land sale means that it remains almost impossible to get any level of detail of these forestry sales, why they were sold, what has become of the forests and whether the sales are representative of the true value of the forest to the Irish people.
14. What is also not clear from Coillte's published records is how much forestry in totality Coillte have actually sold during the period 2002 to 2015. The sale of the 402 ha of forestry at Kilcooley Abbey does not appear on their published records for land sale in 2013. Coillte's 2013 financial statement states that there were 49 land sales in 2013, however the excision list

only gives details of 40 sales, with an additional 4 sites removed for windfarms. It remains unclear why Coillte did not include Kilcooley Abbey Forest or indeed the other land sales noted in the 2013 financial statement on their excision list.

15. The above largely sets out the context in which the sale of Kilcooley Abbey Forest was sold and the cumulative effect of why the decision to sell Kilcooley Abbey Forest, when combined with Ireland's low level of existing forestry and new afforestation, its sale may have a significant effect on the environment in relation to climate change and species and biodiversity protection. Therefore, there is a case for public participation in the sale of state forestry, such as Kilcooley Abbey Forest pursuant to article 6 paragraph 1 (b) of the Convention as any loss of forestry and forestry that is managed according to sustainable forest management practices may have an effect on the environment.
16. Dealing more specifically with how the decision to sell Kilcooley Abbey Forest by Coillte may have a significant effect on the environment, pursuant to article 6.1(b). Extensive tree felling of the forest has taken place since the property was sold. Within 6 months of Coillte selling the land to a private owner, 3 felling licenses were submitted and subsequently granted in October 2014 by the Forestry Service in the Department of Agriculture, Food and the Marine (DAFM). The combined total area for felling was 197.18 ha. Two of the licenses were for clear-felling a total area of 38.28 ha and one license for thinning 158.9 ha.
17. A considerable number of conditions were attached to the felling licenses by The Forestry Services Regional Inspector and Ecologist and by the Forestry Inspector Acting Senior Archeologist (appendix 1). The Ecologist and Archeologist go to some lengths to spell out the biological and archeological sensitivity of the Kilcooley Abbey Forest and Estate and the requirements needed for their protection. Further information can also be seen in the Regional Inspectors, Felling License Inspection Report (appendix 2). The report gives additional details of the possible impact the operation and the close proximity of the felling to special areas of conservation (SAC) and nation heritage areas (NHA).
18. The Ecologist warns that *'Given the size and scale of the proposed operation there is the potential to impact on the aquatic zone, the pNHA and species that occur on the site'*. The Ecologist further notes that *'the information submitted with the application make no reference to the aquatic zones on the site and the presence or absence of effective buffer zones'*.
19. All this combined suggests to us that there was an unfamiliarity by the owners to the sensitivity, biological diversity and the archeological heritage of Kilcooley Abbey Estate and Forest when applying for the felling licenses and a recognition that their operations could have a significant effect on the environment. The lack of reference to a forestry plan in any of the documents would suggest that none is in place.
20. It is not clear why an Appropriate Assessment Plan under the Habitats Directive wasn't advised or completed before the felling licenses were granted.
21. An initial request we made to the Forestry Service on 6th October 2016 seeking information relating to any inspections of the area that were carried out to confirm that the conditions of the felling licence were adhered to and that no environmental or archaeological damage

has occurred as a result of the felling was refused by the Forestry Service. We were advised that:

'Inspections of sites are arranged to check on the utilisation of licences. Please note the breach of any conditions of a felling licence, should they occur, is a matter to be resolved between the Department and the licence holder'.

22. We subsequently following this with an Access to Environmental Information (AIE) request to the DAFM. The DAFM response dated 24th November 2016 grant some of the information requested.
23. Although the DAFM have omitted to respond to our request for information relating to environmental inspections and any environmental damage that may have occurred as a result of the felling, in their reply they have advised us that the Archeologist carried out an inspection of the archeological sites on 28th October 2016 and that:

'The findings of the inspection by the Archaeologist concluded there was no evident damage to any of the Recorded Monuments or structures of architectural interest contiguous to the areas that were thinned or clear-felled'.

