

1. The Communicants seek to raise wide ranging complaints relating to the manner in which the Aarhus Convention has been complied with in Ireland. The central theme of the communication is an allegation that Ireland has failed to comply with Articles 3(1), 4, 5, 6, 7, 8 and 9 of the Convention in respect of its renewable energy programme, with an emphasis on the manner in which wind farms have been given development consent in Ireland.
2. The Convention was signed by Ireland on 25th June 1998 and ratified on 20th June 2012, entering into force in September 2012. Emphasising these dates is important in the context of one of the core complaints raised by the Communicants relating to the adoption of the Ireland's Natural Renewable Energy Action Plan (NREAP) pursuant to Directive 2009/28/EC. This complaint runs through all the issues raised by the Communicants, who take particular issue with a refusal by national authorities to re-consider the substantive merits of policies that are outlined in NREAP. The adoption of the NREAP occurred in June 2010, two years before the Convention was ratified by Ireland. Many of the policies referred to in NREAP were adopted even earlier than that date. The jurisdiction of this Committee is confined to complaints '*concerning a Party's compliance with the convention*'. As Ireland was not a party to the Convention at the time the NREAP was adopted, it is respectfully suggested that the Committee is precluded from considering any complaint relating to it. It is particularly important to note that ratification of the Convention did not have a retrospective effect that could invalidate any decisions taken or processes undertaken prior to ratification.
3. The date on which Ireland ratified the Convention is also important in the context of the complaint raised relating to alleged non-compliance with the decision of this Committee in ACCC/C/2010/54. This decision was directed towards the European Union, at time when Ireland was not a party to the Convention and therefore no complaint relating to non-compliance can arise.
4. It is noted that the Communicants are bound together by a common theme, namely their common opposition to the development of wind energy. This can be seen

throughout the communication with the common thread being the Communicant's disagreement with the substance of certain decisions reached by national authorities rather than the process by which those decisions were reached. While the Communication is framed as a complaint relating to a lack of public participation in various decision making processes, it is clear from a review of the Communication that the Communicants actually disagree with the outcome of decisions by the Commissioner for Environmental Information and national planning authorities. However, it is the position of Ireland that it would be inappropriate for this Committee to consider the merits of those decisions. An examination of the processes identified by the Communicants as flawed actually establishes clear compliance with the Convention in respect of ensuring public participation in decision making processes.

5. Before turning to the substance of the complaint, one final preliminary matter must be dealt with. One of the Communicants, Mr. Swords, is currently involved in proceedings before the High Court of Ireland against the Minister for Communications, Energy and Natural Resources relating to the manner in which the NREAP was adopted in Ireland. The Communicants raise a number of complaints relating to the manner in which these proceedings have progressed through the High Court. Ireland emphasises that these proceedings are currently active before the High Court and judgment is awaited from Mr. Justice David Keane on a preliminary issue. In light of the fact that the proceedings are currently active, it would not be appropriate for the Committee to make any comment relating to them or interfere with the jurisdiction of the Irish High Court. It is noted that the Communicants have informed the Committee that judgment has been adjourned on a number of occasions. The question of when a judgment in High Court proceedings is given lies solely with the individual High Court Judge. The independence of the judiciary is a core constitutional value in Ireland and the Minister, as a party to the proceedings, cannot seek to influence the delivery of judgment including the timeframe within which judgment is delivered.

6. Turning therefore to the substance of the complaints raised by the Communicants, which have been expressed in general and broad terms but which can be summarised as a general allegation that there has been a systemic failure of public authorities in Ireland to comply with the Convention. This allegation has no basis in either fact or law. As fully explained in our written observations, Ireland has developed a robust legal framework through which the rights guaranteed by the Convention are protected.

7. In respect of the obligations that arise under Article 4, Ireland draws attention to the legal process established for the determination of requests for information on the environment under the European Communities (Access to Information on the Environment) Regulations 2007 (S.I No. 133 of 2007) (as amended). The full framework is set out in our written observations but can be summarised as an entitlement to make a request to a public authority, which said decision is subject to an appeal to the independent office of the Commissioner for Environmental Information. Ireland accepts that for a number of years, there were difficulties in the office of the Commissioner for Environmental Information in respect of the time it took to have decisions fully determined. Unfortunately, due to the recent economic circumstances that pertained in Ireland, there was a limit in the amount of public funds available to fund public services and bodies. This has recently been remedied by the allocation of additional resources and the Commissioner has been in a position to significantly reduce the backlog of decisions pending before his office. The remainder of the complaint raised by the Communicants under Article 4 relate to particular decisions of public authorities or the Commissioner for Environmental Information where the Communicants are dissatisfied with the outcome on the merits. It is noted that in the majority of the cases referenced, the Communicants have not exhausted the legal process available to them under national law.

8. The second core complaint made by the Communicants relates to an allegation that any public consultation engaged in by Irish authorities is a *pro forma exercise* and therefore contrary to Article 6 of the Convention. As already indicated, it is the view of Ireland that the real complaint made by the Communicants relates to the refusal

of decision making bodies to revisit questions relating to national policy or to dis-apply those national policies. The allegation that there is a failure of proper and effective public participation is not supported by any evidence supplied by the Communicants. An analysis of decisions taken, for example, by planning authorities show that they reach decisions having regard to the range of factors, of which they are obliged by national law to take account. These include government policy, ministerial guidelines, Development Plans, environmental considerations and submissions and/or observations made by the public concerned. In particular, section 34(3) of the Planning and Development Act, 2000 – 2015 places an express obligation on a Planning Authority to consider any written submissions or observations made in respect of the proposed development. All these factors are considered in order to reach a conclusion as to whether a particular development is in accordance with proper planning and sustainable development. It is also important to note that wind energy projects are not uniformly granted development consent in Ireland. Many such proposals are refused consent or modified significantly in the course of the planning process.

9. Specific complaint is raised relating to the development of the Westmeath County Development Plan 2014-2020. A full history is set out in our written observations but it can be emphasised that all actions undertaken by the Minister were in accordance with national law. Extensive public participation was undertaken in respect of the Westmeath County Development Plan, and while not all of those views were adopted, they were considered in the decision making process. Fundamentally the Convention requires that views be heard and considered but it is open to a decision maker to reach an alternative conclusion.

10. The central theme of the complaints raised by the Communicants relate to the merits of national energy policy and individual planning decisions, specifically in relation to wind farm developments. While the Communicants may not agree with the substance of those decisions, that lack of agreement cannot form the basis for a finding that there has been any violation of the Convention.