

ZERO WASTE ALLIANCE IRELAND

Towards Sustainable Resource Management



Submission by Zero Waste Alliance Ireland to the Department of the Environment, Climate and Communications, in Response to the Public Consultation on the Aarhus Convention National Implementation Report 2025

7 April 2025

**Zero Waste Alliance Ireland is funded by the Department of the
Environment, Climate and Communications through the Irish
Environmental Network, and is a member of**



and



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07 April 2025

Public Consultation on the Aarhus Convention National Implementation Report 2025,
Department of the Environment, Climate and Communications,
Tom Johnson House,
Haddington Road,
Dublin,
D04 K7X4.

BY EMAIL TO:
aarhus@decc.gov.ie

Dear Sir / Madam,

Response to the Public Consultation on the Draft Aarhus Implementation Report for the period 2021 to 2024

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

On behalf of Zero Waste Alliance Ireland (ZWA), we attach our submission in response to the Department's public consultation on the Ireland's draft Aarhus Convention Implementation Report for the period 2021 to 2024, for publication in 2025.

ZWA is pleased to have the opportunity to respond to this public consultation, given that our role and function as an environmental NGO frequently requires us to seek and 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 such data and information on the environment generally obtainable in Ireland, there are significant areas where difficulties in the operation of the Aarhus Convention have been encountered by ourselves and other NGOs; and we will refer to these issues in our attached submission.

We are aware that this is the third occasion on which the Department of the Environment, Climate and Communications (DECC) has consulted organisations and members of the public on issues related to the Aarhus Convention and its

implementation in Ireland. On the first occasion, in 2021, the Department stated its intention to review, update and consolidate the existing Irish Regulations implementing the Convention in Ireland; and the purpose of that public consultation was to gather views and feedback from organisations and individuals, in order to assist the DECC in undertaking this task.

The purpose of the second public consultation, launched on 04 November 2023 by the DECC was to gather stakeholder feedback on the Department's updated draft Regulations on Access to Information on the Environment (AIE Regulations) 2007-2018. Zero Waste Alliance Ireland responded to this public consultation by providing a detailed assessment of the draft AIE Regulations, noting that while significant improvements had been made, some serious problems remained.

In that submission, dated 08 January 2024, we emphasised that the Aarhus Convention is an environmental human rights treaty which applies fundamental principles of democracy and participatory governance in the environmental context; and that Ireland is legally obliged to implement its obligations. Rights of access to environmental information, and more generally the right of citizens to have a robust and default access to government's environmental 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.

We also submitted that citizens' access to correct and timely information on the environment is 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.

Article 10, paragraph 2, of the Aarhus Convention requires the parties to the Convention to keep under continuous review the implementation of the Convention by means of regular reporting by the parties. Parties to the Convention are required to produce an "*Implementation Report*" every four years in advance of the next meeting of the parties.

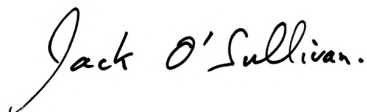
In response to Article 10 (2), the Department of the Environment, Climate and Communications has drafted the current National Implementation Report (NIR), which provides data on the increased number of Access to Information requests received by public bodies, the activities of the Commissioner for Environmental Information (OCEI) and the initiation of the new planning and environmental court. The report also outlines the approach taken by public authorities in their role of engaging with the public in relation to the taking of decisions which affect the environment.

However, the draft NIR also provides a response to very extensive and detailed critical evaluation, undertaken by the Aarhus Convention Secretariat, of the way in Ireland has implemented the Convention; and includes an assessment of how Ireland has responded to the obligations of the Convention.

Because of our interest in the accessibility of environmental information, and the rights of environmental NGOs (in addition to the rights of citizens) to participate in environmental decisions, ZWAI is very pleased to have the opportunity to respond to this consultation on the draft National Implementation Report, and the intention of our submission is to provide observations which will hopefully have some positive influence on the way in which Ireland will continue to implement this important Convention, and will fulfil the necessary requirements as a party to the Convention.

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

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 the Aarhus Convention Draft National Implementation Report

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

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ZERO WASTE ALLIANCE IRELAND

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RESPONSE TO THE PUBLIC CONSULTATION ON THE AARHUS CONVENTION DRAFT NATIONAL IMPLEMENTATION REPORT

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

1. INTRODUCTION

“...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 2021.¹

The Aarhus Convention² (“the Convention” or “the Aarhus Convention”) is an environmental human rights treaty or Convention³ which applies fundamental principles of democracy and participatory governance to a wide range of environmental contexts. As such, it enshrines the right to a clean and healthy environment, the right of access to environmental information, a right to public participation in environmental decision-making, and access to environmental

¹ 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>

² 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>.

³ Jonas Ebbesson, Helmut Gaugitsch, Jerzy Jendroska, Fiona Marshall and Stephan Stec, The Aarhus Convention: An Implementation Guide (2nd edn, United Nations, 2014)

justice, in order to support the right to a clean and healthy environment. These important rights are sometimes described as the three pillars of the Convention.

Public participation in environmental decision-making is framed as a fundamental international law right, and increasingly it has also come to be framed as a human right.⁴ As mentioned above, the Aarhus Convention includes two other categories of rights to support the right of public participation. These are the right to access information about the environment (so that the public would be well informed enough to participate in environmental decision-making), and the right to a remedy in the courts when rights of public participation and information were not fully protected. “Access to Justice”, as it is known, is a very important plank of the tripartite rights that make up the Aarhus Convention rights in broad terms. The Convention also provides for other related rights and obligations, like the right to protection from persecution for environmental defenders (Art 3(8)), the obligation to provide support for environmental NGOs (Art 3(4)), or the obligation to take all necessary steps to implement the Convention (Art 3(1)).

