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### 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 7 (b) of the provisional agenda

#### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

### **Report of the Compliance Committee on compliance by Ireland\*\*\*\***

#### *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). Part I of the document 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. Part II of the document 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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\* The present document is being issued without formal editing.

\*\* This document was submitted late owing to additional time required for its finalization.



## **Part I**

### **Progress by the Party concerned to implement the Committee's findings and recommendations on communication ACCC/C/2013/107 concerning the compliance of Ireland**

#### **I. 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.

#### **II. Summary of follow-up**

3. On 1 October 2020, the Party concerned submitted its first progress report.
4. On 31 October 2020, the communicant provided its comments on the Party concerned's first progress report.
5. On 29 May 2021, the observer Irish Environmental Network provided additional information.
6. On 10 June 2021, the Party concerned provided additional information on the developments that had taken place since its first progress report.
7. 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/2013/107 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, the communicant and the observer with an invitation to provide comments by 19 July 2021.
8. On 6 July 2021, the observer Irish Environmental Network submitted an update.
9. 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/2013/107 in open session with the participation via virtual means of the Party concerned, the communicant and the observer Irish Environmental Network.
10. Comments on the Committee's draft report were received from the Party concerned, the communicant and the observer Irish Environmental Network on 21 July 2021.
11. After taking into account the information received, the Committee finalized its report to the seventh session of the Meeting of the Parties on the implementation of the findings and recommendations on communication ACCC/C/2013/107 in closed session. The Committee adopted its report through its electronic decision-making procedure on 26 July 2021 and thereafter requested the secretariat to send the report to the Party concerned, the communicant and the observer.

#### **III. Consideration and evaluation by the Committee**

12. 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:

(a) 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;

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

13. 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 an extension of 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

14. The communicant, in his comments on the Committee’s draft report, submits that the Party concerned should use the opportunity of the Committee’s follow-up on its findings on communication ACCC/C/2013/107 to deal with its other legislation which raises similar issues to section 42 PDA. On this point, he highlights in particular section 177 (c) PDA<sup>1</sup> and

<sup>1</sup> Communicant’s comments on Committee’s draft report, 21 July 2021, paras. 8–10.

also pre-application consultations between the developer and An Bord Pleanála under the Strategic Infrastructure Act and the Strategic Housing Development Act.<sup>2</sup>

15. 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. It highlights section 146B PDA, which concerns alterations to the “terms” of strategic infrastructure developments, with respect to which it submits that 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. It submits that this provision led to the recent extension of the duration of a liquified gas project. It further claims 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 permissions.<sup>3</sup>

16. The Committee considers that the allegations by the communicant and the observer outlined above appear not to fall within the scope of the Committee’s recommendations in paragraph 95 of its findings on communication ACCC/C/2013/107, which specifically concern section 42 (1) PDA. 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 however preclude the possibility of the Committee examining any of these allegations falling within the scope of the Convention if put before it in a future communication. In this regard, the Committee notes that the issue of pre-application consultations regarding strategic infrastructure development is currently before the Committee in the context of its deliberations on communication ACCC/C/2015/132.

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

17. In its progress report of 1 October 2020, the Party concerned reports that it will make a commencement order to bring section 28 (1) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (PDHRTA)<sup>4</sup> into operation “in the coming weeks”.<sup>5</sup> 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.<sup>6</sup>

18. In its update of 10 June 2021, the Party concerned again states that it “will progress the commencement order ... in the coming weeks”.<sup>7</sup>

19. In its comments of 21 July 2021 on the Committee’s draft report, the Party concerned once again states that it is intended that the commencement order “will be submitted to the Minister for Housing, Local Government and Heritage for signature in the coming weeks, subject to final drafting”.<sup>8</sup> It submits that any “apprehension that the Department intends to

<sup>2</sup> Communicant’s comments on Committee’s draft report, 21 July 2021, paras. 11–20.

<sup>3</sup> Additional information from observer Irish Environmental Network, 29 May 2021, p. 8.

<sup>4</sup> As itself amended by section 57 of the Planning and Development (Amendment) Act 2018.

