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Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
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Date: 30 October 2025

Dear Ms Marshall

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding public participation in the context of the European Union Withdrawal Act (ACCC/C/2017/150)

1. I write in response to your letter of 7 July 2025, enclosing the draft findings of the Aarhus Convention Compliance Committee (the "**ACCC**") on communication ACCC/C/2017/150 ("**C150**") for comment. The United Kingdom of Great Britain and Northern Ireland (the "**UK**") takes this opportunity to make the ACCC aware of its profound concern with regard to the wide-ranging constitutional implications that would result from the interpretation of Parties' obligations set out therein, were the draft findings to be endorsed by a decision of the Meeting of the Parties.

2. In light of these concerns, the UK will not be in a position to endorse any decision at the November 2025 Meeting of the Parties which purports to accept the draft findings. We strongly disagree with the interpretation of Convention obligations which the ACCC has recommended in its draft findings.

3. Fundamentally, the ACCC has failed to approach its interpretative exercise by recognising that the Convention is a negotiated instrument between state Parties. Nothing put before the ACCC, or in the public domain, indicates that the intention of any state Party in joining the Convention was overhaul of longstanding aspects of their fundamental constitutional order. The state Parties certainly would not have done so using the oblique words on which the ACCC's interpretation is now founded. Fundamentally, the Convention, as a negotiated document, means what it says namely that bodies acting in a *"legislative capacity"* are outwith the Aarhus

Convention. The ACCC's interpretation is seeking to impermissibly expand the scope, reach and requirements of the Convention, beyond any reasonable interpretation of what the state Parties agreed.

4. The implications of the recommendation which the ACCC sets out in its draft findings with regards to the UK legislative system would be profound. The UK legislative system is designed to meet the requirements of government in responding to the issues of the day, from the implementation of emergency legislation to deal with the Covid pandemic, to the introduction and scrutiny of Private Members' Bills and the development by the executive of draft legislation in a manner and following procedures appropriate to the vast and complex range of issues of government. The implication of the ACCC's recommendation, in particular its disregard for the UK government's position that Acts of Parliament are not within the category of legislation covered by Article 8, is that a level of standardisation must be imposed across an unpredictably vast range of legislation which would undermine this longstanding practice and limit the functionality of government to respond to this range of issues.

5. For the avoidance of doubt, these concerns do not reflect an attempt to rely on the provisions of internal law to avoid compliance (as the ACCC has implied). Instead, they arise out of the expansionist approach taken by the ACCC in this decision, unjustifiably expanding the reach and effect of the Convention. It can be confidently presumed that the intention of the Parties (certainly the UK) when agreeing these provisions was not to mandate an outcome requiring fundamental constitutional overhaul. We therefore cannot accept a new interpretation of the Convention which would require this.

6. The Supreme Court of the UK in ***R. (Buckinghamshire CC) v Secretary of State for Transport*** [2014] 1 W.L.R. 324 (and drawing upon a judgment of the German Constitutional Court) said the following of EU law, and we include here because the premise, well-articulated in this excerpt, must be applicable, *a fortiori*, to the Aarhus Convention:

> *"110. There is a further difficulty with the contention that EU law requires the internal proceedings of national legislatures to be subject to judicial oversight of this nature. The separation of powers is a fundamental aspect of most if not all of the constitutions of the member states. The precise form in which the separation of powers finds expression in their constitutions varies; but the claimants' contentions might pose a difficulty in any member state in which it would be considered inappropriate for the courts to supervise the internal proceedings of the national legislature, at least in the absence of the breach of a constitutional guarantee.*
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> *111. Against this background, it appears unlikely that the Court of Justice intended to require national courts to exercise a supervisory jurisdiction over*

