

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/8i  
on compliance by Ireland with its  
obligations under the Convention**

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## **I. Introduction**

1. At its seventh session (Geneva, Switzerland, 18-21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/8i on compliance by Ireland with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

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

2. On 26 October 2022, the Party concerned provided an update concerning decision VII/8i.

3. At its seventy-third meeting (Geneva, 13–16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Representatives of the Party concerned, the communicant of communication ACCC/C/2016/141 and the observers the Irish Environmental Network and the Environmental Justice Network of Ireland took part in the open session.

4. On 7 February 2022, on the Committee's instructions, the secretariat sent an information note and a template for its plan of action to the Party concerned to assist it to prepare its plan of action.

5. At its seventy-fourth meeting (Geneva, 15-16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. Representatives of the Party concerned and one of the communicants of communication ACCC/C/2014/112 took part in the open session.

6. On 10 May 2022, the observers Ms. Mary Redmond and Mr. Jim Redmond submitted a letter.

7. On 30 June 2022, the Party concerned submitted its plan of action.

8. On 4 July 2022, the secretariat forwarded the Party concerned's plan of action to the communicants of communications ACCC/C/2013/107, ACCC/C/2014/112, ACCC/C/2016/141 and registered observers, inviting their comments by 1 August 2022.

9. On 14 July 2022, the Party concerned provided additional information.

10. On 4 August 2022, the observer the Irish Environmental Network provided its comments on the Party concerned's plan of action.

11. On 3 December 2022, the secretariat wrote to the Party concerned to inform it that, having reviewed its plan of action, the Committee had concluded that Ireland's plan of action appeared to be only partially appropriate. The Committee therefore invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13-16 December 2022) to discuss its plan of action.

12. On 7 December 2022, the secretariat wrote to the Party concerned, providing it with a summary of the Committee's concerns on its plan of action.

13. At its seventy-seventh meeting, the Committee held an open session to discuss the Party concerned's plan of action with the participation of the Party concerned, the communicant of communication ACCC/C/2016/141, and the observers the Irish Environmental Network and Mr. Stephen Minch.

14. On 1 September 2023, the Committee wrote to the Party concerned to remind it of the upcoming deadline of 1 October 2023 for it to submit its first progress report.

15. On 4 September 2023, the Party concerned forwarded to the Committee a letter from the communicant of communication ACCC/C/2016/141.

16. On 2 October 2023, the Party concerned submitted its first progress report on decision VII/8i.
17. On 24 November and 11 December 2023, the Party concerned submitted additional information.
18. On 11 December 2023, the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2013/107, ACCC/C/2014/112, ACCC/C/2016/141 and registered observers, inviting their comments by 15 January 2024.
19. On 14 January 2024, the communicant of communication ACCC/C/2016/141 submitted comments on the Party concerned's first progress report.
20. On 15 January 2024, the observer Mr. Stephen Minch submitted comments on the Party concerned's first progress report.
21. On 16 January 2024, the observer the Irish Environmental Network submitted comments on the Party concerned's first progress report.
22. On 1 February 2024, the communicant of communication ACCC/C/2016/141 provided an update.
23. At its eighty-second meeting (Geneva, 20-23 February 2024), the Committee prepared its first progress review on decision VII/8i and adopted it through its electronic decision-making procedure on 7 June 2024. The Committee thereafter requested the secretariat to forward the first progress review to Ireland, the communicants of communications ACCC/C/2013/107, ACCC/C/2014/112, ACCC/C/2016/141 and registered observers.

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

24. In order to fulfil the requirements of paragraph 4 of decision VII/8i, Ireland will need to provide the Committee with evidence that:
  - (a) With regard to section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000 it has taken:
    - (i) 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;
    - (ii) The necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in subparagraph (i) above;
  - (b) It has taken the necessary legislative or regulatory measures to ensure that:
    - (i) Appeals under the Access to Information on the Environment Regulations to the Office of the Commissioner for Environmental Information 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;
    - (ii) 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 Access to Information on the Environment Regulations, the underlying information request is thereafter resolved in an adequate and effective manner;
  - (c) The necessary legislative, regulatory, administrative and practical measures to ensure that:
    - (i) 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;

- (ii) Appeals under the Access to Information on the Environment Regulations to the Office of the Commissioner for Environmental Information (OCEI) are required to be decided in a timely manner, for instance by setting a specified deadline.

