

ZERO WASTE ALLIANCE IRELAND

Towards Sustainable Resource Management



Submission to the Department of the Environment, Climate and Communications on proposed amendments to the Access to Information on the Environment (AIE) Regulations 2007-2018

08 January 2024

Zero Waste Alliance Ireland is a member of



and



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Public Consultation Proposed Amendments to the Access to Information on the Environment (AIE) Regulations 2007-2018,
Department of the Environment, Climate and Communications,
29-31 Adelaide Road,
Dublin 2,
D02 X285.

BY EMAIL TO:
aarhus@decc.gov.ie

Dear Sir / Madam,

**Response to the Public Consultation on Proposed Amendments to the
Access to Information on the Environment (AIE) Regulations 2007-2018**

**Submitted By Zero Waste Alliance Ireland to the Department of the
Environment, Climate and Communications**

On behalf of Zero Waste Alliance Ireland (ZWAI), we attach our submission in response to the Department's public consultation on the proposed amendments to the Access to Information on the Environment (AIE) Regulations 2007-2018.

ZWAI is very pleased to have the opportunity to respond to this important public consultation, given that our role and function as an environmental NGO frequently requires us to obtain information about environmental activities being undertaken by Government Departments, statutory organisations and other state agencies, in addition to accessing data on the environment. While there is a wealth of data and information on the environment obtainable in Ireland generally, there are significant areas where difficulties in obtaining relevant information have been encountered by ourselves and other NGOs; and we will refer to these issues in our submission.

We are aware that this is the second occasion on which the Department of the Environment, Climate and Communications (DECC) has consulted organisations and members of the public on the 2007-2018 Regulations on Access to Information on the Environment. On the previous occasion, in 2021, the Department announced its intention to review, update and consolidate the existing regulations; and the purpose of the public consultation was to gather

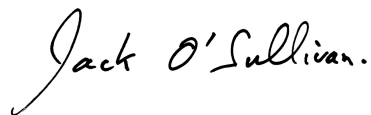
views and feedback from interested organisations and individuals, in order to assist the DECC in undertaking these tasks.

At that time, Zero Waste Alliance Ireland was not in a position to respond to the Department's public consultation, but one of our members responded in a private capacity, and we are aware that the Office of the Commissioner for Environmental Information and at least six environmental NGOs and five publicly-owned commercial organisations responded to the consultation.

Because we did not respond to the previous public consultation, ZWA is therefore very pleased to have the opportunity to respond to this consultation on the draft amended Regulations, and the intention of our submission is to provide observations which will hopefully have some influence on the scope and content of this important legislation.

We look forward to your acknowledgement of the submission, and to seeing in due course the final version of the Regulations.

Yours sincerely,



Jack O'Sullivan

On behalf of Zero Waste Alliance Ireland

ZERO WASTE ALLIANCE IRELAND

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RESPONSE TO THE PUBLIC CONSULTATION ON PROPOSED AMENDMENTS TO THE ACCESS TO INFORMATION ON THE ENVIRONMENT (AIE) REGULATIONS 2007-2018

SUBMITTED BY ZERO WASTE ALLIANCE IRELAND TO THE DEPARTMENT OF THE
ENVIRONMENT, CLIMATE AND COMMUNICATIONS

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COMMUNICATIONS**

1. INTRODUCTION

On 14 November 2023, the Department of the Environment, Climate and Communications launched a public consultation on reviewed and updated draft Irish Regulations on Access to Information on the Environment (AIE), 2007-2018. The existing AIE Regulations have been in place since 2007, with only minor changes made during the last six years,¹ and the Regulations now require urgent and major revision in response to findings by the Aarhus Convention Compliance Committee (ACCC) of non-compliances by Ireland.²

In 2020, the Government made a commitment to amending the Regulations; and, 08 March 2021, the Department launched a public consultation to gather views and feedback from interested organisations and individuals, before undertaking a review and updating of the 2007-2018 Regulations (see section 2 below). The Office of the Commissioner for Environmental Information, together with at least

¹ S.I. No. 133 of 2007; S.I. No. 662 of 2011; S.I. No. 615 of 2014; and S.I. 309 of 2018.

² UN ECE Report on progress made by the Party concerned to implement the Committee's findings and recommendations on communications ACCC/C/2013/107 and ACCC/C/2016/141 concerning the compliance of Ireland, 26 July 2021. UNECE/MP.PP/2021/52; 23 August 2021. Presented at the seventh session of the meeting of the Parties to the Convention, Geneva, 18-20 October 2021.

six environmental NGOs, five publicly-owned semi-state commercial organisations and a number of individuals responded to the consultation; and the Department has stated that these responses have been taken into consideration when preparing the draft amended and consolidated Regulations which are the subject of the current public consultation, to which ZWAI is now responding.

The extent which the proposed new or amended Regulations have been brought fully up to date and consolidated is an issue which we will examine in this submission, and the extent to which they rectify Ireland's failure to comply fully with the Aarhus Convention is also considered in our submission.

Another factor which must be considered when updating the Regulations on Access to the Environment is the increasing importance of environmental data and information, when making decisions about almost every type of activity – not only those activities which have a direct effect on the environment, but also many legal, social and economic policies, plans and activities which affect the environment, and for which correct and up-to-date environmental information is necessary.

1.1 Importance and Relevance of the Aarhus Convention

Environmental data and information are essential for planning, regulatory activity and governance; and this is one of the principal reasons why a public right of access to environmental information collected by or held by public authorities was established. This right is guaranteed by the Aarhus Convention,³ which sets an essential legal and jurisdictional context for access to environmental information in all States which are parties to the Convention. In section 3 of our submission, we make the further point that the Department cannot, as a matter of international law, ignore the Aarhus Convention, and simply focus on the EU Directive on Access to Environmental Information 2003/4/EC, for the important reason that Ireland (as a Party to the Convention, directly and through membership of the EU) has a binding obligation itself to comply with the Convention).

³ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus Denmark, 25 June 1998 ('Aarhus Convention').

1.2 European Union Environmental Information and Environmental Data Policy Context

We also wish to highlight that EU environment policy, which requires environmental information for its formulation, implementation and monitoring, dates back to the European Council held in Paris in 1972, at which the Heads of State or Government (in the aftermath of the first UN conference on the environment) declared the need for a Community environment policy alongside economic expansion, and called for an action programme. The Single European Act of 1987 introduced a new 'Environment Title', which provided the first legal basis for a common environment policy with the aims of preserving the quality of the environment, protecting human health, and ensuring rational use of natural resources.

