EU Statement following the open session of 25 January 2021

of the Aarhus Convention Compliance Committee

regarding the preliminary admissibility of the communication in case PRE/ACCC/C/2020/184

25 January 2021

We thank the Committee for the opportunity to provide our views on the preliminary admissibility of this new communication.

We would like to make two points:

- Firstly, we request the Committee to declare the case inadmissible insofar as the European Union (EU) is concerned, considering that the United Kingdom (UK) is no longer a member of the EU.
- Secondly, we wish to comment on the application of the admissibility criteria under decision I/7 in the context of effective case management.

Request to the Committee to declare the case inadmissible insofar as the EU is concerned

The communication has been submitted against the UK and focuses on alleged infringements of the Aarhus Convention in Northern Ireland (NI). The communication contains no allegations regarding the EU as such. Neither is the UK a member of the EU any longer.

Nevertheless, in its communication, the communicant also designated the EU as a Party to the proceedings before the Committee.

Considering that the UK is no longer a member of the EU and that no allegations have been made against the EU as such, **we respectfully request the Committee to declare the case inadmissible insofar as the EU is concerned.**

The UK, in its own right, remains a Party to the Aarhus Convention and must take its own, sole, responsibility to ensure compliance with the Convention. The UK also has the sole responsibility to defend its case before the Committee.

Indeed, EU law (including directives and regulations) no longer applies to the UK and within the UK as from the end of the transition period (31 December 2020).

It is true that the Withdrawal Agreement concluded between the UK and the EU foresees that the UK will continue to follow EU law for a limited number of environmental directives and regulations. However, none of these directives and regulations concern the implementation of the Aarhus Convention, or the subject matter of the case at hand.[1]

Further, it is also true that the Trade and Cooperation Agreement (TCA) concluded between the UK and the EU does contains provisions on respect of Aarhus principles and these will apply to measures that fall within its scope. We note, in particular, that there is text on public participation in Article 7.4(3), on access to justice in Art 7.5(b), and text in Art 8.2(b) on access to information. Under Chapter nine of the TCA the EU may raise bilateral concerns regarding non-compliance of the UK with these provisions.[2]

However, these provisions apply to both Parties equally. It is for the EU to ensure its compliance with these Aarhus-type provisions, and for the UK to ensure its own compliance, as with any free trade agreement. The EU is not given a supervisory role over the UK.

Having Aarhus-type provisions in a trade and cooperation agreement does not make the EU responsible, as a Party to the Aarhus Convention, for the actions of the UK.

National measures in the UK that ensured transposition of Aarhus-related EU legislation previously may continue to remain in force in the UK in their current form for some time. On this latter we are not in a position to provide any more information and it will be up to the UK to explain to the Committee its own legal system and how it complies with the Convention. It will also be up to the UK to make any necessary changes in its legal system to ensure compliance with the Convention, should the Committee find any non-compliance and provide any recommendations.

For completeness, we would also like to point out that as explained to the communicant, and as shown in the reply of the Commission set forth by the communicant in annex 3, the EU has previously opened four so-called 'EU pilot'

[1] See Article 5(4) and annex 2 of the Protocol on Ireland and Northern Ireland in the Withdrawal Agreement, https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29.

[2] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.444.01.0014.01.ENG

cases, looking into potential non-compliance by the UK with EU laws on environmental matters. These cases will be closed in the coming months, given that the UK is no longer part of the EU.

Effective case management

As a final point, to support the efforts of the Committee for effective case management, and noting the Committee's intention to be more selective, we would also welcome if, at an early stage of the process, the Committee were able to narrow down the scope of this case, and define which particular claims are admissible and which ones are to be considered inadmissible, and notified the Party/Parties and communicant of this decision. This could help the Committee focus its efforts on claims where systemic failings have been identified.

Further, insofar as the admissibility criteria set out in paragraph 20 of annex to decision I/7 is concerned, we submit that paragraph 20 (e) 'lack of relevance to the subject matter of the Convention' may apply to at least some of the allegations and information set forth in the communication and its annexes. These possibly include concerns about UK coronavirus measures (Annex 1 and 2) and Brexit (Annex 5).

Further, with regard to some claims (such as the ICO information request claim referred to in Annex 4), it appears that the applicant may not have exhausted domestic remedies (in the meaning of para 21 of decision I/7).

Finally, while we acknowledge that the communicant has intentionally filed a broad claim and claims non-compliance with regard to a large number of provisions in the Convention (specific references are made to Articles 3(1), 3(2), 3(4), 3(8), 4, 5, 6, 8, 9), we believe that a more focused and evidence-based approach could be more effective.