



**Roinn Cumarsáide, Gnómhaithe
ar son na hAeráide & Comhshaoil**

Department of Communications,
Climate Action & Environment

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Ms Fiona Marshall

By e-mail

Secretary to the Aarhus Convention Compliance Committee

Palais des Nations, Room S-429-4

8 – 14 Avenue de la Paix

CH-1211 GENEVA 10

Switzerland

18th November 2016

Your ref: ACCC/C/2013/107

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland with the provisions of the Convention on public participation in decision-making in relation to the extension of the duration of 3 planning permissions for a quarry (ACCC/C/2013/107)

Dear Ms Marshall

We refer to your correspondence dated 28th October 2016 relating to questions raised by the Compliance Committee during the discussion of the above communication at its fifty-second meeting (Geneva, 8 – 11 March 2016). Please now find enclosed Ireland's response:

INTRODUCTION

1. The Communicant, Kieran Cummins, wrote to the Aarhus Convention Compliance Committee (“ACCC”) alleging non-compliance with articles 6 and 7 of the Convention with respect to decision-making on the extension of the duration of 3 planning permissions for a quarry, under S.42 of the Planning and Development Act 2000.
2. On 9th April 2015, after receiving preliminary observations from the Communicant and Ireland, the ACCC declared the Communication to be preliminarily admissible.
3. On 27th November 2015 Ireland issued a response to the Communicant’s written communication.
4. At the invitation of the ACCC, Ireland and the Communicant attended a discussion of the above communication at its fifty-second meeting (Geneva, 8 – 11 March 2016).
5. During the discussion the Compliance Committee indicated that it would send further questions for the response of both Ireland and the Communicant.
6. On the 28th October 2016 Ireland received correspondence from the ACCC raising further questions by the Compliance Committee.

PRELIMINARY OBSERVATIONS

7. Ireland's response is divided into two parts.
8. **Part A** of Ireland's response replies to the Committee's questions raised in its correspondence of 28th October 2016.
9. **Part B** of Ireland's response outlines additional information that was indicated would be supplied by Ireland to the Committee following the discussion.
10. However, at the outset Ireland expresses reservation toward responding to the questions posed by the Committee concerning: (i) domestic remedies and (ii) Ireland's legal cost regime.
11. Ireland notes that these questions are not within the subject matter of the Communicant's initial Communication, which concerned non-compliance with articles 6 and 7 of the Convention with respect to decision-making on the extension of the duration of 3 planning permissions for a quarry.
12. Ireland considers that these questions risk unnecessarily engorging the scope of the Committee's inquiry well beyond what is relevant to the subject matter of the communication.
13. In particular, Ireland notes that there is an ongoing ACCC communication in respect of Ireland's legal cost regime. Ireland emphasises that that communication is the appropriate forum for addressing questions concerning Ireland's legal costs regime in the context of the Convention.¹

¹ ACCC/C/2014/113 Ireland. See <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc2014113-ireland.html>

14. Despite these concerns and reservations, in the interests of assisting the Committee's deliberations Ireland has provided responses to the questions presented in respect of domestic remedies and legal costs.
15. Ireland does so on only on the express understanding that an inquiry into the compatibility of Ireland's system of legal remedies and regime for costs with the Convention is manifestly beyond the scope of this Communication.

Part A- Response to Committee questions of 28 October 2016

RESPONSE TO QUESTION 2 AND 3

16. Ireland proposes to answer questions 2 and 3 together.
17. A member of the public cannot challenge a decision under s.42 before the Planning Board. As emphasised in Ireland's written response and opening statement, the decision to extend the duration of a planning permission is not a substantive decision which would have a significant effect on the environment. The decision is an administrative and technical one, subject to strict statutory criteria which severely limit a decision maker's discretion.²
18. Given the wholly administrative and non-substantive nature of a decision under s.42, an appeal to a Planning Board would serve no discernible purpose. Any concerns over the legal validity of a s.42 decision can be made through the process of judicial review before the High Court.
19. The Irish High Court has confirmed that under s.42 the planning authority has very little discretion in relation to its decision, and its role is confined to satisfying itself as to whether the applicant has complied with the statutory conditions for the grant of an extension of time. The Court further noted that the relevant statutory regime makes no provision for third party participation of any nature.³

² See http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-107_Ireland/Party_s_response_to_communication/frPartyC107_response_to_communication_27.11.2015.pdf, at para. 17. and http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-107_Ireland/Communication_from_Party/frPartyC107_opening_statement_52_CC_meeting_09.03.2016.pdf, at para 18.