Ireland and all EU Member States, as well as the EU itself, are full parties to this Convention, and are obliged to implement all of its obligations.⁵

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, which sets an essential legal and jurisdictional context for access to environmental information in all States which are parties to the Convention.

The legal definition of what constitutes ‘environmental information’ was first established by the Aarhus Convention; and, because the European Union is a signatory to the Convention, a number of regulatory instruments were adopted by the EU, including the Directive on Freedom of Access to Information⁶ and the Aarhus Regulation.⁷

⁴ Ebbesson, J. (2018, April 19). *Public Participation in Environmental Matters – International Human Rights Developments in Europe and Africa*. Faculty of Law, Stockholm University Research Paper No. 58. doi:<https://dx.doi.org/10.2139/ssrn.3164785>

⁵ The EU ratified the Convention in 2005, Ireland in 2012.

⁶ 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’)

⁷ 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’),

Environmental information (and, by implication, a right of 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,⁸ and priority policies and actions such as:

- Preventing and rectifying pollution at the source.
- Combating and mitigating climate change.
- Eliminating fossil fuel use and transitioning to renewable energy sources.
- Protecting biodiversity and repairing damaged ecosystems.
- Addressing land use issues, including soil health, agriculture, forestry, and urbanisation.
- Protecting and managing water resources and water quality.
- Tackling the problems of air and noise pollution.
- Achieving resource efficiency and implementing a circular economy.
- Promoting environmentally sustainable production and consumption.
- Confronting the challenging issues of toxic chemicals, biocidal products, and pesticide use (including persistent organic pollutants, POPs).

Article 10(2), of the Convention requires the parties to the Convention to keep the implementation of the Convention under continuous review by means of regular reporting by the parties. At the first meeting of the parties, it was agreed that each party should prepare a report on the legislative, regulatory or other measures that it has taken to implement the provisions of the Convention, including their practical implementation.

The result of this decision is that every country which is a signatory to the Convention, i.e., all parties to the Convention, should produce an implementation report every four years in advance of the next meeting of the parties. In Ireland's case, the National Implementation Report (NIR) should evaluate the performance of the country in the implementation of the Convention, and the report should specifically include detailed information on access to information on the environment, public participation in environmental decision making, and access to justice in environmental matters.

The Irish National Implementation Report (NIR) drafted by the Department of the Environment, Climate and Communications (DECC) provides data on the increased number of Access to Information requests received by public bodies, the activities of the Commissioner for Environmental Information (OCEI) and the

amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021, OJ L 356/1.

⁸ Communication from the Commission, 'The European Green Deal', COM(2019) 640 Final ('EGD').

initiation of the new planning and environmental court. The report also outlines the approach taken by public authorities in engaging with the public concerning the making of decisions that affect the environment.

The Department's responsibility is to have Ireland's NIR for 2021 to 2024 agreed and prepared in time for the next meeting of the Parties to the Aarhus Convention, scheduled for November 2025. The current draft NIR follows a template set by the Aarhus Secretariat; it builds on text provided in earlier reports, and, in the preparation of this draft, the relevant Government Departments and Agencies have been consulted and have made submissions which have provided substantive parts of the draft report.

As stated by the DECC, the current public consultation is intended to seek a wider range of views on Ireland's draft Aarhus Convention NIR, and to obtain these views from a larger number of organisations, including civil society organisations. It is this consultation to which our submission is a response.

2. ZERO WASTE ALLIANCE IRELAND (ZWAI)

At this point we consider that it is appropriate to mention the background to our submission, especially the policy 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 waste elimination, and continues to lobby the Irish Government and the European Commission on using resources more 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 in Ireland;
- iii) lobbying Government and local authorities to implement environmentally sustainable waste management practices, including clean production, elimination of toxic substances from products, re-use, recycling, segregation of discarded materials at source, and other 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, 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) maintaining contact and exchanging information with similar 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 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.

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. These same ecological

principles can be applied to the many ways in which we abstract and use water as a resource, and to the equivalent volumes of wastewater produced as a consequence of these uses.

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 to wasting nutrients contained in our wastewater); and Goal 15, to protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, to halt and reverse land degradation and to halt biodiversity loss.

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

- How Ireland, the European Union and the Irish food industry should address the problems of single-use plastic packaging and plastic waste (March & Nov. 2019);
- Transforming the construction industry so that it could become climate-neutral (instead of being a major emitter of greenhouse gases & toxicants);
- Observations on the general scheme of the Irish Government's Circular Economy Bill (October 2021);
- Several observations and submissions addressing the need for recovery and reuse of the phosphorus and nitrogen content of wastewater (2019 to 2023);
- Observations to the European Commission on a proposed revision of the EU Regulation on Shipments of Waste (January 2022);
- Feedback to the European Commission on a proposed Directive on Soil Health – Protecting, Sustainably Managing and Restoring EU Soils (March 2022);⁹
- Submission in response to a public consultation on the review of Ireland's security of energy supplies (October 2022);¹⁰

⁹ <https://www.zwai.ie/resources/2022/protecting-sustainably-managing-and-restoring-eu-soils/>

¹⁰ Submission to the Department of the Environment, Climate and Communications in Response to the Public Consultation on a Review of the Security of Energy Supply of Ireland's Electricity and Natural Gas Systems; <https://www.zwai.ie/resources/2022/public-consultation-on-a-review-of-the-security-of-energy-supply-of-irelands-electricity-and-natural-gas-systems/>

