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## **Supplementary Information #4 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: 29 April 2026 To: Aarhus Convention Compliance Committee Secretariat (aarhus.compliance@un.org)

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Dear Secretariat,

I write to file supplementary #4 to the communication filed on 2 March 2026 concerning Ireland's compliance with the Aarhus Convention at Dublin Airport.

This supplementary addresses four structural features of Ireland's institutional framework relevant to the Committee's assessment of Convention compliance. First, the same Minister holds responsibility for both aviation growth and environmental protection. Second, the broadcasting regulator has not acted on complaints about false claims broadcast nationally for eight months. Third, the State characterises the airport operator in mutually incompatible ways across contemporaneous proceedings, with each characterisation excluding a different Convention-relevant domestic mechanism from operating on it. Fourth, the lowest-friction domestic information-access route, a precision parliamentary question on the environmental decision-making procedures this communication concerns, returned the chronology of an unrelated proceeding in answer.

### **1. Structural conflict: Transport and Environment under one Minister**

Since January 2025, the Minister for Transport is also the Minister for Climate, Environment and Energy. At Dublin Airport, this means:

- (a) The Minister responsible for ensuring Ireland's compliance with the Environmental Noise Directive (2002/49/EC), the EIA Directive (2011/92/EU), and Regulation (EU) 598/2014 (Balanced Approach) is the same Minister who brought the Dublin Airport (Passenger Capacity) Bill 2026 to Cabinet. That Bill would permanently remove the only enforceable constraint on airport growth.
- (b) The Minister responsible for Ireland's obligations under the Climate Action Act is the same Minister promoting legislation that, at Head 12, exempts itself from that Act.
- (c) The Minister to whom ANCA (the Aircraft Noise Competent Authority) reports on noise regulation is the same Minister whose Department is facilitating the removal of the conditions under which noise was assessed.

The European Commission has already found Ireland non-compliant with Regulation (EU) 598/2014 (Decision C(2026) 919, 10 February 2026). The Advocate General's Opinion in Case C-857/24 (12 February 2026) found that a passenger cap is a valid operational constraint,

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directly contradicting the policy premise of the Bill. The Minister now defends Ireland's environmental compliance before the Commission while promoting legislation that the Commission has signalled is non-compliant and the CJEU's Advocate General has found unnecessary.

This structural conflict is relevant to the Committee's assessment under Articles 3(1), 6 and 9. If the domestic authority responsible for environmental protection is structurally aligned with the interests it is supposed to regulate, the "clear, transparent and consistent framework" required by Article 3(1) cannot function. The access to justice required by Article 9 becomes theoretical when the authority that should be enforcing environmental obligations is the same authority seeking to remove them.

## **2. Broadcasting regulator: false claims uncorrected for eight months**

On 10 and 16 July 2025, Newstalk (a national radio broadcaster) broadcast two segments containing false claims about Dublin Airport's North Runway, including that noise complaints are "all fucking made up" and that the passenger cap is "illegal under EU law." The claims were made by the CEO of Ryanair and a Newstalk presenter. Neither was corrected or challenged.

Complaints were filed with Coimisiún na Meán (the broadcasting regulator) in August 2025. The CnaM Commission assessed them against six statutory obligations and in November 2025 referred both for investigation. On 31 March 2026, CnaM confirmed that no authorised person has been appointed to investigate, that complaints are processed in chronological order with no priority for severity, and that supplementary material (including transcripts of the broadcasts) has been refused.

The relevance to this communication is twofold:

- (a) Article 3(1) requires the Party to establish a "clear, transparent and consistent framework" for implementing the Convention. A regulatory framework in which false claims about environmental matters can be broadcast to a national audience and remain uncorrected for eight months while the regulator has not even begun its own process does not meet that standard.
- (b) Article 5(1) requires public authorities to possess and update environmental information. When the most widely disseminated public information about Dublin Airport's environmental impact consists of false claims (that flights have halved, that noise complaints are fabricated, that the passenger cap is illegal), and the regulatory mechanism for correcting those claims is non-functional, the public's ability to participate meaningfully in environmental decision-making under Article 6 is undermined. The false narrative was amplified online, and several of the same claims were repeated unchallenged during Oireachtas pre-legislative scrutiny of the Passenger Capacity Bill.

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### **3. Each Convention-relevant domestic mechanism is excluded by a different State characterisation**

Each of the principal Convention-relevant domestic mechanisms by which a member of the public can obtain environmental information about, or seek a remedy in respect of the environmental conduct of, the airport operator (daa plc) is excluded from operating on daa by a different State characterisation. None of the characterisations has been tested against the others in any domestic forum, because they arise in proceedings that do not communicate.

The relevant characterisations are on the public record and are taken in writing by State organs of the same Member State, in different proceedings, within twenty months. Both are annexed.

