

Supplementary Information to the Aarhus Convention Compliance Committee

Communication: NRTG v Ireland (filed 2 March 2026) From: Gareth O'Brien BE (Civil) MSc, North Runway Technical Group Date: [21 March 2026] To: Aarhus Convention Compliance Committee Secretariat (aarhus.compliance@un.org)

Dear Secretariat,

I write to supplement the communication filed on 2 March 2026 concerning Ireland's compliance with the Aarhus Convention at Dublin Airport. Three developments since the filing date materially strengthen the communication, particularly on Article 9 (access to justice) and Article 6 (public participation).

1. Ombudsman batch closure: five complainants, zero remedies (Article 9)

On 19 and 20 March 2026, the Office of the Ombudsman issued decisions on all five open complaints concerning Fingal County Council's failure to enforce Condition 1 of the North Runway planning permission (F04A/1755). All five declined to uphold and all directed the complainants to the High Court under s.160 of the Planning and Development Act 2000 as the sole remaining remedy. The five decisions are:

- OMB-158504-Q7T9Q4 (O'Brien, 19 March)
- OMB-161923-C6V2Y1 (Delaney, 19 March)
- OMB-163150-M3X3H8 (Keary, 19 March)
- OMB-163201-G2R6Z9 (Cassidy, 19 March)
- OMB-163238-T4F1H0 (Stamford, 20 March)

The decisions are substantively identical. The key findings relevant to this communication are:

- (a) The Council argued, and the Ombudsman accepted as reasonable, that Condition 1 may not regulate the ongoing use of the airport at all, citing *Diamrem Limited v Cliffs of Moher Visitors' Centre* [2021] IECA 291 and *Leitrim County Council v Dromaprop Ltd* [2024] IEHC 233. Neither case addresses the question before the Council: *Diamrem* concerned the s.160(6)(b) time-bar exception, and *Dromaprop* concerned exempted development under Article 9(1)(a)(i) of the Planning Regulations. Neither applies to the North Runway facts. The Council's legal position is identical to that of the airport operator, daa, whose interim CEO told the Oireachtas in January 2023 that "the actual flight paths, whether they are the deviated or the original, are not a factor of our planning permission."
- (b) The Council told the Ombudsman it has no obligation to provide periodic updates to complainants during an enforcement investigation.
- (c) The Council has now been given a further 6 months (approximately until September 2026) to make a decision on enforcement. The Warning Letter was issued in September 2022: the total period will exceed four years.

- (d) The Ombudsman explicitly acknowledged its own limitations: it “cannot direct a planning authority to take any particular enforcement action” and its recommendations are “not legally binding.”

The chronological sequence across 18 and 19 March is striking:

- On 18 March, the Minister for Transport answered a parliamentary question (PQ 363/26) stating that “enforcement of planning conditions is a matter for” the planning authority, Fingal County Council.
- On 18 March, affected communities told the Oireachtas committee that Fingal has not enforced in over 180 weeks.
- Throughout the investigation, Fingal maintained that Condition 1 may not cover flight paths at all, and that it questions whether there is a legal basis for enforcement.
- On 19 and 20 March, the Ombudsman found this position “not unreasonable” and closed every open complaint, directing all five complainants to the High Court.

The Minister points to Fingal. Fingal questions whether it can act. The Ombudsman says that position is not unreasonable. No institution points to the 30,000 residents under the flight paths.

The simultaneous closure of every administrative complaint confirms, beyond what was alleged in the original communication (paragraphs 109 to 127), that no functioning administrative remedy exists for any affected resident. Every complainant has been directed to a single remedy: the High Court. As set out in the communication (paragraph 103), the cost of a s.160 application is approximately EUR 10,000 per day, against a developer with unlimited litigation resources and a statutory liability shield for the regulator (IAA). This does not constitute an adequate and effective remedy within the meaning of Article 9(4) of the Convention.

The five Ombudsman decisions are annexed.

