



Communication PRE/ACCC/C/2022/193 by Brendan Heneghan

1. Ireland wishes to thank the Compliance Committee for the opportunity to participate in this open session to consider preliminary admissibility and asks the Committee to consider the following matters.
2. The Communication alleges non-compliance by Ireland with Article 6 of the Convention in connection with certain public transport infrastructure proposals for Dublin city called BusConnects Core Bus Corridors.
3. Ireland has carefully considered the Communication and submits that it should not be regarded as admissible having regard to Decision 1/7 of the Committee and, in particular, Paragraphs 20(d) and 21 thereof.
4. In conjunction with the delivery of this oral statement, Ireland has sent a letter to the Committee which sets out its position on admissibility in more detail. Ireland requests that the Committee consider the contents of both the letter and this oral statement. Ireland will also be happy to provide further information to the Committee in respect of the issues raised at this meeting as is considered necessary.

Background to BusConnects Core Bus Corridors

5. BusConnects is a major, multi-billion euro, investment programme being implemented in the Dublin region by the National Transport Authority (NTA) and is designed to increase the use of public transport through an increase in bus priority measures, including the delivery of 230kms of continuous bus lanes and the development of approximately 200kms of largely segregated cycle tracks/lanes.
6. There are twelve stand-alone Core Bus Corridor Schemes. The Communication relates to the Clongriffin to City Centre Core Bus Corridor Scheme (the “**Clongriffin Scheme**”).

Decisions the subject matter of Article 6 of the Convention

7. The Communication is premised on a contention that the NTA has made a “decision” within the meaning of Article 6 of the Convention. That is not



accepted by Ireland. No decision, within the meaning of Article 6 of the Convention, has been taken in respect of the Clongriffin Scheme. Further, the NTA does not have the statutory power to take any decision in respect of either this Scheme or any other Core Bus Corridor Scheme.

8. The NTA is vested with powers to procure the provision of public transport infrastructure in Ireland. In accordance with those powers, it has submitted an application for development consent in respect of the Clongriffin Scheme to An Bord Pleanála, the Competent Authority under national law. The NTA is not permitted to proceed with this Scheme unless the Competent Authority decides to grant it approval. The function of the NTA is confined to the submission of the application for development consent to An Bord Pleanála.
9. The decision as to whether development consent will be granted will be made by An Bord Pleanála following the completion of the statutory decision making process in accordance with section 51 of the Roads Act, 1993, which is fully compliant with Article 6 of the Convention, including as regards to public consultation. In that regard, the Committee may note that the decision-making process is not *“largely complete at this stage”* but is rather underway and ongoing.
10. The application in respect of the Scheme was notified to the public by the publication of advertisements in two Irish newspapers in circulation in the relevant area. They informed the public of the arrangements in place to allow the application documentation to be examined. The application documentation was published on a website at www.clongriffinscheme.ie. In addition, physical site notices were erected at 25 locations along the route of the proposed Scheme to notify the public of the application and the arrangements for inspecting the relevant documentation and to make submissions to An Bord Pleanála.
11. The public concerned were entitled to make submissions to An Bord Pleanála for a period of 8 weeks, in excess of the time required by both the EIA Directive and domestic law. The Communication confirms that the Communicant has made a submission on the Scheme to An Bord Pleanála.
12. An Bord Pleanála is now required to consider the application in accordance with section 51 of the Roads Act, 1993 and take a decision on the application. At this time, all options remain open to An Bord Pleanála and it may grant approval for



the Scheme, with or without modifications, or it may refuse approval for the Scheme.

13. It may also be noted that the statutory scheme grants An Bord Pleanála a range of powers to request further information in respect of the application, to require the notification of further information to the public and to hold an Oral Hearing at which the public concerned may participate.
14. In the absence of any decision within the meaning of Article 6 having been made in respect of the Clongriffin Scheme, or any other Core Bus Corridor Scheme, Ireland submits that the Communication is inadmissible having regard to Paragraph 20(d) of Decision 1/7.

Non-Statutory Public Consultation

15. Prior to the submission of the application for development consent in respect of the Clongriffin Scheme, the NTA engaged in a consultation process with the public and interested stakeholders which enabled them to provide input to the design and planning stage of the Core Bus Corridor proposals. The purpose of this process was to inform the public and stakeholders of the evolution of the proposal from an early stage and to seek feedback on the design proposals. This consultation was undertaken by the NTA on a voluntary basis and was not required by law. Ireland believes that this consultation falls outside the scope of the Convention.

Failure to Exhaust Domestic Remedies

16. Ireland also submits that the Communication is inadmissible having regard to paragraph 21 of Decision 1/7 as there has been a failure to exhaust available domestic remedies.
17. There has, to-date, been no decision taken in respect of the Clongriffin Scheme. If the Communicant alleges that any decision has been taken he may make an application for Judicial Review. The Communicant does not allege that an application for Judicial Review would be unreasonably prolonged or that it would obviously not provide an effective and sufficient means of redress.



18. When a decision is taken by An Bord Pleanála in respect of the Clongriffin Scheme, the Communicant will be entitled to make an application for Judicial Review of that decision.
19. For these reasons, Ireland believes that the Communication is inadmissible having regard to paragraph 21 of Decision 1/7.
20. Ireland is happy to address any questions which the Committee may have and can provide any further information to the Committee as required.