³ *Lackagh Quarries Ltd -v- Galway City Council* [2010] IEHC 479, at para. 61.

20. The Court observed that all of these factors tend to suggest that the role of the planning authority on a s. 42 application is to make an administrative decision.⁴
21. Ireland strongly agrees with this characterisation of the nature of s.42 and reiterates that substantive issues are considered under a separate statutory regime.
22. Specifically, the substantive environmental effects of a development are considered through the proper investigation of all of the relevant matters by the planning authority prior to the commencement of a development, and in the course of the application for planning permission.⁵
23. It is *this* process that encompasses (i) substantive public participation and (ii) a statutory entitlement to challenge an initial grant of planning permission before the Planning Board.
24. This process has been utilised extensively in respect of the quarries which are listed in the communication. As noted in Ireland's response, of the 3 planning applications relating to quarry development at Trammon, Rathmoylan, Co. Meath, as listed in the communication, in the 2 most recent consent applications members of the public exercised their rights under the Planning & Development Act 2000, as amended, to appeal the decisions of Meath County Council to grant permission to An Bord Pleanála (the Planning Board).

⁴ In another High Court decision, it was held that "the true effect of section 42 is that the Planning Authority must therefore consider the application in that light having regard to the matters enumerated in the section and those matters only." The court also held that a decision maker acting pursuant to s.42 "is confined to the matters specified in section 42 in reaching its decision." See *McDowell v Roscommon County Council* [2004] IEHC 396, per Finnegan P.

⁵ *Lackagh Quarries Ltd -v- Galway City Council* [2010] IEHC 479, at para. 61.

25. No party chose to appeal the decision of the County Council to grant permission for the first listed activity (reference number 97/1868).⁶
26. Given the wholly administrative and non-substantive nature of a decision under s.42, an appeal to a Planning Board would serve no discernible purpose, as the board would be confined to considering its legal validity. The Planning Board has neither the expertise nor jurisdiction to consider same.
27. A person concerned that a legally invalid decision has been made under s.42, *i.e.* that the strict and technical statutory criteria have not been adhered to, can seek a judicial review of the decision before the High Court.

Challenging a decision before the High Court

28. A person seeking to challenge the legality of an administrative decision under s.42 could seek a judicial review of the decision.
29. The courts have stated that given the administrative and technical nature of a decision under s.42, its role in reviewing the decision is limited to considerations of whether the decision maker acted reasonably and rationally on the basis of the evidence before it.
30. The High Court has stated that its function in assessing the legality of decision to grant an extension permission decision is to review the manner in which the decision maker concluded that the statutory criteria of s.42 have been met.
31. This involves the court having regard to the material which was before the decision-maker when the decision was made on the applicant's application.⁷

⁶ http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-107_Ireland/Party_s_response_to_communication/frPartyC107_response_to_communication_27.11.2015.pdf.

⁷ *Lackagh Quarries Ltd -v- Galway City Council* [2010] IEHC 479, at para. 94.

32. Although Ireland maintains that a consideration of its domestic remedies is beyond the scope of this communication, it notes that the availability of judicial review strongly highlights that s.42 decisions are not immune from legal scrutiny.
33. For the purposes of this Communication Ireland agrees with the High Court's construal of s.42 as a technical decision, characterised by the strictly defined and limited discretion it vests in a local planning authority.

Costs

34. The highly abstract nature of the question makes it difficult for Ireland to respond. The question posed involves consideration of a large number of hypotheticals. Any answer will therefore necessarily be arbitrary in the absence of a concrete set of circumstances on which to base an assessment.
35. Broadly speaking, the hypothetical level of costs likely to be incurred in a judicial review of a s.42 decision will vary considerably depending on: (i) whether it is determined that the challenge involves certain environmental matters; and, (ii) the litigants' own choices relating to the conduct of litigation and the level of legal representation chosen.
36. Under Irish law, if a judicial review is considered to concern certain environmental matters, then the procedure for awarding costs is governed by the special costs rules governing environmental litigation.
37. Conversely, if a judicial review application is not considered to concern an environmental matter, then normal costs rules apply.