24. However, the DAFM have refused to grant us access to the Archeologist's report on the grounds of Section 9 (1) (b) of the Access to Information on the Environment (AIE) Regulations 2007 which states that:

9(1) A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect—

(b) the course of justice (including criminal inquiries and disciplinary inquiries)

25. We are merely stating this as a fact and are not aware of any proceeding either criminal or civil which would be give grounds for reason for refusal. However, their refusal does raise concerns.
26. The level of public consultation carried out by Coillte in regards to their sale of Kilcooley Abbey Forest, was wholly inadequate and they did not make available sufficient information on the sale that was necessary for the public to fully participate in the consultation process. The three-week consultation process, given the size and scale of the forestry sale and the potential environmental impact that could result from the sale, was insufficient and the fact that the consultation took place in March 2011 and the sale completed in December 2013 meant that the consultation process was too far removed from the sale to be of any benefit. NAMA who sold the freehold interest of Coillte's land at Kilcooley Abbey Estate on 6th December 2013 have advises us via an FOI that they were not aware that Coillte was selling Kilcooley Abbey Forest. Coillte sold the Forest on 16th December 2013.
27. Following a recent AIE request Coillte provided us with a copy of their consultation note dated 7th March 2011 and the advertisement they placed in a regional paper, The Tipperary

Star, dated either the 10th or 17th March (appendix 3) in relation to the sale process of Kilcooley Abbey Forest.

28. The consultation note and regional newspaper advertisement simply states under the heading ‘Land at Kilcooley, Gortnahoe, Thurles, Co. Tipperary’, states that:

‘Coillte Teoranta herby give notice of its intention to relinquish its lease over lands at Kilcooley Gortnahoe County Tipperary (Kilcooley Abbey), to the freeholder. Any queries in relation to this matter can be directed to ... On or before March 28th 2011’.

29. Our reading and we believe any reasonable person reading the consultation note and advertisement would come to the conclusion that the decision had already been taken to ‘relinquish’ the forest and that the lands were not for sale by a competitive selling process or open to any other interested parties. Even very basic levels of details such as how much land is being ‘relinquished’ or why the land is being ‘relinquished’ is not provided and the public were only allowed a three-week period in which to contact Coillte.

30. No advertisement was placed in any national newspapers as is required. Coillte are refusing to provide us with any other details of the consultation, suffice to say that they carried out local consultation with local organisations, house owners and land owners between 7th March 2011 and 28th March 2011.

31. Following the sale of Kilcooley Abbey Forest by Coillte in December 2013, a complaint was made to the Forest Stewardship Council (FSC) in 2014 by a member of the public in relation to the consultation process carried out by Coillte (appendix 4). The complainant highlights a number of serious failing in the consultation process and states that:

‘this sale without community consultation would be disgraceful at any time - but is even more egregious at a time when the community had made contact with Coillte on the prospect of it taking a part in a proposal to secure the entire Kilcooley Abbey Estate lands for forestry and public use... the community of the Slieveardagh region was actively engaged with Coillte’s local contacts and recreation staff on developing walking/cycling trails in the forest at the time of the sale’.

32. The investigation carried out by the FSC as part of their 2014 annual audit of Coillte’s Certification, states in some detail the level of consultation which Coillte stated they carried out in relation to the sale of Kilcooley Abbey Forest. It also provides information on what consultation should have taken place:

Kilcooley Abbey would be classified as "Large property Land Sale" and would therefore be required to have standard consultation plus, open day or evening may be held, 2 national newspaper advertisements and local paper advertisements.

33. It is bewildering to us why the FSC investigator does not make any comment on why this level of consultation did not take place.

34. Furthermore, the FSC investigators findings in the last paragraph where it states that:

There was no evidence that Coillte had sold to a second purchaser and in all the evidence showed that the sale, although protracted has been to the original purchaser.