- (a) On 14 April 2026, the Department of Transport answered Question 25673/26 by Deputy Ann Graves TD (Annex S4-A). The question asked why daa is excluded from the Freedom of Information Acts and from the jurisdiction of the Office of the Ombudsman. The Department's answer described daa as a "commercial semi-state" company and stated that, on that basis, daa is excluded from both regimes.
- (b) On 26 August 2024, the Competition and Consumer Protection Commission ("CCPC") issued a Preliminary Finding of fact in NRTG's competition complaint on the AirNav terminal-services arrangement at Ireland's three State aerodromes (Ref CAS-303342-S1D9H4; Annex S4-B). The CCPC closed the file on the ground that "an entity, such as Dublin or Cork airport, acting in the exercise of official authority where the activity in question is a task in the public interest, which forms part of the essential functions of the State, is not an undertaking and therefore its activity does not fall within the scope of competition law." The closure was on classification, not on the merits of the complaint, and the CCPC directed NRTG to a private action under Section 14 of the Competition Act 2002 in the Circuit or High Court.

The two characterisations are irreconcilable on the merits. Section 3(1) of the Competition Act 2002, as amended, defines an undertaking as "a person... engaged for gain in the production, supply or distribution of goods or the provision of a service." A commercial semi-state body engaged for gain in the provision of a service is, by the State's own characterisation, an undertaking on the statutory definition.

The relevance to this communication is that each characterisation excludes a different Convention-relevant domestic mechanism from operating on the airport operator:

- (i) Article 4 (access to environmental information). The Freedom of Information Acts are the principal domestic route by which a member of the public can obtain environmental records held by daa. Daa is excluded from that regime on the Department's "commercial semi-state" characterisation given to the Oireachtas on 14 April 2026.
- (ii) Article 9(2) and (3) (administrative review). The Office of the Ombudsman is the principal domestic administrative-review forum for complaints against semi-state bodies. Daa is excluded from that jurisdiction on the same characterisation.

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(iii) Article 9(2) and (3) (regulator-led review). The CCPC has closed by classification on the inverse characterisation, without adjudicating the merits, and has directed NRTG to a private action in the Circuit or High Court.

The Convention's Article 9(4) requires that the procedures provided under Article 9(1) to (3) "be fair, equitable, timely and not prohibitively expensive." The remaining route on the CCPC limb (Section 14 Competition Act 2002, private action in the Circuit or High Court) carries court costs of approximately EUR 10,000 per sitting day to a complainant against a State commercial entity with the resources of daa. On any reasonable construction of Article 9(4), it is prohibitively expensive.

Article 3(1) requires the Party to take "necessary legislative, regulatory and other measures... to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention." A framework in which the same regulated entity is held to be in two mutually incompatible legal categories across contemporaneous proceedings, where each characterisation excludes a different Convention-relevant domestic mechanism, and where no domestic forum has had the two characterisations placed before it simultaneously, does not meet that standard.

The pattern is consistent: the State adopts whichever characterisation excludes the regime currently being pressed. The contradiction is not between two unrelated bodies. The CCPC's reasoning at (b) above adopted the Department of Transport's underlying statutory reading on the AirNav arrangement as a premise, and the Graves PQ answer at (a) above is the Department's own. The two characterisations are joined at the same Department.

#### **4. Access to information: a precision parliamentary question answered with the chronology of an unrelated proceeding**

A parliamentary question is the lowest-friction domestic mechanism by which a member of the public, working through an elected representative, can obtain a position from the Executive on environmental decision-making. The Convention's Article 4 right of access to environmental information held by public authorities is mirrored in this domestic mechanism: the public's request is directed to the Minister, who is required to answer, and the answer is published on the Dáil record.

On 21 April 2026, Deputy Roderic O'Gorman tabled Question 28679/26 (PQ 422) to the Minister for Transport (Annex S4-C). The question asked, in three parts, whether the section 34C "relevant action" application by daa under the Planning and Development Act 2000 (ABP-314485-22), if granted, would: (a) establish a new environmental baseline for departure routes from Dublin Airport's North Runway; (b) have any legal effect on the departure routes assessed in the 2007 Environmental Impact Statement (PL06F.217429); and (c) operate as de facto retention of departure routes that were never the subject of the application and were never assessed under the EIA Directive.

The three questions concern the section 34C process under planning law. They are precise and

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on-point to the present communication, which addresses the use of domestic procedures to confirm the environmental status of routes that were never assessed under Directive 2011/92/EU.

The Ministerial answer (Annex S4-D) recites the chronology of a different proceeding: the An Coimisiún Pleanála (“ACP”) night-time air-traffic decision of 17 July 2025 under section 10 of the Aircraft Noise (Dublin Airport) Regulation Act 2019, the Article 8 notification of 8 August 2025, and the Commission’s notification of 10 February 2026 finding that the process used by ACP did not fully follow the Balanced Approach. The answer concludes “Given that this is currently an open case with ACP, it would be inappropriate to comment further at this time.”