38. There has not been any judicial determination of whether any particular proceedings for judicial review of a specific s.42 decision is governed by the special costs rules for environmental litigation or by the normal cost rules for judicial review.
39. Consequently, at this juncture Ireland strongly emphasises that it does not wish to speculate on which costs rules would apply.
40. Ireland therefore expresses reservation at the exceedingly hypothetical nature of the question, and concern that the submission of the observer on the 13 September represents an irrelevant and unfounded collateral attack on the State's environmental legal costs regime, and reiterates that same are not within the subject matter of the communicant's Communication.
41. Despite these concerns and reservations, in the interests of (i) assisting the Committee's deliberations, and (ii) rebutting the inaccurate and irrelevant contentions of the observer submitted on 13 September 2016, Ireland will briefly outline a basic overview of each cost regime.
42. However, Ireland does so on only on the express understanding that a consideration of Ireland's legal regime for costs is manifestly beyond the scope of this Communication.

Special costs regime for judicial review proceedings involving environmental matters

43. Prior to ratification of the Aarhus Convention Ireland introduced radical changes to the manner in which costs are applied in environmental litigation by creating a special statutory costs regime.

44. The special statutory costs regime for environmental proceedings consists of Section 50B(1) Planning & Development Act 2000 ("PDA 2000"), and in Part 2 of the Environment (Miscellaneous Provisions) Act 2011 ("E(MP)A 2011").
45. Section 7 of Environment (Miscellaneous Provisions) Act 2011 provides that a party to such environmental proceedings can apply to the Court at any time before or during the proceedings for the application of the special cost rules.
46. As no EIA is required for a s.42 decision, the S50B cost rules will not apply. Although no judicial determination has been reached on the applicability of Part 2 of the E(MP)A 2011, if the section is found to apply then any applicant seeking to challenge the extension of a time limit on the consent in question can seek the considerable protection offered by the rules.
47. Part 2 of the Environment (Miscellaneous) Provisions Act 2011 introduced a special costs regime for environmental civil proceedings. The special costs rules mean that no costs are imposed in Ireland upon an applicant in environmental litigation. Rather, an unsuccessful applicant will bear his own legal costs if he chooses to use legal representation, and if the legal representative is not doing so on a conditional fee ("no-foal, no-fee") basis. A successful applicant may be awarded his legal costs. Applicants in such proceedings are also absolved from applicable court filing costs.
48. Further, any analysis of the costs provisions provided by domestic law must be carried out in light of the judicial notice the domestic Court is required to take of the Aarhus Convention under section 8 Environment (Miscellaneous Provisions) Act 2011 and those provisions of the Aarhus Convention implemented by directly applicable European Union law. Therefore, any award of costs that may be made must ensure that those costs are not prohibitive.

49. There is therefore a complete disparity of treatment between applicants and respondents in respect of certain environmental matters. Respondents will normally never obtain their costs if they win - whereas applicants can litigate in the knowledge that they will normally obtain their costs if they win. If they lose they are (bar rare circumstances due to their own conduct) protected from the making of a cost award against them.
50. Consequently, save in extreme circumstances, applicants are even absolved from the award of reasonable costs, which goes far beyond the Convention requirement that such costs not be prohibitively expensive.

Regulation of own legal costs

51. Indeed, if the special costs regime is found to apply, the level of costs a person would incur on a judicial review of a s.42 decision is entirely contingent on the choices of the litigant.
52. In this scenario, a person would not be obliged to engage any legal representation for a judicial review of a s.42 permission. Unlike many legal systems, the Irish courts permit individuals to represent themselves, thus eliminating own costs altogether.
53. Should litigants choose to have legal representation, they need only be represented by a single practising solicitor, who has full rights of audience before the Irish courts. Solicitors are trained in advocacy, and many across the country have specialist knowledge of environmental law and litigation.
54. Barristers, a specialist body of court advocates, are not required to be retained at any time by a client: still less are senior counsel (senior barristers recognised for their expertise in advocacy).