Subsequent treaty revisions strengthened the Community's commitment to environmental protection, requiring additional environmental data and information, together with an increased role for the European Parliament in policy and strategy development. The Treaty of Maastricht (1993) made the environment an official EU policy area, introduced the co-decision procedure and made qualified majority voting in the Council the general rule. The Treaty of Amsterdam (1999) established a duty to integrate environmental protection into all EU sectoral policies with a view to promoting sustainable development; and the Treaty of Lisbon (2009) introduced combating climate change as a specific goal, along with sustainable development in relations with third countries. All of these treaty changes required a very significant expansion in the extent, quantity and quality of environmental information needed; and they had the effect of raising the importance of environmental information in every area of governance.

If we go deeper into the basic law of the EU, namely, the Treaty on the Functioning of the European Union (TFEU), we find that environmental information and data form the basis for a wide range of activities and interventions.⁴ Such data-driven or data-intensive activities in the public sector include anticipation and planning, delivery, and evaluation and monitoring.

It might be said that the legal definition of 'environmental information' was first established by the Aarhus Convention; and, in the European Union which is a signatory to the Convention, a number of regulatory instruments which flowed

⁴ The TFEU provides that *'in preparing its policy on the environment, the Union shall take account of, inter alia, 'available scientific and technical data'*. See Articles 3, 11 and 191-193.

from it, including the EU Directive on Freedom of Access to Information⁵ and the Aarhus Regulation.⁶

The principal objective of these legal measures is to improve environmental protection by increasing public access to, and dissemination of, environment-related information held by the competent authorities of the EU Member States and/or by EU institutions. This objective is to be accomplished, not only by increasing the extent of environmental awareness in society, but also by enabling a free exchange of views; and (an issue of significant importance) by ensuring effective public participation in decision-making on environmental issues, also guaranteed by the Aarhus Convention.

It is also essential to point out that environmental information (and, by implication, freedom to access that information) is key to the effective operation of other major agenda-setting EU policies, including, for example, the European Green Deal,⁷ and priority policies and actions such as:

- ♣ prevention and rectifying pollution at source;
- ♣ combatting and mitigating climate change;
- ♣ eliminating fossil fuel use and transitioning to renewable energy sources;
- ♣ protection of biodiversity and repair of damaged ecosystems;
- ♣ addressing land use problems, including soil health, agriculture, forestry and urbanisation;
- ♣ protection and management of water resources and water quality;
- ♣ addressing the problems of air and noise pollution;
- ♣ achieving resource efficiency and implementation of the circular economy;
- ♣ achieving environmentally sustainable production and consumption; and,
- ♣ dealing with the very difficult problems of toxic chemicals, biocidal products and use of pesticides (including persistent organic pollutants, POPs).

⁵ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L041 ('Freedom of Access to Information Directive').

⁶ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13 ('Aarhus Regulation'), amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021, OJ L 356/1.

⁷ Communication from the Commission, 'The European Green Deal', COM(2019) 640 Final ('EGD').

For example, the Monitoring Framework⁸ now established under the EU Eighth Environment Action Programme⁹ aims to foster transparency and inform Europeans about the impact of EU climate and environmental policy; and a new set of environmental indicators will measure progress towards environmental wellbeing, including economic and social aspects. These indicators should make it easier to measure the health of our economies and societies based on wellbeing, and going beyond the most well-known economic indicator, GDP, which is becoming widely regarded as a most unsuitable indicator.

Another activity which generates environmental information is Horizon Europe,¹⁰ the EU's key funding programme for research and innovation with a budget of €95.5 billion for the period from 2021-2027. Horizon Europe is intended to facilitate collaboration and to strengthen the impact of research and innovation in developing, supporting and implementing EU policies while tackling global challenges. This programme is addressing climate change, and is helping the EU to achieve the UN's Sustainable Development Goals.

It is not generally considered that other areas of EU activity also involve environmental information; but, for example, the European Strategy for Data¹¹ addresses the interconnection between environmental issues, optimised energy use, intelligent systems generally; while the potential of Information and Communication Technology (ICT) applications to reduce emissions to the environment is expected to be seven times more than the amount of emissions created by the ICT sector itself.¹² As the Department will be aware, the carbon footprint of the ICT sector is a topic of controversy in Ireland (and it does not go unmentioned in the European Green Deal).

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the monitoring framework for the 8th Environment Action Programme: Measuring progress towards the attainment of the Programme's 2030 and 2050 priority objectives; COM(2022) 357 final; Brussels, 26.7.2022.

⁹ Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 (Eighth Environment Action Programme).

¹⁰ European Commission, Directorate-General for Research and Innovation, *Horizon Europe, budget – Horizon Europe - the most ambitious EU research & innovation programme ever*, Publications Office of the European Union, 2021, <https://data.europa.eu/doi/10.2777/202859>

¹¹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A European Strategy for Data', COM(2020) 66 Final.

¹² European Commission, Supporting the Green Transition: Shaping Europe's Digital Future (Publications Office 2020).

The establishment of a Common European Green Deal Data Space¹³ as part of the Digital Europe Programme¹⁴ (DIGITAL) is intended to make high-quality data and information on the environment available in support of the European Green Deal's priority actions such as combating climate change, achieving zero pollution, protecting biodiversity and preventing deforestation (we refer to the lack of availability of such digital information in Ireland, in section 4.6 below).

In addition to information and data *about the environment*, that is; data that reflects the state of the environment, there is another significant body of data and information which includes, for example, data collected by Copernicus, the EU's Earth observation programme, which offers information drawn from satellites and so-called in-situ data, mainly comprising observational data (environmental measurements, e.g., atmosphere data, meteorological data, air pollution data, marine data) and geospatial reference data.

This category of data and information is best described as data *related to the environment*, that is; data and information which enables indirect conclusions about the environment to be drawn, or may be needed or used to influence environmental policies. Examples include traffic data on the emission-generating vehicles along a road section, which can be used to establish correlations with greenhouse gas concentrations and thus provide insights for traffic planning or management, or data on fertilisation use by farmers, which, when this information is appropriately utilised, can contribute to environmentally-friendly optimisation of agriculture. In one of our recent submissions, ZWAI referred at some length to the importance of this type of information which might not be considered as environmental information, but which should have a major impact on policy, if properly considered.¹⁵

The list above is only a subset of EU policies, programmes and actions which depend on, or which require environmental information. Furthermore, the wide range of environmental research activities undertaken or funded by the EU and carried out by European research agencies, Member States' authorities and

¹³ European Commission, 'The European Green Deal Data Space Vision', available at: <<https://digital-strategy.ec.europa.eu/en/events/information-session-preparatory-action-common-european-green-deal-data-space-under-digital-europe>>.

¹⁴ The Digital Europe Programme (DIGITAL) is a new EU funding programme focused on bringing digital technology to businesses, citizens and public administrations. See: <https://digital-strategy.ec.europa.eu/en/activities/digital-programme>.

¹⁵ Observations and feedback to the European Commission on a Proposed Directive on Soil Health – Protecting, Sustainably Managing and Restoring EU Soils; March 2022. <https://www.zwai.ie/resources/2022/feedback-to-the-european-commission-on-a-proposed-directive-on-soil-health/>

agencies, third level institutions and commercial firms, not only provide but also require large amounts of environmental information and data.