### **General observations**

25. The Committee appreciates the overall level of engagement demonstrated to date by the Party concerned in the follow-up on decision VII/8i.

26. The Committee however expresses its disappointment at the poor quality of the Party concerned's first progress report, including that:

- (a) The first progress report submitted on 2 October 2023 reports only on paragraph 4 (a) of decision VII/8i but not on paragraph 4 (b) or (c) of the decision at all;
- (b) The Party concerned has subsequently provided additional information regarding its implementation of paragraph 4 (b) (i) and (c) (ii) with respect to the timeliness of OCEI appeal decisions,<sup>1</sup> but has failed to provide the Committee with the full text of the proposed legislative measures, namely the draft revised European Communities (Access to Information on the Environment) Regulations 2007 – 2018 (AIE Regulations);
- (c) Neither in its first progress report or in its additional information provided on 24 November and 11 December 2023 has the Party concerned reported on its progress to implement paragraphs 4 (b) (i), with respect to the timeliness of court decisions on appeals under the AIE Regulations, or 4 (c) (i) of decision VII/8i.

27. The Committee reminds the Party concerned that, in order for the Committee to properly carry out the task requested of it by the Meeting of the Parties to review Parties' progress to implement the decisions of the Meeting of the Parties concerning their compliance, it is imperative that:

- (a) In its progress reports, the Party concerned provides clear, complete and up-to-date information on its progress to implement each of the recommendations in the decision;
- (b) Together with its progress reports, the Party concerned provides the full text of any legislative, regulatory, administrative measures that it has by that date taken to implement the recommendations in the decision.

### **Paragraph 4 (a) of decision VII/8i**

28. In order to fulfil the requirements of paragraph 4 (a) of decision VII/8i, the Party concerned will need to demonstrate to the Committee that, with regard to section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000, it has taken:

- (i) 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;
- (ii) The necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in subparagraph (i) above.

29. In its plan of action, the Party concerned has reported on amendments to section 42 of its Planning and Development Act 2000 and Chapter 3 and 3A of its Planning and Development Regulations 2001 which entered into force in September 2021.

30. In its summary of its concerns on the Party concerned's plan of action 7 December 2022, the Committee had informed the Party concerned that:

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<sup>1</sup> Party concerned's additional information, 24 November 2023.

Regarding paragraph 4 (a) of decision VII/8i, it is not clear to the Committee that the legislative developments that entered into force in September 2021 meet the requirements of that paragraph. For example, the relevant amendment of section 42 of the Planning and Development Act appears only to remove the possibility for automatic extension of permit duration for extensions that themselves would require an [environmental impact assessment (EIA)] or appropriate assessment (see section 42 (8) of the Planning and Development Act). However, article 6 (10) of the Convention is not limited only to reconsideration or updates that themselves require an EIA or appropriate assessment.<sup>2</sup>

31. In its first progress report, the Party concerned reports that, in December 2022, the Government published the Planning and Development Bill 2022 which, when enacted, will replace the Planning and Development Act 2000 in its entirety.<sup>3</sup>

32. In its additional information of 11 December 2023, the Party concerned reports that the Planning and Development Bill 2023 was initiated in the Irish Parliament (*Oireachtas*) on 22 November 2023. It states that Chapter 5 of Part 3 of the Planning and Development Bill 2023 addresses “Alterations, Extensions and Revocations” of permissions and will, when enacted, replace section 42 of the Planning and Development Act 2000.