<sup>5</sup> Party’s progress report on implementing the Committee’s findings and recommendations on communication ACCC/C/2013/107, 1 October 2020, pp. 1–2.

<sup>6</sup> *Ibid.*, p. 2.

<sup>7</sup> Additional information from the Party concerned, 10 June 2021, p. 1.

<sup>8</sup> Party’s comments on Committee’s draft report and on comments of observer, 21 July 2021, para. 6.

delay the commencement of Section 28 (1) PDHRTA 2016 until 31<sup>st</sup> December 2021... is entirely unfounded.”<sup>9</sup>

20. In its comments on the Committee’s draft report, the Party concerned also 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 that the extension is applied for. It reports that the relevant draft amendment to section 42 (1) (a) (i) (II) PDA, which is intended to “coincide with commencement of Section 28 (1) PDHRTA” and will have immediate effect,<sup>10</sup> states that:

A planning authority shall not extend the appropriate period under this Section in relation to a permission if an environmental impact assessment or an appropriate assessment would be required in relation to the proposed extension.<sup>11</sup>

21. It contends that together these amendments 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 where the requirement for EIA and/or AA is “screened in” at the point of application for such an extension of duration.<sup>12</sup> It submits that, once the amendments to section 42 (1) PDA are in operation, where an EIA or AA would be required at the point of the application for an extension, the application must be refused and the developer would need to apply for planning permission, including the necessary EIA and/or AA procedures, which are subject to public participation.<sup>13</sup>

22. The Party concerned also reports on proposed amendments to the Planning and Development Regulations 2001 (PDR 2001), which it states will come into effect at the same time as the commencement of section 28 (1) PDHRTA.<sup>14</sup> It states that part 2, schedule 5 to the PDR 2001 transposes annex II of the EIA Directive<sup>15</sup> into national law but gives more specific details on development classes than that Directive. It submits that it intends to review the thresholds of some of the projects contained in part 2, schedule 5 to set revised upper national thresholds for mandatory EIA and lower thresholds below which no determination is required. Projects that fall between these thresholds require an EIA screening.<sup>16</sup>

23. Finally, the Party concerned reports that, in the light of the closure of construction activity since the onset of the COVID-19 pandemic, a temporary measure to permit the completion of projects the completion and/or commencement of which have been delayed as a result “is due to be commenced in the coming weeks”.<sup>17</sup> The temporary provision, section 42 (1B) PDA 2000, will allow applications for further extension of planning permissions which have already been extended under section 42 (1) or section 42 (1A), in circumstances where no further extension is permissible. Section 42 (1B) will provide that the planning authority shall further extend that period by an additional period of up to 2 years or until 31 December 2023, whichever occurs first, subject to the following conditions: the development has commenced, substantial works have been carried out; the extension is required to enable the development to be completed; and an EIA or AA would not be required in relation to the proposed extension.<sup>18</sup>

24. The Party concerned submits that section 42 (1B) will not constitute an alternative to securing an extension that meets the requirements of article 6 of the Convention. Rather, an

<sup>9</sup> Ibid., para. 8.

<sup>10</sup> Ibid., para. 9.

<sup>11</sup> Ibid., para. 10.

<sup>12</sup> Party’s progress report on implementing the Committee’s findings and recommendations on communication ACCC/C/2013/107, 1 October 2020, p. 2.

<sup>13</sup> Party’s comments on Committee’s draft report and on comments of observer, 21 July 2021, para. 20.

<sup>14</sup> Ibid., para. 13.

<sup>15</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 124, 25.4.2014.

<sup>16</sup> Party’s comments on Committee’s draft report and on comments of observer, 21 July 2021, para. 16.

<sup>17</sup> Ibid., para. 19.

