



# Government Legal Department

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

Defra Legal Adviser  
Area 6D  
Nobel House  
17 Smith Square  
London SW1P 3JR

T +44 (0)20 87203717

[www.gov.uk/gld](http://www.gov.uk/gld)

Your ref: **PRE/ACCC/C/2020/184**

22 January 2021

Dear Ms Marshall

**PRE/ACCC/C/2020/184 (United Kingdom and European Union)**

Ahead of the Committee's meeting to discuss the preliminary admissibility of the above communication, we attach the United Kingdom's observations.

We intend to dial in to the meeting on 25 January 2021 and look forward to this meeting.

Yours sincerely

*Grace Adisa-Solanke*

**Grace Adisa-Solanke**  
Lawyer  
Defra Legal Advisers, Government Legal Department

T +44 (0)20 87203717  
E [grace.adisasolanke@defra.gov.uk](mailto:grace.adisasolanke@defra.gov.uk)

**United Kingdom comments on the preliminary admissibility of  
PRE/ACCC/C/2020/184 (United Kingdom and European Union)**

**January 2021**

**Summary**

1. We consider that the communication PRE/ACCC/C/2020/184 is inadmissible for the following reasons:
  - The communication does **not include corroborating information**, as is required under paragraph 19 of the annex to decision 1/7, to substantiate the allegations. There is no supporting evidence or corroborating information to support the asserted breaches of the various articles of the Aarhus Convention. The communicant does not engage with the requirements of the Convention beyond making plain assertions that these provisions have been breached.
  - The communicant's arguments are unsubstantiated and appear to be **an abuse of the right to bring a communication** (Decision 1/7 Paragraph 20 (b)).
  - It is **manifestly unreasonable** (Decision 1/7 Paragraph 20 (c)); the absence of sufficient information in respect of the allegations, makes it unreasonable for this communication to be submitted and considered admissible.
  - Some of the allegations hinge on the communicant's dissatisfaction with the UK's exit from the European Union. This constitutes **an abuse of the right to make such a communication**. The communicant has muddled her disagreement with this outcome with breaches of the Convention. Therefore some of the allegations relate to matters that do not fall within the scope of the Convention and thereby **not compatible with the provisions of the Convention** as required under paragraph 20 (d) of the annex to decision 1/7.
2. We therefore request that the Committee finds the communication be inadmissible and closes the case.
3. In order to assist the Committee ahead of the meeting to discuss the preliminary admissibility of this communication on 25 January 2021, we have set out in advance of that meeting, the reasoning we will talk the Committee through. We are of course happy to provide any further information that the Committee feels that it needs in order to determine the issue.

## Comments on the admissibility of the communication

### *Access to Information:*

4. The communicant makes a number of allegations that the UK breached the requirements of articles 3, 4, 5, 6 of the Convention. These allegations are set out in paragraphs g, h, i, j, k, l, m, n of the communication. The allegations are not only wide ranging, but also the **communicant has not provided corroborating information** to substantiate these allegations.
5. The communicant refers to *requesting an EIR response* and makes reference to a response dated 11 November 2019. The communicant has failed to provide any information on this point and has not included any corroborating information to support the allegation of a potential breach.
6. The communicant has made allegations about up-to-date information not being available to her, the communicant has failed to mention what specific information she sought and was denied. The communicant has not provided any context behind the assertions made. The communicant has not provided us with specific facts to answer and we do not understand the specific facts relating to how the communicant was disadvantaged. She has not given enough details to understand how the Convention rights were breached.
7. The communicant makes bald assertions and mere generalisations about alleged failures of public bodies to provide information. These assertions lacks substantiation and have not been corroborated despite the communicant claiming that she has over 50 examples. The communicant further alleges “that no public body in NI provides information to form an effective protection mechanism on any environmental threats including emergency response information on imminent threats”. The Northern Ireland Environment Agency (NIEA) and Department of Agriculture, Environment and Rural Affairs (DAERA) websites<sup>1</sup> provides a large volume of environmental information under its topics section (eg pollution, waste, sustainability etc.) These are further divided with links to both national, European and international legislation. The communicant has not indicated whether she has considered these publicly available websites.
8. The communicant claims that there is no organisation to protect the environment in Northern Ireland, this is a claim which is **manifestly unreasonable** as the NIEA is an Executive Agency within DAERA with a staff of approximately 400 whose primary purpose is to protect and enhance Northern Ireland’s environment. Additionally, each local council has an Environmental Health Department, which play a key role in environmental protection in Northern Ireland.
9. The communicant’s allegations of non-compliance with the access to information provisions of the convention are unfounded and unmeritorious.