33. The Party concerned states that the proposed definition of “material alteration” in section 133 of the 2023 Bill “includes an extension of duration which requires an environmental impact assessment or an appropriate assessment or which the deciding authority considers to be material”.<sup>4</sup>

34. The Party concerned also states that, during the 2023 Bill’s passage through the House, it is intended to bring forward amendments to: (a) ensure that multiple applications to extend the duration of a permission are prohibited; and (b) limit the term of an extension of duration which can be sought.<sup>5</sup>

35. The Committee notes that proposed section 133 of the Planning and Development Bill 2023 as initiated in the Irish Parliament on 22 November 2023 provides that:

“material alteration” means an alteration or extension of the duration of a permission requested under section 135–

- (a) that requires an appropriate assessment,
- (b) that requires an environmental impact assessment,
- (c) the request for which is accompanied by an environmental impact assessment or a Natura impact statement, or both, in respect of the alteration or extension, or
- (d) subject to subsection (2), that the deciding authority determines under subsection (4) of section 135 constitutes an alteration of the terms or extension of the duration of the permission that is otherwise material.<sup>6</sup>

36. Section 135 (2) provides:

Without prejudice to the generality of paragraph (d) of the definition of material alteration in subsection (1), the following matters shall not, for the purposes of that paragraph, be determined to constitute an alteration of the terms or extension of the duration of a permission that is otherwise material—

- (a) a correction of a clerical error in the permission,
- (b) an alteration of the terms of the permission for the purpose of facilitating the doing of a thing pursuant to the permission, where the doing of that thing may reasonably be regarded as having been contemplated by a particular term of the

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<sup>2</sup> Email to the Party concerned enclosing summary of Committee’s concerns on the Party concerned’s plan of action, 7 December 2022.

<sup>3</sup> Party concerned’s first progress report, 2 October 2023, pp. 1-2.

<sup>4</sup> Party concerned’s first progress report, 2 October 2023, pp. 1-2.

<sup>5</sup> Party concerned’s additional information, 11 December 2023, p. 2.

<sup>6</sup> Party concerned’s additional information, 11 December 2023, annex 1.

permission, or its terms as a whole, but was not expressly provided for in the permission,

(c) a clarification of the terms of the permission, or

(d) an alteration of the terms of the permission to facilitate its implementation or operation.

37. Section 135 (4) provides:

Where an alteration or extension requested under subsection (1) is not a material alteration within the meaning of paragraph (a), (b) or (c) of the definition of material alteration in section 133, the deciding authority shall, as soon as practicable after the making of the request, determine whether the alteration or extension is a material alteration within the meaning of paragraph (d) of that definition.

38. The Committee recalls that, in its findings on communication ACCC/C/2014/104 (Netherlands), it held:

The Committee considers that the permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to the permitted duration of an activity, be it a reduction or an extension, is a reconsideration or update of that activity's operating conditions.<sup>7</sup>

39. In its findings on communication ACCC/C/2014/104 (Netherlands), the Committee also held that:

Except in cases where a change to the permitted duration is for a minimal time and obviously would have insignificant or no effects on the environment, it is appropriate for extensions of duration to be subject to the provisions of article 6.<sup>8</sup>

40. In its findings on communication ACCC/C/2013/107 (Ireland), from which the recommendation in paragraph 4 (a) (i) stems, the Committee made clear that:

Save in exceptional circumstances such as an extension of only very minimal duration, when extending the duration of a permit subject to article 6, it is "appropriate", and thus required, to provide for public participation.<sup>9</sup>

41. In its advice to the Netherlands on paragraph 3 (a) of decision VII/8m, the Committee held that:

The Committee underlines that the application of article 6 (10) is by no means to be limited to situations where the relevant national legislation would require an environmental impact assessment to be carried out.<sup>10</sup>

42. The Committee points out that, as it already explained to the Party concerned in the Committee's summary of concerns on the Party concerned's plan of action, "article 6 (10) of the Convention is not limited only to reconsideration or updates that themselves require an EIA or appropriate assessment".<sup>11</sup>

43. In its advice to the Netherlands on paragraph 3 (a) of decision VII/8m, the Committee held that:

A further criterion for determining whether public participation is "appropriate", and thus required, may be whether there is significant public concern regarding the activity or the proposed reconsideration or update thereof.<sup>12</sup>

44. Based on its caselaw as set out in paragraphs 36 - 43 above, the Committee considers that there may be applications for extension of duration of permission for which public

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<sup>7</sup> ECE/MP.PP/C.1/2019/3, para. 65.

<sup>8</sup> ECE/MP.PP/C.1/2019/3, para. 71.