<sup>18</sup> Ibid., paras. 19–26.

extension of duration under any of the avenues of section 42 PDA will not be permissible where the application would require an EIA or AA.<sup>19</sup>

25. The communicant provides several examples of projects that were granted extensions of duration under section 42 PDA in 2020 and 2021 and that he submits should have been subject to public participation, but, since the proposed amendment to section 42 has still not yet been commenced, were not.<sup>20</sup>

26. The communicant also submits that the amendment to section 42 should require that an extension of duration must be declined where there are issues of substantial non-compliance with the existing planning consent. He submits that non-compliant development should not be granted an extension under section 42.<sup>21</sup>

27. The observer Irish Environmental Network submits that section 28 (1) PDHRTA “if ever commenced” will not remedy the non-compliance found in the Committee’s findings on communication ACCC/C/2013/107.<sup>22</sup>

28. The observer points out 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.<sup>23</sup> It thus considers that the amendment proposed by the Party concerned (see para. 20 above) is too narrow.

29. The observer also reports that, as it had already indicated in its comments on the Committee’s draft findings,<sup>24</sup> a new temporary subsection 1A has been inserted into section 42 PDA. In summary, the new temporary subsection 1A, which was commenced on 9 August 2017, 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.<sup>25</sup> The observer claims that the Party concerned will therefore not commence section 28 PDHRTA until after 31 December 2021.<sup>26</sup>

30. Lastly, with respect to section 42 (1B) PDA, the observer expresses concern that this legislative amendment does not require the planning authority to check whether the original permission complied with EIA or AA requirements or that any intervening extensions did either. It considers it problematic that the need for EIA or AA appears to be considered only in respect of the proposed extension, but not the project as a whole. As for the amendment outlined in paragraph 20 above, the observer is concerned that, under section 42 (1B) activities not requiring EIA or AA but with a likely significant effect on the environment will not require public participation.<sup>27</sup> According to the observer, while section 42 (1B) is in effect, the changes proposed to the Committee by the Party concerned to fulfil the requirements of paragraph 95 of the Committee’s findings on communication ACCC/C/2013/107 would “in effect largely be set at nought...in a large number of instances”.<sup>28</sup>

31. 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

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<sup>19</sup> Party’s comments on Committee’s draft report and on comments of observer, 21 July 2021, paras. 21–22.

<sup>20</sup> Communicant’s comments on Committee’s draft report, 21 July 2021, paras. 3 and 5.

<sup>21</sup> *Ibid.*, para. 6.

<sup>22</sup> Additional information from observer Irish Environmental Network, 29 May 2021, p. 4.

<sup>23</sup> *Ibid.*, pp. 4–6.

<sup>24</sup> Comments on Committee’s draft findings from observer Irish Environmental Network, 14 August 2019, para. 18.

<sup>25</sup> Additional information from observer Irish Environmental Network, 29 May 2021, pp. 2–3.

<sup>26</sup> Comments on Committee’s draft findings from observer Irish Environmental Network, 14 August 2019, para. 18.

<sup>27</sup> Update from observer Irish Environmental Network, 6 July 2021, p. 4; Comments on Committee’s draft report from observer Irish Environmental Network, 21 July 2021, paras. 17–18.

<sup>28</sup> Update from observer Irish Environmental Network, 6 July 2021, p. 4.

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 amendments to section 42 (1) (a) PDA before it.

32. In this regard, the Committee makes clear that since the recommendations in its findings on communication ACCC/C/2013/107 concern section 42 (1) PDA, any legislative developments regarding that provision, including those outlined in paragraphs 19–24 and 28–30 above, are potentially within the scope of its follow-up on those findings.

33. As a first point, the Committee considers that the proposed new section 42 (1) (a) PDA would have the effect of no longer allowing the duration of permits to be extended for activities for which an EIA or AA was conducted, or should have been conducted, at the time the activity was originally permitted. As such, the Committee considers that the new section 42 (1) (a) of the PDA, once commenced, will mark significant progress.

34. However, the Committee expresses two reservations in this regard. First, 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. The Committee accordingly welcomes the proposed amendment by the Party concerned referred to in paragraph 20 above, which to the Committee would seem to be an important step towards addressing its concerns on this point. The Committee, however, invites the Party concerned to clarify if the proposed amendment in paragraph 20 above will apply only to extensions that in themselves would require an EIA and/or AA or to projects which, taken as a whole, would require an EIA and/or AA at the time of the application for extension.