- Submission in response to a public consultation on Ireland's Fourth National Biodiversity Action Plan (November 2022);¹¹
- Submission in response to a public consultation on Ireland's National Bioeconomy Action Plan 2023-2025 (January 2023);¹²
- Submission in response to a public consultation on Ireland's draft Waste Management Plan for a Circular Economy (July 2023);¹³
- Submission in response to a public consultation on the problem of disposable vaping devices (July 2023);¹⁴
- Observations and recommendations on the rapidly increasing European and global problem of waste electronic & electric equipment (WEEE, Sept. 2023);¹⁵
- Observations to the European Commission on a Proposed EU Directive on Soil Monitoring and Resilience (November 2023);¹⁶
- Observations on the Irish Government's draft Green Public Procurement Strategy & Plan (November 2023);¹⁷
- Observations and feedback to the European Commission on the proposed revision of the EU Waste Framework Directive (November 2023);¹⁸

¹¹ <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/>

¹² <https://www.zwai.ie/resources/2023/zwai-submission-on-irelands-national-bioeconomy-action-plan-2023-2025/>

¹³ 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/>

¹⁴ 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/>

¹⁵ 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/>

¹⁶ Observations and Feedback to the European Commission on the Proposed EU Directive on Soil Monitoring and Resilience; ZWAI, 03 November 2023.
<https://www.zwai.ie/resources/2023/submission-on-the-proposed-eu-directive-on-soil-monitoring-and-resilience/>

¹⁷ <https://www.zwai.ie/resources/2023/submission-to-the-decc-on-the-draft-green-public-procurement-strategy-and-action-plan/>

¹⁸ <https://www.zwai.ie/resources/2023/observations-and-feedback-to-the-european-commission-on-the-proposed-revision-of-the-eu-waste-framework/>

- Observations & feedback to the European Commission on revision of Directives 2000/53/EC & 2005/64/EC on End-of-Life Vehicles (December 2023);¹⁹
- Submission by ZWAI to the Department of the Environment, Climate and Communications in response to the Department's public consultation on proposed amendments to the Access to Information on the Environment (AIE) Regulations 2007-2018 (January 2024);²⁰
- Response to the first Public Consultation by the Department of the Environment, Climate and Communications on Ireland's draft National Energy and Climate Plan (March 2024);²¹
- Submission by ZWAI to the European Commission in response to the Commission's public consultation on the evaluation of the Nitrates Directive (91 / 676 / EEC) on Protection of Waters against Pollution caused by Nitrates from Agricultural Sources (March 2024);²²
- Response to the second Public Consultation by the Department of the Environment, Climate and Communications on Ireland's updated draft National Energy and Climate Plan (June 2024);²³
- Submission by ZWAI to the European Commission in response to the Commission's public consultation on proposed ecodesign and ecolabelling requirements for computers (July 2024);²⁴
- Submission by ZWAI and the Waterford Environmental Forum to the Department of Transport in response to the Department's Public Consultation: *"Moving Together – A Strategic Approach to Improving the Efficiency of the Transport System in Ireland"* (August 2024);²⁵
- Submission by ZWAI to the Irish Department of Housing, Local Government and Heritage in response to the Department's Public Consultation on Draft

¹⁹ <https://www.zwai.ie/resources/2023/end-of-life-vehicles-observations-and-feedback-to-the-european-commission/>

²⁰ <https://www.zwai.ie/resources/2024/submission-to-the-decc-on-the-proposed-amendments-to-the-access-to-information-on-the-environment-aie-regulations-2007-2018/>

²¹ <https://www.zwai.ie/resources/2024/submission-by-zwai-to-decc-on-irelands-national-energy-climate-plan-necp/>

²² <https://www.zwai.ie/resources/2024/submission-by-zwai-to-the-eu-public-consultation-on-the-evaluation-of-the-nitrates-directive/>

²³ <https://www.zwai.ie/resources/2024/draft-update-of-irelands-national-energy-and-climate-plan-necp-submission-by-zwai-to-decc/>

²⁴ <https://www.zwai.ie/resources/2024/ecodesign-and-ecolabelling-requirements-for-computers-zwai-submission-to-eu-commission-ecodesign-and-ecolabelling-requirements-for-computers/>

²⁵ <https://www.zwai.ie/resources/2024/moving-together-a-strategic-approach-to-improving-irelands-transport-system/>

Proposed Additional Measures for Ireland's Fifth Nitrates Action Programme (December 2024);²⁶ and,

- Observations and feedback by Zero Waste Alliance Ireland in response to the European Commission's call for evidence on the proposed European Oceans Pact (February 2025).²⁷

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

ZWAI has been listed since 2023 in the European Commission's "Transparency Register" (Registration Number **417362640092-95**) as an Environmental Non-Government Organisation (eNGO), based in Ireland.

ZWAI is also a not-for-profit company limited by guarantee (Company registration number **394205**), and a registered charity (CRN number **20057244**). Membership is less than 50 individuals, and the company's affairs and activities are supervised by a 6-person Board of Management (Directors), some of whom are regular contributors to submissions, or make presentations at conferences.

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 continuing discussions on the sustainability of construction materials, buildings and on the built environment.