35. As the freehold title to Coillte's Kilcooley Abbey Forest was being sold via a National Asset Management Agency (NAMA) sale this indicates that there is a breach of the NAMA Act 2009, section 172 which prohibits the sale of property back to defaulting debtors.
36. Via a FOI to the Department of Agriculture, Food and the Marine we understand that Coillte's sale of Kilcooley Abbey Forest, breached Section 18 of the Code of Best Practice for the Governance of State Bodies. As the Forest was not sold by public auction or competitive tender as per Section 18 of the Code of Best Practice for the Governance of State Bodies.
37. Section 18.1 of the Code of Best Practice for the Governance of State Bodies states that:

The disposal of assets of State bodies or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, with an anticipated value at or above a threshold level of €150,000 should be by auction or competitive tendering process, other than in exceptional circumstances (such as a sale to a charitable body). The method used should be both transparent and likely to achieve a fair market-related price. The anticipated value may be determined either by a reserve price recorded in advance in the State body's records or by a formal sign-off by the Board on the advice of the Chief Financial Officer (CFO) or, if delegated by the Board, sign-off by the CFO or the Board Audit Committee, that, in its view, the anticipated value is likely to be less or greater than €150,000. In determining market value, regard should be had to accounting standards best practice in Ireland.

38. It also appears that Section 18.7 and Section 18.8 of the Code of Best Practice for the Governance of State Bodies were also breached.

39. Section 18.7 and 18.8 of the Code of Best Practice for the Governance of State Bodies state:

18.7 Details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been subject to auction or competitive tendering process should be included in the Chairperson's annual report to the relevant Minister (see paragraph 13.1).

18.8 The Chairperson, in the annual report to the relevant Minister (see Paragraph 13.1), should affirm that the disposal procedures, as outlined above, have been complied with.

40. Press reports in April 2014 state that the owner purchased Kilcooley Abbey Forest for €1.5 million. The fact the property was put back on the market for sale within 18 months of purchase seeking offers in excess of €8 million suggests that the forest was not sold at the correct price or achieved the best return for the tax payer and this may be a breach of EU State Aid Rules and Regulations.

Question 2: Please explain how the decision to change from public to private ownership of the Kilcooley Abbey Forestry may have a significant effect on the environment, pursuant to article 6, paragraph 1(b).

41. Contrary to the Party's letter of 15th September 2015 to the ACCC, '*that a sale of land in itself cannot have a significant effect on the environment*', we would argue that the sale of Kilcooley Abbey Forest and the transfer from public ownership to private ownership fundamentally alters the relationship that people and the community have with the forest. The Irish Governments proposed sell off of our public forests generated a vociferous public campaign which resulted in this proposal being put on hold in 2013. Environmental, social and economic concerns were at the forefront of the arguments to halt the change of ownership. Who owns the forest and how the forest is managed does matter in Ireland, as it does in most countries. In some countries, the privatisation of forest land has led to conflict, disenfranchisement of communities and poverty.
42. The social and economic value of publicly owned forest for the benefit, use and enjoyment of the people is well understood and documented both nationally and internationally. The UNECE report '*Public Participation in Forestry in Europe and North America*' which was prepared as a contribution of the joint FAO/ECE/ILO Committee on Forest Technology, Management and Training to the follow up of the Lisbon Conference, highlights this fact and recognises that the interaction between forestry and society and that the concept of public participation is recognized as important and integral parts of sustainable forest management.
43. The sale of Kilcooley Abbey Forest means that the public now have no rights of access to almost 1000 acres of forest. As Kilcooley Abbey is a nation monument of historical importance, a day out visiting the Abbey means that the public no longer have any right to freely access the forest as part of their visit and enjoy the recreational, health and social benefits that this can provide. The true value of Kilcooley Abbey Forest in this respect to the social, and local and national economy has not been factored into the sale of the forest. Public participation in this instance should have taken place.
44. We note the Party's assertion in their letter of 15th September 2015, '*Thus certain agricultural activities, forestry activities including tree felling and any other development will require the grants of prior consents under the relevant statutory agricultural, forestry and planning and development legislation*'. The tree felling that has occurred at Kilcooley Abbey Forest was a licensable action, but the tree felling licensing application process is a private matter between the owner and the Forestry Service. No public consultation or participation or notice is required prior to or during the felling. There is no opportunity for public participation or to be consulted on in any of the felling decisions taken by the owner or the Forestry Service even though those decisions may have an effect the environment pursuant to article 6, paragraph 1(b). As felling licenses are a private matter between the owner of the forest and the Forestry Service there is no provisions within Irish law to take a judicial review before the High Court in this matter.
45. When Kilcooley Abbey Forest was in public ownership, Coillte had a corporate responsibility to carry out public consultation on felling proposals. The publication of the 5-year Business