35. Secondly, the Committee notes that, while there may be considerable overlap between those projects for which EIA and/or AA must be conducted under a Party's 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. The Committee is thus concerned that 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. The Committee thus takes note of the information provided by the Party concerned on the proposed amendments to the PDR 2001 (see para. 22 above) which the Committee understands would extend the scope of projects subject to EIA screening. The Committee invites the Party concerned to provide the text of the proposed amendments at an early point in the next intersessional period in order that it may assess the extent to which these amendments would address its concerns on this point.

36. The Committee invites the Party concerned, when deciding upon the measures through which it intends to fully implement the recommendations in paragraph 95 of the Committee's findings on communication ACCC/C/2013/107, to bear in mind the considerations in paragraphs 34 and 35 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.

37. 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.

#### **IV. Conclusions**

38. 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.

39. 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.

40. 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.

41. The Committee further recommends to the Meeting of the Parties that it request the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) 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 plan of action and the above recommendations;

(c) 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;

(d) 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.

## Part II

### **Progress by the Party concerned to implement the Committee's findings and recommendations on communication ACCC/C/2016/141 concerning the compliance of Ireland**

#### **I. 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.

#### **II. Summary of follow-up**

3. On 21 May 2020, the Party concerned provided an update on the measures it had by that date taken to address the Committee's findings and recommendations on communication ACCC/C/2016/141.

4. On 27 May 2021, the communicant of communication ACCC/C/2016/141 provided its comments on the Party concerned's update.

5. On 4 July 2021, 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. 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 by virtual means of the Party concerned, the communicant of communication ACCC/C/2016/141 and observers Irish Environmental Network and Mr. Steven Minch.

7. On 19 July 2021, the Party concerned, the communicant of communication ACCC/C/2016/141 and observer Irish Environmental Network each submitted comments on the Committee's draft report.

8. After taking into account the information received, the Committee finalized 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 in closed session. The Committee adopted its report through its electronic decision-making procedure on 26 July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicant.

#### **III. Consideration and evaluation by the Committee**

9. 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

10. 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.<sup>29</sup> The communicant expresses its dissatisfaction with the consultation process carried out by the Party concerned on the proposed reform of 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 claims that no proper access to the current legislation was provided, that the timeframes for access to the consultation documents were insufficient and that the consultation responses were not published for more than six weeks after the consultation had closed.<sup>30</sup> It provides a summary of the 33 responses received, including the 11 responses received from public authorities.<sup>31</sup>

11. 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.<sup>32</sup>

12. Observer Irish Environmental Network similarly expresses its disappointment regarding the quality of the consultation process carried out by the Party concerned on the proposed revision the AIE Regulations.<sup>33</sup> It also alleges wider failings regarding the management of environmental information held by public authorities, which it claims fails to meet the requirements of article 5 (1) (b) of the Convention.<sup>34</sup>

13. While taking note of the concerns raised by the communicant and observer regarding the consultation procedure on 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. Similarly, the observer's allegations regarding the way environmental information is held and made publicly available by public authorities in the Party concerned appears to relate rather to article 5 of the Convention, which is not within the scope of the Committee's review of its 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

14. 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 the Environment, Climate and Communications 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. In particular, it submits that the amendment is meant

<sup>29</sup> Communicant's comments on Party's update, 27 May 2021, p. 1.

<sup>30</sup> Ibid., p. 2.

<sup>31</sup> Communicant's update, 10 June 2021.

<sup>32</sup> Communicant's comments on Party's update, 27 May 2021, p. 3.

<sup>33</sup> Comments by observer Irish Environmental Network on Committee's draft report, 19 July 2021, paras. 26–27 and 43.

<sup>34</sup> Ibid., paras. 30–34.