²⁶ <https://www.zwai.ie/resources/2024/proposed-additional-measures-for-irelands-fifth-nitrates-action-programme-nap/>

²⁷ <https://www.zwai.ie/resources/2025/eu-oceans-pact-submission-by-zwai/>

3. PRELIMINARY GENERAL OBSERVATIONS

The Aarhus Convention was developed from Principle 10 of the Rio Declaration 1992,²⁸ which embodies a key principle of international environmental law: that environmental decisions are best made with the participation of those concerned. The Convention was unusual in that it was negotiated with NGOs at the table,²⁹ and NGOs remain important actors at the Meeting of the Parties, with speaking rights. The Convention places a large degree of importance on including the public in environmental decision-making. This is because robust and default access to information enhances public discourse, supports free speech, combats propaganda and other forms of misinformation and disinformation, and enhances the capacity of a well-informed public to engage in political life and the governance of the country.

The existing Irish Regulations on Access to Information on the Environment (AIE Regulations), 2007-2018, have been in place since 2007, with only minor changes made during the last seven years,³⁰ and the Regulations required urgent and major revision in response to findings by the Aarhus Convention Compliance Committee (ACCC) of non-compliances by Ireland.³¹

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. 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.

The amended and updated regulations were issued for public consultation on 14 November 2023; and, on 08 January 2024, Zero Waste Alliance Ireland (ZWAI) made a detailed submission to the DECC,³² in which we recommended that the proposed amended Regulations on access to information on the environment must reaffirm the fundamental nature of this right to open and transparent

²⁸ https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

²⁹ Wates, J. (2004, June 5). *The Aarhus Convention and the Citizen*. Retrieved from www.ec.europa.eu: https://ec.europa.eu/environment/aarhus/pdf/jeremy_wates.pdf

³⁰ S.I. No. 133 of 2007; S.I. No. 662 of 2011; S.I. No. 615 of 2014; and S.I. 309 of 2018.

³¹ 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.

³² <https://www.zwai.ie/resources/2024/submission-to-the-decc-on-the-proposed-amendments-to-the-access-to-information-on-the-environment-aie-regulations-2007-2018/>

environmental governance as a standalone right, and that the revision of the AIE Regulations provided an opportune moment to do so.

ZWAI also recommended that practical measures by which this ambition can at least be partially achieved should 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 by 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 ensuring that a register of such organisations or authorities would 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 is the equivalent of limiting a fundamental human right, and therefore the proportionality requirements apply, so that such 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 drew 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 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; we recommended that 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.

It is our submission that the above recommendations are still relevant, despite the significant improvements in Ireland's implementation, as described in the Department's consultation document and draft NIR dated 07 March 2025.

4. EVALUATION OF THE DRAFT AARHUS CONVENTION NATIONAL IMPLEMENTATION REPORT 2025

4.1 Implementation of Article 3, Paragraphs 2, 3, 4, 7 and 8

This section corresponds with sections III - VI of the draft National Implementation Report.

4.1.1 Paragraph 2: Measures taken to Ensure that Officials and Authorities Assist and Provide the Required Guidance

There is no appropriate legal implementation in Irish law of the important obligation in Art3(2) of the Convention, which requires public bodies to assist the public in exercising their rights under the Convention.

The draft NIR refers to the Access to Information on the Environment Regulations 2007 – 2018, Regulation 5(1), which establishes a general obligation to provide advice and guidance on the exercise of the public's rights but fails to create a sufficiently specific obligation.

4.1.2 Paragraph 3: Measures taken to Promote Education and Environmental Awareness

Art3(3) requires capacity building around the Convention's rights. Although there have been initiatives, as outlined in the DECC's draft NIR, no structural system exists to ensure the public's capacity building specifically in the area of Aarhus Rights. This became clear in 2022, when the State refused a request from the eNGO sector for funding an Aarhus Centre; which, if it had been established, would have played an important role in capacity building for individuals.³³

Environmental law is a notoriously complex and fragmented legislative regime. Knowledge about the law is hard to find and is generally contained in expensive legal textbooks and subscription-based journal articles, which are not accessible to those outside of higher education or the legal profession. Government-funded advice services, such as Citizens Information, lack the capacity to assist in this specialized and complex area.

4.1.3 Paragraph 4: Measures taken to ensure that there is Appropriate Recognition of and Support to Associations

Funding for the eNGO sector in Ireland is generally low compared to that available in Britain, the North of Ireland and other EU Member States. Even

³³ <https://friendsoftheirishenvironment.org/press-releases/ireland-and-uk-to-be-informed-of-organisation-for-security-and-cooperation-europe-support-for-irish-aarhus-centre>

considering the increase in funding for the Irish Environmental Network from less than € 500,000 in 2014 to € 3 million in 2024, this amount must be distributed among the 36 member eNGOs of that network, which provides only a minimal amount of core funding to support their activities. There are only limited additional sources of government funding specifically for the eNGO sector.³⁴

Public participation in plans and programmes generally offers only very short consultation periods, sometimes over holiday periods, while requesting feedback on highly complex issues, and failing to notify the appropriate stakeholders. Such cases can raise concerns regarding “selective” consultation, where one might question whether the government is seeking to confirm a particular viewpoint by consulting only those bodies from which agreement has already been obtained.

For example, Ireland did not initiate public consultations early enough during the development of its latest National Energy and Climate Plan (2024).³⁵ Two consultations took place, but only after the draft had been submitted to the EU Commission, and the Irish government made minimal efforts to encourage public participation. Furthermore, the initial consultation relied on an outdated policy projections scenario, and the second consultation occurred just days before the final NECP submission deadline, which allowed little room for meaningful adjustments at that stage.

It is our submission that these consultations fall short of the legal requirements set by the Governance Regulation, the Aarhus Convention, and the European Commission’s guidelines.

