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United Nations Economic Commission for Europe,
Environment Division,
Palais des Nations,
CH- 1211 Geneva 10,
Switzerland

20th July 2021

Attention: Ms Fiona Marshall,

Secretary to the Compliance Committee – Environmental Affairs Officer Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention),

Re: - ACCC/C/2013/107

Public Participation

Extension of Duration without Assessment

Dear Sir/ Madam

Thank you for your communication of July 4th last. I make the following comments.

IMPLEMENTATION

1. Implementation of the amended version of section 42 has been lethargic at best. It is now two years since the findings in the matter of **ACCC/C/2013/107** and still the legislation has not been amended. Persons are still able to use the 'extension of duration' facility to avoid EIA and NIA requirements and all they need to do is lodged a small fee of €62.
2. Why has the party concerned dragged its feet in amending this and other legislation of a similar substance? It can certainly not be described as prompt!

RECENT EXAMPLES

3. Planning ref. **21/1047**: In June 2021, Apple applied to **Galway County Council** under section 42 of the planning and development act to extend the life of a planning consent for a very large Data Center; PL.07.245518, granted on the 11th August 2016. No Environmental Impact Assessment or screening for EIA, no screening for Appropriate Assessment and no Appropriate Assessment accompanied this extension application. This is contrary to EU Directive 85/337/EEC. The development in question will have direct impacts upon the surrounding community and there has not been any assessment of the impacts of the energy demands of this development and the implications, which arise therefrom. Likewise there

have been no assessments of any of the potential issues, which arise from this development since the initial permission was granted almost 5 years ago, which is contrary to European law.

4. Planning ref. **TA201338**: IN January 2021, **Meath County Council** granted planning consent to Devan Plant Hire (Pratt's) re a quarry development. Likewise there had been no public consultation. Worryingly there had been wholesale unauthorised development at the site. This consisted of illegal extraction of sand and gravel from below the water table. This was right adjacent to the River Boyne SAC.
5. The quarry next door to the quarry at the center of **ACCC/C/2013/107** is Kilsaran Concrete. There had been issues at that the quarry in the past, which I wanted, dealt with going forward and had intended raising at a public information opportunity. I had in fact believed the quarry to be out of planning consent when in November 2020,, to my horror I discovered that, that quarry too had in secret lodged an extension of duration application in 2018 and avoided any public participation and secured another 5 years. There had been significant EIA / NIA issues and they were able to conveniently sidestep them with this loophole. Planning reference; **Meath County Council**; TA180336.

PROPOSED AMENDMENT – NON-COMPLIANCE

6. There is nothing in the proposed amendment to provide that an extension of duration can and should be declined in circumstances where there are issues of substantial non-compliance with existing planning consents. This is a major short falling with the proposed legislation and should be dealt with. This is a central consideration why the public may wish to comment in the first place. One must examine the issue through the prism of ethics and ask the question; is it fair or reasonable that a development / applicant should be facilitated with an extension of duration in circumstances where there is major non-compliance with existing planning consents and or conditions or worse still where that applicant has engaged in significant unauthorised development? The public interest would dictate that they certainly should not. It follows that there should be a clause in the proposed amendment mandating that this be also a factor, which the planning authority must be satisfied with. Note that currently section 35 of the planning act provides that an authority MAY refuse consent for past failures to comply. This is NEVER invoked despite repeated representations and submissions that it should. Therefore it would be helpful if a similar provision were included in other parts of the planning act, which make it mandatory that a non-compliant development should not be permitted to continue in operation.

OTHER LEGISLATION with SIMILAR ISSUES

7. Please also note that there are a number of other pieces of legislation in Ireland, which similarly excludes the public from participating in the earlier part of the planning process. These too should have been amended following the decision in **ACCC/C/2013/107**. These are: -
 - a. Section 177(c) of the planning act
 - b. The Strategic Infrastructure Act [SID]
 - c. The Strategic Housing Development Act [SHD]

SECTION 177(c)

8. In a judgment delivered on the 3rd July 2020, by the Irish Supreme Court in *AN TAISCE, PETER SWEETMAN & Others v. AN BORD PLEANÁLA and Others* [9/19, 42/19 and 43/19], Mr. Justice William M. McKechnie stated that the public should have an input at the earlier s.177 (c) stage and specifically cited the Aarhus Convention. He also stated that 'exceptional circumstances' should not be used to avoid EU law. In fact case **ACCC/C/2013/107** (above) was pleaded in this case and likely influenced this judgment.
9. Indeed I [*Kieran Cummins*] encored practically the same issues all over again with s.177(c). Knowing that the very same quarry was out of planning consent on the 5th August 2018, he was again monitoring site entrances and also websites. Nothing appeared until in May 2019, he discovered a permission from *An*

Bord Pleanála permitting the applicant to apply for a type of retention permission. There had been no published notice on the website of *An Bord Pleanála* nor had there been a site notice.

10. I [*Kieran Cummins*] was then obliged to pursue the matter through the courts by way of Judicial Review. This is an onerous task, which should not be constantly falling to a citizen to deal with.

