

Date: 31 July 2022

Your Ref: Decision VII/8s

Aarhus Convention Secretariat
United Nations Economic Commission for Europe

By email: aarhus.compliance@un.org

Dear Aarhus Convention Secretariat,

UK PLAN OF ACTION FOR DECISION VII/8s

Thank you for the opportunity to comment on the Party's plan of action for decision VII/8s (United Kingdom).

My comments in respect of the recommendations relating to communication ACCC/C/2013/90, as set out in paragraphs 4(a), 4(b)(i) and (ii) of decision VII/8s and contained on pages 6 – 9 of the Party's plan of action, are somewhat curtailed by the lack of substantive progress contained in that plan of action.

Consultation

There has been no consultation with the Communicant by the Party in respect of its plan of action for decision VII/8s.

Progress

The Party's progress to-date is disappointing with no firm commitment that it intends to implement any of the recommendations arising from communication ACCC/C/2013/90. Rather, the Party's non-committal statements on recommendations 4(a), 4(b)(i) and 4(b)(ii), provide no insight into any meaningful progress having been made.

From its extensive engagements with the Aarhus Convention Compliance Committee and the European Commission (EC), the Party can be in no doubt that the retrospective regularisation of environmentally harmful developments is seen as a serious problem impacting Northern

Ireland. Indeed, some of the findings and concerns set out in ACCC/C/2013/90 are echoed by the EC in its *Pilot Case 7640: ENVIRONMENTAL ENFORCEMENT IN NORTHERN IRELAND*.¹

The European Commission

The attached letter from the EC, dated 28 January 2022, emphasises how the Department for Infrastructure (and UK) has persistently failed to adequately address this problem that is giving rise to significant environmental effects and actual harm.

The EC correspondence draws attention to an independent review (the Mills Review)² which, as far back as December 2013, made a recommendation similar to that of Decision VII/8s, 4(a).³ Of note is the EC's ongoing concern about the Department's eight year failure to implement recommendation 9 of the Mills Review in respect of addressing the issue of the grant of retrospective planning permissions for environmentally harmful developments. It questions the Department's interpretation of European case law, which is considered to be "...entirely at odds..."⁴ with the EC's reading of European Union (EU) environmental law. Moreover, it points out how the practice of allowing retrospective permissions to be granted "...without sufficient regard to the requirements set out in case C-215/06 appears to continue without there being any clear provisions ensuring that such cases are exceptional..."⁵ [emphasis added].

Due to the UK's exit from the EU, the Pilot Case is unlikely to attract further action by the EC, making it all the more critical that these long-running issues of environmental injustice are addressed through decision VII/8s. In that regard, the Party's lack of engagement and transparency remain a concern.

¹ European Commission (2015) *PILOT CASE EUP(2015)7640: ENVIRONMENTAL ENFORCEMENT IN NORTHERN IRELAND*. Brussels, EC – see letter attached.

² Mills, C. (2013) A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland. Belfast, Department of the Environment, p55. URL: <https://www.daera-ni.gov.uk/sites/default/files/publications/doe/waste-report-mills-review-10-dec-2013.pdf> [Accessed: 29 July 2022].

³ Refer to footnote 1, p2.

⁴ Ibid., p2.

⁵ Ibid., p3.

Yours sincerely

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Enc. Letter from the European Commission dated 28 January 2022.