4.1.3.1 *Media Coverage of Environmental Issues*

Concerns have also been raised in Ireland about poor media coverage of environmental issues. For example, major news outlets frequently publish articles that portray the exercise of environmental rights negatively. It is common for politicians to criticise “objectors”, characterising those who assert their Aarhus rights as “NIMBYs” (“Not in My Back Yard”). This term is used to shame individuals exercising their rights under the Convention, suggesting they are selfish rather than genuinely concerned about environmental issues. A recurring theme is that the exercise of environmental democracy rights hinders the

³⁴ <https://www.cso.ie/en/releasesandpublications/ep/p-essst/environmentalsubsidiesandsimilartransfers2022/keyfindings/>

³⁵ https://caneurope.org/content/uploads/2024/11/Ireland_Press-Release-on-NECP-Complaint-06.11.24-1.pdf

development of essential infrastructure and housing, with environmental defenders even being blamed for the housing crisis.^{36 37}

4.1.3.2 Access to Decision-making in the Irish Planning System

Extensive research shows that delays in the planning system stem from a combination of a high rate of poor-quality first-instance decision-making, while legislative amendments intended to expedite the process have the effect of ultimately reduce its effectiveness (such as the now-repealed Strategic Housing Development provisions), and dysfunction within the courts system.³⁸ Ongoing concerns regarding An Bord Pleanála have raised questions about the integrity and efficacy of this decision-making organisation, which already has a history of significant delays and backlogs, despite a significant increase in staff numbers.^{39 40 41}

Unfortunately, the false narrative that environmental defenders are ‘serial objectors’ has already resulted in several adverse legislative attempts to restrict Aarhus rights in order to appease industry lobbyists eager to reduce regulation across various sectors. These attempts include the General Head of the Housing, Planning and Development Bill 2019, which sought to heavily limit both NGO and individual rights to review planning decisions, as well as similarly restrictive proposals in the forestry sector originally contained in the Agriculture Appeals (Amendment) Bill 2020.^{42 43} The introduction of such measures often backfires, leading to more legal challenges rather than fewer, as these restrictive measures conflict with EU laws and international law norms regarding access to environmental justice.

³⁶ <https://www.agriland.ie/farming-news/planning-system-slow-inefficient-and-at-mercy-of-serial-objectors/>

³⁷ <https://www.farmersjournal.ie/more/buildings/frustration-over-serial-objectors-to-farm-building-works-828999>

³⁸ <https://www.irishnews.com/news/uk/courts-backlog-requires-radical-answers-head-of-review-says-QQVBSHUHAVKJFKWSGVUXHHHF4Y/>

³⁹ <https://www.irishtimes.com/ireland/housing-planning/2024/09/17/an-bord-pleanala-triggers-further-inquiries-into-governance-issues/>

⁴⁰ <https://irishcycle.com/2024/07/08/fear-of-delay-for-metrolink-and-dart-as-an-bord-pleanala-takes-26-months-to-approve-relatively-straightforward-level-crossing-removals/>

⁴¹ <https://www.tipperarylive.ie/news/nenagh/1731429/alan-kelly-td-expresses-concern-over-an-bord-pleanala-decision-beside-tipperary-school.html>

⁴² <https://www.gov.ie/en/consultation/c20fbc-public-consultation-on-general-scheme-of-the-housing-and-planning-an/>

⁴³ <https://www.gov.ie/en/consultation/290a0-submissions-received-in-response-to-the-public-consultation-on-the-draft-agriculture-appeals-amendment-bill-2020-now-entitled-the-forestry-miscellaneous-provisions-bill-2020/>

The General Heads of the Planning and Development Bill 2019 reappeared as the Planning Bill 2022 which eventually passed into law as the Planning Act 2024.⁴⁴ This Act seeks to introduce a system of legal aid, while severely restricting standing for NGOs in environmental matters. This has not yet been commenced and has been subject to criticism by NGOs and experts for the extent of State control over the granting of the aid and the level of the fees.⁴⁵ If set at a comparable level to those currently set by the State in criminal matters, then this will make it hard for litigants to operate under this restrictive scheme. The legislation has also been criticised for disincentivising settlement in environmental judicial review via provisions which make it a criminal offence. This will likely lead to cases proceeding which could otherwise have been amicably resolved, leading to waste of court time, undermining the administration of justice and also racking up unnecessary costs for both sides, in particular the State.

4.1.3.3 *Government's Narratives on Environmental Issues*

It was notable that in response to the most recent public consultation and survey on Aarhus Implementation, many participants raised concerns about dominant narratives from the government that were anti-environmental democracy, incorrect, and misleading. Additionally, many participants expressed a desire to see this narrative challenged or addressed. This issue was rated as serious for Aarhus Implementation in Ireland.

It is our submission that a range of measures should be considered, including media monitoring, for industry-influenced narratives that run counter to environmental protection objectives, and the adoption of a BAI policy on environmental and climate reporting to include monitoring for balance in environmental discourse.

The introduction of a statutory offence of intimidation against those engaged in environmental protection activities, aimed at preventing them from participating in those activities, should also be considered, with penalties and enforcement powers granted to both the EPA and citizens. Whistle-blower protection designed to protect those with no connection to the organisation committing the wrongdoing should also be considered, in line with Art 33 of the UN Convention Against Corruption, to which Ireland is a party.⁴⁶

⁴⁴ The Planning & Development Act 2024
<https://www.irishstatutebook.ie/eli/2024/act/34/enacted/en/html>

⁴⁵ EJNI (2024) 'Demystifying the Costs of Environmental Justice', <https://ejni.net/wp-content/uploads/2024/12/EJNI-Costs-Handbook-Dec-2024.pdf>

⁴⁶ https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

Consideration could be given to the preparation and issuing of guidelines for political representatives and government members regarding public statements about environmental defenders, especially in the Oireachtas, to ensure that parliamentary privilege is not abused. Such guidelines might include a broader definition of whistle-blower aligned with the UNCAC or the establishment of a new criminal offence of targeting of environmental defenders, or both.

