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London [redacted]  
email: [redacted]

20<sup>th</sup> February 2017

Ms. Fiona Marshall

Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations, Room S429-4  
CH-1211 GENEVA 10  
Switzerland.

Email: [Aarhus.compliance@unece.org](mailto:Aarhus.compliance@unece.org)

Dear Fiona,

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

Thank you for allowing us an opportunity to give our response to the Party's correspondence dated 7<sup>th</sup> February 2017. We are unsure what the purpose of this communication is in relation to our submission but we believe it needs an explanation by way of background information now that it has been provided.

The party's communication draws your attention to the fact that we have taken the Commissioner for Environmental Information to the High Court by way of Judicial Review. As this is an ongoing case we are unable to disclose any details in relation to the correspondence within this hearing. However, I believe it is important to point out information which is in the public domain and relevant to this case.

We were given leave for Judicial Review in January 2016 and had hoped we would have a hearing date in October 2016 at the latest. However, the Commissioner took the decision to request a delay in our case on the grounds that we had referred to the case of *Minch v Commissioner for Environmental Information* [2016] IEHC 91 (Minch), in a replying affidavit.

The decision in the Minch case was delivered after we had submitted our grounds for appeal to the High Court. Justice Barker presided over the Minch case and delivered judgment on the 16<sup>th</sup> February 2016. In her judgement, she referred to the case of *NAMA v Commissioners for Environmental information* [2015] IESC 51, para. 10, O'Donnell J. when giving his judgment in this Supreme Court case, he expressed the

view with regard to the implementation of the Aarhus Convention, that the specific obligation taken by Ireland as a member state of the EU:-

*“requires that the courts approach the interpretation of legislation in Implementing a Directive, so far as possible, teleologically, in order to achieve the purpose of the Directive.”*

Justice Baker in the Minch case considered the Commissioners approach to be too narrow and it failed to adopt the teleological approach required for interpretation and implementation of the Regulations and the Commissioners test of Remoteness was overly narrow. When setting aside the Commissioners decision in Minch she stated that he had fallen into error in his approach. The outcome of this case had the effect of broadening what was considered to be Environmental Information.

The Commissioner has decided to appeal this decision to the Supreme court and made a request in October 2016 to the High Court to delay our hearing pending the outcome of the Supreme court’s decision in Minch. We opposed this delay, but the court granted the delay and subsequently in January 2017 set a hearing date for October 2017 which we were told would be after the Supreme Court decision in the Minch case. We had opposed the delay as we believed there was sufficient breach in the Commissioner’s decision making process to go to a hearing.

In relation to the Commissioner’s Decision Notice of November 2015 which the Party sees as relevant to this communication, we have attached a copy of correspondence we sent to Mr Bernard McCabe, Investigator for Commissioner of Environmental information dated 16<sup>th</sup> September 2015 (Appendix 1). This was in response to his provisional decision that the information we requested was not environmental information and prior to the Commissioners decision in November 2015. In paragraph 3 of this correspondence we argue that the documents provided by Coillte do not correspond to the sale of the land and forest at Kilcooley Abbey Estate and the sale of the timber harvesting on 16<sup>th</sup> December 2013.

The sales brochure for Kilcooley Abbey Estate described it as an important intact estate with an imposing 18<sup>th</sup> century mansion, five staff houses outbuilding, the ruins of historic Kilcooley Abbey and the freehold title of 1,263 acres of which 950 acres is lease to Coillte, the balance being woodland and farmland. Coillte was granted 150 year lease from 1934. We were advised by the selling agent in 2013 that Coillte had no intention of relinquishing its lease early.

The previous owner Mr McCann was the subject of liquidation proceeding and the National Asset Management Agency (NAMA) took over this debt from the bank and then arranged for the selloff of the estate. The estate was sold on the 6<sup>th</sup> December 2013 according to NAMA and they were not made aware that Coillte were selling their land and forestry.

However, it gets confusing because the Commissioner in his decision notice of November 2016 referred to the Coillte sale of land as March 2011, we subsequently advised the Commissioner that this information was incorrect (as NAMA had included this lease as part of its sale in 2013) but he refused to review his decision. If the estate was sold on the 6<sup>th</sup> December 2013 and Coillte sold the land and forest on 16<sup>th</sup>

December 2013, 10 days after the sale date then it would not have been possible for public participation or consultation to have taken place.

There is other information such as the complaint from a Mr. Rice (on behalf of Slieveardagh Community Group)) which he sent to the Forest Stewardship Council (FSC). We have already submitted a copy of this complaint (see appendix 4 of our communication dated 4<sup>th</sup> December 2016). In this document the FSC investigated Mr Rice's complaint and found 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"*.

The FSC in email correspondence to us stated that,

*"A stakeholder complained that Coillte did not follow their own excision policy with respect to public consultation, as they consulted on a sale to one individual and the sale was made to a second party. The evidence provided to SA [FSC] by the stakeholder consisted of newspaper reports and personal accounts. We put this to Coillte, who provided legal evidence to SA [FSC] (who passed this evidence on to ASI) that the sale was made to the original party"*, who we believe would have been Mr McCann. As Mr McCann was liquidated and his assets were the subject of that liquidation process, for Coillte to sell the forestry lease to him would be contrary to Section 172 of the NAMA Act 2009.

However, other information we have acquired through an FOI request seems to suggest otherwise. For example, email correspondence dated 2<sup>nd</sup> October 2013 to Mr Paul McNally private secretary to Tom Hayes T.D. Minister of State for Forestry, Horticultural and Food Safety and Cc Minister Hayes has a hand-written file note which states that *"that the property sale is almost finalised and that Coillte have sold their interest in their lease to the new owner of Kilcooley Abbey"*. This was followed up in an email dated 25<sup>th</sup> October 2013 to Slieveardagh Rural Development (see appendix 2).

We believe Ireland should provide an answer to when Coillte sold its land and forest at Kilcooley Estate, to whom it sold it to and why NAMA were not made aware of this sale if full and open public participation or consultation had been conducted. We believe this has huge relevance here.

Yours sincerely,

Mary and Jim Redmond