

Communication PRE/ACCC/C/2019/165

Speaking Note

Ireland wishes to thank the Compliance Committee for the opportunity to participate in this preliminary hearing which alleges non-compliance by Ireland with Articles 3(2) and 6(2) of the Convention.

Ireland has considered carefully the arguments set out and the information provided in the Communication. Ireland wishes to raise a number of points in relation to the question of the admissibility of the Communication.

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

Firstly, 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.

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.

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.

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.

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.

This has been recognised by the Committee itself in its determinations in the matters of *Spain* ACCC/C/2008/24 (paragraph 82) and *United Kingdom* ACCC/C/2008/27(paragraph 39).

The screening process for EIA or AA is not within the scope of the Aarhus Convention.

Ireland contends that those aspects of the Communicant's communication which relate to the screening process are not admissible.

Insufficient detail

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.

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

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 will be provided to the Committee with the written submission that I will submit later today.

Ireland will submit a more detailed response to the secretariat of the Compliance Committee and requests that this be considered in determining the admissibility of this communication.

Thank you,