We advocate that this is an important issue, given the number of historic and very recent attacks made by Deputies speaking under parliamentary privilege in Dáil Éireann, and the fact that most of these verbal attacks on environmental defenders were based on deliberately incorrect information, and some of the attacks have been of a personal nature, or consisted of attempts to reduce or eliminate the right of environmental organisations to obtain information and use it to object to, or to appeal against, inappropriate developments (see also section 4.1.4 below).

4.1.4 Paragraph 8: Measures taken to Ensure that Persons Exercising Their Rights under the Convention are not Penalised, Persecuted or Harassed

There is no legislation in place to implement Article 3(8) of the Convention, creating specific protections against harassment for environmental defenders.

Whistle-blower legislation, namely the Protected Disclosures Act 2014, covers only information about organisational wrongdoing disclosed by a worker in the course of their job, as specified in section 5 of the Act. This legislation excludes volunteers. The only available redress mechanisms are those under employment law. This law was amended following EU Directive 2019/1937,⁴⁷ and the legislation published in 2022 extended the protections to volunteers, shareholders, board members and job applicants for the first time.⁴⁸

It is our submission that the legislation still does not protect those who have no connection to the organisation being reported on (the majority of those reporting environmental harm or wrongdoing), nor does it safeguard those who initiate environmental judicial reviews or other court proceedings to prevent environmental harm, or who make complaints in a personal capacity to State Agencies. It will not protect concerned citizens and NGOs that report on wrongdoing in the private or public sector, for example.

⁴⁷ <https://www.gov.ie/en/publication/e20b61-protected-disclosures-act-guidance-for-public-bodies/#eu-whistleblowing-directive>

⁴⁸ <https://www.oireachtas.ie/en/bills/bill/2022/17/>

Harassment of environmental defenders may be actionable under Section 10 of the Non-Fatal Offences Against the Person Act 1997 if the criminal burden of proof can be met, which can be challenging. It can be difficult to satisfy the constituent elements of the offence, such as proving fear of harm or injury, and the requirement to demonstrate repeated incidents of harassment (particularly concerning cases involving different individuals participating in the harassment). Additionally, complications arise when environmental defenders are harassed anonymously or online, making it challenging to formulate a criminal complaint against unknown offenders.

There is no civil wrong or tort of “harassment”; in the sense that it falls below the criminal threshold of instilling fear of actual harm; for example, it is not illegal to bully someone. It may become a civil wrong if the victim suffers an injury, such as a mental condition like depression or anxiety, or a physical injury incurred as a result of the harassing behaviour when this outcome is foreseeable. However, distressing behaviour towards an environmental defender aimed at discouraging them from engaging in environmental protection work is not yet expressly against any law in Ireland.

It is notable in Ireland that environmental NGOs often come under attack for their activities. In 2021, Friends of the Irish Environment received threats related to a judicial review in which they were involved. Environmental NGOs have also been targeted by politicians and public figures because of their environmental protection efforts. This is unacceptable and potentially a breach of Art 3(8). Political interference in the activities of environmental NGOs, particularly threats to funding, should not be tolerated in a democratic society.

This problem was highlighted in the judgement in the leave application stage of the Kilkenny Cheese Plant case⁴⁹ by Mr. Justice Humphries in the High Court, who pointed out that the high-profile attacks on the Plaintiff, An Taisce, were characterised by vitriolic attacks from farming bodies, various cross-party TDs and Senators (including some members of the Cabinet), and ultimately the Taoiseach himself urging An Taisce in the Dáil to drop the appeal of the High Court case.

It is therefore our submission that the DECC (on behalf of Ireland) should strongly consider developing a statutory offence of intimidation against those involved in environmental protection activities, to prevent such actions, in order to implement Art 3(8).

Another issue faced by those seeking to exercise their environmental democracy rights is the targeting of individuals who engage in public participation or access

⁴⁹ *An Taisce - The National trust for Ireland -v- An Bord Pleanála & Ors*, [2021] IEHC 254, [2021] IEHC 422, [2021] IESCDET 109]

to justice through defamation, or other types of lawsuits. This practice is known as SLAPP (Strategic Lawsuits Against Public Participation), where the courts are used as a tool to intimidate those involved in environmental protection activities. In 2020, Ireland was reported to the Council of Europe for the use of a SLAPP against journalists.⁵⁰ Concerns exist that Ireland's defamation processes, which are costly and lengthy, provide an ideal forum for SLAPP litigation, where the goal is not to win but to tie up the target's time, energy, and money.⁵¹

In 2022, a Tidy Towns committee was threatened with a defamation suit for opposing Strategic Housing Developments (SHDs) in their area, which was raised in the Dáil.^{52 53} Despite the initiation of reforms to the Defamation Law in 2024, progress has stagnated, and the law remains unchanged as of today.^{54 55}

