

1. Please list the specific activities you refer to in your communication as “forestry activities”.

My communication relates to forestry activities carried out under licence from the Forest Service (FS) of the Department of Agriculture, Food and the Marine (DAFM) under the following headings, which are all subject to public notification under EIA screening procedures. These are;

- Afforestation
- Forest road construction projects
- Aerial fertilisation
- Tree felling operations

2. The communication refers, in various places, to Ireland’s procedures for notification regarding screening of forestry activities, scoping, applications for licences for forestry activities and notification of the final decision itself. In the light of the above, please clarify which of the following your communication actually alleges to be in non-compliance with the requirements of article 6 of the Convention:

- (a) Notification of applications for authorization for forestry activities; and/or
- (b) Notification regarding EIA screening procedures for forestry activities; and/or
- (c) Notification regarding EIA scoping procedures; and/or
- (d) Notification of the final decision on forestry activities, and the right to appeal.

a), b) & c)

As I understand the process a) and b) are, in effect, the same thing. The notification of applications for authorisation (licence) is part of the EIA screening process. In my communication I referred to the ‘EIA scoping phase’, by this I meant the EIA screening process, so I would see b) and c) as the same also.

I am alleging that notifications for all of the listed forestry activities are not in compliance with the requirements of Article 6 of the Convention in that they do not inform the public concerned in an ‘adequate’ or ‘effective’ manner.

The Department’s website states;

Under the Forestry Regulations 2017 (SI No 191 of 2017), all applications for licences for afforestation, forest road construction projects, whether grant-aided or not, and for aerial fertilisation and tree felling operations, require the prior written approval of the Minister for Agriculture, Food and the Marine.

Before the Minister can grant approval for any of the above, he must first determine if the project is likely to have a significant environmental effect.

Under the heading ‘Article 6 and EIA’ the Aarhus Implementation Guide states:

At first glance, it may appear that article 6 refers simply to public participation in EIA procedures. However, EIA is not in itself a permitting or authorization process. It is a tool for decision-making. The term EIA has become associated with a standard form of procedure for the assessment of potential environmental impacts as part of the decision-making process relating to a proposed activity.

While the term EIA is used in the Convention, the test as to whether the Convention applies to a particular decision-making procedure is not whether that procedure is required to include EIA, or is considered as “environmental decision-making” under national law, but whether the decision-making itself may have a potentially significant impact on the environment.

The EIA screening process for licences is part of an environmental decision-making procedure and as a consequence the decision making process may have a potentially significant impact on the environment. On this basis the Convention applies and I believe that my communication should be treated as admissible.

d) I argue that notification of decisions and the right to appeal are not compliant with Article 6 in that they are not effective in reaching the public concerned.

Notifications of decisions for all of the schemes (to which there is a right of appeal) are only published on the Department's website. If the public concerned has not been effectively notified of the application (as I am claiming) then *de facto* they cannot have been effectively notified of the decision as the same or, in the case of Afforestation and Forest Road licences, a lesser process of notification is used. As a consequence the public concerned does not have access to justice in the case of an environmental decision-making procedure of which they have not been effectively notified.

3. Which, if any, of the applications or decisions on forestry activities referred to in your communication and supporting documentation were subject to an environmental impact assessment and/or appropriate assessment? Please list each such application or decision, including the pages of your communication on which each such application or decision is mentioned.

My communication relates to the general system of notification of applications and decisions for the application and decision stages of the categories of forestry activities listed. It does not relate to any specific decisions. It is about the process not the outcome of individual cases. On an annual basis the number of applications and decisions runs in to many hundreds. My communication did not identify any specific cases. Ms Joyce introduced the fact that I had made an appeal to the Forestry Appeals Committee on a particular decision. This is incidental to my communication to the Committee. That appeal concerned a much wider suite of issues than just compliance with the Aarhus Convention.

I can provide, if so required, details of further individual cases that illustrate the points of my communication that the general process of notification used by the Forest Service is not adequate or effective.

EIA is mandatory for individual Afforestation and Forest Road construction applications above certain thresholds (50 Ha & 2000m respectively). I am not aware of any individual application that has required a mandatory EIA. That is not to say that cumulative applications over a relatively short period of time in the same locale do not exceed the threshold, particularly for afforestation. There are concerns that very large applications are broken up in to a number of smaller applications to avoid the need for mandatory EIA's. The Minister can require an EIA where he /she considers that an application is '*likely to have significant effects on the environment*'. Again, I am not aware of any such cases where an EIA has been requested.

I am not aware of any application that has undergone Appropriate Assessment (AA) and the only way that I would know how to determine this would be to put in an AIE request. It is highly unlikely that I would receive a decision on a request prior to the 28th June deadline indicated for me to respond to these queries. AA screening is conducted on applications in relevant areas but I am not aware of any application that has required a full AA.

I wish to reiterate that my communication relates to compliance of the process with the Convention, not the outcome of individual decisions made through the process. If the process is flawed then ultimately all decisions are questionable.

4. In your statement regarding preliminary admissibility of 7 March 2019, you state that you do not have the financial resources to bring legal proceedings. What complaints, if any, have you made to the Irish Ombudsman or other review body regarding the issues raised in your communication?

It is my understanding that the Irish Ombudsman deals with complaints regarding unfair treatment by public service providers. I do not consider that the issue that I am raising in my communication is a complaint regarding unfair treatment in the context of the role of the Ombudsman. My communication relates to the question of interpretation of the requirements of the Aarhus Convention in respect of public consultation and access to justice. In my view this is a legal issue not one of unfair treatment. I asked the Forest Service to review their procedures – they declined. Other than challenging a specific application or decision on legal grounds in the courts in order to establish a legal precedent (for which I do not have the resources) I felt limited in the options that were open to me.

I have appealed a number of decisions to the Forestry Appeals Committee (FAC). In the two cases that have been heard to date the issue of compliance with the Aarhus Convention was included as one of a number of grounds for appeal. Although two cases have been heard I have received only one notification of a decision. On appeal the licence was amended to include an additional condition for DAFM to collaborate with other agencies on the monitoring of the works. In respect of the issues raised over compliance with the Article 6 of the Convention the correspondence that I have received from the FAC states;

The application was advertised on the Department's website on 24th October 2018 in accordance with 3.2 of the Felling and Re-afforestation Policy manual (May 2017). Public consultation in the case of the licence application was provided for. The Department's interpretation of its obligations in relation to public consultation is reasonable in that this plantation was always clearly intended to be felled for commercial timber and the restocking does not involve a change of land use."

The FAC appears to be of the view that notification of an application and decision on the Department's website satisfies the requirement for public consultation. The above did not address the specific points that I made in respect of compliance with Article 6 of the Convention in respect of the adequacy or effectiveness of the notification to the public concerned. The fact that there is not a change of land use does not preclude an activity (the clear felling (32 Ha (79 acres) in this case) from having a significant effect on the environment.

I do not have the resources to challenge the decision of the FAC in the High Court.

I am a private citizen. I am not aware of any other process or review body that I could have contacted regarding the issue of interpretation of Article 6. I became aware of the ACCC in the process of researching interpretation of the Convention and it seemed to me to be the most appropriate body to examine the issue given that the FS had clearly stated that it had no intention of reviewing its own procedures. The FS was informed that I intended to raise this matter with the ACCC and it did not offer any alternative process or course that I could or should have adopted.

I trust that the Committee and the Department can appreciate that, in bringing forward this communication, I am trying to be constructive and consider that I am acting in the spirit of the Convention.

I would be happy to provide more detail in due course to elaborate on specific aspects of my communication if it is deemed admissible.