2. State confirmation of Article 6 failure on the Oireachtas record

On 4 March 2026, the Department of Transport appeared before the Joint Oireachtas Committee on Transport for pre-legislative scrutiny of the Dublin Airport (Passenger Capacity) Bill 2026. The following confirmations are on the official Oireachtas record:

- (a) The Department’s Assistant Secretary for Aviation, Ethna Brogan, confirmed that “there was an acknowledgement that the flight paths, the initial SIDs, as they’re called, Standard Instrument Departures, were not those that had been consulted on previously.” This is a state admission that the routes actually flown were never consulted on, corroborating the Article 6 allegation at paragraphs 85 to 95 of the communication.
- (b) When asked who monitors whether the actual flight paths comply with the planning permission, no body in the State accepted responsibility. The Department redirected to ANCA’s noise monitoring; the Committee member replied: “But that’s only for noise. So that’s still not giving us whether there’s adherence to the flight path that the planning permission was granted for.” The question was not

answered. This circular referral of compliance responsibility was demonstrated on the public record.

- (c) The Committee Chair, a member of the governing party, read the complainant's enforcement summary into the Oireachtas record and characterised it as "a persistent pattern that any attempt by Fingal County Council or indeed any public body to enforce a lawful constraint, a planning condition, on Dublin Airport faces litigation, lobbying or legislation to override it." The underlying evidence was drawn from the complainant's submission, but the characterisation and the decision to place it on the official record were the Chair's own. This is consistent with the enforcement-blocked pattern alleged in the communication (paragraphs 30 to 34).

On 18 March 2026, affected communities gave evidence to the same committee. The testimony, given under Oireachtas privilege, includes:

- (d) Confirmation that the original flight paths would have newly affected 538 homes, while the flight paths actually operated newly affect 8,050 homes: a fifteen-fold increase in the number of newly affected residents, none of whom were consulted or assessed.
- (e) Evidence that ANCA has documented a 343% increase in population exposed to 55 dB Lnight since 2019 and has taken zero enforcement actions in five years.
- (f) Evidence that ANCA is now reviewing the noise action criterion itself, raising concerns that the standard may be removed rather than enforced.

Both committee transcripts are publicly accessible official records of the Oireachtas.

3. The Passenger Capacity Bill: prospective elimination of future remedies

The original communication (paragraphs 42 to 49) described the Dublin Airport (Passenger Capacity) Bill 2026. Since filing, the following has occurred:

- (a) Airlines for America filed a supplemental response with the US Department of Transportation on 20 February 2026 (Docket DOT-OST-2026-0067-0011) explicitly urging that Ireland enact the legislation "by the end of April 2026" to render the CJEU reference in Case C-857/24 moot before a binding ruling can be delivered.
- (b) The European Commission issued Decision C(2026) 919 on 10 February 2026 finding Ireland's noise restriction process at Dublin Airport non-compliant with Regulation 598/2014. The Bill would remove operating restrictions without any assessment under that Regulation.
- (c) The Bill proceeds through the Oireachtas despite a formal complaint to the European Commission (CPLT(2026)00881, DG Environment lead) alleging breaches of six EU instruments, and despite the AG Opinion in C-857/24 supporting the very restrictions the Bill would abolish.
- (d) On 18 March 2026, the Minister for Transport answered parliamentary questions confirming:

- “Ongoing engagement with the US Department of Transportation (USDOT), Airlines for America (A4A) and the US Ambassador Edward S. Walsh over the last year,” including “in person meetings and written correspondence” (PQ 361/26). The communication alleged external pressure on the legislative timetable (paragraphs 39 to 41); the Minister has now confirmed that pressure on the Oireachtas record.
- Awareness of the Commission complaint, with no commitment to await the Commission’s assessment before proceeding: “It is my intention to introduce the legislation into the Oireachtas as soon as possible” (PQ 362/26).
- That daa has abandoned the flight path review it indicated since June 2023: “it is not daa’s intention to embark on a flightpath review at this time” (PQ 363/26). The routes that were never assessed under the EIS will remain in place indefinitely.

The Minister’s answer to PQ 363/26 also confirmed the circular referral of compliance responsibility that was demonstrated at the 4 March committee session: daa is responsible for design, AirNav Ireland for maintenance, IAA for safety, ANCA for noise, and Fingal for planning enforcement. No single body is responsible for ensuring that the routes flown correspond to those assessed.