It is therefore a key issue which we must raise in our submission – does the EU legislation on access to environmental information, as a whole, and summarised above, provide a coherent and effective regulatory measure for the collection, processing and making available information and data on the environment, in the interest of environmental sustainability and the rights of EU citizens to access and use such information and data ?

1.3 The Irish Context

In section 1.2 above we have shown that environmental information and data collection, processing and availability cannot be considered in isolation, but are an integral part of a large number of other EU policy areas, programs and actions. We also submit that a similar approach is needed in Ireland, so that our national legislation, including the proposed amended Regulation on access to information on the environment, should be consistent with environment-related policies and actions in Ireland’s Whole of Government Circular Economy Strategy,¹⁶ the Programme for Government, the Climate Action Plan,¹⁷ and the Waste Action Plan for a Circular Economy.¹⁸

One of our primary reasons for responding to this important consultation is that our principal areas of policy analyses and recommendations are focussed on prevention of waste, and on the elimination of wasting or discarding substances, materials, made objects (natural or man-made) and products of every description; and we especially oppose their end-of-life fate by incineration or landfilling, resulting in the continuing extraction and processing of yet more raw materials to replace them.

Closely allied with these areas of work are our promotion of the Circular Economy, and our support for schemes such as “deposit and return” which would

¹⁶ On 11 June 2021, Zero Waste Alliance Ireland made a submission to the Department of Environment, Climate and Communications on the proposed Whole-of-Government Circular Economy Strategy: <https://www.zwai.ie/resources/2021/circular-economy-strategy-for-ireland/> and on 05 July 2023, ZWAI made a submission to Ireland’s Regional Waste Management Planning Offices on the draft Waste Management Plan for a Circular Economy: <https://www.zwai.ie/resources/2023/submission-on-the-draft-waste-management-plan-for-a-circular-economy/>

¹⁷ On 20 September 2022, Zero Waste Alliance Ireland made a submission to the Department of the Environment, Climate and Communications to support and inform the preparation of the 2023 Climate Action Plan.

¹⁸ In September 2020, Zero Waste Alliance Ireland prepared draft observations on the Government’s Waste Action Plan for a Circular Economy, but no submission was made.

have the effect of increasing the rate at which materials and objects are re-used and recycled. It is clearly obvious that these are environmental issues, in which the availability and accessibility of environmental information and data are essential to our work. Furthermore, it is our experience that obtaining accurate and up-to-date information on the types and quantities of waste collected, how these are processed, their eventual fate, and other information about these wastes, is also difficult to obtain.

On 28 November 2023, the Irish Times¹⁹ quoted from a report by the Environmental Protection Agency²⁰ which stated that Ireland remains “*overly reliant on unpredictable export markets*”, with almost 382,000 tonnes of residual waste sent for incineration abroad in 2021, and 69 % of packaging waste was exported in the same year.

When a new or amended Regulation on access to Information on the environment is fully implemented, it should make a significant contribution to the objectives mentioned above; while the above positive activities may be summarised as promoting the transition from a wasteful linear to a more efficient circular economy, together with accompanying changes in how our society values and uses non-living and living (plant-based and animal-based) materials, and the manufactured goods we produce from them.

It is therefore a second key point of our submission – that the amended or new Irish Regulations on access to environmental information must include regulatory consistent references to other relevant Irish government environmental policies and programmes, and to the Aarhus Convention; and must not simply be “stand alone” Regulations, referring only to the EU Directive on Access to Environmental Information 2003/4/EC; without the inclusion of such references, the proposed Regulations will fail to be a coherent and effective regulatory measure for the collection, processing and ensuring the availability of information and data *about the environment and related to the environment.*

This point is expanded in section 3 and in further sections of our submission.

¹⁹ <https://www.irishtimes.com/environment/2023/11/28/ireland-overly-reliant-on-exporting-waste-for-recycling-epa/#:~:text=Ireland%20remained%20heavily%20reliant%20on,for%20energy%20recovery%20through%20incineration.>

²⁰ The most up-to-date information on waste is available from the EPA at <https://www.epa.ie/our-services/monitoring--assessment/waste/national-waste-statistics/municipal/>

2. ZERO WASTE ALLIANCE IRELAND (ZWAI)

At this point we consider that it is appropriate to mention briefly the background to our submission, especially the policies and strategy of ZWAI.

2.1 Origin and Early Activities of ZWAI

Zero Waste Alliance Ireland (ZWAI), established in 1999, and registered as a company limited by guarantee in 2004, is a Non-Government Environmental Organisation (eNGO) and a registered charity. ZWAI has prepared and submitted to the European Commission, the Irish Government and to Irish State Agencies many policy documents on waste management, and continues to lobby the Irish Government and the European Commission on the issue of using resources more sustainably, on using resources sustainably, on promoting re-use, repair and recycling, and on development and implementation of the Circular Economy.

One of our basic guiding principles is that human societies must behave like natural ecosystems, living within the sustainable flow of energy from the sun and plants, producing no materials or objects which cannot be recycled back into the earth's systems, or reused or recycled into our technical systems, and should be guided by economic systems and practices which are in harmony with personal and ecological values.

Our principal objectives are:

- i) sharing information, ideas and contacts,
- ii) finding and recommending environmentally sustainable and practical solutions for domestic, municipal, industrial and agricultural waste management, and for more efficient and ecologically appropriate uses of natural resources such as scarce minerals, water and soil;
- iii) lobbying Government and local authorities to implement environmentally sustainable waste management practices, including clean production, elimination of toxic substances from products, re-use, repairing, recycling, segregation of discarded materials at source, and other environmentally and socially beneficial practices;
- iv) lobbying Government to follow the best international practice and EU recommendations by introducing fiscal and economic measures designed to penalise the manufacturers of products which cannot be re-used, recycled or composted at the end of their useful lives, and to financially

- support companies making products which can be re-used, repaired, recycled or are made from recycled materials;
- v) raising public awareness about the long-term damaging human and animal health and economic consequences of landfilling and of the destruction of potentially recyclable or re-usable materials by incineration; and,
 - vi) investigating, raising public awareness and lobbying Irish Government departments and agencies about our country's failure to take adequate care of vulnerable and essential natural resources, including clean water and air, biodiversity, and soil;
 - vii) advocating changes in domestic and EU legislation to provide for more ecologically appropriate, environmentally sustainable and efficient uses of natural resources; and,
 - viii) maintaining contact and exchanging information with similar NGOs and national networks in other countries, and with international zero waste organisations.

2.2 Our Basic Principles

Human communities must behave like natural ones, living comfortably within the natural flow of energy from the sun and plants, producing no wastes which cannot be recycled back into the earth's systems, and guided by new economic values which are in harmony with personal and ecological values.

