

Statement from the Irish Environmental Pillar on agenda item 6b, Public participation in decision-making at the sixth session of the Meeting of the Parties to the Aarhus Convention.

The Irish Environmental Pillar, is a coalition of 26 eNGO's in the Republic of Ireland. We wish to highlight the increased importance of this convention to all the Parties, in the context of Brexit with all its associated environmental consequences, and how you will in the future need to be able to rely on a strong and robust convention and compliance mechanism to ensure you have a voice on relevant matters within the UK in the post-Brexit context.

We take note of negotiating position papers from the UK on Brexit in recent weeks on matters which impact on the environment, and those of the EU; and the proposed [European Union \(Withdrawal\) Bill¹, \(HC5\)²](#) in the UK, and the absence of public participation as required by the Aarhus Convention on such matters.

Public participation obligations arise for the UK, EU, and the Member States on a range of matters with environmental implications **during³** the various Brexit negotiations and agreements, **and on the final decisions**. We put on record, here, our interest in being consulted on all such matters relating to Brexit, governed by the Convention, by: the UK, the EU and the Member States. Following yesterday's compliance decision on the UK, we ALSO record our interest on being consulted by the UK on all matters governed by the convention relating to the nuclear matters in the UK, and air quality, climate, soil and water.

The requirement for public participation on any final proposal on Brexit clearly could be immensely significant.

Some of the Environmental Impacts at issue:

In particular, we wish to highlight the following:

1. The UK's withdrawal from the Euratom treaty, has clearly significant environmental consequences. Euratom featured in the early financial settlement discussions on Brexit. This risks compromising the ability to ensure there are meaningful environmental guarantees leveraged by the EU in respect of concessions granted to the UK for access to Euratom privileges essential to it – for example transport of nuclear materials. We also have grave concerns if a 'compromise' Euratom arrangement with the UK could provide effective safeguards on such matters as UK nuclear waste and radioactive materials for example, already an issue of longstanding concern in Ireland.

¹ <https://www.publications.parliament.uk/pa/bills/cbill/2017-2019/0005/18005.pdf>

² Also referred to as "the Great repeal bill"

³ Consultation obligations under Aarhus Article 6(4) and 7 require : "early public participation, when all options are open and effective public participation can take place"³ and Article 8 provides similarly for participation to occur "at an appropriate stage, and while options are still open" and "during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment".

2. While the UK remains as part of the EU – the same Environmental Acquis applies to Ireland and the UK; both lie under the jurisdiction of the EU Court of Justice, “CJEU”; and the UK is subject to enforcement proceedings from the EU Commission under the Treaties. Any change to this clearly has environmental consequences. That is a fact and regardless of any preliminary assurances which the UK may seek to make about the continuity of its current environmental legislation afforded by its Withdrawal Bill⁴. Trading privileges and access to the single market, and financial agreements have to consider what can be leveraged and mechanisms employed which enforce and safeguard environmental protections and standards.
3. UK proposals⁵ to pursue an arbitration style state and investor state dispute resolution system in place of the EU Court of Justice, similar to the Investor Court System, “ICS”, in the EU/Canadian Comprehensive Economic & Trade Agreement, CETA, has major environmental implications, particularly for effective climate action. Belgium’s preliminary reference⁶ to the EU Court of Justice on the legality of ICS proposals in the EU Canadian Comprehensive Economic & Trade Agreement, “CETA” last week is most welcome and to be applauded, as is Wallonia’s role in that. By comparison, the conclusion of negotiations by the EU Council last October without seeking advance clarification from the Court on the legality of the agreement – remains the utmost concern, as does the inadequate public participation provided for in CETA and other EU trade agreements.
4. Ratification by all the Member States is required for trade agreements with Investor State dispute mechanisms impacting on the jurisdiction of national courts⁷. This led to recent suggestions⁸ from the President of the EU that those elements in future trade agreement will be separated out from the main trade elements, to facilitate fast-tracking. Our concern is that such an approach in Brexit will only serve to compromise the EU’s overall leverage in trade

⁴. The UK’s European Union Withdrawal Bill, HC5, also known as “Great Repeal Bill” in its current draft, contains a controversial provision giving the Prime Minister power to amend by Statutory Instrument any Primary or Secondary UK legislation deriving from EU law, without even the approval of Parliament, making repeal of any UK ‘equivalent’ elements of the *acquis* an easy proposition. We submit the Bill is clearly a transitional and vulnerable measure and provides no assurance of an equivalence with the EU Environmental *acquis*.

⁵ <https://www.gov.uk/government/publications/enforcement-and-dispute-resolution-a-future-partnership-paper>

⁶ Preliminary reference sought under Article 218(11) of the Treaty of the Functioning of the European Union, “TFEU”

⁷ Clarified by the CJEU in the context of the EU Singapore Free Trade Agreement, EUSFTA, preliminary reference A 2/15 paragraphs :

“292. Such a regime, which removes disputes from the jurisdiction of the courts of the Member States, cannot be of a purely ancillary nature within the meaning of the case-law recalled in paragraph 276 of this opinion and cannot, therefore, be established without the Member States’ consent.

293. It follows that approval of Section B of Chapter 9 of the envisaged agreement falls not within the exclusive competence of the European Union, but within a competence shared between the European Union and the Member States.”

negotiations, and that loss of leverage in our view is likely to be at the cost of environmental considerations.

5. The Brexit negotiations around the border between the UK and the Republic of Ireland have the potential to leverage, or cede concessions which will be crucial to environmental considerations on this island of Ireland and its surrounding Marine environment, as will decisions regarding funding for environmental programmes and commitments.

These are but some of the considerations. We trust the imperative to provide for public participation is clear, and call upon the Meeting of the Parties to support our call and ensure commitments are given to ensure our rights under this Human Rights convention are complied with now and into the future, so we can protect the environment essential to us all.

Thank-you for your consideration of our statement.

⁸ <http://www.politico.eu/article/juncker-proposes-fast-tracking-eu-trade-deals/>