



7th December 2018

Dear Ms Marshall,

Re. Communication concerning compliance by Ireland with Articles 5 and 6 of the Convention with respect to Dumping at Sea Permits (ACCC/C/2016/139)

I am writing to you in response to your letter of 4 November 2018 requesting the following additional information in order to clarify which of the permits listed in annex 1 of its reply to the Committee's questions of 5 September 2016 were:

- (i) issued after 18 September 2012; and
- (ii) within the scope of either article 6(1)(a) or (b) of the Convention.

I have attached details of all Dumping at Sea Permits (**DAPs**) issued since 18 September 2012 in Annex 1 to this letter.

The Communicant considers that all of the DAPs issued after 18 September 2018 are within article 6(1)(b) of the Convention. It makes no assertion that any such permit falls within article 6(1)(a).

This annex also lists those DAPs which were subject to Appropriate Assessment under article 6(3) of the Habitats Directive. In its judgment in Case C-243/15¹ the CJEU held essentially that article 6(3) of the Habitats Directive read in conjunction with article 6(1)(b) of the Aarhus Convention confers on the public a right to participate in a permitting procedure insofar as one of the decisions envisaged in article 6(3) of the Habitats Directive is to be adopted. The Court found that "*the fact that the competent national authorities decided to initiate an authorisation procedure for that project pursuant to Article 6(3) of Directive 92/43 permits, however, the inference that those authorities considered it necessary to assess the significance of the project's effect on the environment, within the meaning of Article 6(1)(b) of the Aarhus Convention.*" The Communicant submits, therefore, that all DAPs for which there has been a stage 1 or stage 2 Appropriate Assessment are within the scope of article 6(1)(b) of the Convention since in those cases the competent authority considers that those permits may have a significant effect on the environment.

However, there is a more general point to be made since the Communicant considers all DAPs to be within article 6(1)(b) of the Convention since the relevant legislation required public participation in the permitting procedure.

¹ Judgment of 8 November 2016 – Case C-243/15 *Lesochranárske Zoskupenie VLK* ECLI:EU:C:2016:838 Para 47



Since 3 November 2011 all DAPs are subject to public participation. Under section 5A of the Dumping at Sea Act 1996 (as inserted by section 5 of the Dumping at Sea (Amendment) Act 2004) (the **1996 Act**)² public notice must be given of all applications for DAPs and the public are entitled to make submissions in relation to the application. Section 5(1)(b)(iii) of the 1996 Act obliges the competent authority to consider (i.e. to take due account) of the results of the public consultation and the comments of the applicant before a decision is made.

In addition, the Party concerned has given effect to articles 9(2) and 9(4) of the Aarhus Convention in relation to access to justice concerning DAPs. In particular the party concerned has specifically included civil proceedings relating to compliance with DAPs in the category of permits to which special costs rules apply through section 4(4)(g) of the Environment (Miscellaneous Provisions) Act 2011 in order to make such proceedings not prohibitively expensive³.

Finally section 5A(8) of the 1996 Act was inserted by article 5 of the European Communities (Public Participation) Regulations 2010 (SI 352/2010) and is intended to give notice of practical information on the review mechanism for decisions on DAP applications.

Taken as a whole it is apparent that the Party concerned considers all DAP permits to come with article 6(1)(b) and has adapted its legislation accordingly to allow for public participation and a standard of access to justice compatible with the Aarhus Convention in respect of DAPs.

The communicant would like to point out that public participation rights only apply to the grant of a DAP. There are no rights of public participation if the conditions (including the period in which dumping is permitted) are varied by the competent authority.

Under section 5(4) The competent authority must consult various Ministers but not the public before deciding to amend a DAP. It seems that the competent authority considers it possible that the dumping period can be subject to amendment or otherwise agreed with it. This is illustrated by DAP reference S0028-01 where the dumping period is expressed to be "*All loading and dumping activities shall be completed by 30 April 2019 or as otherwise agreed by the Agency*". Therefore, the possibility remains to vary the dumping period without public participation.

² A consolidated version of the 1996 Act is included in Annex 2 and is also available at <http://revisedacts.lawreform.ie/eli/1996/act/14/revised/en/html>

³ A copy of Part 2 of the Environment (Miscellaneous Provisions) Act 2011 is included in Annex 3 and is also available at <http://revisedacts.lawreform.ie/eli/2011/act/20/revised/en/html>



Irish Underwater Council

Comhairle Fo-Thuinn

78a Patrick Street
Dun Laoghaire, Co. Dublin
Phone: (01) 2844601
Email: info@diving.ie
Website: www.diving.ie

I trust that the information set out in this letter clarifies the position but please do not hesitate to contact me should the committee require further clarification.

Yours sincerely

Jean Kelleher