In nature, the waste products of every living organism serve as raw materials to be transformed by other living creatures, or benefit the planet in other ways. Instead of organising systems that efficiently dispose of or recycle our waste, we need to design systems of production that have little or no waste to begin with.

There are no technical barriers to achieving a "zero waste society", only our habits, our greed as a society, and the current economic structures and policies which have led to the present environmental, social and economic difficulties.

"Zero Waste" is a realistic whole-system approach to addressing the problem of society's unsustainable resource flows – it encompasses waste elimination at source through product design and producer responsibility, together with waste reduction strategies further down the supply chain, such as cleaner production, product repairing, dismantling, recycling, re-use and composting.

ZWAI strongly believes that Ireland and other Member States, and the EU as a whole, should have a policy of not sending to other countries our discarded

materials for further treatment or recycling, particularly to developing countries where local populations are being exposed to dioxins and other very toxic POPs. Relying on other countries' infrastructure to achieve our "recycling" targets is not acceptable from a global ecological and societal perspective.

2.3 What We are Doing

Our principal objective is to ensure that government agencies, local authorities and other organisations will develop and implement environmentally sustainable resources and waste management policies, especially resource efficiency, waste reduction and elimination, the promotion of re-use, repair and recycling, and the development and implementation of the Circular Economy.

As an environmental NGO, and a not-for-profit company with charitable status since 2005, ZWAI also campaigns for the implementation of the UN Sustainable Development Goals, including (but not limited to) Goal 12, Responsible Consumption and Production; Goal 6, Clean Water and Sanitation (having particular regard to the need to avoid wasting water); and Goal 15, to protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and to halt and reverse land degradation and halt biodiversity loss.

In responding to many public consultations, members of ZWAI have made submissions and given presentations on:

- how Ireland and the European Union should address the problem of plastic waste (March 2019);
- the problem of single-use plastic packaging by the Irish food industry (November 2019);
- transforming the construction industry so that it could become climate-neutral (instead of its present position as a major emitter of greenhouse gases and toxicants);
- the general scheme of the Irish Government's Circular Economy Bill (October 2021);
- recovery and reuse of the phosphorus and nitrogen content of wastewater (2019 to 2022);
- proposed revision of the EU Regulation on Shipments of Waste (January 2022);
- Ireland's energy security situation (October 2022);

- Ireland's Fourth National Biodiversity Action Plan (November 2022);²¹
- Ireland's National Bioeconomy Action Plan 2023-2025 (January 2023);²²
- Ireland's draft Waste Management Plan for a Circular Economy (July 2023);²³
- the problem of disposable vaping devices (July 2023);²⁴
- the rapidly increasing European and global problem of waste electronic and electric equipment (WEEE, September 2023);²⁵
- observations to the European Commission on a Proposed EU Directive on Soil Monitoring and Resilience (November 2023);²⁶
- observations on the Irish Government's draft Green Public Procurement Strategy & Plan (November 2023);²⁷
- observations and feedback to the European Commission on the proposed revision of the EU Waste Framework Directive (November 2023);²⁸ and,
- observations and feedback to the European Commission on revision of Directives 2000/53/EC & 2005/64/EC on End-of-Life Vehicles (December 2023).²⁹

²¹ <https://www.zwai.ie/resources/2022/submission-to-the-department-of-housing-local-government-and-heritage-in-response-to-the-public-consultation-on-irelands-fourth-national-biodiversity-action-plan-nbap/>

²² <https://www.zwai.ie/resources/2023/zwai-submission-on-irelands-national-bioeconomy-action-plan-2023-2025/>

²³ Submission to the Regional Waste Management Planning Offices on the draft Waste Management Plan for a Circular Economy; ZWAI, 05 July 2023: <https://www.zwai.ie/resources/2023/submission-on-the-draft-waste-management-plan-for-a-circular-economy/>

²⁴ Submission to the Department of the Environment, Climate and Communications in Response to the Department's Public Consultation on Disposable Vaping Devices; ZWAI, 27 July 2023: <https://www.zwai.ie/resources/2023/submission-to-the-decc-on-disposable-vapes-and-why-they-should-be-banned/>

²⁵ Submission by ZWAI to the European Commission on Waste from Electrical and Electronic Equipment — Evaluating the EU Rules; ZWAI, 22 September 2023. <https://www.zwai.ie/resources/2023/waste-from-electrical-and-electronic-equipment-weee-evaluating-eu-rules/>

²⁶ Observations and Feedback to the European Commission on the Proposed EU Directive on Soil Monitoring and Resilience; ZWAI, 03 November 2023.

²⁷ <https://www.zwai.ie/resources/2023/submission-to-the-decc-on-the-draft-green-public-procurement-strategy-and-action-plan/>

²⁸ <https://www.zwai.ie/resources/2023/observations-and-feedback-to-the-european-commission-on-the-proposed-revision-of-the-eu-waste-framework/>

²⁹ <https://www.zwai.ie/resources/2023/end-of-life-vehicles-observations-and-feedback-to-the-european-commission/>

It will be clear that ZWAI is primarily concerned with the very serious issue of discarded substances, materials and goods, whether from domestic, commercial or industrial sources, how these become “waste”, and how such “waste” may be prevented by re-design along ecological principles.

ZWAI is represented on the Irish Government’s Waste Forum and Water Forum (An Fóram Uisce), is a member of the Irish Environmental Network and the Environmental Pillar, and is funded by the Department of Communications, Climate Action and the Environment through the **Irish Environmental Network**.

In 2019 ZWAI became a full member of the **European Environment Bureau** (EEB); and a member of the **Waste Working Group** of the EEB. Through the EEB, we contribute to the development of European Union policy on waste and the Circular Economy. In November 2021, the EEB established a **Task Force on the Built Environment**; ZWAI is a member of this group, and we contribute to discussions on the sustainability of construction materials, buildings and on the built environment

3. BACKGROUND TO THE CONSULTATION

“...we need free, reliable and independent information as the foundation upon which democratic societies are built.”

Ms Audrey Azoulay, Director-General of UNESCO, on the occasion of the International Day for Universal Access to Information 28 September 2021.³⁰

The Aarhus Convention³¹ is an environmental human rights treaty³² that applies the fundamental principles of democracy and participatory governance in environmental contexts. As such, it enshrines the right to a clean and healthy environment and the rights of access to environmental information, public participation in environmental decision making, and access to environmental justice, in order to support the right to a clean and healthy environment. Ireland and all the EU Member States, as well as the EU itself, are full parties to this Convention and obliged to implement its obligations.³³

When drafting laws on access to environmental information, the relevant Department is obliged to do so in a manner compatible with Ireland’s obligations under the Convention, as well as with the EU Directives through which the EU has given effect to its obligation to implement the Convention. The relevant Department cannot, as a matter of international law, ignore the Aarhus Convention itself, and simply focus on the Directive on Access to Environmental Information 2003/4/EC, as Ireland has a binding obligation itself to comply with the Convention.