<sup>9</sup> ECE/MP.PP/C.1/2019/9, para. 90.

<sup>10</sup> Advice on paragraph 3 (a) of decisión VII/8m (Netherlands), 28 November 2023, para. 22.

<sup>11</sup> Email to the Party concerned enclosing summary of Committee's concerns on the Party concerned's plan of action, 7 December 2022.

<sup>12</sup> Advice on paragraph 3 (a) of decisión VII/8m (Netherlands), 28 November 2023, para. 31.

participation would be “appropriate” and thus required, but which would not be considered a “material alteration” under proposed section 133 of the 2023 Bill in its current form.

45. Similarly, given the vague and open-ended wording of subparagraphs (b) and (d) of proposed section 135 (2) of the 2023 Bill, the Committee is concerned that the exceptions in subparagraphs (b) and (d) could potentially be applied in practice to exclude from public participation some applications for extension of duration of permission for which public participation would in fact be “appropriate”, and thus required, under article 6 (10) of the Convention.

46. In line with its caselaw set out in paragraphs 36 - 43 above, when extending the duration of a permit subject to article 6 of the Convention, it is “appropriate”, and thus required, to provide for public participation unless the extension will be for a very minimal duration only. This means that an extension of the duration of a permit subject to article 6 for anything longer than a very minimal duration must be considered to be a “material alteration” for the purposes of proposed section 133 of the Planning and Development Bill 2023.

47. In the light of the above considerations, the Committee does not consider that, if enacted in their current form, proposed sections 133 and 135 (2) (b) and (d) of the Planning and Development Bill 2023 would fulfil the requirements of paragraph 4 (a) (i) of decision VII/8i.

48. Turning briefly to paragraph 4 (a) (ii) of decision VII/8i, the Committee notes that, in order to meet the recommendation in that paragraph, the Party concerned will need to demonstrate to the Committee that it has taken the necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in paragraph 4 (a) (i) of decision VII/8i. Since the measures proposed by the Party concerned to implement paragraph 4 (a) (i) of decision VII/8i are still in draft form, the Party concerned has not yet met the requirements of paragraph 4 (a) (ii) of decision VII/8i either.

49. Based on the foregoing, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 4 (a) (i) and (ii) of decision VII/8i.

50. The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the texts of all legislative, regulatory, administrative or other measures it has by that date taken to implement paragraph 4 (a) (i) and (ii) of decision VII/8i, and to explain in its final progress report how those measures fulfil the requirements of that paragraph.

#### **Paragraph 4 (b) (i) and (c) (ii) of decision VII/8i**

51. In order to fulfil the requirements of paragraph 4 (b) (i) of decision VII/8i, the Party concerned will need to demonstrate to the Committee that it has taken the necessary legislative or regulatory measures to ensure that:

Appeals under the Access to Information on the Environment Regulations to the Office of the Commissioner for Environmental Information 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;

52. In order to fulfil the requirements of paragraph 4 (c) (ii) of decision VII/8i, the Party concerned will need to demonstrate to the Committee that it has taken the necessary legislative, regulatory, administrative and practical measures to ensure that:

Appeals under the Access to Information on the Environment Regulations to the Office of the Commissioner for Environmental Information are required to be decided in a timely manner, for instance by setting a specified deadline.

53. The recommendation in paragraph 4 (b) (i) stems from the recommendation in paragraph 134 (a) of the Committee’s findings on communication ACCC/C/2016/141 (Ireland).<sup>13</sup> The recommendation in paragraph 4 (c) (ii) stems from the recommendation in

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<sup>13</sup> ECE/MP.PP/C.1/2021/8.

paragraph 167 (b) of the Committee’s findings on communication ACCC/C/2014/112 (Ireland).<sup>14</sup> Given the overlapping content of the two recommendations with respect to the timeliness of OCEI appeal decisions, in the present progress review the Committee examines the progress made by the Party concerned to implement these recommendations together.