4.1.5 Our Concluding Observations on the Implementation of Paragraphs 2, 3, 4, 7, and 8 of Article 3

In conclusion, it is evident that governmental support for the environmental NGO sector is lacking, and despite some recent funding increases, most organisations remain drastically under-resourced. A poor understanding of the importance of environmental democracy rights, combined with misleading narratives surrounding these rights and their exercise from prominent public figures and the media, creates a toxic atmosphere for environmental defenders. As a result, they are subject to attacks for their efforts to combat environmental harms amid a climate and biodiversity crisis. The financial precarity of environmental NGOs and the absence of effective legal protections for environmental defenders exacerbate these issues, affecting both NGOs and individuals. Current harassment laws and whistle-blower legislation do not provide adequate protection for them. Additionally, the recent rise in SLAPP litigation discourages the exercise of civic rights, which undermines environmental protection, the rule of law, and democracy. It is hoped that existing international law obligations to address these issues will be fully implemented and that there will be a domestic

⁵⁰ <https://fom.coe.int/en/alerte/detail/71014913;globalSearch=false>

⁵¹ <https://www.irishtimes.com/business/media-and-marketing/buzzfeed-legal-case-shows-dublin-s-draw-for-foreign-libel-claimants-1.4105676>

⁵² <https://www.independent.ie/irish-news/developer-threatens-tidy-towns-group-with-legal-action-41298649.html>

⁵³ <https://www.oireachtas.ie/en/debates/debate/dail/2022-02-01/speech/195/>

⁵⁴ <https://www.bbc.com/news/articles/cgerpklyqwxo>

⁵⁵ <https://www.irishtimes.com/politics/oireachtas/2025/02/05/defamation-bill-among-planned-laws-to-be-revived-in-new-dail/>

willingness to tackle these fundamental challenges and find creative, balanced solutions.

4.2 Access to Information – Articles 4 & 5 of the Convention

This section corresponds with sections VII - XIV of the draft National Implementation Report.

4.2.1 Article 4: Legislative, Regulatory and other Measures Implementing the Provisions on access to Environmental Information

As stated in the draft NIR issued by the DECC for consultation, draft revised AIE Regulations are in preparation providing for amendments in response to the recommendations of the Compliance Committee in Decision VII/8i (Ireland) and to bring Ireland into compliance with the Convention. Two public consultations have also been held as part of this revision to the Regulations.

Despite the amendments, the draft NIR states that time limits to respond to queries under the Convention remain one month extendable to two months for complex requests. This is longer than in many other EU Member States, and should therefore be reduced to between 10 and 14 days. The amendments, as outlined in the draft NIR, do not propose a timeframe for the Commissioner for Environmental Information to make a decision. This can be adversely compared to the Freedom of Information Act 2014, as amended, which sets down a four-month timeframe for determination.⁵⁶ The Aarhus Convention Compliance Committee found this lack of clear timeframe to be a breach of the Convention; and it is therefore our submission that this deficiency should be addressed in the proposed amended AIE Regulations.⁵⁷

Delays in processing complaints by the Office of Commissioner for Environmental Information (the “Ombudsman” for Environmental Information, OCEI) have been repeatedly highlighted by NGOs. These continuing extensive delays are excused by statements from the OCEI about lack of resources, despite the fact that additional resources have been provided. This is said to have had no effect on reducing backlogs due to the increase in volume and complexity of the complaints being dealt with. Therefore, one can conclude that although funding was increased, it was not increased sufficiently to enable the authority to function as

⁵⁶ <http://www.irishstatutebook.ie/eli/2014/act/30/section/22/enacted/en/html#sec22>

⁵⁷ https://unece.org/fileadmin/DAM/env/pp/compliance/C2016-141_Ireland/Draft_Findings/C141_Ireland_findings_advance_version.pdf

required by EU law. The Aarhus Convention Compliance Committee has found that these excessive delays constitute a breach of the Convention.⁵⁸

Also, the situation reported by NGOs that public authorities often treat the outer limit of two months as the actual deadline should be addressed through amendments to the legislation that make it clear that extension is only to be availed of in exceptional circumstances. This should also be addressed through training provided regularly by the Department of Environment to public authorities/training provided as part of the PMDS system.

It is difficult to address this issue when no statistics are available, and instead reliance is placed on the anecdotal reports of NGOs and timelines in cases which come before the Court. There are statistics available upon request for Government Department response times to AIE requests and these do indicate good practice in terms of keeping to the time limit of one month by Government departments. However, it is impossible to assess the situation in the absence of more comprehensive data regarding the processing timeframes across the wider public service and in particular local authorities. Records should be kept in a central database containing annual reports on the requests, the response times, and the reasons for any exceedances of time limits in order to monitor and assess compliance in this area.

Another undesirable aspect of the framework is the treatment by public authorities of requests for information. The tendency by public authorities is to treat the AIE and FOI frameworks as competing separate frameworks instead of overlapping complementary frameworks, so refusing to deal with requests unless they list the “correct” legislation at the top of the request, and processing the requests under different legislation in different ways. This acts as a barrier to access was not envisaged in the legislation. It is therefore a welcome change that the draft amendments to the AIE Regulation set out the definitions of “environmental information”, “public authority” and “applicant”, as these were definitions were subject to many disputes in the past, hindering compliance with the Convention. Unfortunately, the language used in the draft NIR still indicates a treatment of the AIE and FOI as totally separate frameworks.

A final matter of note is that the Aarhus Convention represents a radical alteration in the governance and transparency obligations of Governments. This new era of transparency stands in opposition to a sometimes-dysfunctional organisational culture that prevails in the Irish Public Service.