55. If a litigant chooses to engage legal representation, section 150 of the Legal Services Regulation Act 2015 requires all legal practitioners to provide an estimate of fees upon receiving instructions. Should any emergent factor later arise which would significantly add to estimated costs, a new notice will be required. Both the client and the legal practitioner can arrive at an agreement which sets out the amount and manner of payment of all or part of the legal costs and no other amount shall be chargeable in respect of legal services provided save as otherwise provided in the agreement.
56. The legal practitioner is further required to provide an itemised bill of costs as well as a summary of the legal services provided and where time is a factor in the calculation of legal costs, the time spent in dealing with the matter. The legal practitioner shall provide to the client (together with the bill of costs) an explanation in writing of the procedure available to the client should the client wish to dispute any aspect of the bill of costs, which shall contain information such as the fact that the client may have a dispute referred to mediation and/or adjudication.
57. Section 154 of the Legal Services Regulation Act provides that a person can refer a dispute in relation to their own costs to the Office of the Legal Costs Adjudicator. This provides a fair, transparent and independent adjudicatory body for a litigant to take a complaint in respect of legal costs charged by a representative.
58. Many litigants who do engage legal practitioners can obtain pro bono legal representation or engage such representation on a conditional fee arrangement. Both of these practices are common in Ireland, with cases being taken in many areas of the law on the basis of either a pro bono or a conditional fee arrangement.

59. The choice whether to retain any lawyer, and the choice as to the numbers and type of lawyers, are, therefore, entirely for each party.
60. As a result, any attempt to offer a “*typical figure*” for a judicial review under the special costs regime would be arbitrary and wholly speculative.
61. Ireland, however, notes that its special costs regime goes far beyond what is required by the Aarhus Convention. They facilitate and enable access to justice by both any member of the public and any NGO.
62. Although Ireland is not in a position to speculate on a “*typical figure*”, it notes that if a judicial review of a decision under s.42 is determined to fall under the special costs regime for environmental litigation, the operation of this statutory regime ensures that a litigant would not be precluded from environmental litigation by reason of prohibitively expensive costs.

Judicial review when not covered by the special costs regime

63. At this juncture Ireland observes that scrutiny of the cost regime for standard judicial review applications is both: (i) beyond the scope of the within Communication; and, (ii) beyond the scope of the Aarhus Convention. However, Ireland will briefly outline the regime to assist the Committee.
64. In Ireland, pursuant to Order 99 of the Rules of the Superior Courts, costs are generally awarded to the winner of the proceedings: this is known as “costs following the event”.
65. The level of costs incurred by a litigant in a standard judicial review will vary considerably based on a number of factors and variables, including:

- (i) whether the litigant is successful at trial;
- (ii) the length of trial and complexity of the legal issues and facts involved;
- (iii) the number of parties involved;
- (iv) the litigant's self-regulation of costs and the amount of legal representation he/she chooses to engage.

66. As a consequence, any figure proffered in abstraction is necessarily arbitrary.

QUESTION 4

67. Time limits for applications for judicial review are governed by s.50 of the Planning and Development Act 2000 (as amended).⁸
68. The Planning Act provides that an application for judicial review to question the validity of any decision made by a planning authority shall be made within the period of 8 weeks beginning on the date of the decision of the planning authority.⁹
69. The High Court may extend this period only if it is satisfied that (a) there is good and sufficient reason for doing so, and (b) the circumstances that resulted in the failure to make the application for leave within the 8-week period were outside the control of the applicant for the extension.¹⁰
70. The communicant did not seek to challenge the extension permission within the 8-week period, nor at a later stage. The communicant has given no satisfactory account of why he could not have done so.
71. Ireland therefore does not speculate on whether the communicant's circumstances would constitute "*good and sufficient reason*" for delaying seeking judicial review.
72. Ireland notes that providing statutory timelines requiring planning decisions to be challenged within a prescribed time-period is standard practice in international and national law.

⁸ As substituted by Planning and Development (Strategic Infrastructure) Act 2006 (27/2006), s. 13, S.I. No. 525 of 2006.

⁹ *Ibid.*

¹⁰ *ibid.* Jargon free information in relation to judicial review and the procedures governing its time limits is available for perusal by the public free of charge, on an easily accessible citizens' information website managed by the Citizens Information Board.

73. The provision of reasonable temporal limitations for legal challenges is essential to enable public authorities to make binding decisions.
74. If any decision was open to challenge without temporal limitation it would create an untenable climate of great uncertainty for all actors involved in the planning process, including individual citizens, developers, businesses, public authorities.

QUESTION 5

Domestic procedures

- 75. The decisions to grant extension permissions under s.42 were not challenged by the communicant or any other person.
- 76. The time limit for availing of domestic remedies has long expired.
- 77. Ireland has dealt with the question of costs in its response to questions 1 and 2.

