



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



Ms Fiona Marshall,
Environmental Affairs Officer – Secretary to the Compliance Committee
Aarhus Convention secretariat
United Nations Economic Commission for Europe

September 15th 2015

Re: Communication PRE/ACCC/C/2015/129

Dear Ms. Marshall,

I refer to your correspondence of August 18th 2015 in which you advised that we, the Party, would have a time period of one week within which to respond to the additional information provided by the applicant. We received the information by email on September 8th and have considered very carefully the information provided by the Communicants.

If required, Ireland will respond more formally and in more detail in due course to the specific points raised in the Communication however I wish to make a very brief statement at this early opportunity. This statement is made without prejudice and Ireland reserves the right to make additional submissions on admissibility on this case.

It is very strongly considered that the principal subject matter of the communication is not a matter within the scope of the Aarhus Convention. It is submitted that nothing within the response material provided by the communicant actually proves the allegation that the sale of the Kilcooley Abbey Forestry is subject to article 6, paragraph 1(b) of the Convention. It is submitted that the sale of land, as in this particular case, is not a decision within the ambit of Article 6 of the Aarhus Convention. The sale of land, which is essentially the transfer of ownership of property, is not a **permitting** or licensing decision or a development consent of the type that is contemplated by Annex 1 of the Convention, nor is it a decision on an activity not listed in Annex 1 and which might otherwise have “a significant effect on the environment”. A sale of land cannot in itself have a significant effect on the environment.

Therefore it is submitted that the sale of land is not a decision or an activity which comes within the scope of Article 6 of the Convention. The conditions for public participation as set out in Article 6 cannot possibly apply.

I also confirm that no provision of Irish Law requires public participation or the application of Article 6 in the sale of lands such as in this transaction.

Furthermore I wish to point out that the sale of land or the transfer of ownership of property does not in and of itself negate the legal requirements related to the carrying out of any activity on the land. Thus certain agricultural activities, forestry activities including tree felling and any other development will require the grants of prior consents under relevant statutory agricultural, forestry and planning and development legislation. All of these are subject to the requirements of domestic legislation implementing the Environmental Impact Assessment Directive and the Habitats Directive and are subject to public participation obligations complying with Article 6 of the Convention. Thus while the sale of land is not subject to article 6 subsequent activities by the purchasers of land are subject to a variety of consent systems which comply with Article 6 of the Convention.

If, as I outline briefly above, the subject matter is not within the scope of the Aarhus Convention, it must then follow that the Committee's second question in relation to the availability of domestic remedy to challenge the failure to provide for public participation is a moot point.

For the sake of completeness it should be noted that any activity or decision in relation to an activity that might be carried out following a sale of land and which does not comply with the relevant consent legislation can be challenged by any member of the public or NGO by way of, inter alia, judicial review before the High Court, which procedure satisfies the requirements of Article 9 of the Convention.

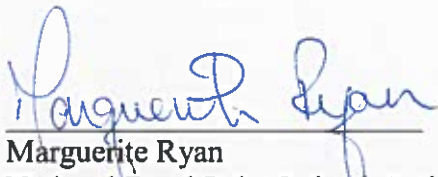
In relation to the Access to Information on the Environment aspect of the Communication, I am advised by that an investigator in the Office of the Commissioner for Environmental Information (OCEI) has made substantial progress on the case and has been in regular contact with the appellants and with Coillte on the issues involved, including the question of whether some or all of the information sought is environmental information within the definition. In addition, the Investigator formed views on the appeal and when he could not make contact with the appellant by phone earlier, gave those views by email to the appellant on 26 August 2015. He did this following confirmation from Coillte on 19 August 2015 that it had provided to the appellant some environmental information following the intervention of the Commissioner's Office. He has invited comment from the appellant before he will finalise his recommendation to the Commissioner. It is hoped that this will happen very shortly and he is in contact with the appellant who has promised to make a submission

The next step in relation to domestic remedies that would be available is a right of appeal by the Communicants or any person affected by the decision of the Commissioner on a point of law to the High Court. In addition a right of judicial review by the High Court also exists in respect of any decision of the Commissioner which procedure satisfies the requirements of Article 9 of the Convention.

The State is not aware at this time of any attempts by the Communicants, other than those they have described in their complaint, to invoke any of the alternative remedies open to them.

In any event the fundamental point in response to this complaint is that a sale of land is not a decision or activity that is within the scope of Articles 4 or 6 or indeed any of the articles of the Convention. It is submitted that this complaint is not admissible.

Yours sincerely,



Marguerite Ryan
National Focal Point Ireland-Aarhus

