



**Irish Underwater Council**  
Comhairle Fo-Thuinn

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19<sup>th</sup> April 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 12 March 2018 regarding Ireland's submission on admissibility. This letter addresses the issue raised on page 21 of the response from Ireland dated 5 May 2017.

I would like to thank the Chair for agreeing to a short extension of time to make this submission.

The communicant wishes to stress that this letter only addresses the issue of exhaustion of domestic remedies as raised by Ireland at page 21 of its submission of 5 May 2017. Should the committee decide that the communication is admissible the communicant requests the opportunity to respond to the substantive points raised.

**General observations**

The Party concerned's objection to this communication's admissibility is misconceived.

The first general point is that the communicant is not making a specific claim in relation to the Dumping at Sea Permit (**DAP**) reference S0004-1. Rather the communicant is complaining about a systemic lack of compliance with the Convention by Ireland which is illustrated *inter alia* by the granting of a number of DAPS without fixed start and end dates up until 2016 and



on-going failures in respect of pro-active dissemination of environmental information in relation to DAP reference S0004-1 and other DAPs which post-date the coming into force of the Convention.

By the Party concerned's own admission the practices complained of in the communication continued up until 2016 some four years after the Convention came into force in Ireland illustrating that the compliance issues raised by the Communicant existed when the Convention came into force in Ireland and continue to exist.

Reliance on DAP S0004-1 should be permitted since it can be used to show how the dumping at sea regime has changed with the coming into force of the Convention in 2012, i.e. before and after scenarios. The communicant contends (and this is supported by the observations made by Ireland) that while there appear to have been some voluntary changes since this communication was made, there have been no material changes to the legislative and regulatory framework for DAPs since DAP S0004-1 was granted. Compliance requires binding rules. Voluntary compliance by public authorities is not a substitute for binding rules and it certainly does not meet the standards set by article 3(1) of the Convention for compliance.

The second general point is that the remedy for the alleged non-compliance is legislative rather than judicial since the communicant considers that the legislation underpinning the Dumping at Sea permitting system must be amended to ensure compliance. It is well established as a matter of European Union and Irish law that a person may not rely directly on the Aarhus Convention when bringing a judicial or administrative challenge to a measure



or a decision<sup>1</sup>. In other words, there is no domestic remedy available to the communicant insofar as Irish legislation is incompatible with the Convention.

**Allegation that dumping at sea permits are issued without fixed start and end dates**

The communicant observes that the Party concerned has already indicated that this practice continued up until 2016 after which time the Environmental Protection Agency (EPA) has only issued permits where dumping must cease by a specified date. It is not stated but it seems implicit that should the EPA wish to do so it could grant licences without fixed start and end dates again in the future.

As Ireland observes the practice of not specifying fixed start and end dates is compatible with section 5(1)(a) of the Dumping at Sea Act 1996. In its submission, Ireland says the term “*within a specified period of time*” in that section encompasses a specified period of dumping running from the date of commencement rather than a fixed date<sup>2</sup> and that this is not an open-ended period.

Because the condition complained of is compatible with national legislation, the communicant does not have a remedy in respect of this non-compliance since it is not possible, under Irish law, to rely directly on provisions of the Aarhus Convention before the courts. In particular in this case, there is no judicial or administrative remedy for a person who wishes to have legislation struck down due to incompatibility with the Convention.

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<sup>1</sup> : Conway -v- Ireland, the Attorney General & ors [2017] IESC 13 at paragraph 2.5  
<http://www.bailii.org/ie/cases/IESC/2017/S13.html>

<sup>2</sup> Ref 5 May 2017 page 13



It should also be noted that even if the communicant wished to bring a judicial challenge concerning the compatibility of the Dumping at Sea Act with the Convention or alleging that a particular condition of a DAP was incompatible with Ireland's obligations under the Convention the costs of doing so would be prohibitive. In that regard the communicant adopts the observations of the Environmental Pillar submitted on 13 September 2016 and notes that the category of actions indicated above is not amongst the limited range of judicial actions to which Ireland's special costs rules apply.

**Alleged non-compliance with the duty to actively disseminate environmental information relating to DAPs**

As the Committee is aware DAPs generate large quantities of environmental information including results of monitoring, logging of dumping activity, surveys, information on complaints, correspondence, notices, requests for modifications and so on. The communicant alleges non-compliance with article 5 of the Convention since relevant public authorities are not actively disseminating this information and are under no obligation to do so, nor is the EPA under an obligation to ensure that the conditions of DAPs result in active dissemination of all relevant environmental information.

The communicant considers that the lack of active dissemination of environmental information arising from DAPs illustrates a general non-compliance by Ireland with article 5 and a particular non-compliance because there are no specific legislative or regulatory measures for active dissemination in the Dumping at Sea legislation.



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In the first instance regulation 5 of the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 (the **AIE Regulations**) appears to reflect article 5 of the Convention (admittedly indirectly via article 7 of Directive 2003/4/EC). The communicant contends that Regulation 5 of the AIE Regulation does not actually place any obligation on public authorities to actively disseminate environmental information. Neither is there any legislative requirement to actively disseminate environmental information arising from DAPs.

In that case the communicant is left without a remedy since Ireland has not introduced an appropriate regulatory or legislative framework to ensure active dissemination of environmental information in general and in particular to ensure active dissemination in respect of dumping at sea.

The points raised previously in relation to DAP S0004-1 also apply here. This DAP merely illustrates a lack of active dissemination that continues to this day. The communicant continues to encounter this issue in respect of a range of licences including those granted after 2012.

Yours Sincerely

President  
Irish Underwater Council