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**Economic Commission for Europe**

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

**Seventh session**

Geneva, 18 – 20 October 2021

Item x (x) of the provisional agenda

**Procedures and mechanisms facilitating the implementation of the Convention:**

**Compliance mechanism**

 Draft report of the Compliance Committee[[1]](#footnote-2)\*

 Compliance by Ireland with its obligations under the Convention

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| *Summary* |
| This document is prepared by the Compliance Committee in accordance with the Committee’s mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8) and reviews the progress by the Party concerned to implement the Committee’s findings and recommendations on communication ACCC/C/2013/107 concerning the compliance of Ireland. |
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#  Introduction

1. On 19 September 2019, the Committee adopted its findings and recommendations on communication ACCC/C/2013/107 concerning the compliance of the Ireland (see ECE/MP.PP/C.1/2019/9).
2. In accordance with paragraph 36(b) of the annex to decision I/7 of the Meeting of the Parties, the Party concerned agreed that the Committee might make its recommendations to it directly, in order to address compliance matters without delay pending the seventh session of the Meeting of the Parties.

# Summary of follow-up

1. On 1 October 2020, the Party concerned submitted its first progress report.
2. On 31 October 2020, the communicant of communication ACCC/C/2013/107 provided its comments on the Party concerned’s first progress report.
3. On 29 May 2021, observer Irish Environmental Network provided additional information.
4. On 10 June 2021, the Party concerned provided additional information on the developments having taken place since its first progress report.
5. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement the Committee’s findings and recommendations on communication ACCC/C/2016/141 through its electronic decision-making procedure on 4 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on that date to the Party concerned and communicant with an invitation to provide comments by 19 July 2021.
6. *At its seventy-first meeting (Geneva online, 7-9 July 2021), the Committee reviewed the implementation of its findings and recommendations on communication ACCC/C/2016/141 in open session with the participation via virtual means of XX.*
7. *Comments on the Committee’s draft report was received from XX.*
8. *After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of the findings and recommendations on communication ACCC/C/2016/141 through its electronic decision-making procedure on xx July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicant.*

# Consideration and evaluation by the Committee

1. In order to fulfil paragraph 95 of the Committee’s findings and recommendations on communication ACCC/C/2013/107, the Party concerned would need to demonstrate to the Committee that with regard to section 42(1)(a)(i) and (ii) of the Planning and Development Act 2000 (PDA) it has:
	1. Taken the necessary legislative measures to ensure that permits for activities subject to article 6 of the Convention cannot be extended, except for a minimal duration, without ensuring opportunities for the public to participate in the decision to grant that extension in accordance with article 6(2)–(9) of the Convention;
	2. Taken the necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in paragraph (a) above.
2. Section 42(1)(a) PDA, as in force at the time of the grant of the permit extensions at issue in communication ACCC/C/2013/107, stipulated two alternative situations which can lead to the duration of a permit being granted:

… a planning authority shall, as regards a particular permission, extend the appropriate period by such additional period not exceeding five years as the authority considers requisite to enable the development to which the permission relates to be completed provided that each of the following requirements is complied with:

(a) either —

(i) the authority is satisfied that —

(I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,

(II) substantial works were carried out pursuant to the permission during that period, and

(III) the development will be completed within a reasonable time, or

(ii) the authority is satisfied —

(I) that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission,

(II) that there have been no significant changes in the development objectives in the development plan or in regional development objectives in the regional spatial and economic strategy for the area of the planning authority since the date of the permission such that the development would no longer be consistent with the proper planning and sustainable development of the area,

(III) that the development would not be inconsistent with the proper planning and sustainable development of the area having regard to any guidelines issued by the Minister under section 28, notwithstanding that they were so issued after the date of the grant of permission in relation to which an application is made under this section, and

(IV) where the development has not commenced, that an environmental impact assessment, or an appropriate assessment, or both of those assessments, if required, was or were carried out before the permission was granted.