*the internal proceedings of national legislatures of the nature for which the claimants contend. There is in addition much to be said *358 for the view, advanced by the German Federal Constitutional Court in its judgment of 24 April 2013 on the Counter-Terrorism Database Act , 1 BvR 1215/07, para 91, that as part of a co-operative relationship, a decision of the Court of Justice should not be read by a national court in a way that places in question the identity of the national constitutional order ("Im Sinne eines kooperativen Miteinanders zwischen dem Bundesverfassungsgericht und dem Europäischen Gerichtshof … darf dieser Entscheidung keine Lesart unterlegt werden, nach der diese offensichtlich als Ultra-vires-Akt zu beurteilen wäre oder Schutz und Durchsetzung der mitgliedstaatlichen Grundrechte in einer Weise gefährdete … dass dies die Identität der durch das Grundgesetz errichteten Verfassungsordnung in Frage stellte")."*

7. The UK also wishes to draw attention to the dismissal by the ACCC of the caselaw of the Court of Justice of the European Union (CJEU) which was referenced in our submissions, in particular the case of ***Flachglas Torgau GmbH v Federal Republic of Germany*** ECLI:EU:C:2012:71, [2013] Q.B. 212. While the ACCC is not bound by judgments of the CJEU, the resulting inconsistency in obligations articulated by different international legal organs, only one of which is a judicial tribunal, undermines implementation of their respective norms. The views of a number of Member States as well as the EU Commission, who are also Parties to the Aarhus Convention, were clearly expressed in that case and supported by the CJEU. For this to be ignored by the ACCC in its draft findings, without any reasoning other than noting it is not bound by the CJEU (para. 82) is not conducive to a mutually supportive interpretation of the complementary legal regimes binding upon some Parties. The reasoning of the CJEU is comprehensive and compelling, and if the ACCC are going to take a different approach it is incumbent on it to grapple with the reasoning of the CJEU and explain why it takes a different approach. The UK accepts, of course, that the CJEU has different jurisdiction. However, the careful and detailed reasoning employed by the Advocate-General and the Grand Chamber of the CJEU do, the UK submits, provide substantial support in favour of its position. Moreover, the Advocate-General and the CJEU were directly addressing not just the interpretation of EU Directive but the Aarhus Convention and the Implementation Guide. The issue that was decided is the very same issue that arises in this case. There is now a clear conflict in this regard between the interpretation of the same legal provisions by the CJEU and the ACCC.

8. Moreover, ACCC has dismissed without explanation the UK's submissions concerning the profound potential consequences for the UK's longstanding constitutional arrangements and legislative processes. Rather than engaging with due consideration of the fundamental concerns flagged by the UK submissions, the ACCC has set these aside, simply asserting that *"there is therefore no risk that a finding of non-compliance by the Committee would undermine the principle of*

Parliamentary sovereignty" because "*Were there to be such a finding, it would be for the Party concerned in the exercise of its sovereign powers to determine how to bring its processes into compliance with the Convention*" (para. 81). This approach is wholly unjustifiable and fails to take account of the impact of Articles 9(2) and (3). Were the interpretation of the ACCC to be adopted, the ACCC – or communicants – will undoubtedly also assert that the requirement for consultation has to be enforceable by a court of law or other independent tribunal pursuant to Articles 9(2) and (3). The recommendation would seek to override the UK's established constitutional principle that the Courts do not interfere with anything that is done towards the process of a bill being laid or not laid before parliament because that is all considered to be within the scope of the principle of parliamentary sovereignty.

9. In light of the above concerns, and with a view to upholding the integrity of the Convention and the mechanism which the Parties have designed in the ACCC and related decisions, the UK informs the ACCC that it is not in a position to agree (in line with Decision I/7 paragraph 36(b)) the making of the recommendations which the ACCC has drafted with regards to this matter. We consider that to do so would not be in the best interests of the integrity of the Aarhus Convention regime. We look forward to working within the mechanisms of the Convention to remove this item from the range of matters to be considered by the Parties in their important work at the November 2025 Meeting of the Parties.

Yours sincerely

E. Barker

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