QUESTION 6

78. As noted in Ireland's response and opening statement, each of the original decisions of the planning authorities to grant planning permissions in respect of Trammon Quarry followed substantive consideration of the various development applications. These included EIAs and a statutory public consultation process.¹¹
79. The details of the 3 relevant planning consent applications were published by the applicant in a national or local newspaper and a site notice erected at the entrance to the development site, both of which described the nature and extent of the development and the fact that an EIS had been prepared and was available for inspection at the offices of the planning authority.¹²
80. In the 2004 and 2010 applications, the notices included a public invitation to examine the planning application documents and drawings and the Environmental Impact Statement and to make a written submission to the county council on the application.
81. Section 130 of the Planning and Development Act 2000 also provides for public participation in an appeal to An Bórd Pleanála of a decision by a planning authority in relation to a planning application, including power for the Board to hold an oral hearing into the appeal in which *inter alia* persons who made submissions and observations on the appeal may participate.
82. These provisions applied in the case of the decision-making processes for the permission granted for the quarry in 2004 and 2010, as evidenced by the level of actual public participation in those cases, as set out in Appendix 1 to Ireland's letter of 27 November 2015 to the Committee.

¹¹ See Ireland's Opening Statement, at para 17.

¹² As per the provisions of the Planning & Development Regulations 2001, as amended, or its predecessor.

83. Ireland notes that it is not possible for a planning application to specify the duration of any additional period by which the permission, if granted, might be extended in the future.
84. This is because the extension of duration process applies only where, for unforeseen reasons, the permitted development cannot be completed within the permitted appropriate period, and an application for such an extension can be made only within one year before the expiration of the appropriate period.
85. By definition, the necessity for an extension of the duration of a planning permission cannot be anticipated at the time a planning application is made. It is precisely because this necessity cannot be anticipated that statutory forms of site and newspaper notices in relation to a planning application and related environment impact statement do not include reference to the possibility that an extension of duration of any permission granted on foot of the application may be sought in strictly limited circumstances in the year before expiry of the permission.
86. However, Ireland emphasises that at the time planning permission was granted in 1998, statutory provision for an administrative extension of the duration of a planning permission in certain circumstances had been a part of Irish planning law for a number of decades.
87. Provision for extension was made in section 29 of the Local Government (Planning and Development) Act 1976 and revised provisions for that purpose were made in section 4 of the Local Government (Planning and Development) Act, 1982.

88. At the time the original planning permission was granted in 1998, S.42 of the Planning Act 2000 had not yet been enacted. However, its immediate statutory predecessor, s.4(1) of the Local Government Act 1982, was in force.¹³
89. The two provisions are substantively very similar. The High Court has described s.42 of the PDA 2000 as s.4(1) of the Local Government Act “*restated with minor amendments*”.¹⁴ Whilst section 42 was amended in 2010, the provisions at issue in the present Communication are the same as section 4(1).
90. The High Court described the effects of s.4(1) as follows: “*If the conditions set out in section 4(1) are complied with the Planning Authority must extend the duration of the permission and consideration of matters other than the conditions set out there is precluded.*”¹⁵
91. It was therefore entirely within the discretion of an interested person to make a submission to the planning authority or the Board at the time the original planning application or appeal was being considered, raising concerns about the possibility of an extension of permission.
92. Moreover, and as previously indicated to the Committee, an extension of the duration of a planning permission does not permit any development to be carried out over and above what is covered by the permission concerned.

¹³ Available at Appendix One of this Submission.

¹⁴ *McDowell v Roscommon County Council* [2004] IEHC 396, per Finnegan P.

¹⁵ *McDowell v Roscommon County Council* [2004] IEHC 396, per Finnegan P.

QUESTION 7

93. As noted in Ireland's response and opening statement, each of the decisions relating to the developments referenced by the communicant were the subject of comprehensive public participation as provided for under the provisions of the Planning & Development Act 2000, as amended, or, with reference to the first listed activity (reference number 97/1868) under the 2000 Act's predecessor (the Local Government (Planning & Development) Act 1963, as amended).¹⁶
94. The decisions to grant planning or retention permissions in respect of the developments at Trammon Quarry followed substantive consideration of the various development applications. These included EIAs and a statutory public consultation process.¹⁷
95. As already outlined in Ireland's response to question 6, the details of the 3 relevant planning consent applications were published by the applicant in a national or local newspaper and a site notice erected at the entrance to the development site.¹⁸
96. The notices described the nature and extent of the development and the fact that an EIS had been prepared and was available for inspection at the offices of the planning authority. Ireland notes that a number of members of the public chose to make submissions in relation to Keegan Quarry's 1997 application for planning permission.¹⁹

¹⁶ http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-107_Ireland/Party_s_response_to_communication/frPartyC107_response_to_communication_27.11.2015.pdf, at para. 5 and http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-107_Ireland/Communication_from_Party/frPartyC107_opening_statement_52_CC_meeting_09.03.2016.pdf, at para.17.

