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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland
(By email only)

7 December 2017

Dear Ms Marshall

PRE/ACCC/C/2017/150: UK comments on admissibility

In advance of the Compliance Committee meeting next week I share the position that the UK replies on and will supplement setting out why communication C150 is inadmissible.

Summary

We consider that communication C150 is inadmissible for the following reasons:

- **It is not established to be within the scope of the Convention:** both generally, and in relation to specific allegations, as the communicant has failed to establish that the issues they raise are within the scope of the Convention;
- The communicant's arguments are unsubstantiated and appear to be **an abuse of the right to bring a communication (Decision 1/7 Article 20 (b))**; and
- **It is manifestly unreasonable (Decision 1/7 Article 20 (c))**; the absence of sufficient information in respect of at least one of the allegations, makes it unreasonable for this communication to be submitted and considered admissible.

Submissions on admissibility

This communication alleges that the UK failed to conduct a public consultation in respect of the European Union (Withdrawal) Bill ('the Bill') and has therefore breached Articles 3 and 8 of the Convention. The issues which the communicant raise are outside

the scope of the Convention as Article 2(2) provides that for the purposes of the Convention:

“Public authority” means:

- (a) Government at national, regional and other level;*
- (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;*
- (c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;*
- (d) The institutions of any regional economic integration organisation referred to in article 17 which is party to this Convention.*

This definition does not include bodies or institutions acting in a judicial or legislative capacity”

The UK is acting in a legislative capacity in relation to the Bill and its current passage through Parliament. This is **clearly therefore outside the scope of the Convention** and is not a matter for the Committee to consider.

Article 8

The communicant alleges at page 3 of the communication that the White Paper was not a public consultation, and the effect of repealing the European Communities Act and the withdrawal from the EU could have a significant effect on the environment. The communicant goes on to mention in a footnote that the White Paper provided an email address for feedback “but did not request public responses as part of an express consultation”.

In the UK a White Paper is used to set out the Government proposals on legislative changes, and at times can be used as a means of consultation by inviting comments¹. In this matter (i) the White Paper for the European Union (Withdrawal) Bill outlined the UK’s proposals in respect of the Bill; and (ii) page 2 of the document expressly stated that “[t]he Government welcomes feedback on this White Paper. Comments can be sent to repeal-bill@dexeu.gov.uk”.

The communicant has focused most of their arguments on clause 7 as they allege that the clause gives ministers wide powers to amend or delete EU derived environmental

¹ <https://publications.parliament.uk/pa/cm201011/cmwib/wb100529/wgp.htm>

law. The White Paper outlines at page 23 the scope, and more importantly, the constraints the Government considered in respect of this provision.

It is mentioned that the power (now clause 7) would be limited and crucially, the government would “*ensure that the power will not be available where Government wishes to make a policy change which is not designed to deal with deficiencies in preserved EU derived law arising out of our exit from the EU*”. The White Paper explicitly stated the Government’s thinking in respect of clause 7. The communicant and members of the public have therefore had the opportunity to publically participate and raise concerns if there were any issues in relation to the Bill.

Under Decision 1/7 Article 20 (b), the communicant is abusing their right to bring a communication as it appears it is being used as an opportunity for the Committee to analyse clauses within a draft Bill. This is **clearly outside the scope of the Convention and is also clearly outside the Committee’s jurisdiction.**

Article 3(1)

The communicant simply states that the UK has failed to comply with the above Article and this stands whether or not the Bill is enacted. Under Article 20(c) of Decision 1/7, **the absence of sufficient information is manifestly unreasonable.** This is therefore **not something that the Committee cannot consider further and must therefore find inadmissible.**

A further consideration

The Secretary of State for the Department for Environment, Food and Rural Affairs (‘Defra’) announced on 12 November 2017 his plans to consult in early 2018 on a new, independent body² for environmental standards which would hold the Government to account. The Secretary of State intends for this statutory body to challenge and advise the government (and other public bodies) on environmental legislation, which will hold these bodies to account and enforce standards.

Conclusion

The Bill is at the Committee stage in the House of Commons, this means various Members of Parliament are scrutinising the Bill’s provisions and suggesting that various clauses should be amended or deleted. Despite the fact this communication is outside the scope of the Convention for reasons outlined above; the communicant should not have asked the Committee to consider this communication, particularly when the communicant recognises that the allegations in the communication are premature, as

² <https://www.gov.uk/government/news/new-environmental-protections-to-deliver-a-green-brex-it>

they even admit at page 10 of the communication that “ [i]t is impossible, at this stage, to predict what amendments ... may be made to the Bill before it becomes law”. If the Committee fails to conclude that this communication is inadmissible, it will misuse its valuable time considering a matter which is outside the scope of the Convention and which may not even include the provisions complained of, which in itself, are outside the scope of the Convention. In addition, **in light of the premature nature of the allegations, this communication should not be expedited.**

It is clear that this communication is outside the scope of the Convention. As mentioned above, Article 2(2) of the Convention provides that for the purposes of the Convention, the definition of public authority does *not* include bodies or institutions acting in a legislative capacity. The reason for this would have been to ensure that each Party to the Convention is able use their respective Parliamentary processes to determine the passage of legislation, as opposed to assigning such a task to the Committee which does not have the constitutional remit to make a determination. **The Committee has no remit to discuss provisions within the Bill.**

We therefore respectfully request that the Committee finds both the individual allegations and the communication as a whole to be inadmissible. We would be happy to provide further clarification on any points to assist the Committee in its deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Azam' with a flourish at the end.

Ahmed Azam
United Kingdom National Focal Point to the UNECE Aarhus Convention