

Response from Communicant
To EU Statement provided at the open session of 25 January 2021
Of the Aarhus Convention Compliance Committee
Regarding the Preliminary Admissibility

I am herewith providing a response given that this is the first opportunity that is afforded to me to do so as the written statement was only received yesterday evening and although at the meeting I was given the opportunity to respond, I feel that to ensure all Parties (including myself) concerned are on equal footing that I am afforded this opportunity to respond in writing. This document is also intended to provide clarity to the Chair's question concerning my case against the EU to which I attempted to answer at the meeting.

In response to the first two points made:

- Point 1: UK Non-membership of EU
- 1 The UK has indeed left the EU however, as confirmed at the meeting yesterday, it is the time of the submission that is relevant to a case and that on November 3 2020, the UK was a member of the EU at that time and had knowingly allowed the UK to breach the Convention in the following areas:
 - a. That the UK provided information to the EU in reports of the status of the environment where NI was clearly in a category of its own in being substantially insufficient in numerous features of environmental data (eg water, air, land, biodiversity) and in the manner it was (or was not) captured (in geographical area and in elements within each feature eg substantial gases were excluded in data capture for air quality monitoring). IF I or any other person would request information on the environment from the EU on Northern Ireland, the EU would knowingly either provide such information that is incomplete and misleading or it would deflect the request to the UK or NI knowing that the information there was insufficient in terms of the Convention obligations and therefore in breach of the same ie Articles 4 and 5 and the generality of the Convention.
 - b. That the EU, knowing that the effectiveness of the Conventions rests on the applicability of national laws of that Party, and also knowing that NI has been lacking in such transposition (See last line of letter at Annex 3) in conforming to EU Law, they have ignored their powers and authority to ratify or at least attempt to ratify regulations that would ensure that the UK was in adherence to the Convention prior to leaving (and much time beyond that in the past and in the future). This matter highlights the breach in Article 16 and in the generality of the Convention.
 - c. Further to b) above, that the EU knowingly had authority to rectify a situation where a decision that could be challenged under EU law was denied within the NI framework which is also in breach of Article 16 and in the generality of the Convention.
 - 2 Although the EU is relinquishing responsibility as the UK has left the EU membership, I believe that the EU has failed to acknowledge its responsibility to Ireland as a continuing member of the Union. To quote from the Convention itself:

“Bearing in mind the relevant provisions in the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and the Convention on the Transboundary Effects of Industrial Accidents and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, both done at Helsinki on 17 March 1992, and other regional conventions,”

It is important to note here that I live on the northern side of Carlingford Lough; a body of water that belongs to both UK and Ireland (neither governments have yet determined where the boundary line is). This Lough is the main feature of the environmental case I brought to judicial review where I had demonstrated inter alia, that it was contaminated (with and at risk from continued) nuclear waste discharge from Sellafield for decades and continues to do so.

3 Within the response from the EU, a link was provided as to the new Legal [Agreement of Withdrawal](#) from the EU. There are issues here that prove, with my evidence in Communications A and B that the Agreement in itself does not protect our environment as it allows the current situation (as noted above in 1 and 2) to remain without change. (See Article 11) where the Agreement seeks to *“to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport”* [my emphasis in underlining]

4 It is important to note here that **all** these areas are connected to the environment to some degree and that the EU is fully aware that to date there is no effective mechanism with which to protect our environment. I therefore believe that this [Agreement](#), now ratified by **both** Parties, is in breach of the Convention in terms of deterring any access to justice to protect the environment by non-transposition of EU environmental (including Human Rights at Articles 2 and 8) laws into national laws prior to and ensuring their secure longevity into the future. (Article 9 and 16 and the generality of the Convention)

5 To demonstrate, until now there is no national NI law to protect the environment from the continuing discharge from Sellafield into the Lough (which I provided a new consultation response to their proposal to increase this level in 2020 (see Communication A - p11 paragraph 19 1 i). Notwithstanding the legality of this grave matter, where Ireland as a Party to the Convention to undertake any activity that were to pollute the environment in NI, for example, non-ionising radiation, I nor any other person in NI would have recourse to challenge this decision in any form due to the lack of national legislation by which to invoke in proceedings.

6 I can also refer to two grave matters concerning the [Agreement](#), that was made by **both** Parties with equal responsibility, now that we have left without any protections post-Brexit, it is clearer as to what our risks are and easier for me to highlight them. Here are two such examples:

a. At Article 9 *“The provisions of Union law governing wholesale electricity markets listed in Annex 4 to this Protocol shall apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.”* See Communication A page 7 at 12j ix and 12k where I explained that the electricity network is owned by and Irish company and provided for by a private NI company, neither of which are obligated to adhere to the Convention with regards to the NI environment. This structure frustrates my ability to seek information, be part of any meaningful

consultation in decision making and deters me from successfully challenging any relevant decisions in court or otherwise.