Rights of access to information, in relation to the environment and more generally the right of citizens to have access to government information, are much older³⁴ than the Aarhus Convention, and is an established democratic norm and human right. This is because robust and default access to information enhances public discourse, supports free speech, combats propaganda and other forms of

³⁰ A steady path forward: UNESCO 2022 report on public access to information (SDG 16.10.2) - UNESCO Digital Library <https://unesdoc.unesco.org/ark:/48223/pf0000385479>

³¹ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) 1998, available at <https://unece.org/environment-policy/public-participation/aarhus-convention/text>.

³² Jonas Ebbesson, Helmut Gaugitsch, Jerzy Jendroska, Fiona Marshall and Stephan Stec, *The Aarhus Convention: An Implementation Guide* (2nd edn, United Nations, 2014),

³³ The EU ratified the Convention in 2005, Ireland in 2012.

³⁴ History of Right of Access to Information – Access Info Europe ([access-info.org](https://www.access-info.org)) <https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/>. The EU had a right of access to environmental information Directive since 1990, Directive 90/313, and the rights appeared in the UN Rio Declaration in 1992, Principle 10 of which went on to inspire the creation of the Aarhus Convention.

misinformation, and enhances the capacity of the public to engage in political life and the governance of the country in an informed manner.³⁵

This is why the right is a standalone right in the Aarhus Convention and is not just a subsidiary or supporting right to the right of public participation or access to justice, as it is sometimes characterised reductively.³⁶ It is clear that it is an established international law norm, and the right to access information generally is protected by the ECHR.

It is also arguably a Constitutional right, or at the very least subject to Constitutional protection in a variety of contexts, as it is essential to the right to fair trial and fair procedures in decision making, and free speech, as well as participation in civil and political life. These principles and references to democratic traditions might seem an overly academic point, but identifying the fundamental human rights character of the right to access information has important consequences for the nature of the right. This means that the legislation implementing the right needs to safeguard the right in a standalone sense and to its fullest capacity, and the legislation ought to be interpreted in a broad and purposive manner that safeguards the right, and the purpose of the Aarhus Convention in enshrining the right which was to ensure the vindication of the right to a clean and healthy environment.

Unfortunately, the right of access to environmental information has been subject to a recent judicial trend of “reading down”³⁷ which began in the UK and spread to Ireland recently, treating the right as a purely legislative one, ancillary to the right to public participation, and created limited readings of the right based on this misconception. This submission argues that the legislature needs to reaffirm the fundamental nature of this right to open and transparent environmental governance as a standalone right, and that the revision of the AIE Regulations is an opportune moment to do so. Our submission suggests practical ways in which this can be achieved.

Therefore, our submission seeks to identify, based on prior good quality research in the area and our own analysis, outstanding obligations on giving effect to the Conventions’ obligations in Irish law, with a focus on access to information. We suggest additions that could improve the usability of Ireland’s access to information, and ways in which the State could better meet its obligations under the Convention and EU law.

³⁵ See footnote above.

³⁶ Redmond v Commissioner for Environmental Information [2017] IEHC 827 (High Court, Ní Raifeartaigh J.)

³⁷ Conor Quinn “Reading Down” 2020 IPELJ

Zero Waste Alliance Ireland has on many occasions expressed concern about the difficulty of obtaining access to relevant information on environmental issues, particularly those waste-related issues in which we have a particular interest.

For example, on 05 October 2022, we stated in a submission to the European Commission that, *“at least in Ireland, obtaining the necessary environmental information to challenge a proposed decision of a government decision-making body was very difficult”*.³⁸

In that submission, we added that, *“in addition to challenging decisions [by state agencies], the Aarhus Convention gives the right to environmental organisations and individuals to participate in environmental decision-making; and we interpret this to mean that decisions on State aid which have or may have an environmental outcome or an environmental effect must provide for public participation in the making of such decisions.*

Thirdly, the Aarhus Convention establishes a right to correct and timely environmental information; and we would interpret that pillar of the Convention so that State aid being given to industries or other organisations, in situations where that State aid may have an environmental effect, full and complete information about how that State aid may be given (or may have been given) should be freely available to members of the public”.

The AIE Regulations form part of a legislative package that implements the first pillar of the Aarhus Convention and transposes the AIE Directive in Irish law. The Regulations provide a definition of environmental information, and they outline the manner in which public authorities are required to deal with requests. The AIE Regulations provide for three levels of review procedure: an internal review; an appeal to the Commissioner for Environmental Information and an appeal to the High Court on a point of law.

In 2020, Ireland committed to amending the AIE Regulations in response to findings of non-compliance by the Aarhus Convention Compliance Committee (ACCC). Following a public consultation between February and April 2021, the Regulations were reviewed and updated, so as to ensure Ireland’s compatibility with EU law and with the Aarhus Convention.

³⁸ Submission by Zero Waste Alliance Ireland to the European Commission on the Aarhus Convention, State Aid & Transparency, in response to the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2015/128; submitted 05-Oct-2022. In preparing that submission we had considerable and very significant help from Alison Hough, co-author of this submission.

4. THE SUBSTANTIVE ISSUES

The Department of the Environment, Climate and Communications has stated that the aim of this consultation is to gather stakeholder feedback on the draft AIE Regulations, a copy of which is on the consultation website.

On the Department's public consultation website, the following questions have been suggested as potentially useful when considering our submission.

- i) Should any of the proposed updates outlined be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.
- ii) Should any other specific part of the Regulations be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.
- iii) Any other comments on the existing AIE Regulations and their implementation of the AIE Directive 2003/4/EC.

We at Zero Waste Alliance Ireland have not confined our submission to these three questions, and have included a broader commentary on the role of the AIE Regulations and how they can better implement relevant EU and International law, as well as issues arising from our experience in attempting to obtain environmental information (including difficulties in obtaining such information).

Of course this is such a wide area to address, and as such it is not possible for us to comprehensively address all the issues that could arise in this area. Therefore the principal substantive issues addressed in our submission, based on the Department's public consultation questions, are:

1. Should any of the proposed updates outlined be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.

1.1 Section 2, Interpretation – definition of a public authority.

This has given rise to a large amount of case law, due to the lack of clarity. There has been a recent narrowing trend in the case law which does not comply with the EU Directive.

1.2 Section 4, General Duties of Public Authorities – see section 4.5 below on proactive obligation.

2. Should any other specific part of the Regulations be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.

4.1 Amending the Scope of Environmental Information

The scope of environmental information is by necessity drafted broadly in the legislation. This of course gives rise to problems as broad definitions make it difficult to precisely delineate the boundaries, and environment by its nature is difficult to box in and delineate. The Courts and the Office of the Commissioner for Environmental Information (OCEI) formerly employed a broad “bigger picture” approach, but have lately adopted an (arguably) incorrect UK line of precedent which takes a narrower approach to the issue of scope.

