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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/2016/141 concerning the compliance of Ireland. |
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#  Introduction

1. On 9 November 2020, the Committee adopted its findings and recommendations on communication ACCC/C/2016/141 concerning the compliance of Ireland (see ECE/MP.PP/C.1/2021/8).
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 21 May 2020, the Party concerned provided an update on measures taken to address the Committee’s findings and recommendations on communication ACCC/C/2016/141.
2. On 27 May 2021, the communicant of communication ACCC/C/2016/141 provided its comments on the Party concerned’s update.
3. 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.
4. *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.*
5. *Comments on the Committee’s draft report was received from XX.*
6. *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 134 of the Committee’s findings and recommendations on communication ACCC/C/2016/141, the Party concerned would need to demonstrate to the Committee that it has taken the necessary legislative or regulatory measures to ensure that:

 (a) Appeals under the European Communities (Access to Information on the Environment) Regulations (AIE Regulations) to the Office of the Commissioner for Environmental Information (OCEI) or the courts, whether commenced by the applicant or any other person, are required to be decided in a timely manner, for instance by setting a specified deadline;

 (b) There are mandatory directions in place to ensure that, should a court rule that a public authority or an information request falls within the scope of the AIE Regulations, the underlying information request is thereafter resolved in an adequate and effective manner.

**Scope of review**

1. The communicant of communication ACCC/C/2016/141 expresses its disappointment that, following the adoption of the Committee’s findings on communication ACCC/C/2016/141, the Irish authorities did not engage with it in an exchange of views to bring the Party concerned into compliance with the Convention as quickly as possible.[[2]](#footnote-3) It expresses its dissatisfaction with the consultation process carried out by the Party concerned on the planned amendments to the AIE Regulations. It considers that the published consultation document contained insufficient background information on the AIE Regulations and did not reference the Committee’s findings. It also claims that no proper access to the current legislation was provided, that the timeframes for access to the consultation documents were insufficient and that consultation responses, six weeks after the consultation had closed, had not yet been published.[[3]](#footnote-4)
2. The communicant moreover expresses its concern about the fact that the AIE Regulations are intended to be reformed using secondary legislation, which it claims is adopted by the executive without detailed parliamentary scrutiny and debate.[[4]](#footnote-5)
3. While taking note of the communicant’s concern regarding the consultation procedure to amend the AIE Regulations, the Committee cannot see how those concerns themselves fall within the scope of the Committee’s recommendations in paragraph 134 of the findings on communication ACCC/C/2016/141. While not precluding the possibility of examining any allegations falling within the scope of the Convention if put before it in a future communication, the Committee will not examine these matters in the context of its follow-up on its findings on communication ACCC/C/2016/141.