- b. At Annex V, the EU has, in effect, sold all rights to the nuclear industry including the largest stockpile of [plutonium in the world](#) in Sellafield, to the UK. Here the EU has abnegated its responsibility of dealing with the critical issue of nuclear waste to a Party they are full aware has a nation that has no environmental protection mechanisms in place and therefore prejudicing NI as a nation in making us extremely vulnerable for providing a potential site for nuclear waste without any responsibility or accountability held to anyone for any risks that may occur. The NI Assembly has yet to confirm that it will not receive this waste (NI does support the waste burial plan) as Scotland have already indicated ([see page 10](#)).
- c. Notwithstanding, that the waste may (we are still waiting for the UK to decide on the site) not be transported to NI in the future, nuclear discharge remains a real and present risk where no public body in NI is responsible for monitoring, assessing, reporting and advising on the radioactivity levels in our waters and land. I, nor anyone else can challenge the decision now for further discharge from Sellafield into the Irish Sea nor in the matter of a future decision made to bury nuclear waste. This is further exacerbated by the Executive Functions Bill where a Minister can make a decision autonomously without any consultation on our environment matters (see Annex 7).

7 The EU Response refers to the “Pilot Cases” and as I had stated at the meeting, these cases were ineffective in their purpose and I had requested any evidence from the EU that these had instigated any positive outcome since their introduction.

Point 2: Case Management

8 With regards to the context of case management, I must request that due to the complexity of the case to be able to demonstrate the generality of my Complaint against both Parties that it is unreasonable to expect me to strictly follow the guidelines for example the length of documentation and format, without providing a sound argument supported with material and relevant evidence. I have provided all information necessary that is outlined in the Guidelines in a way that adheres to avoiding documentation that would exceed well over 50 annexes and have a volume of some 100s of pages.

9 If the Committee would advise at the earliest possible time if there was a different way of providing this and any further information other than that which I am following, I would follow any new advice on this matter.

10 Notwithstanding my comments at 7. I hope that those points in this response will suffice in the EU’s query as to the specificity of my complaints towards them.

11 With regards to the “lack of relevance” and in particular the EU highlight “**coronavirus**” and “**Brexit**” I will explain how these are relevant to my case.

- a. Coronavirus is a virus and is deemed as a environmental feature by the [Aarhus Convention Implementation Guide at page 52](#) *“The Cartagena Protocol defines “living modified organism” as “any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology” and “living organism” to mean “any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids”*(my emphasis in underlined words)
- b. In addition, I had provided the letter at Annex 6 which outlines my concerns regarding coronavirus as evidence of my actions seeking remedy from the Government of NI.

- c. Annexes 1 and 2 which were responses from the ECHR to my application, focused on the lack of environmental protectionisms in NI post Brexit (relevant here) and more recently I had resent the same ECHR application with the imminent human rights threat of the CHI Bill (not relevant here). Also denied but highlights that now NI is in a critical state from numerous threats without having any recourse to remedy them. If, for example, an environmental accident occurred that would detrimentally affect us there would be no recourse to take and no one responsible to remedy the situation.
 - d. In terms of the Brexit reference at Annex 5, for the purpose of this case, it was provided to highlight the discrimination of NI within the UK and compared to Ireland where the EU had recourse to and still has recourse to (for example) extend the EPA and Radiation EPA remits to NI under the Good Friday Agreement but has failed to remedy the situation such as this or any other means. The letter also specifically references the link on page 1 where the EU has never issued fines to UK/NI and links in the footnotes at page one provide further evidence from various sources including DEFRA that the data provided NI is insufficient and/or proves the critical state of the environment. Further at page 3 I refer directly to the Convention (at no 12) and human rights at no.10.
 - e. With regards to the point about the ICO complaint: as I had explained at the meeting, I was denied any remedial action by the GRC as they were dependent upon a written decision from the ICO. As the ICO failed to respond to me with a decision (notably past the deadline to respond), I had no further recourse to take.
 - f. Finally, in responding to the EU above, I hope that I have given sufficient detail concerning which Articles I am invoking with regards to the EU (4, 5, 9 and 16 and in its generality) and that the evidence is also provided in this case.
- 12 In addition to my verbal response to the EU during the meeting, I had asked the question of the EU if they an opinion on whether they believed that the UK was in breach of the Convention.