

Our Reference: FPL/113/02327
Your Reference: ACCC/C/2016/141

20 October 2020

By email only

Ms Fiona Marshal
Secretary to the Aarhus Convention Compliance Committee
aarhus.compliance@un.org

Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland with the provisions of the Convention on access to information on the environment by Right to Know CLG

Dear Ms Marshal

I refer to the above communication and to the draft findings and recommendations with regard to compliance by Ireland which were issued on 7 April 2020. I note the Committee's invitation to the Communicant to provide its comments pursuant to paragraph 34 of the annex to decision I/7 before 25 September 2020 (subsequently extended to 20 October 2020 at the request of the Party concerned).

The communicant welcomes and accepts the findings and recommendations but wishes to identify some points of clarification.

Allegation of systemic intentional abuse by public authorities

Points 51, 54 and 131 of the draft findings and recommendations refer to alleged deliberate or intentional abuse by public authorities. However, the Communicant respectfully notes that it never made this allegation. It will be recalled that the Communicant alleged that¹

*Public authorities **can** comfortably refuse a request on a narrow threshold jurisdictional point (not a public authority or not environmental information) knowing that if there is an appeal to the CEI it will be more than a year before the matter returns to it at which point it will have a further two or three months to make a decision (including internal review) and the matter may then be appealed again to the CEI. (emphasis added)*

The Communicant did not allege that the practice of making decisions on threshold jurisdictional issues was being done deliberately or abusively, it merely observed that there was a possibility. The Communicant adduced evidence that the taking of narrow decisions necessitating several rounds of

¹ Page 8 of the Communication

decision making does in fact introduce delay, it didn't however make any claim that this was being done intentionally.

Irish Bank Resolution Corporation Ltd (formerly Anglo Irish Bank Corporation Ltd) v Commissioner for Environmental Information

The Communicant refers to point 126 of the draft findings and recommendations and wishes to note a couple of factual points.

First, Mr Sheridan was named as a party to this litigation but chose not to participate.

Second, as already pointed out, this case was never reactivated following the *NAMA* decision. It currently remains "adjourned generally" but it is still open to either the CEI or IBRC to reactivate this case.

Conclusion

The Communicant very much welcomes the draft findings and recommendations and hopes that they will be a catalyst for significant improvements in the access to environmental information system in the Party concerned.

The Communicant asks the Committee to take the comments outlined in this letter into account in its preparation of the final version of the findings and recommendations.

I would like to conclude by thanking the Committee, the Secretariat, the officials from the Party Concerned and the observers for their contributions to and work on this case.

Yours sincerely



Fred Logue

Copy to: Irish Environmental Pillar
The Party concerned
Mr Stephen Minch