#### *Appeals to the OCEI*

54. In its plan of action, the Party concerned states that, in order to address the recommendation in paragraph 4 (b) (i) regarding the timeliness of OCEI appeal decisions, it proposed to: “revise the current [AIE Regulations] to include a specified deadline within which the Office of the Commissioner for Environmental Information must issue a decision.”<sup>15</sup>

55. In its first progress report, the Party concerned does not report on its progress to implement paragraphs 4 (b) (i) or (c) (ii) of decision VII/8i with respect to OCEI appeal decisions.<sup>16</sup>

56. However, in its additional information of 24 November 2023, the Party concerned states that proposed regulation 10 (8) (a) of the draft revised AIE Regulations is intended to address paragraph 4 (b) (i) of decision VII/8i.

#### Proposed regulation 10 (8) (a)

57. Proposed regulation 10 (8) (a) of the draft revised AIE Regulations provides:

A decision by the Commissioner under paragraph (5) shall be made in a timely manner and, insofar as practicable, not later than four months after the date of receipt by the Commissioner of the application for the review concerned.

58. With respect to the proposed four-month timeframe for the OCEI to decide appeals under the AIE Regulations, the Committee points out that timeliness is of particular importance in environmental information cases since the requested information may often be needed to exercise other rights under the Convention, such as public participation under articles 6, 7 or 8 or to challenge a particular act or decision under article 9. Given the foregoing, the Committee considers that setting a timeframe of “not later than four months” after the date of receipt of the application for review for the OCEI to make a decision does not ensure that such appeals are required to be decided in a timely manner.

59. Furthermore, the Committee considers that the phrase “in so far as is practicable” in proposed regulation 10 (8) (a) is so open-ended as to allow the Commissioner to delay his or her decision unduly when that may not be warranted. The Committee therefore considers that the words “in so far as is practicable” should be deleted in their entirety.

#### Proposed regulation 10 (8) (b)

60. In its comments on the Party concerned’s first progress report, the communicant of communication ACCC/C/2016/141 states that:

It is...regrettable that Ireland has not provided the Compliance Committee with the full text of the proposed AIE Regulations since key provisions have been omitted from the progress report. For example, proposed Regulation 10 (8) (b) provides for a suspension of the timeliness requirement while the Commissioner has requested a statement of reasons from the public authority, proposed an amicable settlement or has requested further information. This is contrary to Article 9 (4) and to the Compliance Committee’s recommendations and findings which envisage timeliness as an overarching requirement for Article 9 procedures.<sup>17</sup>

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<sup>14</sup> ECE/MP.PP/C.1/2021/17.

<sup>15</sup> Party concerned’s plan of action, 30 June 2022, p. 5.

<sup>16</sup> Party concerned’s first progress report, 2 October 2023.

<sup>17</sup> Comments on Party concerned’s first progress report by the communicant of communication ACCC/C/2016/141, 14 January 2024, pp. 8-9.



61. The Committee expresses disappointment that the Party concerned has failed to provide the full text of the draft revised AIE Regulations with its first progress report, and that it has instead been the communicant of communication ACCC/C/2016/141 that helpfully has provided that text to the Committee.<sup>18</sup> The Committee reminds the Party concerned that, in order to properly perform its task to review the progress by Parties to implement the decisions of the Meeting of the Parties concerning their compliance, it is essential that the Committee be provided with the full text of all relevant measures by then already taken or proposed to implement the recommendations in the decision.

62. Having reviewed the text of the draft revised AIE Regulations provided by the communicant of communication ACCC/C/2016/141, the Committee notes that regulation 10 (8) (b) provides that:

- (b) The timeline in paragraph (8) (a) shall be suspended—
  - (i) where paragraph (3) applies, until such time as the public authority complies with the direction under paragraph (3) (a),
  - (ii) where paragraph (4) applies, or
  - (iii) where further information is requested by the Commissioner from the applicant or a third party to the appeal, until such time as the information requested is provided.

63. From the proposed wording of regulation 10 (8) (b), it is unclear to the Committee whether the suspension of the “timeline in paragraph (8) (a)” refers only to the suspension of the four-month timeframe in proposed regulation 10 (8) (a), or also of the requirement that the decision “shall be made in a timely manner”.

