

**Preliminary determination of admissibility of communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding public participation in the context of the “Great Repeal Bill” (ACCC/C/2017/150)**

**15 December 2017**

**I. Background to the determination**

1. Before considering the substantive merits of any communication, the Committee needs to decide whether to accept the communication, taking into account the admissibility criteria set out in paragraph 20 of the annex to decision I/7. According to paragraph 20, the Committee must take into account whether the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such a communication;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of decision I/7 or with the Convention.

2. A further possible criterion is the lack of relevance to the subject matter of the Convention.

3. In addition, the Committee has identified two further criteria for deeming a communication inadmissible:

(a) When the communication is made with respect to a State which is not a Party to the Convention, or where the significant events with which the communication is concerned occurred before the Convention had entered into force for the Party;

(b) When the communication is made with respect to a Party which has opted out of having communications from the public concerning its compliance considered by the Committee.

4. Should the Committee find that a communication falls under one of the above criteria, it may find it inadmissible.

5. Furthermore, in accordance with paragraph 21 of the annex to decision I/7, the Committee “should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress”. The Committee’s view is that this provision does not imply any strict requirement that all domestic remedies must be exhausted, i.e., the Committee would not be precluded from considering a case even where the application of the remedy was not unreasonably prolonged. On the other hand, the failure by a communicant to make use of available domestic remedies might be grounds for the Committee to determine that the matter should be pursued at the level of domestic procedures rather than (for the time being) through the compliance mechanism.

**II. Preliminary determination of admissibility**

6. Having considered the communication and the supporting documentation, the Committee determines the allegation concerning the preparation of subsequent legislation (i.e. the second issue listed on page 8 of the communication) to be inadmissible under paragraph 20 (d) of the annex to decision I/7 on compliance, on the ground that the allegation relates to the content of draft legislation that has not yet been finally adopted and may therefore still be subject to change.

7. With respect to the communicant's allegations concerning the preparation of the draft "Great Repeal Bill" and the alleged lack of a clear, transparent and consistent framework to implement article 8 (i.e. the first and third issues listed on pages 8 and 9 of the communication), the preliminary view of the Committee is that these allegations do not fall under any of the four criteria listed in paragraph 20 of the annex to decision I/7. Regarding the first criterion, the communication is not anonymous and the contact information for the communicant is provided. The Committee does not find that the communication represents an abuse of the right to make communications, or that it is manifestly unreasonable. Nor does the content of the communication, or the process through which it has been submitted, appear to be incompatible with the provisions of decision I/7 or with the Convention.

8. While the Committee at this stage finds it premature to comment on the actual substance of the communication, it does relate to the procedures and obligations regulated by the provisions of the Aarhus Convention, and therefore the content of the communication could not be considered to be irrelevant.

9. The United Kingdom deposited its instrument of approval of the Convention on 23 February 2005, meaning that the Convention entered into force for the United Kingdom on 24 May 2005, i.e. ninety days after the date of deposit of the instrument of ratification. Furthermore, the United Kingdom has not opted out of the aspects of the compliance mechanism relating to communications from the public.

10. Accordingly, the preliminary determination of the Committee, subject to review following any comments received from the Party concerned, is that the communication is admissible with respect to the allegations set out in paragraph 7 above.

---