



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

March 11<sup>th</sup> 2019

**Re: Communication PRE/ACCC/C/2019/165**

Dear Ms Marshall,

1. I refer to your correspondence of February 12<sup>th</sup> 2019 informing Ireland that the Compliance Committee will consider the preliminary admissibility of a new communication PRE/ACCC/C/2019/165 concerning Ireland today, Monday 11<sup>th</sup> March. We set out below Ireland's response in respect of the matter of its admissibility.
2. Ireland wishes to thank the Compliance Committee for the opportunity to participate in this preliminary hearing and requests the Committee to consider the following matters in determining the admissibility of this communication.
3. The communication alleges non-compliance by Ireland with Articles 3(2) and 6(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').
4. Ireland has considered carefully the arguments set out and the information provided in the Communication. Ireland wishes to raise the following points in relation to the question of the admissibility of the Communication.
5. Further, Ireland considers it to be in order to draw the Committee's attention to certain additional matters, without prejudice to any further submissions that it may make in response to the Communication in due course, as required, including in respect of the matter of admissibility.



## **Screening**

6. Ireland contends that those aspects of the Communicant's communication which relate to the screening process, and in relation to which he asserts a breach of the Convention on public participation grounds, are inadmissible.
7. There is an important distinction to be drawn between the process of screening – whether under the AA or EIA regimes – and the decision made following the screening process, i.e. the substantive decision.
8. The scope of the Aarhus Convention only extends to the substantive decision and the Committee has in the past determined that public participation is required in relation to that decision.
9. Ireland does not dispute that the decision on screening, once it is made, is within the scope of the Convention and that access to justice is required in relation to that decision – in short, the Aarhus Convention is only engaged once the screening decision is made.
10. Accordingly, public participation is not required for the screening process. While contracting parties may voluntarily provide for public participation in the screening process, they are free not to provide for it.
11. This has been recognised by the Committee itself in its determinations in the matters of Spain, ACCC/C/2008/24 and United Kingdom, ACCC/C/2008/27.
12. In Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, the Committee determined (at paragraph 82) that:

“The Committee notes that it cannot address the adequacy or result of an EIA screening procedure, because the Convention does not make the EIA a mandatory part of public participation; it only requires that when public participation is provided for under an EIA procedure in accordance with national legislation (paragraph 20 of annex I to the Convention), such public participation must apply the provisions of its article 6. Thus, under the Convention, public participation is a mandatory part of the EIA, but an EIA is not necessarily a part of public participation. Accordingly, the factual accuracy, impartiality and legality of screening decisions are not subject to the provisions of the Convention, in particular the decisions that there is no need for environmental assessment, even if such decisions are taken in breach of applicable national or international laws



related to environmental assessment, and cannot thus be considered as failing to comply with article 6, paragraph 1, of the Convention”.

13. The determination of the Committee in United Kingdom ACCC/C/2008/27, ECE/MP.PP/C.1/2010/6/Add.2, November 2010 at paragraph 39 is also notable:

“Paragraph 20 of annex I covers any activity not covered by the other paragraphs of the annex where public participation is provided for under an environmental impact assessment (EIA) procedure in accordance with national legislation. The Committee understands that the relevant legislation specifying which activities in Northern Ireland are subject to an EIA procedure is the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. For the purposes of those regulations, an “EIA development” means either development which is listed in schedule 1 of those regulations, or development, which is listed in schedule 2 and which is likely to have significant effects on the environment by virtue of factors such as its nature, size or location. Schedule 1, paragraph 7 (a), of the Regulations refers to the construction of airports with a basic runway length of 2,100 metres or more. Schedule 2, paragraph 10 (e), of the Regulations refers to the construction of airfields (unless included in schedule 1) where the development involves an extension to a runway or the area of works exceeds 1 hectare. The increased seat allocation is not an activity subject to an EIA procedure under national legislation and, as noted above, the amended Planning Agreement did not alter the runway length. Thus, paragraph 20 of annex I does not apply”.

14. The screening process for EIA or AA is not within the scope of the Aarhus Convention.
15. Ireland contends that those aspects of the Communicant's communication which relate to the screening process are not admissible.

#### **Insufficient detail**

16. By way of more general observation, Ireland requests the Committee to note that while the Communicant's arguments are in places detailed, and some effort has been made to corroborate them with information, throughout the Communication there is a failure to particularise the precise activities that the Communicant is referring to; to outline the relevant legislation governing



the consent procedures applying to those particular activities or to indicate how in particular those specific provisions and procedures give rise to a breach of the requirements of the Convention.

17. For example, it is not sufficient for the Communicant to refer, for the purposes of his claims and arguments, to “activities” or “forestry activities”. In order for the Committee to consider the question of whether a breach of the Convention pertains, the nature of the forestry activities and the domestic regulations and procedures at issue must be clearly set out.

### **Ongoing appeal**

18. It is also appropriate to bring to the attention of the Committee at this stage of the procedure the fact that the Communicant has brought an appeal to the ‘Forestry Appeals Committee’ in respect of a felling licence (TFL00109218) by way of a Notice of Appeal dated 14 September 2018, filed on the 24 September 2018. While this is not a matter which comes within the scope of the Convention, it is of note that the appeal is currently pending with a hearing date to be scheduled. It is concerned only with the grant of a particular tree felling licence. However, because the appellant has included in his submissions, in support of the appeal, arguments in respect of Ireland’s alleged failure to comply with the requirements of the Aarhus Convention similar to those set out in the Communication, the Committee’s attention is drawn to the matter. The Notice of Appeal and the appellant’s submissions are submitted as an annex to this paper.

19. To assist, Ireland can respond more formally and in more detail in due course to the specific points raised in this letter and in today’s open session in the event that the Committee determines that this communication is admissible.

Yours sincerely,

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Aoife Joyce  
National Focal Point Ireland-Aarhus