The matter of scope was considered settled law after the decision of *Minch -v- OCEI* [2017] IECA 22. This decision, admirable for its comprehensive yet concise coverage of the issues and its clarity, found that based on prior authority of the CJEU, the test for whether information was environmental information for the purposes of the regulations, depended on the possibility of the measure in question affecting the environment. This was a broader approach in keeping with the Convention’s aims.

The Court of Appeal in *Redmond (Redmond -v- OCEI* [2020] IECA 83 (hereinafter *Redmond*)), adopted a much stricter test of whether information a stricter approach to the issue of what was environmental information (para 63) while attempting to characterise the scope of the right as narrower based on requiring “a real and substantial possibility” that the measure would affect the environment, and focussing on the rights dependence and ancillary relationship to the right of public participation, relying on UK authorities like *DBEIS -v- The Information Commission & Alex Henny* [2017] EWCA Civ 844 (hereinafter ‘Henny’), and *Department of Transport -v- Commissioner for Information* (“Cieslik”) leading to a more limited reading of when information is environmental information, thereby restricting the extent to which information is obliged to be disclosed by public authorities.

It is our submission that this stricter approach is not in keeping with the language or the objective and purpose of the Aarhus Convention. Furthermore, a purposive reading adopted more recently in the case law of environmental information rights seeks to connect the right solely to public participation processes, and this again undermines the fundamental human rights nature of the standalone right of the citizen to access government held information, in particular environmental information.

This selective purposive approach based on a misreading of the only purpose of the access to information provisions as ancillary to public participation purposes, ignores both the fundamental nature of the broader right to access government information, and the purpose by which the rights in the Aarhus Convention must be read and interpreted, which is not public participation, but the broader human right to a clean and healthy environment which is set out in Article 1 of the Aarhus Convention as its objective/purpose. For more detailed analysis of the case law developments in this area see Quinn (2020).³⁹

This approach was based on an restrictive interpretation of Glawishnig Bundesminister fur Sichereit und Generationen (13 June 2003) Case C-316/01, an ECJ decision taken prior to the current Directive 2003/4/EC and the ratification of the Aarhus Convention by the EU, which stated:

“Directive 90/313 is not intended, however, to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned in Article 2(a). To be covered by the right of access it establishes, such information must fall within one or more of the three categories set out in that provision.”

Not only was Directive 90/313 repealed, the scope of it was narrower, and it was concluded prior to the ratification of the Aarhus Convention by the EU. It is of little relevance, and should not have been excavated by the Court as the basis for a determination in this context. This reflects the Courts’ limited ability to give effect to the Aarhus Convention in the context of Ireland’s dualist legal system, where the Court can only truly apply international law when it has been transposed by a domestic legislation measure.

The legislature needs to act to bring the law in this jurisdiction back within the ambit of the constitutional and international law parameters of the right, and as mentioned only the legislature and legislative bodies like the Minster has the power to fully implement the Aarhus Convention, by setting out on a legislative basis a clear mandate for interpreting the right to access information.

Our suggested amendments to the Department’s draft are as follows:

1. Location: Article 2 Interpretation additional provision:

“(4) When interpreting the provisions of this regulation, regard should be had to the underlying instruments, Directive 2003/4/EC and the relevant

³⁹ Conor Quinn “From “Bigger Picture” to “Reading Down”: the Courts tighten the Definition of “Environmental Information” under the AIE Regulations, (2020) (2) IPELJ 50-59.

provisions of the Aarhus Convention, including the objectives of both instruments, and in particular the objective of the Aarhus Convention as articulated in the Preamble and Article 1 of the Convention which states:

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

2. Location: After Article 3 (Scope), additional Article, named 3A to avoid confusion in the numbering system (Note sub-sections (a), (b) and (c) mirror the text of Directive 2003/4/EC):

Article 3A Objective:

“(1) The objectives of these Regulations are:

- (a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise; and,*
- (b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.*
- (c) to encourage the dissemination of such information in order to contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment”*
- (d) to implement the requirements of Directive 2003/4/EC and the relevant provisions of the Aarhus Convention.*
- (e) to protect the fundamental human right to access information held by public authorities.*

4.2 Amending the Definition of a Public Authority

Similarly, recent approaches of the courts in Ireland have sought to narrow the scope of what is a public authority.⁴⁰ In two cases, public authorities have been allowed to shirk their obligations under the Aarhus Convention by setting up companies to carry out certain functions on their behalf, and the Irish Courts have allowed them to thereby avoid their obligations.

This can be seen in the case of *Right to Know -v- OCEI & Raheenleagh Power DAC* (2022), where the Court found that a wind company set up by the ESB and Coillte, Raheenleagh Power DAC, did not fall within the ambit of the Regulations. This creates an undesirable loophole in the AIE Regime that could allow public authorities to contract out of their AIE obligations; and this is incompatible with the Aarhus Convention and the underlying norms of international law.

Our suggested amendment to the Department's draft is:

Location: Article 2(1) of the draft Regulations

Addition to the definition of a public authority, after sub-sub-section (c):

“Private companies established and wholly owned by public authorities or by a combination of public authorities, or a combination of public authorities and private interests, or other such joint ventures engaged in by public authorities.”

4.3. Amending the Form of Access Request

The requirement that the access request state the regulations is restrictive, as is the requirement that the request be in writing. There are many people who have disabilities that render them unable to make an access request in writing. In accordance with best practice in accessibility, there should be a variety of mediums through which access requests could be made. This could be in the form of voice notes sent by email, or simply by setting up a voicemail number which is monitored regularly on which requests could be made

4.4 Grounds for Refusal

It should be made clear that the grounds of refusal can only be exercised on a case by case basis using a proportionality test approach. The denial of a request for access to environmental information requires the decision be subject to a

⁴⁰ *Right to Know v OCEI & Raheenleagh Power DAC* [designated activity company] a joint venture originally set up by Coillte and ESB Wind, a subsidiary of the ESB. [2022] IECA 210 21st Sept 2022 Costello J.

balancing test, because refusal represents limiting of a fundamental human right and therefore proportionality requirements apply. There should be no mandatory grounds for refusal and as such the grounds should all be discretionary,⁴¹ and as such we welcome the removal of the mandatory requirement to refuse based on our previous submissions.