Area Unit Strategic plans by Coillte provide an opportunity for the public to consult on the proposed felling for that area over the next five year. Changes to the Felling Plan can be found on their website via Coillte's Interactive Web Map viewer which gives the public the opportunity to raise concerns or queries on the felling proposals. Coillte must also submit annually, to the Minister for Agriculture, Food and the Marine, a development plan, indicating in detail the plans regarding management and development of the company and its assets, as well as acquisition and sale of property, forestry objectives and profit forecasts. With the transfer of the Forest from public ownership to private ownership the public no longer have the opportunity to consult on felling now that Kilcooley Abbey Forest is in private ownership.

46. Whilst there is a replanting condition attached to the clear-felling licences for Kilcooley Abbey Forest, these conditions are applicable to the licensee only and is not transferable with the sale the Forest. Given that Kilcooley Abbey Estate and Forest are on the market for sale, if the sale concludes before the replanting conditions of the clear-felling licence which expires in October 2017 and the private owner has not replanted by then, the owner is not required or legally bound to replant. The replanting condition is not legally binding on the new owner and the new owner will be under no obligation to replant the area clear-felled. Effectively within a short period of time from transfer from public ownership to private ownership, deforestation could occur which may have a significant effect on the environment, pursuant to article 6 paragraph 1 (b).
47. Further transfers from private ownership to private ownership could result in the complete deforestation of Kilcooley Abbey Forest. Even if the land was kept in use for agriculture purposes, the land use change in all probability would have a significant effect on the environment and the species biodiversity of the area. We would also argue that gaining planning permission for building development, non-agricultural development is more straight forward if the land is privately owned than in public ownership.
48. The effect of the sale to private ownership over the medium to longer term may therefore, have a significant effect on the environment, pursuant to article 6, paragraph 1(b) of the convention.
49. With the sale from public to private ownership of Kilcooley Abbey Forest means that the new owner is not subject to Access to the Environmental Information (AIE) Regulations and they are no longer subject to statutory or governmental oversight in the context that a public body can be scrutinised. The effect of AIE regulations on the actions and activities of public authorities, such as Coillte, when it comes to the environment and environmental protection should not be underestimated. Coillte's resistance to being defined as a public authority is well documented in law. The loss of this legislation and governmental oversight in the transfer of ownership from public to private can lead to practices that may have a significant effect on the environment pursuant of article 6 section 1 (b).
50. Equally environmental incidents or accidents that occur in public forests, due to rights of access by the public, are more likely to be reported or detected quicker, allowing for a speedier response and mitigation. Those that occur on private land or forest are more likely to go unreported or undetected.

51. Another obvious effect that the sale of Kilcooley Abbey Forest may have on the environment due to the change from public ownership to private ownership is the loss of the Forest Stewardship Council (FSC) Certification that ensures that Kilcooley Abbey Forest is managed in a sustainable way. Coillte's FSC Certification is an internationally recognised accreditation that the forestry is being managed in accordance with sustainable forest management (SFM) practices which attempts to balance the economic, environmental and social aspects of forestry. The FSC certification of Coillte, while still controversial among environmental NGOs, has had a positive influence on their forest management practice.
52. The FSC certification process provides a mechanism and an additional layer to the public to make representation to the FSC and influence Coillte's forest management.

We have tried to answer both questions as succinctly as possible. If you have any queries or need clarification on any point, please do not hesitate to contact us.

Yours sincerely

Jim & Mary Redmond