**Paragraph 134 of the Committee’s findings and recommendations on communication ACCC/C/2016/141**

1. The Party concerned reports that a decision was taken to review and consolidate the current version of the AIE Regulations, and that this review commenced with a public consultation in March and April 2021. It submits that the Department of Environment, Communications and Climate Action is currently reviewing the submissions from the public and preparing amending legislation. The Party concerned states that it is proposed that this amending legislation should also respond to the Committee’s findings and recommendations on communication ACCC/C/2016/141.[[5]](#footnote-6) In particular, it submits that the amendment is meant “to introduce a requirement which will bring Ireland into conformity with the draft findings in respect of decisions of the OCEI and to introduce a requirement that Courts hearing an appeal brought pursuant to Article 13 of the AIE Regulations act ‘as expeditiously as possible’”.[[6]](#footnote-7)
2. The Party concerned provides that it is not currently possible to give an accurate indication as to when the amending regulations would be adopted but that a draft would be prepared as soon as possible. It welcomes the Committee’s offer to consider the draft text and announces that it would revert to the Committee once the amending regulations are at a more advanced stage.[[7]](#footnote-8)
3. The communicant of communication ACCC/C/2016/141 submits that it appears that the legislative review carried out by the Party concerned is aimed only at the OCEI. It states that this is a missed opportunity, since the most effective way of achieving timely access to information would be to ensure that public authorities fulfil their obligations in relation to “active and re-active” access to environmental information to the greatest possible extent, and thus to avoid administrative and judicial review entirely.[[8]](#footnote-9)
4. The communicant further contends that it appears that the Party concerned is only planning to introduce a requirement that courts act as expeditiously as possible, which would fall short of ensuring timely dispute resolution and timely access to information since a key aspect of timeliness is a requirement to take into account the time frame specified by the requestor. In addition, it considers that the Party concerned 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.[[9]](#footnote-10)
5. The communicant expresses its concern that the Party concerned’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 considers that for the Party to be compliant in relation to judicial remedies, court procedure also needs to be reformed.[[10]](#footnote-11)
6. Lastly, the communicant expresses its disappointment that the Party concerned has not provided a timeframe for legislative reform, which it submits is “unacceptable” given that the Committee’s findings were concerned with timely remedies.[[11]](#footnote-12)
7. The Committee welcomes the Party’s swift steps for legislative reform. It also welcomes the Party’s willingness to engage with the Committee and to provide a draft text of its planned amendments once this is available. It encourages the Party concerned to provide such a draft at an early stage, to ensure that the final amendment will fully meet the requirements of paragraph 134 of the Committee’s recommendation on communication ACCC/C/2016/141. The Committee also encourages the Party concerned to provide the Committee, as soon as possible, with an indicative timeframe on its process for legislative amendment.
8. Not having been provided the draft text of any amendments yet, the Committee is not in a position to assess whether the planned legislative amendments will meet the requirements of paragraph 134 of the Committee’s recommendation on communication ACCC/C/2016/141. However, it stresses that any legislative or regulatory measures taken to meet the requirements of paragraph 134(a) must address appeals to both the OCEI and the courts. To ensure that appeals to the OCEI are decided in a timely manner would be an important first step but would not be in itself enough to fulfil the requirements of paragraph 134(a). The Committee is also concerned that a requirement that appeals are decided “as expeditiously as possible” may not be enough to fulfil the requirement that appeals be decided in a timely manner.
9. In addition, the Committee emphasizes that to fulfil the requirements of paragraph 134, the Party concerned will equally need to meet the requirements of paragraph 134(b), i.e. that there are mandatory directions in place to ensure that, should a court rule that a public authority or an information request falls within the scope of the AIE Regulations, the underlying information request is thereafter resolved in an adequate and effective manner.
10. In light of the foregoing, the Committee, while welcoming the swift efforts taken to date in that direction, finds that the Party concerned has not yet fulfilled the requirements of paragraph 134 of its findings and recommendations on communication ACCC/C/2016/141.

#  Conclusions

1. The Committee welcomes the constructive engagement of the Party concerned in the Committee’s follow-up on the findings on communication ACCC/C/2016/141.
2. The Committee, while welcoming the swift efforts taken to date in that direction, finds that the Party concerned has not yet fulfilled the requirements of paragraph 134 of its findings and recommendations on communication ACCC/C/2016/141.
3. The Committee therefore recommends to the Meeting of the Parties that it endorse the Committee’s findings and recommendations on communication ACCC/C/2016/141 and recommend that the Party concerned take the necessary legislative or regulatory measures to ensure that:

 (a) Appeals under the AIE Regulations to the OCEI or the courts, whether commenced by the applicant or any other person, are required to be decided in a timely manner, for instance by setting a specified deadline;

 (b) There are mandatory directions in place to ensure that, should a court rule that a public authority or an information request falls within the scope of the AIE Regulations, the underlying information request is thereafter resolved in an adequate and effective manner.

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. Communicant’s comments on Party’s update, 27 May 2021, p. 1. [↑](#footnote-ref-3)
3. Communicant’s comments on Party’s update, 27 May 2021, p. 2. [↑](#footnote-ref-4)
4. Communicant’s comments on Party’s update, 27 May 2021, p. 3. [↑](#footnote-ref-5)
5. Party concerned’s update, 21 May 2021, p. 2. [↑](#footnote-ref-6)
6. Party concerned’s update, 21 May 2021, p. 1. [↑](#footnote-ref-7)
7. Party concerned’s update, 21 May 2021, p. 2. [↑](#footnote-ref-8)
8. Communicant’s comments on Party’s update, 27 May 2021, p. 2. [↑](#footnote-ref-9)
9. Communicant’s comments on Party’s update, 27 May 2021, p. 2. [↑](#footnote-ref-10)
10. Communicant’s comments on Party’s update, 27 May 2021, p. 2. [↑](#footnote-ref-11)
11. Communicant’s comments on Party’s update, 27 May 2021, p. 3. [↑](#footnote-ref-12)