STRATEGIC HOUSING DEVELOPMENT ACT [SHD]

11. This legislation facilitates a developer to go straight to the *An Bord Pleanála*, bypassing the usual requirement to first go to the local planning authority. This means that the public have no right of appeal.
12. Furthermore, a developer is given access to *An Bord Pleanála* **prior to any public consultation**. A Pre-Application Consultation between the developer and *An Bord Pleanála* is in fact a mandatory requirement of the legislation before any application is lodged. The outline of a proposed development was essentially designed between *An Bord Pleanála* and a developer without any public participation whatever; the public has no access until an application is lodged and having been through such a case, this amounted to little more than a box ticking exercise. In practice there was no public participation, which is frankly scandalous. This is best illustrated by example; -
13. I [*Kieran Cummins*] again witnessed a similar set of circumstances regarding the same applicant (same group of companies) which had applied to construct some 320 housing units on a site which had 3 times been turned down for a far less number of housing units. The applicant lodged a planning application on the **8th July 2020**. A mere 3 months later *An Bord Pleanála* granted permission for the proposal by order dated **27th October 2020**. The fact that the application sailed straight through without any questions or further information of any kind being raised (on foot of submissions made by 3rd parties) is astounding.
14. The applicant had been in discussions with the planning authorities for the best part of a year before the applications were lodged.
- d. There are minutes of a meeting at the offices of *Meath County Council* on the **3rd September 2009** between interested parties (the public were excluded and completely unaware of this pending application).
 - e. There are minutes of a meeting at the offices of *An Bord Pleanála* on the **13th February 2020**; again between all the parties, but with the public excluded.
 - f. **Indeed it is noted that the Board subsequently issued an opinion and inspectors report prior to the applicant lodging their plans. ALL WITH THE PUBLIC EXCLUDED!**
 - g. The applicants together with *An Bord Pleanála* essentially designed the development during pre-planning consultations prior to a planning application and without public participation.
 - h. There were major issues of compliance and unauthorised development issues with the applicant together with specific environmental and heritage issues, which *Mr. Cummins* wished to have included in the mix. While *Mr. Cummins* did present these issues in August 2020, it is considered that the decision by the Board appeared to be a *fait accompli* with acceptance of submissions from the public at the latter stage more of a box ticking exercise rather than of any meaningful engagement.
 - i. Apart from the track record of the promoters, there were major capacity and heritage issues, which should of course have been dealt with in the earlier stages. A developer was unlikely to raise issues, which might negatively compromise their chances of obtaining planning consent for a given proposal.
 - i. Indeed in January 2021, the pressure in the water supply to the town had to be reduced as it was unable to cope with the current demand.

- ii. Likewise there were major issues with regard to capacity of both schools and doctors, which could and should have been addressed in the earlier pre-planning stage

15. The public were essentially excluded from the process for one whole year before the applicant ultimately lodged their application after which the authorities granted permission in a mere 3 months with no further issues raised of the applicant despite important issues having been outlined in comprehensive submissions from *Mr. Cummins* and *Eco Advocacy*.

16. The STRATEGIC INFRASTRUCTURE ACT is in clear contravention of the Aarhus convention and indeed elementary justice and fairness. It is considered that the statutory authorities are merely box ticking and paying only lip service to the public participation element of the Aarhus Convention.

SUGGESTED AMENDMENTS, WHICH WOULD BE HELPFUL

- 17. If the government/ department really wanted to improve the planning code and streamline the judicial system to reduce costs and time, there are a number of alternatives, which we have taken the liberty of outlining hereunder.
- 18. **Accountability:** our experience is that there has been a complete lack of accountability on the part of public servants who are charged with upholding and enforcing Ireland's environmental and planning laws. We need laws to make people responsible and accountable and with consequences for people who fail to perform and where *mala fides* may in fact be the case.
- 19. **Resources:** as stated above; communities and individuals are totally under-resourced and outgunned when up against the deep pockets of large developers and the state itself. This needs to be addressed to give citizens proper resources to deal with shoddy Environmental Impact Assessments and such like. It has been our experience that EIAR's are contrived and drafted entirely in favour of the developer who pays for it. Moreover what they omit can be very significant.

STRATEGIC INFRASTRUCTURE ACT [SID]

- 20. Likewise the same issues arise in respect of the STRATEGIC INFRASTRUCTURE DEVELOPMENT ACT where developers are given exclusive access to *An Bord Pleanála* with the public excluded. This often arises where wind turbine developers are given exclusive access to *An Bord Pleanála* while the public has no right to participate in this integral part of the process.

OPPORTUNIT to BRING OTHER LAWS INTO LINE WITH AARHUS

- 21. **It is respectfully submitted that the party concerned [Ireland] use this opportunity to deal with all other pieces of legislation, which have similar issues to s.42. This would avoid us having to pursue each piece of legislation separately and is in the public interest and in the broader spirit of compliance with its obligations under Aarhus.**