



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

June 21<sup>st</sup> 2016

**Re: Communication PRE/ACCC/C/2016/139**

Dear Ms Marshall,

I refer to your correspondence of May 31<sup>st</sup> 2016 informing Ireland that the Compliance Committee will consider the preliminary admissibility of a new communication PRE/ACCC/C/2016/139 concerning Ireland today, Tuesday 21<sup>st</sup> June.

To assist, Ireland can respond more formally and in more detail in due course to the specific points raised in this Communication and in today's conference call. However I wish to make a very brief submission at this early opportunity and of course these submissions are without prejudice to further submissions which Ireland may make at a later stage in the process in the event that the Committee determines that this communication is admissible.

We note that the communication from the Irish Underwater Council alleges non-compliance by Ireland with Articles 6(2)(a), 5(1) and 5(2) of the Convention on Access to Information, Public Participation in Decision Making and access to Justice in Environmental Matters as signed at Aarhus, Denmark, 24th June 1998 (hereinafter 'the Convention'). We consider that the above referenced communication is inadmissible for the following reasons:

- The issue concerned predates Ireland's ratification of the Convention
- The communicant has failed to exhaust domestic remedies.
- Matters raised are outside the scope of the Convention

Furthermore the submission below sets out Ireland's contention that Ireland fully complies with the Convention.

### **Pre-dates ratification of Convention**

The substantive matters with which the communication is concerned occurred before the Convention had entered into force for Ireland. For this reason, Ireland contends that the communication is inadmissible.

The Convention was signed by Ireland on 25th June 1998 and ratified by Ireland on the 20th June 2012, entering into force in September 2012. The newspaper notice concerning an application for a dumping at sea permit was placed in a national newspaper, the Irish Times, on the 15th October 2009 in accordance with national legislation (Dumping at Sea Act 1996 as amended). A permit (register number S0004-01) was granted to Dublin Port Company on the 28th July 2011. Both of these dates pre-date the ratification and the entering into force of the Convention in 2012. Therefore it is not open to the communicant to make the arguments that it does in this communication and in particular to argue before this Committee that the public participation procedure relating to that permit was flawed and in contravention of the Convention when the Convention was not in force in Ireland at the material time.

Without prejudice to the fact that a decision was made on permit register number S0004-01 prior to Ireland's ratification of the Convention, it is not accepted that there was a failure to inform the public early in the decision-making of the proposed activity and the application on which a decision was to be taken. A public notice was placed in a national newspaper on the 15th October 2009 in accordance with national legislation (Dumping at Sea Act 1996 as amended). No submissions from members of the public were received in relation to the application. Eleven submissions were received from statutory and notified consultees. All of the application documentation was made available to view on the Environmental Protection Agency (EPA) website ([www.epa.ie](http://www.epa.ie)), along with any correspondence between the permit applicant and the EPA and any third parties relating to the application process. A permit (register number S0004-01) was granted to Dublin Port Company on the 28th July 2011 and the permit was available to view on the EPA website from that date. No challenge to the decision by way of an application for judicial review was made in relation to the permit granted. All application documentation in relation to this permit application is still available to view on the EPA website. Even though the Convention was not in force at the material time, Ireland confirms that members of the public were afforded an opportunity to engage in the process.

## **Failure to Exhaust Domestic Remedies**

It is further contended that the communicant did not exhaust all domestic remedies and that the Committee should find the communication inadmissible on the basis of paragraph 21 of the annex to decision I/7.

As stated above, the communicant did not make any submissions on Dublin Port Company's application for a permit although public notice of same was placed in a national newspaper at that time. Moreover the communicant has not gone before the Irish courts to challenge the decision of the EPA to grant the permit to Dublin Port Company and has not provided any reason for this. The Convention should not be used as an alternative form of redress in circumstances where communicants have failed to exhaust all domestic remedies and have failed to bring a challenge in good time.