“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’”.<sup>35</sup>

15. The Party concerned states that it welcomed the Committee’s offer to review the draft text of the proposed amendments and undertook to revert to the Committee once the amending regulations are at a more advanced stage.<sup>36</sup> It indicates that it is envisaged that the revised Regulations will be published before the end of 2021.<sup>37</sup>

16. The communicant of communication ACCC/C/2016/141 submits that the legislative review being carried out by the Party concerned appears to be aimed only at the OCEI. It claims 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 reactive” access to environmental information to the greatest possible extent, and thus to avoid administrative and judicial review entirely.<sup>38</sup>

17. 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.<sup>39</sup>

18. The communicant expresses its concern that the Party concerned’s response in relation to judicial remedies has already been decided without waiting for the results of the consultation and that, moreover, its response is inadequate. It considers that for the Party concerned to be compliant in relation to judicial remedies, court procedures will also need to be reformed.<sup>40</sup>

19. The communicant also expresses its disappointment that the Party concerned has not provided a time-frame for legislative reform, which it submits is unacceptable given that the Committee’s findings were concerned with timely remedies.<sup>41</sup>

20. Finally, the communicant voices its concern that legislative measures may not be sufficient to fulfil the requirements of paragraph 134 of the Committee’s findings on communication ACCC/C/2016/141. It contends that the Party concerned “could and should take immediate steps to ensure that the legislation in place at the moment is better implemented as a first step towards compliance”.<sup>42</sup>

21. Observer Irish Environmental Network likewise submits that the Party concerned’s approach, focussing exclusively on legislative and other regulatory measures, is overly narrow. It argues that a specification of timeliness or expeditiousness for the courts, or a specific timeframe for the OCEI, will not on their own lead to appeals being decided in a timely manner and submits that to implement “timely” procedures may require the consideration of the compatibility or lack thereof between AIE timescales and the timescales for participation or access to justice under the Convention.<sup>43</sup> Moreover, it contends that a comprehensive approach to reducing timescales would include taking steps to assist a speedier decision of appeals by the OCEI and the courts, to reduce the volume of AIE appeals arising, to provide greater resources to the OCEI and the courts, and to engage with public authorities to re-evaluate their position on requests that are under appeal. It further highlights

<sup>35</sup> Party concerned’s update, 21 May 2021, p. 1.

<sup>36</sup> *Ibid.*, p. 2.

<sup>37</sup> Party’s comments on the Committee’s draft report, 19 July 2021, para. 5.

<sup>38</sup> Communicant’s comments on Party’s update, 27 May 2021, p. 2.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 3.

<sup>42</sup> Communicant’s comments on Committee’s draft findings, 19 July 2021, p. 1.

<sup>43</sup> Comments on Committee’s draft findings by observer Irish Environmental Network, 19 July 2021, paras. 8–10.

a number of existing obligations under the AIE Regulations which it argues could already be focused on to assist the OCEI and the courts.<sup>44</sup>

22. The Committee welcomes the Party concerned's swift steps towards legislative reform. It also welcomes the Party concerned'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 findings on communication ACCC/C/2016/141.

23. In this regard, the Committee notes the Party concerned's statement that the revised AIE Regulations would be published "before the end of 2021". The Committee points out that if it is to provide a meaningful input on the proposed amendments, the Committee will need to receive the draft version of the revised regulations in due time before their adoption.

24. Not having been provided the draft text of any amendments yet, the Committee is not in a position to assess whether the proposed legislative amendments will meet the requirements of paragraph 134 of the Committee's findings on communication ACCC/C/2016/141. However, it underlines 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.

25. 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), meaning that there are mandatory directions put 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.

26. Lastly, the Committee makes clear that the fulfilment of its recommendations will require the Party to ensure paragraphs 134 (a) and (b) of the Committee's findings on communication ACCC/C/2016/141 will be fully met in practice. The Party concerned is thus invited to consider what, if any, additional measures or practical arrangements it may need to put in place to ensure the effectiveness in practice of its proposed legislative or regulatory reforms. In light of the foregoing, the Committee, while welcoming the swift efforts taken to date, 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.

## IV. Conclusions

27. 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.

28. The Committee, while welcoming the swift efforts taken to date, 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.

29. 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;

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<sup>44</sup> Ibid., paras. 12–13.

(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.

30. The Committee further recommends to the Meeting of the Parties that it request the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) 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 plan of action and the above recommendations;

(c) 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;

(d) 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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