4.5 Proactive Obligation

The obligation in Article 5 of the Aarhus Convention that Public Authorities engage in proactive dissemination of environmental information related to their functions is based on the concept of open government; and therefore the default position should be disclosure of environmental information and full transparency by State authorities, especially as this is one of the most important aspects of the AIE regime in the Aarhus Convention/Directive 2003/4/EC.⁴²

It is often described as the “*active*” obligation, in contrast to the “*passive obligation*” on public authorities to respond to requests for information,⁴³ because it places an ongoing obligation on the local authority. It is clear that a public authority (and any private actor carrying out a public function such as to bring it within the definition of a public authority) should be made to comply with this “*active*” obligation in the proposed amended Regulations. Public authorities, as defined above, should, as a matter of course be collating and making public on their websites the environmental information and statistics in their possession or generated as a result of their activities. This should include any environmental monitoring and any records in their possession falling within the definition of environmental information in the Aarhus Convention.

This is well expressed in Article 7 of the EU’s AIE Directive, which creates a strong obligation on public authorities to make the information they have at their disposal accessible to the public as a matter of course.

⁴¹ Áine Ryall, 2016. Access to Information on the Environment: The Evolving EU and National Jurisprudence. IPELJ, 23(1), pp. 3 -11.

⁴² Whittaker, S., Mendel, J., & Reid, C. (2019). Back to Square One: Revisiting How We Analyse the Right of Access to Environmental Information. *Journal of Environmental Law*, 31(3), 465-485. <https://doi.org/10.1093/jel/eqz013>

⁴³ Jonas Ebbesson, Helmut Gaugitsch, Jerzy Jendroska, Fiona Marshall and Stephan Stec, *The Aarhus Convention: An Implementation Guide* (2nd edn, United Nations, 2014), 19, cited in Whittaker, S., Mendel, J., & Reid, C. (2019). Back to Square One: Revisiting How We Analyse the Right of Access to Environmental Information. *Journal of Environmental Law*, 31(3), 465-485. <https://doi.org/10.1093/jel/eqz013>

4.6 The Urgent Need to Foster a Culture of Open and Transparent Government

As noted in section 4.5 above, lack of an obligation on local and State agencies to proactively provide environmental information has been a weak point of the Irish AIE regime in both the legal framework and implementation;⁴⁴ and it is our submission that this is strongly indicative of a weak culture of transparency in the Irish public service,⁴⁵ with the consequence that very few public authorities make environmental information in their possession available as a matter of course.

The account of treatment of “*threshold jurisdictional issues*” by Right to Know CLG in ACCC/C/2016/141 and in the commentary by the OCEI on these same issues,⁴⁶ as well as the OCEI commentary on difficulties it has in engaging with public bodies on AIE issues,⁴⁷ is suggestive of a culture problem around AIE. Procuring cultural change in an organization is a difficult task, and there is a body of research on organizational change and performance management which suggests that culture trumps rules every time.⁴⁸

While evidence suggests that training has been provided with reasonable regularity to Local Authorities and Government Departments on how to deal with information requests, there is no available evidence to indicate that training in how to fulfil that obligation has been provided to them. The obligation is poorly articulated in the Regulations, and very badly implemented. For example, a

⁴⁴ Alison Hough, Finding Common Ground: Ireland Report (Report on Implementation of the Aarhus Convention in Ireland) IRC Funded Project (2022) available at www.findingcommonground.ie; Áine Ryall, 2016. Access to Information on the Environment: The Evolving EU and National Jurisprudence; IPELJ, 23(1), pp. 3 -11.

⁴⁵ Alison Hough, Finding Common Ground: Ireland Report (Report on Implementation of the Aarhus Convention in Ireland) IRC Funded Project (2022). Available at www.findingcommonground.ie; Áine Ryall, 2016. Access to Information on the Environment: The Evolving EU and National Jurisprudence; IPELJ, 23(1), pp. 3 -11. Michael Ewing, Alison Hough, & Magnus Amajirionwu, (2011). Assessing Access to Information, Participation and Justice in Environmental Decision Making in Ireland. EPA. Dublin: EPA. Retrieved from https://www.epa.ie/pubs/reports/research/econ/STRIVE_86_web.pdf. O’Riordan, J. (2017). Organisational Culture and the Public Service. Institute of Public Administration. Retrieved from https://www.ipa.ie/_fileUpload/Documents/Organisational_Culture.pdf

⁴⁶ For example, see comments of the OCEI on pages 3 and 4 of its submission to the public consultation on review of the AIE Regulations from 16th April 2021, available here <https://www.gov.ie/pdf/?file=https://assets.gov.ie/136947/04d180fc-809c-47bd-a590-c2b355bc5f0d.pdf#page=null>.

⁴⁷ See comments by the OCEI on page 6 of its submission to the public consultation on review of the AIE Regulations from 16th April 2021, available here <https://www.gov.ie/pdf/?file=https://assets.gov.ie/136947/04d180fc-809c-47bd-a590-c2b355bc5f0d.pdf#page=null>.

⁴⁸ O’Riordan, J. (2017). Organisational Culture and the Public Service. Institute of Public Administration. Retrieved from https://www.ipa.ie/_fileUpload/Documents/Organisational_Culture.pdf

cursory examination of most Local Authorities' websites shows that they do not make basic environmental information in their possession available as a matter of course.

A further omission is that Local Authorities do not have their pesticide use on their websites, despite access requests showing that Local Authorities' roads departments are among the biggest users of pesticides; and safety measures and risk assessments around the use of these pesticides are not available.

Common measures affecting the environment, such as County Council Bye Laws, are often not publicly accessible on Local Authority websites.

A 2019 EU-level study by the Institute of European Environmental Policy (IEEP) indicated that Ireland performs weakly when assessed on access to environmental information and transparency. It highlighted deficiencies in many respects in the dissemination of environmental information, for example chemicals information.⁴⁹

The 2019 EU-level study also highlighted that Ireland was one of the few countries that did not provide online EIA information in a manner that complied with best practice on accessibility for those with disabilities, for example by allowing customisation of text,⁵⁰ or allowing text to be read aloud, as well as comprehensive alt-text description of images.

The IEEP report also criticised Ireland's provision of EIA information as not meeting best practice because data was incomplete or hard to access; and it highlighted the need for greater digitisation of environmental information in general, and a complementary need for enhanced broadband access because of the reliance on internet-based dissemination.⁵¹

This omission is of increasing importance in view of the establishment of a Common European Green Deal Data Space⁵² as part of the Digital Europe Programme⁵³ (DIGITAL), mentioned in section 1.2 above. These EU policies and programmes are intended to make high-quality data and information on the environment available in support of the European Green Deal's priority actions

⁴⁹ Institute of European Environmental Policy, 2019, p. 33.

⁵⁰ Institute of European Environmental Policy, 2019, p. 55.

⁵¹ Institute of European Environmental Policy, 2019, p. 120.

⁵² European Commission, 'The European Green Deal Data Space Vision', available at: <<https://digital-strategy.ec.europa.eu/en/events/information-session-preparatory-action-common-european-green-deal-data-space-under-digital-europe>>.