## **Scope of the Aarhus Convention**

Notwithstanding that the Aarhus Convention Compliance Committee is not the appropriate forum for examining compliance with the Habitats Directive, Ireland makes the following points. Permit register number S0004-01 was granted prior to the designation of the Rockabill to Dalkey Island Special Area of Conservation (SAC), which was formally proposed for designation in September 2011. Permit register number S0004-01 requires the activity to be carried on without causing deterioration in habitat or disturbance of species in European Sites. Furthermore, Dublin Port Company has agreed to employ a Marine Mammal Observer to ensure that there is no deterioration in the habitat or disturbance of the Harbour Porpoise (*Phocoena phocoena*). The Marine Mammal Observer shall meet the monitoring and reporting requirements of the National Parks and Wildlife Service (NPWS) and full reporting will be provided to NPWS and the EPA. The EPA is aware of and complying with the requirements of Article 6(2) of the Habitats Directive (92/43/EEC).

With regard to the disposal of contaminated material, data on the composition of the material to be disposed of was freely available to view in the permit application documents available on the EPA website during the application process. Chemical analysis data of the material was submitted as part of the application form and was also available to view on the EPA website during the application process. Furthermore, the Inspector's Report (attached) outlined in detail the composition of the material and clearly stated that some of the material was contaminated. It should be noted that the disposal at sea of contaminated material is considered acceptable by OSPAR under certain conditions. The Inspector's Report and permit set out the measures required to be implemented to ensure protection of the environment when carrying out the activity. Again, it is respectfully submitted that the Aarhus Convention Compliance Committee is not the appropriate forum for examining this matter.

Ireland queries whether the matter falls within Article 6.

## **Further information**

Without prejudice to the above arguments on admissibility, Ireland also asks the Committee to note, over the last number of months, the EPA has received a number of complaints from the Irish Underwater Council on permit register number S0004-01 and on largely the same grounds as made in this communication. Some of these complaints have been answered by the EPA and others are currently under active investigation and a full report on the EPA's assessment will be forwarded to the complainant on completion. In the circumstances it is submitted that it is premature for the Committee to examine this matter at this stage.

Further without prejudice to the above arguments on admissibility, Ireland notes that the communicant contends that not all information and correspondence in relation to permit register number S0004-01 is available on the EPA website. It is further asserted by the communicant that this is contrary to the EPA's own guidance documents saying that all information is publicly available.

Throughout its existence, the EPA has maintained a policy of providing full access to its files, including licensee documentation and third party correspondence as well as the EPA's own communications. In respect of the EPA's licensing (and environmental monitoring) functions such public access is mandated by statute in both the EPA Act 1992 as amended and the Waste Management Act 1996 as amended, as well as Regulations thereunder. Systems have been developed to deliver, including electronically available materials, the necessary public access provision in respect of these duties.

The EPA does not have an express statutory obligation to provide access to "enforcement correspondence" under national dumping at sea legislation. The obligations contained within the Convention do not require the formal publication of the range of enforcement documentation that is to be made available to the general public by the EPA. Nevertheless, since its foundation, the EPA has taken the view that it should conduct all of its business in a fully open and transparent manner. The Convention requires that information is made "effectively accessible" and the EPA has measures in place to make information, including Inspection Reports, available to the public on the EPA website.

The communicant refers to the EPA's own guidance document "Dumping at Sea EPA Enforcement and Permitting Booklet", which states that "All permit application documents, correspondence, submissions, etc. are available on the EPA website". This statement refers to documents and correspondence relating to the application for the dumping at sea permit. In relation to enforcement, material is available on hardcopy file at the Cork EPA Regional Inspectorate where all dumping at sea enforcement is co-ordinated, or alternatively at any other EPA office, on request. In addition, it is a condition of dumping at sea permits issued by the EPA that a Public Awareness and Communication Programme be established and maintained by the permit holder to ensure members of the public can obtain information relevant to the permitted activity. The EPA, in conducting inspections of permitted activities,

ensures that permit holders comply with this requirement. The permit holder in this case, Dublin Port Company, maintains a page on its website with information on the permitted activity – see <http://www.dublinport.ie/Masterplan/dublin-port-maintenance-dredging-2016/> for more information.

For the reasons above, we respectfully request that the communication as referenced above is dismissed.

Yours sincerely,

A handwritten signature in blue ink that reads "Aoife Joyce". The signature is written in a cursive style with a light blue background.

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Aoife Joyce  
National Focal Point Ireland-Aarhus