The section 34C application under the Planning and Development Act 2000 (ABP-314485-22) is not the section 10 Aircraft Noise (Dublin Airport) Regulation Act 2019 night-flights appeal. They are distinct proceedings before different processes, on different statutory bases, raising different questions. The conflation by the answering Department is on the public record. None of the three substantive points was addressed: not the baseline question, not the legal-effect question, not the de facto retention question.

The Convention’s Article 4(1) imposes an obligation on public authorities to make environmental information available “in response to a request”; Article 5(1) imposes an obligation to possess and update environmental information, including information about activities “which may significantly affect the environment.” Where the lowest-friction domestic information-access route returns the chronology of an unrelated proceeding in answer to a precision question on the environmental decision-making procedures at the centre of this communication, the public’s ability to ascertain the position is foreclosed.

For completeness, the Committee may wish to note that the same Ministerial answer affirms on the Dáil record the Commission’s finding that “the process used by ACP for the proposed introduction of operating restrictions at Dublin Airport did not fully follow the Balanced Approach process, as set out in Regulation (EU) 598/2014.” That affirmation is the first occasion on which a Minister of the State has affirmed the Commission’s adverse finding under that Regulation on the Dáil record. It is included here because it bears on the State’s own admission of non-compliance with the cognate EU instrument that addresses the same underlying environmental decision-making procedures the Committee is reviewing.

## **5. The pattern**

The original communication documented the failure of all three Convention pillars at Dublin Airport. Supplementary #1 documented the Office of the Ombudsman’s batch closure of five enforcement complaints with no remedy and direction to the High Court. Supplementary #2 documented the Oireachtas record contradicting official representations across four pre-legislative scrutiny sessions. Supplementary #3 documented the Aircraft Noise Competent Authority’s proposal to amend the Noise Abatement Objective baseline from 2019 (pre-breach) to 2023 (post-breach), to remove the metrics that quantify the breach, and to do so by Strategic Environmental Assessment screening rather than full SEA, in advance of public consultation.

This supplementary documents four further dimensions of the same systemic failure:

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- The Minister responsible for environmental compliance is the Minister promoting the legislation that overrides it.
  - The mechanism for correcting false public information about environmental matters has not begun its own process in eight months.
  - The State characterises the regulated entity in mutually incompatible ways across contemporaneous proceedings, and each characterisation excludes a different Convention-relevant domestic mechanism from operating on it.
  - The lowest-friction domestic information-access route returns the chronology of an unrelated proceeding in answer to a precision question on the environmental decision-making procedures this communication concerns.

These are not isolated administrative failures. They are structural features of Ireland's institutional framework that, taken together with the evidence already before the Committee, demonstrate that the domestic system cannot self-correct. The enforcement authority will not enforce. The Ombudsman directs complainants to the High Court. The broadcasting regulator cannot process a complaint in eight months. The competition regulator closes by classification and directs to a private action in the Circuit or High Court at approximately EUR 10,000 per sitting day. The Department conflates proceedings in answer to a precision parliamentary question. The Minister responsible for environmental compliance is the Minister promoting the legislation that overrides it. At no point in this chain does any institution with the power to act have both the mandate and the structural independence to do so.

This is why the communication is before the Committee.

Yours sincerely,

Gareth O'Brien BE (Civil) MSc North Runway Technical Group 24 White Ash Park, Ashbourne, Co. Meath A84 H563 [gobrien@yupon.com](mailto:gobrien@yupon.com) +353-87-277-9281

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## Annexes

- S4-A: Department of Transport written answer to Deputy Ann Graves TD, Question 25673/26, 14 April 2026 ("commercial semi-state" characterisation; daa excluded from FOI and Ombudsman). Source: [correspondence/pq-tracking/PQ 25673-26 Graves FOI Ombudsman reply.eml](#).
- S4-B: CCPC Preliminary Finding of fact, 26 August 2024, Ref CAS-303342-S1D9H4 ("not an undertaking" characterisation; closure on classification). Source: [correspondence/ccpc/2024-08-26 CCPC PF0 terminal services.eml](#).
- S4-C: PQ 422 by Deputy Roderic O'Gorman to the Minister for Transport (Question 28679/26), 21 April 2026. Three-part question on section 34C, EIA baseline, and de facto retention of unassessed routes. Source: <https://www.oireachtas.ie/en/debates/question/2026-04-21/422/>.

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- S4-D: Ministerial answer to PQ 422, 21 April 2026. Recites the chronology of the unrelated ACP night-flights appeal and the Commission's Decision C(2026) 919; "open case... inappropriate to comment further." Source: [correspondence/pq-tracking/PQ-422-28679-26-0Gorman-sect](#)
  - S4-E: Coimisiún na Meán letter to NRTG, 31 March 2026, confirming no authorised person appointed, chronological processing, supplementary material refused (CAS-04508 / CAS-04843; CRM:0161881). Source: [correspondence/cnam/75152 RE CAS-04508.eml](#).