

Observation on Communication ACCC/C/2017/150 United Kingdom

From: Attracta Uí Bhroin, Environmental Law Officer of the Irish Environmental Network,

Firstly my thanks to the Committee and the secretariat for their invaluable diligence and contribution to the matter of compliance with the Convention – we are as an Aarhus Community in your debt.

I wish to preface this observation by making clear the sovereignty of the UK's decision to withdraw from the European Union while regretted – is of course fully respected.

As the communicant has highlighted, the concern here is about “the how” this withdrawal bill and its consequences was to be effected and the participatory rights, and interests and obligations - not recognised.

As a non-lawyer I hope these comments are not overly naïve and that they may be helpful as they are certainly offered constructively.

In addition to supporting the arguments made that Article 8 applies, I wish to make three brief points.

1. I welcome Mr Wolfe's focus in his opening statement for the communicant, on the importance of the words immediately preceding the three indents at the end of Article 8 namely: “the following steps should be taken”

The wording of what follows in the three indents are important. **They are clearly cumulative and distinct requirements, and are clearly about formalising a trigger for a public participation event on “the draft rules” as referred to in indent (b), with a clear timeframe for that effective engagement to be fixed, indent(a) refers.**

This makes it clear that is separate to the point where a draft enters the legislative process before Parliament. It also underpins the value of a Parliament having a clear body of a consultation outcome as base from which to then engage on the legislation in the legislative process. This is materially different to what may or may not emerge from engagement of the public with MPs.

2. Without wishing to complicate the underlying issue in the communication – **Article 8 clearly needs to be read in light of the general obligations of Art 3(9) in respect of non-discrimination on participation – which I won't rehearse here knowing the Committee is familiar with and focused on it's importance.**

Mr Morici (please forgive any mis-spelling) at the hearing on the morning of 14th September outlined the opportunities for public engagement with their public representatives and Members of Parliament, MPs. Clearly not all MPs would share or be prepared to represent and give voice to opposing or contrary views to that of their Government. He also spoke to the General Election as a further area of debate. Neither of these channels are effectively open to citizens from a different

jurisdiction, nor does it suffice to precipitate and facilitate such participation and to collate such consultative input.

I wish to say respectfully that it seems to me that even these examples served to highlight the complete failure to recognise the wider participatory rights and interests which should have been observed.

3. Finally, I support the arguments that this was a matter which may have a potential effect on the environment, particularly in terms of what it empowered. I would highlight that in the Republic of Ireland we share a land and sea border with the UK, most particularly in respect of Northern Ireland, including areas of overground and underground water, air, habitats and species which do not recognise jurisdictional borders, and also in the context of a very sensitive outstanding jurisdictional issue & disputes around certain loughs.

I very much hope for a purposive interpretation of Art 8 in light of the objective of Article 1 of the Convention and thank the Committee for its consideration of these remarks which I have limited here in the interests of not adding to the burden of materials it has to consider, and the very technically complex and expert discussion during the hearing.

Attracta Uí Bhroin, Environmental Law Officer of the IEN and in personal capacity as an Irish citizen.