**Scope of review**

1. Observer Irish Environmental Network, in its additional information provided on 29 May 2021, submits that, in addition to section 42(1)(a)(i) and (ii), there are other sections of the PDA that do not comply with the requirements of article 6(10) of the Convention. Thus, it considers that under section 146B PDA, which concerns alterations to the terms of strategic infrastructure developments, there is no test linked to the requirements of article 6(1) of the Convention to determine under what conditions public participation is to take place. The observer points in this regard to a recent extension of duration for a liquified gas project and the related court proceedings.[[2]](#footnote-3) It further argues that the regulations transposing the Birds and Habitats Directives into the Party concerned’s law do not contain provisions for public participation on the extension of the duration of certain permission.[[3]](#footnote-4)
2. The Committee considers that the above allegations made by the observer do not fall within the scope of the Committee’s recommendations in paragraph 95 of its findings on communication ACCC/C/2013/107. The Committee will thus not examine these allegations in the context of its follow-up on its findings on communication ACCC/C/2013/107. This does not preclude the possibility of the Committee examining any allegations falling within the scope of the Convention if put before it in a future communication.

**Paragraph 95 of the Committee’s findings on communication ACCC/C/2013/107**

1. In its progress report, the Party concerned reports that it will soon make a commencement order to bring section 28(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (PDHRTA)[[4]](#footnote-5) into operation.[[5]](#footnote-6) Section 28(1) PDHRTA would replace section 42(1)(a) PDA with the following:

(a) (i) the authority is satisfied that—

(I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,

(II) an environmental impact assessment or an appropriate assessment, or both of those assessments, was or were not required before the permission was granted,

(III) substantial works were carried out pursuant to the permission during that period, and

(IV) the development will be completed within a reasonable time.[[6]](#footnote-7)

1. Observer Irish Environmental Network reports that the amendment remains un-commenced.[[7]](#footnote-8)
2. The Party concerned contends that, as at 10 June 2021, it “will progress the commencement order … in the coming weeks” and that “an update will issue to the Committee as soon as this work is complete”.[[8]](#footnote-9)
3. The Party concerned further states that it intends to make supplementary amendments to section 42(1) PDA to prohibit extensions of duration where a development requires an environmental impact assessment (EIA) or appropriate assessment (AA) at the point of application for such an extension. It contends that together these will ensure that an extension of duration of planning permission cannot be granted where an EIA and/or AA was carried out as part of the original permission and also whether the requirement for EIA and/or AA is “screened in” at the point of application for such an extension of duration.[[9]](#footnote-10)
4. Observer Irish Environmental Network reports concerning these supplementary amendments announced by the Party concerned that “there is no further change in that regard or at all reflected since 2017”.[[10]](#footnote-11)
5. Observer Irish Environmental Network moreover points out that section 28 PDHRTA has also inserted a new temporary subsection 1A into section 42 PDA. In summary, the new temporary subsection 1A provides that, with respect to a planning permission for a development that relates to 20 or more houses and in respect of which an EIA or AA was not required before the permission was granted, the planning authority, upon application being duly made to it setting out the reasons why the development cannot be reasonably completed within the appropriate period, shall further extend the appropriate period by such additional period not exceeding 5 years, or until 31 December 2021.[[11]](#footnote-12)
6. The observer contends that this indicates that the Party concerned will not commence section 28 PDHRTA until after 31 December 2021.[[12]](#footnote-13)
7. The observer also submits that section 28(1) “if ever commenced will not remedy the Aarhus non-compliance issue found” in the Committee’s findings on communication ACCC/C/2013/107.[[13]](#footnote-14)
8. Lastly, the observer states that it is concerned about the fact that the amendment proposed by the Party concerned limits the considerations only to EIA and AA when determining whether it is possible to draw on section 42 or not to extend a permission. It submits that significant effects on the environment in the sense of article 6 of the Convention can arise even in cases where no EIA or AA is required.[[14]](#footnote-15)
9. The Committee notes that it is still to receive confirmation that section 42(1)(a) PDA has been amended, whether by section 28 PDHRTA or otherwise, and as such cannot yet find that the Party concerned has met the recommendations in its findings on communication ACCC/C/2013/107. However, the Committee examines the content of the proposed amendment of section 42(1)(a) PDA before it.
10. The Committee considers that the proposed new section 42(1)(a) PDA would have the effect of no longer allowing the duration of permits for activities for which an EIA or AA was conducted, or should have been conducted, to be extended under that section. As such, the Committee considers that the new section 42(1)(a) of the PDA, once enacted, will mark significant progress.
11. However, the Committee expresses two reservations in this regard. Firstly, the Committee reminds the Party concerned that while there may be considerable overlap between those projects for which EIA and/or AA must be conducted under its domestic law and those projects for which public participation must take place under article 6 of the Convention, there may be some projects in the latter but not the former category. Consequently, the proposed new section 42(1)(a) PDA may still allow for certain projects subject to article 6 of the Convention to be extended without undergoing public participation.
12. Secondly, the Committee notes the possibility that a change in factual or legal circumstances may mean that while neither EIA nor AA was required for the original proposal, the situation may have changed by the time an extension of the permit is applied for, triggering the obligations under article 6 of the Convention. In such a case an extension of the permit without public participation meeting the requirements of article 6 may constitute a breach of the Convention. While having not yet seen the text of the proposed amendment, the Committee considers that the further amendment proposed by the Party concerned referred to in paragraph ‎18 above would seem to be an important step in that regard.
13. The Committee considers that, when enacted, the new section 42(1)(a) PDA will mark significant progress on the existing situation.
14. The Committee, however, invites the Party concerned, when deciding upon the measures through which it intends to fully implement the recommendation in paragraph 95 of the Committee’s findings on communication ACCC/C/2013/107, to bear in mind the considerations in paragraphs ‎26 and ‎27 above. Moreover, recalling the recommendation in paragraph 95(b) of the Committee’s findings, the Committee urges the Party concerned to address these points as soon as possible.
15. Based on the foregoing, the Committee, while welcoming the steps made to date in that direction, finds that the Party concerned has not yet taken the necessary measures to fully meet the recommendations in paragraph 95 of the Committee’s findings on communication ACCC/2013/107.