64. The Committee considers that the suspension, for any reason, of the requirement in proposed regulation 10 (8) (a) that the decision “shall be made in a timely manner” would not meet the obligation in article 9 (4) of the Convention to ensure a timely procedure. The Committee underlines that the requirement that the decision be taken in a timely manner is an overarching obligation in article 9 (4) which applies to every OCEI appeal. The Committee reiterates that timeliness is of particular importance in environmental information cases since the requested information may often be needed to exercise other rights under the Convention, such as public participation under articles 6, 7 or 8 or to challenge a particular act or decision under article 9. The Committee therefore makes clear that the requirement in proposed regulation 10 (8) (a) that the decision “shall be made in a timely manner” must apply to every OCEI appeal.

65. With respect to the circumstances listed in regulation 10 (8) (b) (i)-(iii), the Committee cannot see any grounds for why the timeframe set in regulation 10 (8) (a) should be suspended in these cases. The Committee therefore considers that regulation 10 (8) (b) should be deleted in its entirety.

66. In the light of the above, the Committee considers that, as currently drafted, proposed regulation 10 (8) (a) and (b) are not in line with the requirements of paragraphs 4 (b) (i) and (c) (ii) of decision VII/8i and should be amended as set out in paragraphs 58 - 65 above.

67. The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the texts of all legislative, regulatory, administrative or other measures it has by that date taken to implement paragraphs 4 (b) (i) and (c) (ii) of decision VII/8i with regard to the timeliness of court decisions on appeals under the AIE Regulations.

#### *Appeals to the courts*

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<sup>18</sup> Comments on Party concerned’s first progress report by the communicant of communication ACCC/C/2016/141, 14 January 2024, annex 1.

68. In its plan of action, the Party concerned referred only to the measures it proposed to take with respect to the timeliness of OCEI appeal decisions, but not the timeliness of decisions on appeals under the AIE Regulations to the courts.

69. Neither has the Party concerned reported on its progress to implement paragraph 4 (b) (i) of decision VII/8i with respect to court decisions on appeals under the AIE Regulations in either its first progress report<sup>19</sup> or in the additional information it has provided since then.<sup>20</sup>

70. The Committee expresses its disappointment that the Party concerned has failed to report on an essential element of the recommendation made by the Meeting of the Parties in paragraph 4 (b) (i) of decision VII/8i.

71. Moreover, based on the comments on the Party concerned's first progress report by the observers Mr. Stephen Minch<sup>21</sup> and the Irish Environmental Network,<sup>22</sup> it appears that the Party concerned has to date failed to take, or propose, any measures to address the timeliness of appeals under the AIE Regulations to the courts.

72. Accordingly, the Committee considers that the Party concerned has not demonstrated that it has made any progress in implementing the requirement of paragraph 4 (b) (i) of decision VII/8i with respect to the timeliness of court decisions on appeals under the AIE Regulations.

73. The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the texts of all legislative, regulatory, administrative or other measures it has by that date taken to implement paragraphs 4 (b) (i) of decision VII/8i with regard to the timeliness of court decisions on appeals under the AIE Regulations.

#### **Paragraph 4 (b) (ii) of decision VII/8i**

74. In order to fulfil the requirements of paragraph 4 (b) (ii) of decision VII/8i, the Party concerned will need to demonstrate to the Committee that it has taken the necessary legislative or regulatory measures to ensure 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 Access to Information on the Environment Regulations, the underlying information request is thereafter resolved in an adequate and effective manner;

75. In its plan of action, the Party concerned stated that it proposed to fulfil the recommendation by revising the AIE Regulations to include a requirement that "public authorities shall comply with any order of the court requiring the requested information to be issued to the person making the request."<sup>23</sup>

76. In its summary of its concerns dated 7 December 2022 on the Party concerned's plan of action, the Committee informed the Party concerned that:

With respect to paragraph 4 (b) of decision VII/8i, the Committee points out that this recommendation stems from the Committee's finding in paragraph 133 (b) of its findings on communication ACCC/C/2016/141 (Ireland) that, "by maintaining a system whereby courts may rule that information requests fall within the scope of the AIE Regulations without issuing any directions for their adequate and effective resolution thereafter, the Party concerned fails to comply with the requirement in article 9 (4) of the Convention to ensure adequate and effective remedies for the review of environmental information requests." The issue to be addressed through paragraph 4 (b) of decision VII/8i is therefore that the courts, having determined that an information request falls within the scope of the AIE regulations, fail to make any

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<sup>19</sup> Party concerned's first progress report, 2 October 2023.