⁵³ The Digital Europe Programme (DIGITAL) is a new EU funding programme focused on bringing digital technology to businesses, citizens and public administrations. See: <https://digital-strategy.ec.europa.eu/en/activities/digital-programme>.

listed in section 1.2 above; but it is our submission that, while most of them are being implemented in Ireland, the information which they generate and contain should be specifically included in a list of environmental information sources annexed to the proposed amended Regulations.

One further area where there is no implementation of the AIE Directive is the lack of any list of bodies classified as public authorities for the purposes of the legal regime, as required by Article 3(5)(b). This should be remedied immediately, as it would enhance the clarity and efficiency of the legal regime if it was clear which bodies were subject to the Regulations, and this could easily be done by setting up and maintaining a register of public bodies.

We also suggest that the onus should be placed on an agency or body falling into the category of a public body to register itself with the relevant authority (the Department or OCEI could be nominated to manage the database). This obligation could be constructed in a similar manner to that required under the Lobbying Act, 2015.

Awareness training was carried out for Local Authorities by the Department of Communications, Climate and the Environment when the updated 2014 AIE Regulations were introduced, and a few times since then, but it is our submission that this training appears to have been insufficient to achieve the level of access envisaged by the Regulations, if the contentions raised in the Aarhus Convention Compliance Committee's Case 141 are taken on board.

Centralisation of the planning system remains primitive, with the new E-Planning Service simply being a redirection to individual local authorities databases; while the website of An Bord Pleanála remains out-dated, lacking in essential data and information, and very difficult to use. In our work, we regularly utilise the website of the Environmental Protection Agency (EPA), and the contrast with An Bord Pleanála could not be more stark. For more than 20 years, the EPA has operated a website which contains a wealth of environmental information; and, most importantly, all documentation relating to licensing of environmental activities is published on the website.

Published information on the EPA website includes all relevant correspondence between the Agency and applicants for environmental licenses, together with correspondence between the Agency and the relevant local authorities. Also it has been possible for at least two decades to make an online submission to the Agency, and to pay the requisite fee if necessary, also online. In contrast, the only information available on the website of An Bord Pleanála consists of the Board's decision, a Board Direction and reports by the Board's inspector; and

only last year (2023) has it been possible to make a submission online, and to make a payment to the Board.

There is presently a huge opportunity to use technology to radically improve active dissemination of environmental information by public authorities, by the establishment of centralised planning and environmental information systems (this would be consistent with the EU programme for a Common European Green Deal Data Space, as part of the Digital Europe Programme, mentioned above.

It is recommended that a system of penalties for failure to establish databases of local authority and public authority information in suitable formats for public access be considered. The provisions in this area require much more detailed and specific obligations be set out for public authorities to collate and disseminate their information; and we suggest that advertising campaigns are required to make the public more aware of the information held by local authorities.

5. CONCLUDING OBSERVATIONS

Given the importance of the issues raised by the Department of the Environment, Climate and Communications in this public consultation, **Zero Waste Alliance Ireland** is particularly pleased to have the opportunity to submit our observations, suggestions and recommendations for further amendment of the proposed Regulations.

One of the problems we have identified is that the EU legislation on access to environmental information, as a whole, does not provide a coherent and effective regulatory measure for collection, processing and making available information and data on the environment, in the interest of environmental sustainability and the rights of EU citizens to access and use such information and data.

We must emphasise that the Aarhus Convention is an environmental human rights treaty that applies the fundamental principles of democracy and participatory governance in environmental contexts; and Ireland is legally obliged to implement its obligations. Rights of access to information, in relation to the environment, and more generally the right of citizens to have a robust and default access to government information, are vitally necessary to support and enable free speech, to combat propaganda and other forms of misinformation, and to enhance the capacity of the public to engage in political life and in the governance of the country in an informed manner.

Access to correct and timely information on the environment is also arguably a Constitutional right, or at the very least subject to Constitutional protection, as it is essentially equal or similar to the established right to a fair trial and fair

procedures in decision making, and to free speech, as well as participation in civil and political life.

In our submission, we have emphasised that the proposed amended Regulations on access to information on the environment must reaffirm the fundamental nature of this right to open and transparent environmental governance as a standalone right, and that the revision of the AIE Regulations is an opportune moment to do so. Practical measures by which this ambition can at least be partially achieved include:

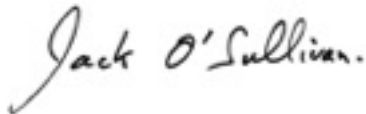
- ✓ Providing in the Regulations an effectively wide or broad definition of environmental information, encompassing information *about the environment*, as well as information *relating to the environment*, by fully implementing the Aarhus Convention, and going beyond it where necessary;
- ✓ Providing in the Regulations a clear definition of what constitutes a public authority; requiring public authorities which hold environmental information to clearly describe and make available the environmental information under their control, and a register of such organisations or authorities should be established and maintained;
- ✓ Requesting access to environmental information should be made easier, by permitting a variety of media through which access requests could be made; and the restriction to make a request in writing should be removed;
- ✓ Refusing a request for environmental information constitutes limiting a fundamental human right, and therefore proportionality requirements apply, so that requests should be refused only on very significant grounds;
- ✓ Public authorities should be required under the Regulations to proactively disseminate environmental information related to their functions, and they should publish on their websites all relevant environmental information and statistics in their possession or generated as a result of their activities;
- ✓ There is a weak culture of open government and transparency at many levels in Ireland; and, while measures to address this problem are outside the scope of the Department's proposed amendment of the Regulations, and outside the scope of our submission, we draw attention to this problem, as it hinders the availability and accessibility of environmental information, and has resulted in Ireland's weak performance when assessed on access to environmental information and transparency;
- ✓ We have highlighted the need for greater digitisation of environmental information in general, in line with the EU Common European Green Deal Data Space and the Digital Europe Programme; high-quality online data and

information on the environment should be freely available, and the amended Regulations should include an Annexed and regularly updated list of environmental information sources.

- ✓ The amended Regulations should include an Annexed and regularly updated list or register of bodies classified as public authorities for the purposes of the legal regime, as required by Art 3(5)(b);
- ✓ A commitment to awareness training on the AIE Regulations, for Local Authorities and other Government and State Agencies, should be included in the Regulations, and should be implemented;
- ✓ The Departments' intention to amend and update the Regulations on Access to Information on the Environment provides an excellent opportunity to use digital technology to radically improve active dissemination of environmental information by public authorities; and,

We trust that the Department will consider our observations and suggestions as a positive contribution to improvement of access to information and data on the environment.

Jack O'Sullivan



Zero Waste Alliance Ireland

08 January 2024

This submission was researched and written by Alison Hough (Zwai member, legal specialist and senior lecturer in law at the Technological University of the Shannon and Head of the Access to Justice Observatory), with additional introductory text by Jack O'Sullivan (Zwai founder member and director); and was edited by Jack O'Sullivan.