#  Conclusions

1. The Committee welcomes the constructive engagement by the Party concerned in the Committee’s follow-up on the findings on communication ACCC/C/2013/107.
2. The Committee, while welcoming the steps made to date in that direction, finds that the Party concerned has not yet taken the necessary measures to fully meet the recommendations in paragraph 95 of the Committee’s findings on communication ACCC/2013/107.
3. The Committee recommends to the Meeting of the Parties that it endorse the Committee’s findings and recommendations on communication ACCC/C/2013/107 and recommend that, with regard to section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000, the Party concerned:

 (a) Take the necessary legislative measures to ensure that permits for activities subject to article 6 of the Convention cannot be extended, except for a minimal duration, without ensuring opportunities for the public to participate in the decision to grant that extension in accordance with article 6 (2)–(9) of the Convention;

 (b) Take the necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in paragraph (a) above.

1. The Committee further recommends to the Meeting of the Parties that it request the Party concerned:
	1. To submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;
	2. To provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the above recommendations;
	3. To provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the above recommendations;
	4. To participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

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1. \* The present document is being issued without formal editing. [↑](#footnote-ref-2)
2. Additional information sent by observer (Irish Environmental Network), 29 May 2021, pp. 6-8. [↑](#footnote-ref-3)
3. Additional information sent by observer (Irish Environmental Network), 29 May 2021, p. 8. [↑](#footnote-ref-4)
4. As itself amended by section 57 of the Planning and Development (Amendment) Act 2018. [↑](#footnote-ref-5)
5. Party’s progress report on the implementation of the Committee’s findings and recommendations, 1 October 2020, pp. 1-2. [↑](#footnote-ref-6)
6. Party’s progress report on the implementation of the Committee’s findings and recommendations, 1 October 2020, p. 2. [↑](#footnote-ref-7)
7. Additional information sent by observer (Irish Environmental Network), 29 May 2021, p. 2. [↑](#footnote-ref-8)
8. Additional information sent by the Party concerned, 10 June 2021, p. 1. [↑](#footnote-ref-9)
9. Party’s progress report on the implementation of the Committee’s findings and recommendations, 1 October 2020, p. 2. [↑](#footnote-ref-10)
10. Additional information sent by observer (Irish Environmental Network), 29 May 2021, p. 3. [↑](#footnote-ref-11)
11. Comments on the draft findings from observer (Irish Environmental Network), 14 August 2019, para. 18; see also additional information sent by observer (Irish Environmental Network), 29 May 2021, pp. 2-3. [↑](#footnote-ref-12)
12. Comments on the draft findings from observer (Irish Environmental Network), 14 August 2019, para. 18. [↑](#footnote-ref-13)
13. Comments on the draft findings from observer (Irish Environmental Network), 14 August 2019, para. 13; see also the additional information sent by observer (Irish Environmental Network), 29 May 2021, p. 4. [↑](#footnote-ref-14)
14. Additional information sent by observer (Irish Environmental Network), 29 May 2021, pp. 4-6. [↑](#footnote-ref-15)