<sup>20</sup> Party concerned's additional information of 24 November and 11 December 2023.

<sup>21</sup> Comments on Party concerned's first progress report by the observer Mr. Stephen Minch, 15 January 2024, p. 9.

<sup>22</sup> Comments on Party concerned's first progress report by the observer the Irish Environmental Network, 16 January 2024, p. 12.

<sup>23</sup> Party concerned's plan of action, 30 June 2022, p. 6.

orders for the adequate and effective resolution of the information request, and not that public authorities fail to comply with such court orders.<sup>24</sup>

77. In its first progress report, the Party concerned does not report on its progress in implementing paragraph 4 (b) (ii).<sup>25</sup> However, in its additional information submitted on 24 November 2023, the Party concerned states that, in order to address the recommendation in paragraph 4 (b) (ii), proposed regulation 11 (5) of the draft revised AIE Regulations provides:

Public authorities shall comply with any order of a court requiring information to be issued to the person making the request concerned.

78. In the light of the wording of proposed regulation 11 (5), it would appear that the Party concerned has failed to have regard to the clarification provided by the Committee in its summary of concerns on the Party concerned's plan of action (see underlined text in para. 76 above).

79. Despite the Committee's clarification in its summary of concerns on the plan of action, proposed regulation 11 (5) only includes a requirement for public authorities to comply with an order of a court if an order is in fact made. The Party concerned has not put before the Committee any provision of the draft revised AIE Regulations that would address the finding of non-compliance in paragraph 133 (b) of the findings on communication ACCC/C/2016/141 (Ireland) (see para. 76 above).

80. In its comments on the Party concerned's first progress report, the observer the Irish Environmental Network notes that proposed regulation 11 (4) of the draft revised AIE Regulations may go some way to address the recommendation in 4 (b) (ii) of decision VII/8i.

81. While welcoming this information, the Committee expresses its disappointment that the Party concerned has not itself brought proposed regulation 11 (4) to the Committee's attention.

82. Proposed regulation 11 (4) provides:

In an appeal under this Regulation to the High Court or, on appeal from that Court, the Court of Appeal or the Supreme Court, the court shall, where appropriate, specify the period within which effect shall be given to its order and may include such other matters as the court thinks appropriate to ensure the provision of an adequate and effective remedy.

83. The Committee considers that, in the light of the concerns set out in paragraphs 84 - 89 below, proposed regulation 11 (4), in its current form, would not fulfil paragraph 4 (b) (ii) of decision VII/8i. However, if regulation 11 (4) is revised to address the concerns below, it might do so.

84. As currently drafted, proposed regulation 11 (4) requires the court "where appropriate" to specify the period within which effect shall be given to its order and "may include" such other matters as the court thinks appropriate to ensure the provision of an adequate and effective remedy.

*"Where appropriate"*

85. Proposed regulation 11 (4) leaves it entirely to the court's discretion to decide when it would be "appropriate" to specify the period within which effect shall be given to its order. However, there is no requirement that, should the court rule that a public authority or an information request falls within the scope of the Access to Information on the Environment Regulations, the court must make an order at all.

86. In order to fulfil paragraph 4 (b) (ii) of decision VII/8i, the Party concerned will need to put "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 Access to Information on the

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<sup>24</sup> Email to the Party concerned enclosing summary of Committee's concerns on the Party concerned's plan of action, 7 December 2022 (emphasis added).

<sup>25</sup> Party concerned's first progress report, 2 October 2023.

Environment Regulations, the underlying information request is thereafter resolved in an adequate and effective manner.

*“may include”*

87. As currently drafted, proposed regulation 11 (4) provides that the court “may include” in its order such other matters as the court thinks appropriate to ensure the provision of an adequate and effective remedy.

88. As explained in paragraph 86 above, paragraph 4 (b) (ii) of decision VII/8i requires the Party concerned to put “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 Access to Information on the Environment Regulations, the underlying information request is thereafter resolved in an adequate and effective manner.