---

<sup>1</sup> <https://www.daera-ni.gov.uk/>

### *Public Participating in decision-making*

10. The communicant makes allegations which are set out in paragraphs y and z of the communication. The communicant alleges that article 6, and in particular, article 6(8) of the Convention has been breached.
11. The communicant has not provided sufficient details to substantiate the alleged non-compliance with the convention. In relation to the consultations that the communicant took part in, she has not demonstrated sufficient link between the facts being complained about and the rights guaranteed under the convention. The communicant has not demonstrated how her rights under the convention are compromised. The communicant has not **provided information to corroborate these allegations**.

### *Access to Justice*

12. The communicant alleges various breaches of article 9 of the convention. The communicant sets these out in paragraphs a, f, k, p, r, of her communication.
13. It is evident that the communicant has misunderstood the access to justice provisions of the Convention. The communicant claims to not have had *free* legal assistance in her Judicial Review case. Quoting the *implementation guide*<sup>2</sup>, “the Convention requires Parties to provide review procedures that are not prohibitively expensive”. It is not the intention of the Convention that legal challenges should be free of costs, the requirement is that they should not be prohibitively expensive. We do not understand the circumstances of the communicant’s case, as there is not enough information here to show what costs were incurred, how the costs were incurred, whether the communicant took advantage of the Aarhus Convention Cost Protection Rules in Northern Ireland<sup>3</sup> and how this amounts to a failure in procedure. The communicant has not demonstrated this in her communication and has not given sufficient details of how the facts here link to the rights under the convention.
14. The communicant raises allegations as to a delay in receiving a court judgment. There is little evidence to demonstrate the facts surrounding the delay, and it is difficult to conclude that the procedures have failed as these facts have not been provided. **The communicant has not provided corroborating information** to support this allegation.
15. The communicant makes several assumptions as to her inability to challenge current and future decisions. These assumptions are without basis. The communicant has not shown what steps she has taken to challenge these decisions and she has not explained, nor provided corroborating information to demonstrate how she has been denied or will be denied the opportunity to challenge decisions. The communicant alleges “that the UK has not afforded human rights to Northern Ireland”. Not only is this allegation unfounded and without basis, but the communicant has not demonstrated how she has engaged with the requirements of the Convention on this point.

---

<sup>2</sup> The Aarhus Convention: An Implementation Guide (2<sup>nd</sup> edition), page 203

<sup>3</sup> The Cost Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017

16. The communicant makes further unfounded assumptions on the status of national environmental law, she has not identified what specific laws or procedures have changed as a result of the UK having left the EU and how this results in any breach of the Convention. There is no specificity or corroboration for her claims and there is no case to answer here. In our view, the communicant has not **identified this claim as related to the provisions of the Convention, we view that these do not fall within the remit of the ACCC to consider these unfounded claims.**
17. The communicant has set out in the communication matters regarded as “*general failure*”. General failure is not established to be within the scope of the Convention: both generally, and in relation to specific allegations, the communicant has failed to establish that the issues she raises are within the scope of the Convention. This is **manifestly unreasonable**. 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 does not even include the provisions complained of, which in itself, are outside the scope of the Convention.
18. None of the communicant’s allegations are admissible on the basis that **the communicant has not provided sufficient corroborating information** and has not been able to demonstrate that she has engaged with the requirements of the Convention. The information provided in the body of the communication and also in the annexes does not support the alleged breaches of the Convention.
19. Given the mounting pressures on the Committee’s limited resources, and the lack of corroborating information in this communication, we therefore respectfully request that the Committee finds the communication to be inadmissible and closes the case.