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27 May 2021

**By email only**

Ms Fiona Marshal  
Secretary to the Aarhus Convention Compliance Committee  
[aarhus.compliance@un.org](mailto:aarhus.compliance@un.org)

**Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland with the provisions of the Convention on access to information on the environment by Right to Know CLG (ACCC/C/2016/141)**

Dear Ms Marshal

I refer to the letter from the Party concerned dated 21 May 2021 giving an update on the developments that have taken place since the adoption of the Committee's findings on 9 November 2020.

The letter indicates that Ireland has agreed to review and amend the legislation which implements the first pillar of the Convention (the "AIE Regulations")<sup>1</sup>. It seems that this review will include measures intended to address the findings of non-compliance by Ireland with article 9, paragraph 4 of the Convention.

The letter points out that in August 2020 Ireland committed to amending the AIE Regulations to bring Ireland into conformity with the draft findings relating to OCEI decisions and that it would introduce a requirement that Courts hearing appeals under article 13 of the AIE Regulations would act as expeditiously as possible.

The communicant, Right to Know CLG (**R2K**), wishes to make some comments on this update.

First, since the start, Ireland has adopted an adversarial rather than a collaborative approach to resolving the core issue of delay in handling disputes over access to environmental information. R2K wishes to express its disappointment that, following the adoption of the committee's findings and recommendations and Ireland's commitment to introduce measures to comply with them, the Irish authorities have not engaged with it in an exchange views aimed at bringing Ireland into effective compliance as quickly as possible.

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<sup>1</sup> The European Communities (Access to Information on the Environment) Regulations 2007 to 2018 which transpose Directive (EC) 2003/4 on public access to environmental information.

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Second, it seems that the legislative review is aimed only at the OCEI aspects of non-compliance<sup>2</sup>. This is a missed opportunity, because the most effective way of achieving timely access is by ensuring that public authorities fulfill their obligations in relation to active and re-active access to environmental information to the greatest extent possible, thereby avoiding administrative and judicial review entirely.

In a similar vein, it appears<sup>3</sup> that Ireland is only committed to the introduction a requirement that courts act as expeditiously as possible. This would fall far short of ensuring timely dispute resolution and timely access since a key aspect of timeliness is a requirement to have regard to the time frame specified by the requestor. It also fails to address the second part of the committee's findings in relation to directions following a determination that a request falls within the scope of the AIE Regulations.

R2K expresses concern that Ireland's response in relation to judicial remedies (a) has already been decided without waiting for the results of the consultation; and (b) is inadequate. It is unclear, for example, if Ireland intends reforming Court procedural rules to ensure compliance<sup>4</sup>. In R2K's view, compliance cannot be assured in relation to judicial remedies without also reforming court procedure.

Third, R2K wishes to express dissatisfaction with the consultation referred to in paragraph 5 of Ireland's update. Copies of the consultation document and consultation website are attached. It can be seen that the consultation document, as published, provided virtually no background information or any substantive analysis of the AIE Regulations. In fact, the consultation document neither summarized why Ireland had been found not to be in compliance with the Convention nor provided a link to the findings and recommendations. Even access to the current version of the legislation was obscured. Rather than linking to the unofficial consolidation of the AIE Regulations, the consultation document contained links to the original statutory instrument and three amending statutory instruments making it virtually impossible for members of the public to become aware of the current legislation. No link was provided to Directive (EC) 2003/4 (the AIE Directive) which wasn't even cited correctly.

Links to these documents were only made available on 29 March 2021, some three weeks after the consultation was launched leaving only a further three weeks for submissions which included two weeks over Easter.

Ireland has indicated that it received 33 responses, which R2K considers to be low and reflective of the quality of the consultation. Although Ireland says it will publish the consultation responses, it has yet to do so some six weeks after the consultation has closed. On 11 May 2021, R2K filed an AIE Request asking for the consultation responses to be made public on the government's website. R2K has yet to receive a substantive response to this request but will update the Committee if or when it receives a response.

In the interim, and to assist the Committee, I have attached R2K's consultation response and that of the OCEI (which it published on its website<sup>5</sup>).

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<sup>2</sup> Paragraph 2 of Ireland's letter of 21 May 2021.

<sup>3</sup> Paragraph 2 of Ireland's letter dated 21 May 2021

<sup>4</sup> The committee will note that the AIE Regulations, while conferring jurisdiction on courts to hear statutory appeals against decisions of the OCEI, do not include the procedural rules for those actions. Such statutory appeals proceed under [Order 84C of the Rules of the Superior Courts](#) which apply generally to all statutory appeals. However, in contrast to FOI, there are no specific rules of court for AIE appeals.

<sup>5</sup> <https://www.ocei.ie/publications/submissions/OCEI-Submission-on-Consultation-on-Review-of-the-AIE-Regulations-FINAL.PDF>

Fourth, R2K has concerns about the way Ireland intends reforming the AIE Regulations. It seems that the intention is to introduce amendments to the AIE Regulations rather than new primary legislation<sup>6</sup>.

The AIE Regulations were adopted in 2007 using secondary legislation without parliamentary scrutiny. The transposition was more than two years after the deadline of 14 February 2005 set by the European Union which ratified the Convention on 17 February 2005.

It seems that Ireland now intends to amend the existing legislation for a fourth time using secondary legislation. Under the Irish constitution, secondary legislation is adopted by the executive rather than parliament and is therefore not subject to detailed parliamentary scrutiny or debate. R2K is concerned that the transposition of the AIE Regulations has never been subject to any real scrutiny by the Irish parliament and that the proposal from Ireland is a serious missed opportunity to enact primary legislation for AIE.

Fifth and finally, R2K is disappointed that Ireland has not proposed a timeframe for legislative reform. Given that the Committee's findings and recommendations were concerned with timely remedies, it is unacceptable that Ireland has not committed to a timetable for the introduction of the necessary measures to ensure that compliance is achieved as soon as possible.

R2K asks the committee to have regard to its concerns and to encourage Ireland to prepare a meaningful and effective response to the recommendations and findings so that compliance can be assured as quickly as possible.

Yours sincerely



**Fred Logue**

**Copy to:**      Irish Environmental Pillar  
                    The Party concerned  
                    Mr Stephen Minch

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<sup>6</sup> Paragraph 5 of Ireland's letter dated 21 May 2021