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Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Palais des Nations, Room 429-4
CH-1211 GENEVA 10
Switzerland
By email: aarhus.compliance@un.org

Re. Draft Findings in Communication ACCC/C/2014/112

Dear Ms Marshall,

Further to the Committee's correspondence of 14th June in respect of the draft findings and recommendations on the above communication, please find the following comments. I would be grateful if you could bring them to the Committee's attention.

Please additionally convey my thanks to the Committee for its diligent consideration of this matter, and the secretariat for its assistance throughout, and the Communicants and Party Concerned for their engagement in this most important compliance mechanism.

In light of the extensive matters detailed in this communication and considered, I will just focus my remarks here on the actual findings and recommendations which are welcomed.

The draft findings and recommendations are as follows: (emphasis added)

"A. Main findings with regard to non-compliance

166. The Committee finds that:

- (a) By refusing the disclosure of the cost-benefit study prepared for the renewable energy export programme on the basis that the study was not "environmental information", the Party concerned failed to comply with article 4(1) in conjunction with article 2(3)(b) of the Convention;
- (b) By not putting in place **measures to ensure** that the OCEI decide appeals regarding environmental information requests in a timely manner, the Party concerned fails to comply with the requirement of article 9(4) of the Convention to ensure timely procedures for the review of environmental information requests.

B. Recommendations

167. The Committee, pursuant to paragraph 35 of the annex to decision I/7 of the Meeting of the Parties, [and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 36 (b) and (c) of the annex to decision I/7,] recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that:

- (a) Access to cost-benefit studies used in environmental decision-making is not refused on the basis that it is not environmental information within the meaning of article 2(3)(b) of the Convention,

(b) Appeals under the AIE Regulations to the OCEI are required to be decided in a timely manner, **for instance by setting a specified deadline.**"

In respect of the issue of the timeliness of decisions on appeals by the OCEI and non-compliance with one of the very important characteristics specified in Article 9(4) of the Convention, the fact the Committee has highlighted the failure in 166(b) above as a failure to put in place "measures" is particularly welcome.

The Committee in its analysis here has referred on a number of times to another Communication regarding Ireland wherein the timeliness of the OCEI appeals featured centrally, namely ACCC/C/2016/141, and where Ireland has been found to be non-compliant.

I would respectfully ask the Committee to consider the comments made, by the Communicant and myself as an observer in respect of the progress against the findings made in that other case, including in particular the need to focus on wider measures not just a legislative time consideration. This is essential if the matter of timeliness is to be truly to be address and the Party Concerned to be move into compliance on this issue. This is consistent with the broader scope of matters encompassed by the term measures which need to be addressed also in respect of this particular aspect of the findings here in communication ACCC/C/2014/112, on the OCEI.

It is of particular concern, that the Party Concerned's response today, 23 July 2021, on the draft finding's refer to ACCC/C/2016/141 and incorrectly characterised the matter as being merely an issue of non-compliance of the AIE Regulations, which was not a primary focus of the Communication, and where the Party Concerned's comments today stated (emphasis added)

"11. The Party Concerned has confirmed in the context of the response provided to the Committee in ACCC/C/2016/141 that it intends to make amendments to the AIE Regulations **to bring the Regulations into conformity with the findings** of the Committee"

However in fact Ireland is not in compliance in respect of the timeliness of the OCEI appeals consequent on a failure to implement the necessary measures in ACCC/C/2016/141, as set out in paragraph 133(a) of the Findings. It is not the regulations which are the issue, and that is an oversimplification of a implementation issues which is not currently capable of delivering timely OCEI decisions on appeals.

On the matter of the term "measures" - the Committee is of course aware that Ireland is under a general obligation under Art 3(1) as follows: (emphasis added)

"1. Each Party shall take the **necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures**, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention."

The term "necessary" in the above – implies a requirement to evaluate and Ireland has entirely failed to do this in respect of diagnosing the set of measures it needs to implement to deliver on timely OCEI appeals, not to mention a failure to consider evaluating what is necessary to achieve compatibility between the Pillars, or to institute an enforcement regime.

It is this wider context of the general obligation which I wish to emphasise here, and to bring that purposive perspective of Article 3(1) to the term "measures", and its reference to "legislative, regulatory and other measures" to the findings in this current communication ACCC/C/2014/112.

In its response to this element of the draft findings on this communication (112), the Party Concerned has focused on in on the AIE regulations. It is of course indisputable they clearly do fail to stipulate a requirement in respect of timeliness for the OCEI decision. However, putting that into the regulations

alone will **not** suffice to resolve the issue of the timeliness for OCEI decisions. This view has been set out at length in the submissions made in respect of the concerns on the lack of progress on ACCC/C/2014/141 and that a wider set of complementary measures also need to be addressed. For example - more effective implementation of a number of existing obligations in the Irish regulations, resourcing, and potential alignment of other timelines to facilitate compatibility across the Pillars of the Convention, and a number of other measures are set out in those commentaries. Additionally highlighted in those submissions was the constructive submission made by the OCEI on a recent consultation on the Irish AIE regulations, which made similar suggestions and comments in the same vein.

Therefore we submit, in light of the above comments, and the potentially very narrow focus of the Party Concerned's response today, that it might be helpful if the Committee were to consider being more explicitly expansive in either its Findings and/or its Recommendations here in 112.

This would be to assist the Party Concerned, and the public generally appreciate the full scope of considerations encompassed by the term "measures" in the findings, and that a mere legislative response, will not be adequate if it does not credibly deliver the result required by Article 9(4) of the convention. It may be particularly helpful even were the Committee to consider revising the final line of the recommendations to read in indent b) as follows:

"(b) Appeals under the AIE Regulations to the OCEI are required to be decided in a timely manner, for instance by setting a specified deadline **and by implementing necessary additional complementary measures to ensure its timely decisions**",

instead of the current:

"(b) Appeals under the AIE Regulations to the OCEI are required to be decided in a timely manner, for instance by setting a specified deadline".

The above suggestion is albeit I appreciate the recommendations are just that "recommendations", and that it is the finding on "measures" which will be the more immutable element reflecting the core issue of non-compliance.

Thank-you for your consideration of these observations and suggestions.

Yours sincerely

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