

Our Reference: FPL/113/02327
Your Reference: ACCC/C/2016/141

10 June 2021

By email only

Ms Fiona Marshal
Secretary to the Aarhus Convention Compliance Committee
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. I also refer to the comments submitted by the Communicant on 27 May 2021 where it was indicated that a further update would be provided once the public submissions on the review of the AIE Regulations were published.

I am pleased to say that these submissions were published on or around 4 June 2021 in response to a request from the communicant to the Party concerned¹. The Communicant has carried out a high level review of the responses to the consultation which is included in the attached document which also contains hyperlinks to the individual responses.

As can be seen, there were 33 responses to the consultation with 11 from public authorities (33%), 5 from NGOs (15%) and 17 from members of the public and other organisations (52%). Right to Know has classified the overall sentiment of each response as (i) Positive – i.e. seeking amendments to expand the scope of the legislation; (ii) Negative – i.e. seeking amendments to narrow the scope of the legislation; and (iii) Neutral – neither seeking to narrow or expand the scope of the legislation.

Please see Table 1 and 2 below indicating the sentiment of the responses by category of respondent

Given that the consultation was also intended to address the Committee's findings and recommendations in case ACCC/C/2016/141, Right to Know also compiled data indicating (a) which submissions addressed timeliness in general and (b) which specifically mentioned the Committee's findings and recommendations. Please see Table 3 below.

Right to Know wishes to make the following observations on the public authority responses:

¹ <https://www.gov.ie/en/consultation/53b81-public-consultation-on-the-review-of-the-access-to-information-on-the-environment-aie-regulations-2007-2018/>

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Consultant: TJ McIntyre

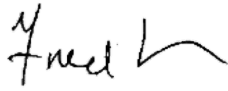
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1. The number of public authority responses is very low and represents a tiny fraction of the number of public authorities in Ireland. Of the 11 which did respond, the majority are or represent private or semi-private bodies within category (b) and (c) of the definition of public authority.
2. There was no response submitted from any consent authority with time-limited procedures (for example, the 32 planning authorities, An Bord Pleanála, Environmental Protection Agency, Department of Housing, Local Government and Heritage, Department of Agriculture Food and the Marine, Department of Public Expenditure and Reform etc.). It is concerning that there has been no input from the public authorities where timely access to environmental information is critical to public participation.
3. There was no response from other public authorities which hold large amounts of environmental information, for example the Office of Public Works, National Transport Authority, Meteorological Service, National Parks and Wildlife Service, Eirgrid, Commission for Regulation of Utilities, Marine Institute, Teagasc, Property Registration Authority, National Archives etc.
4. There was no response from the judiciary or from the Courts Service despite the Committee's recommendation that there should be mandatory directions following a court ruling on jurisdictional disputes.
5. Apart from the Commissioner for Environmental Information (**CEI**), none of the responding public authorities engaged with the issue of how to guarantee timely access to disputed environmental information. Rather, several of the responses sought amendments to make it easier to extend time limits. There was very little awareness demonstrated by public authorities that they must make environmental information available "as soon as possible" following a request and that regard should be had to the time frame specified by the applicant. Equally there was very little awareness that they have an obligation to actively disseminate environmental information and that active dissemination is a key aspect of timely access to information as well as a way of reducing the burden on public authorities.
6. On a positive note many responding public authorities sought better and more up to date guidance.
7. The majority of public authority responses were aimed at narrowing the scope of the AIE legislation by:
 - a. Seeking to reverse a recent court judgment and CEI decision identifying privatised operators of electricity and tolled motorway infrastructure as public authorities
 - b. Introducing a presumption against subsidiaries of public authorities being public authorities
 - c. Narrowing the definition of Environmental Information
 - d. Introducing charges
 - e. Aligning the scope of access under AIE with the lower standards in the Freedom of Information Act 2014
 - f. Making it easier to refuse requests from repeat requestors, requestors which artificially split requests and requestors who may be in dispute with the public authority on the basis that such requests are manifestly unreasonable
 - g. Broadening the exception for "commercially sensitive" information

Overall, Right to Know doesn't believe that the results of this consultation provide a good platform for the long overdue legislative reform of the AIE regime in Ireland. In particular the consultation manifestly failed to address the reforms needed to ensure that Ireland is brought into compliance with the Convention having regard to the Committee's findings and recommendations of 9 November 2020 in case C/141.

My client remains available to the Committee should further updates or clarifications be needed.

Yours sincerely

A handwritten signature in black ink, appearing to read "Fred Logue". The signature is written in a cursive style with a prominent flourish at the end.

Fred Logue

Copy to: Irish Environmental Pillar

The Party concerned

Mr Stephen Minch

Table 1: Response sentiment by number and category of respondent

Category	Number	Positive	Negative	Neutral
Public Authority	11	1	7	3
NGO	5	5	0	0
Other	17	11	2	4
<i>Total</i>	<i>33</i>	<i>17</i>	<i>9</i>	<i>7</i>

Table 2: Response sentiment as percentage of each category of respondent

Category	Number	Positive	Negative	Neutral
Public Authority	11	9%	64%	27%
NGO	5	100%	0%	0%
Other	17	65%	12%	24%
<i>Total</i>	<i>33</i>	<i>52%</i>	<i>27%</i>	<i>21%</i>

Table 3: Number and percentage of responses which refer to communication C/141

Category	Number	Ref to C/141	Percent
Public Authority	11	2	18%
NGO	5	5	100%
Other	17	7	41%
<i>Total</i>	<i>33</i>	<i>14</i>	<i>42%</i>