The Bill’s elimination of Court of Appeal appeal rights (Head 11(17)) and the Minister’s power to revoke planning conditions (Head 4(6)) would prospectively reduce access to justice below the already inadequate level documented in this communication.

4. Noise competent authority response to documented non-compliance (Article 3(1))

ANCA’s own Noise Mitigation Effectiveness Review Report for 2024 (published annually under the Aircraft Noise (Dublin Airport) Regulation Act 2019) documents a 343% increase in population exposed to aircraft noise above 55 dB Lnight, from 1,533 people in 2019 to 6,791 in 2024 (Table 2, page 23). The Noise Abatement Objective for Dublin Airport requires this number to be reduced: by 30% by 2030, 40% by 2035, and 50% by 2040.

The report identifies the cause: “there has been a redistribution of aircraft activity that varied the locations affected” (page 28). The noise contour area barely changed (18.6 to 19.0 sq km, +2%), but the contour shifted northward over populated areas of East Meath that were never within the noise footprint before the route change.

The report does not recommend enforcement action, route correction, or any measure to address the 343% increase. Instead, it states (page 32):

“The process of assessment also requires review of the NAO to ensure that it remains an effective instrument for the management of the harmful aspects of aircraft noise.”

The report further frames the failure as a baseline problem rather than an enforcement problem: “The current NAO is benchmarked against 2019 data and utilises forecasts that predate the operational use of the north runway” (page 18).

This concern was raised on the Oireachtas record on 18 March 2026 by Liam O’Grady of the St Margaret’s the Ward Residents Group, who testified that ANCA’s ongoing review

of the noise abatement objective may result in removal of the 55 dB Night criterion rather than enforcement of the breach.

This is relevant to Article 3(1) of the Convention, which requires each Party to maintain a clear, transparent, and consistent framework for implementing the Convention's provisions. A competent authority that documents a 343% non-compliance with its own objective and responds by reviewing the objective rather than enforcing it does not provide the transparent and consistent framework that Article 3(1) requires.

Summary

The position since 2 March has moved from alleged to confirmed:

- Article 9: five Ombudsman decisions confirm that no administrative remedy exists; the sole remaining route is prohibitively expensive litigation against a developer with unlimited resources
- Article 6: the State's own officials have confirmed on the Oireachtas record that communities were not consulted on the routes actually flown, and that no body monitors flight path compliance with the planning permission
- Article 3(1): the noise competent authority's own data documents 343% non-compliance with its noise abatement objective; its response is to review the objective rather than enforce the breach
- Article 3: the Bill advancing through the Oireachtas would prospectively eliminate future remedies and override environmental constraints without assessment

I respectfully request that the Committee consider this supplementary information alongside the original communication and 69 annexes.

Annexes to this supplementary

- Annex 1: Ombudsman Decision OMB-158504-Q7T9Q4 (O'Brien), 19 March 2026
- Annex 2: Ombudsman Decision OMB-161923-C6V2Y1 (Delaney), 19 March 2026
- Annex 3: Ombudsman Decision OMB-163150-M3X3H8 (Keary), 19 March 2026
- Annex 4: Ombudsman Decision OMB-163201-G2R6Z9 (Cassidy), 19 March 2026
- Annex 5: Ombudsman Decision OMB-163238-T4F1H0 (Stamford), 20 March 2026
- Annex 6: Dáil written answers to PQs 361/26, 362/26, 363/26, 18 March 2026 (available at oireachtas.ie)
- Annex 7: ANCA Noise Mitigation Effectiveness Review Report for 2024 (Table 2, pages 23 and 28-32)
- Annex 8: Official transcript, Joint Committee on Transport, 18 March 2026 (community evidence session)
- Annex 9: Official transcript, Joint Committee on Transport, 4 March 2026 (Department of Transport session)

Kind regards,

– Gareth O'Brien BE (Civil) MSc North Runway Technical Group 24 White Ash Park, Ashbourne, County Meath

gareth.obrien@dublin-north-runway.com www.dublin-north-runway.com