89. The Committee considers that “may” in proposed regulation 11 (4) should therefore be replaced by “shall” in order to be a mandatory direction, in line with the recommendation in paragraph 4 (b) (ii).

90. Consequently, while welcoming the progress made in that direction, the Committee considers that the Party concerned has not demonstrated that it has met the requirement of paragraph 4 (b) (ii) of decision VII/8i.

91. The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the texts of all legislative, regulatory, administrative or other measures it has by that date taken to implement paragraphs 4 (b) (ii) of decision VII/8i.

#### **Paragraph 4 (c) (i) of decision VII/8i**

92. In order to fulfil the requirements of paragraph 4 (c) (i) of decision VII/8i, the Party concerned will need to demonstrate to the Committee that it has taken the necessary legislative, regulatory, administrative and practical measures to ensure that:

(i) 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.

93. In its plan of action, the Party concerned stated, inter alia, that:

Once the amendments to the AIE Regulations are finalised the Department intends to revise the current AIE Ministerial Guidelines to reflect the amended Regulations, recent case law, the definition of environmental information and, in particular, access to cost benefit studies.<sup>26</sup>

94. In its summary of its concerns on the Party concerned’s plan of action 7 December 2022, the Committee informed the Party concerned that:

Regarding paragraph 4 (c) (i) of decision VII/8i, Ireland’s plan of action indicates that the Party concerned proposes to address this recommendation, inter alia, through a revision to the AIE Ministerial Guidelines. In order to be in a position to ascertain the extent to which such a revision will fulfil paragraph 4 (c) (i), the Committee looks forward to receive information on the extent to which the AIE Ministerial Guidelines are in fact widely used by public authorities handling access to environmental information requests in practice. It will also be important for the Party concerned to carry out awareness-raising and training for public authorities on the revised Ministerial Guidelines once issued.<sup>27</sup>

95. The Committee therefore expresses its disappointment that the Party concerned has failed to report on its progress to implement paragraph 4 (c) (i) of decision VII/8i. Neither in its first progress report, submitted on 2 October 2023, nor in its additional information of 24

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<sup>26</sup> Party concerned’s plan of action, 30 June 2022, p. 8.

<sup>27</sup> Email to the Party concerned enclosing summary of Committee’s concerns on the Party concerned’s plan of action, 7 December 2022.

November and 11 December 2023, has the Party concerned made any reference to any measures it has taken to implement paragraph 4 (c) (i).

96. Based on the foregoing, the Committee considers that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 4 (c) (i) of decision VII/8i.

97. The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the texts of all legislative, regulatory, administrative or other measures it has by that date taken to implement paragraphs 4 (c) (i) of decision VII/8i.

## **IV. Conclusions**

98. The Committee appreciates the overall level of engagement demonstrated to date by the Party concerned in the follow-up on decision VII/8i, while expressing its disappointment at the poor quality of the Party concerned's first progress report.

99. The Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 4 (a) (i) and (ii) of decision VII/8i.

100. The Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 4 (b) (i) or (c) (ii) of decision VII/8i with respect to the timeliness of appeals under the AIE Regulations to the OCEI.

101. The Committee considers that the Party concerned has not demonstrated that it has made any progress to implement the requirements of paragraph 4 (b) (i) of decision VII/8i with respect to the timeliness of appeals under the AIE Regulations to the courts.

102. While welcoming the progress made in that direction, the Committee considers that the Party concerned has not demonstrated that it has met the requirement of 4 (b) (ii) of decision VII/8i.

103. The Committee considers that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 4 (c) (i) of decision VII/8i.

104. The Committee requests the Party concerned, together with its final progress report due on 1 October 2024, to provide the texts of all legislative, regulatory, administrative or other measures it has by that date taken to implement paragraphs 4 (a) (i) and (ii), (b) (i) and (ii) and (c) (i) and (ii) of decision VII/8i and to explain in its final progress report how those measures fulfil the recommendations in the decision.

105. The Committee reminds the Party concerned that all measures necessary to implement decision VII/8i must be completed by, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/8i.

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