¹⁷ See Ireland's Opening Statement, at para 17.

¹⁸ As per the provisions of the Planning & Development Regulations 2001, as amended, or its predecessor.

¹⁹ See <http://www.eplanning.ie/MeathCC/AppFileRefDetails/971868/0>.

97. With reference to the 3 planning applications relating to quarry development at Trammon, Rathmoylan, Co. Meath, as listed in the communication, in the course of the 2 most recent relevant consent applications, members of the public exercised their rights under the Planning & Development Act 2000, as amended, to appeal the decisions of Meath County Council to grant permission to An Bord Pleanála.²⁰
98. At the time the original planning permission was granted in 1998, section 4(1) of the Local Government (Planning and Development) Act 1982 had been in force for 16 years.
99. It was therefore entirely within the discretion of an interested person to make a submission on the planning application, raising concerns about the possibility of an extension of permission.

²⁰ The independent National Planning Appeals Board.

QUESTION 8

100. Ireland adopts the same response to this question as with question 7.
101. However, Ireland contends that its submissions apply with greater force in the context of the 2010 permission, given that at the time permission was granted the possibility that it might be extended, if it met the requisite strict statutory criteria, had been a significant part of the Irish planning regime for an even longer period of time.

QUESTION 9

102. The volume of rock extraction permitted in the three planning permissions for the quarry, in accordance with the particulars specified in the relevant Environmental Impact Statement, was as follows:

1998 planning permission	2.5 million tonnes
2004 planning permission	2.5 million tonnes
2010 planning permission	1.33 million tonnes

Part B- Material relating to Committee questions raised during discussion in Geneva, 8 - 11 March 2016

103. This part of Ireland's response outlines additional information that was indicated would be supplied to the Committee at the discussion.

Breakdown of Quarry Size

104. At the discussion Ireland stated that it would supply information in relation to how the area of the site breaks down and that how quarry and its ancillary developments are within 25 Hectares.
105. The attached map and aerial photograph show the area of the permitted quarry (as per the 3 relevant planning permissions), which Meath County Council (the local planning authority) has measured at 18.48 hectares.
106. This quarry area does not include the manufacturing structure to the north of the quarry area (Meath Reg. Ref. TA/00408) and the adjacent block yard (Reg. Ref. 00/2075) as visible in the maps/photos, because these developments do not comprise a 'quarry' and are not the subject of the extension of duration applications applicable to the 3 relevant quarry planning permissions.

Is a separate mining licence required?

107. Ireland also indicated that it would provide information on whether a separate mining licence was required for the site.

108. According to the Planning Board Inspector's report into one of the appeals concerned, the quarry is a limestone quarry.²¹ As a matter of Irish law and administration, mining licences are not required for such quarries.

Whether Ireland considers that change of time constitutes a change of operating activity and a "change or extension" within the meaning of paragraph 22 of Annex 1?

109. Extension decisions under Section 42 of the Planning and Development Act 2000 are not decisions which require to be subject to an EIA. Ireland considers that paragraph 22 of Annex 1 of the EIA Directive to refer to the physical/spatial extent of the development, as distinct from an extension of time.
110. As noted in Ireland's opening statement, under Irish law, which is fully consistent with the requirements of the EIA directive, a decision to extend the duration of an existing planning permission does not alter the previous permission wherein the area and volume of extraction were identified and which substantively considered the development application and the significance of its environmental impact.
111. Properly construed, a decision under S.42 is therefore not a decision to permit an activity in the sense envisaged by Article 6(1)(a) or 6(1)(b) of the Convention.
112. Indeed, this Committee has previously noted that decisions subsequent to the principal permission which are of minor or peripheral importance, or of

²¹ Planning Application: ta130399, Meath County Council, *see*: <http://www.eplanning.ie/MeathCC/AppFileRefDetails/ta130399/0>

limited environmental relevance, do not merit full scale public participation procedure.²²

