

**To:** Secretariat Aarhus Convention Compliance Committee

**From:** Pat Swords

**Date:** 31/1/2021

**Re:** Comments on Draft advice by the Aarhus Convention Compliance Committee to the European Union concerning the implementation of request ACCC/M/2017/3

Dear Fiona

With regard to your e-mail of 18 January and offer to send any comments on the Committee's Draft Advice, first let me thank the Committee and yourselves in the Secretariat for a comprehensive analysis, in both the Draft Advice itself and the associated draft findings and recommendations on ACCC/C/2015/128. The Convention is concise and clear in all its Articles and regrettably the EU has seen fit to try to create a degree of unnecessary complexity and watering down of the obligations in Article 9(3). The EU's 'national law on the environment' is comprehensive and with this comes obligations; there cannot be one law for some Parties and another law for the EU. Therefore, the Committee are to be commended in pointing out the significant limitations with the EU's proposal to amend the Aarhus Regulation.

I would also commend the manner in which the Committee highlighted in its Points 32 to 38 "*Entities other than NGOs*" that broad standing rights are required. In Ireland NGOs do not generally go through a formal process of registration and adoption as NGO with a legal personality. However, the Irish Supreme Court in *Sandymount & Merrion Residents Association - v - An Bord Pleanála* [Appeal Nos. 143/2013 & 171/2013] confirmed the standing rights of such an 'unincorporated body'.<sup>1</sup> The judgement referring specifically to the Aarhus Convention. The CJEU did not accept this position in *Case T-168/13 - EPAW v Commission*, even though EPAW was registered in Ireland as an NGO.<sup>2</sup> Note: This concerned judicial proceedings regarding the Aarhus Regulation.

This reflects that in many cases citizens join informally together to contest a relevant measure, they participate in the decision making process, such as a permitting procedure or the preliminary stages of a legislative proposal. They do not consider from the outset that they will be involved in legal proceedings and hence do not establish a legal entity. Indeed, they expect their concerns to be addressed so that such a situation should not arise. Hence, when they aren't, they suddenly find themselves with limited options, as without a broad interpretation of standing rights, access to justice proceedings remain closed.

Regards

Pat

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<sup>1</sup> [https://www.courts.ie/acc/alfresco/802fc87d-4d99-4487-bde6-3caea034534e/2013\\_IESC\\_51\\_1.pdf/pdf](https://www.courts.ie/acc/alfresco/802fc87d-4d99-4487-bde6-3caea034534e/2013_IESC_51_1.pdf/pdf)

<sup>2</sup> <http://curia.europa.eu/juris/liste.jsf?num=T-168/13&language=EN>