113. There is no analysis or environmental assessment to be carried out by the consenting authority in extending the permitted duration. This additional time is given strictly within the parameters of permitted development and environmental impact established in the original substantive planning consultation and consents stage.
114. No changes whatsoever may be made to the nature and extent of works which were permitted through the substantive public consultation consent process.
115. Moreover, and as Ireland asserted in its opening statement, the extension of the original planning permission is, and has been at all material times, a fundamental part of the statutory scheme, and the inherent basis of any permission granting development consent.²³
116. As Ireland also noted in its opening statement to the Committee, this is not the same situation considered by Article 6(10) of the Convention.²⁴
117. Ireland reiterates that in circumstances where an extension of time is mandatory upon fulfilment of statutory criteria, and there are no assessments to be carried out other than the remaining time required to complete the works, *no conditions* can be attached, apart from a requirement for security for the satisfactory completion of the development. Simply put, there is *no substantive reconsideration* of operating conditions whatsoever.

²² See para 41 of European Community ACCC/C/2006/17, ECE/MP.PP/2008/5/Add.10, 2 May 2008.

²³ At para 15.

²⁴Wherein: "Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied *mutatis mutandis*, and where appropriate".

Whether Ireland had further comments in relation to the Communicant's submissions on "Appropriate Assessment"?

118. As noted in Ireland's response²⁵, the Planning Board carried out screening for Appropriate Assessment pursuant to the Habitats and Birds Directives in its 2012 decision under section 261A of the Planning and Development Act 2000 relating to the entire quarry area (Reference Number: 17.QV.0217) and found that Appropriate Assessment was not required.

Please contact the undersigned if you require any further information.



Aoife Joyce

National Focal Point – Aarhus

Appendix One-

²⁵ At para 45-48.

Section 4(1) of the Local Government Act 1986

4.—(1) On an application being made to them in that behalf, a planning authority shall, as regards a particular permission, extend the appropriate period, by such additional period as the authority consider requisite to enable the development to which the permission relates to be completed, if, and only if, each of the following requirements is complied with:

- (a) the application is in accordance with such regulations under this Act as apply to it,
- (b) any requirements of, or made under, such regulations are complied with as regards the application, and
- (c) the authority are satisfied in relation to the permission that —
 - (i) the development to which such permission relates commenced before the expiration of the appropriate period sought to be extended, and
 - (ii) substantial works were carried out pursuant to such permission during such period, and
 - (iii) the development will be

completed within a reasonable time.

(2) Where —

(a) an application is duly made under this section to a planning authority,

(b) any requirements of, or made under, regulations under [section 11](#) of this Act are complied with as regards the application, and

(c) the planning authority do not give notice to the applicant of their decision as regards the application within the period of two months beginning on —

(i) in case all of the aforesaid requirements referred to in *paragraph (b)* of this subsection are complied with on or before the day of receipt by the planning authority of the application, that day, and

(ii) in any other case, the day on which all of the said requirements stand complied with,

subject to [section 10](#) (2) of this Act, a decision by the planning authority to extend, or to further extend, as may be appropriate, the period, which in relation to the relevant permission is the appropriate period, by such additional period as is specified in the

application shall be regarded as having been given by the planning authority on the last day of the said two month period.

(3) (a) Where a decision to extend an appropriate period is given under *subsection (1)* of this section, or, pursuant to *subsection (2)* of this section, such a decision is to be regarded as having been given, the planning authority shall not further extend the appropriate period, unless each of the following requirements is complied with:

- (i) an application in that behalf is made to them in accordance with such regulations under this Act as apply to it,
- (ii) any requirements of, or made under, such regulations are complied with as regards the application, and
- (iii) the authority are satisfied that the relevant development has not been completed due to circumstances beyond the control of the person carrying out the development.

(b) An appropriate period shall be further extended under this subsection only for such period as the relevant planning authority

consider requisite to enable the relevant development to be completed.

(4) Particulars of any application made to a planning authority under this section and of the decision of the planning authority in respect of such application shall be recorded on the relevant entry in the register.

(5) Where a decision to extend, or to further extend, is given under this section, or, pursuant to *subsection (2)* of this section, such a decision is to be regarded as having been given, [section 2](#) of this Act shall, in relation to the permission to which the decision relates, be construed and have effect subject to and in accordance with the terms of the decision.

(6) This section shall not be construed as precluding the extension, or the further extension, of an appropriate period by reason of the fact that the period has expired.