A generic example of how this might interfere with access to information is where, for example, employees in some sectors may be in fact subtly rewarded for

⁵⁸ https://unece.org/fileadmin/DAM/env/pp/compliance/C2016-141_Ireland/Draft_Findings/C141_Ireland_findings_advance_version.pdf

finding creative ways to deny access requests. The account of treatment of “threshold jurisdictional issues” by Right2Know in ACCC/C/2016/141 and in commentary by the OCEI on these same issues, as well as the OCEI commentary on difficulties it has in engaging with public bodies on AIE issues, is suggestive of a culture problem around AIE.⁵⁹ Procuring cultural change in an organisation is a difficult task and there is a body of research on organisational change and performance management that suggests that culture overwhelms the rules every time.⁶⁰

Many public consultation respondents highlighted their experience of a public service culture that lacked an understanding of the principles of transparency that underpin the access to information regime, finding that the rules on access to information were often not known, or were flouted or not respected. Part of this problem may be due to a lack of knowledge by local authority staff (despite annual training being offered by the Department of Environment). But it seems equally likely that at least some of these experiences may be attributable to organisational culture.

More needs to be done to address the “soft” or invisible cultural and organisational barriers to access to information that arise from a tradition of not affording access to information and participation in decision-making. This could be tackled through training.

While it is acknowledged that the Department of the Environment, Climate and Communications has provided several training sessions to Local Authorities on Access to Environmental Information in the new AIE Regulations; addressing the more difficult cultural barriers and organisational values requires a more workplace-integrated, ongoing and consistent approach; but, if implemented, could be an important contribution to producing real access to information. The PMDS professional development system used throughout the public service is supposed to highlight training needs. However, the evidence suggests uneven application of this system across the public service.^{61 62}

⁵⁹ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/136947/04d180fc-809c-47bd-a590-c2b355bc5f0d.pdf#page=null>.

⁶⁰ 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

⁶¹ 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

⁶² Ewing, M., Hough, A., & Amajirionwu, M. (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

We would also note that Article 11 of the current AIE Regulations does not create an obligation on a public authority, on first-instance refusal, to inform the applicant of their right to appeal; and it is our submission that this deficiency should be rectified.

4.2.2 Article 5: Legislative, Regulatory and other Measures Implementing the Provisions on the Collection and Dissemination of Environmental Information

Another issue which we wish to emphasise in our submission is the extent to which public bodies and local authorities comply (or fail to comply) with their obligations under Article 5 of the Convention to actively disseminate the environmental information they hold in public forums. This provision is outlined in Article 7 of the EU AIE Directive, which requires public authorities to engage in “active and systematic dissemination”. This obligation is not transposed anywhere in the Irish AIE Regulations, and this is a significant deficiency.

The Aarhus Convention requires public bodies to gather and disseminate environmental information. In Irish law, this provision is partly reflected in the AIE Regulations, Article 5, but there appears to be no clear implementing provision for the Aarhus Convention’s Article 5 obligation on public authorities to actively disseminate information.

There are examples of good practice, such as local authorities providing planning information online or the environmental Pollution Register operated by the Environmental Protection Agency (ePRTR).⁶³ However, many instances exist where information is not provided routinely or adequately. Issues often arise with the accessibility and searchability of information, such as due to complex and clunky online displays. The Forestry License Viewer provides effective online access to Forestry License applications. However, eNGOs report delays in uploading these applications, which affect the tool's usefulness for public participation.

One area where there is no implementation of the AIE Directive is the listing of bodies classified as public authorities under the regime, as required by Art 3(5)(b). Clarifying which bodies are subject to the regulations would enhance the regime's clarity and efficiency. This could be achieved through a register of public bodies.

It would also be preferable for the complete list of categories of information required for dissemination to be included in the AIE Regulations to ensure the

⁶³ <https://www.epa.ie/our-services/compliance--enforcement/whats-happening/pollutant-release-and-transfer-register/>

consistency with the Directive and clarity of the obligations. Particularly, the AIE Regulations do not reference the categories listed in Article 7(2)(d)-(g) and Article 7(3) of the Directive (State of the Environment Reports). While it is acknowledged that many of these obligations are implemented elsewhere, enhancing the clarity and accessibility of implementation information would be possible if these categories were added to Article 5 of the AIE Regulations.

4.2.3 Our Concluding Observations on Access to Information – Articles 4 & 5 of the Convention

The implementing measures for Access to Information can be described as a framework that appears comprehensive on paper but lacks adequate provisions for capacity building and does not effectively provide ready access to information in practice. To address this, we recommend the following:

- Enhanced training for both the public and state bodies on the legislation;
- Complete transposition of all provisions of the AIE Directive;
- Improved practice guidelines for public bodies aimed at fostering a cultural shift towards greater transparency;
- Effective implementation of public bodies' obligations to:
 - Generate environmental information through monitoring; and,
 - Make available the environmental information they possess to the public and regularly disseminate it.
- The underfunding of the OCEI must be addressed;
- The dysfunction within the courts system should be evaluated (although we acknowledge that this is a broader societal issue);
- Legislative timelines for the administrative review of decisions by the OCEI and courts need to be established;
- A dedicated Environmental Court could deliver faster and higher-quality decisions in this area, according to environmental scholars; and,
- More training for local authorities and public bodies to consistently gather and disseminate information regarding the environmental impacts of their regular activities.

4.3 Public Participation – Articles 6, 7 and 8 of the Convention

The legal framework around public participation in environmental decision making required by Article 6 is uneven across different areas of environmental decision-making. The EU has implemented this provision by way of the Public Participation Directive 2003/35/EU, which has been the driver of Ireland's implementation in this area, together with the provisions of the EIA Directive (Directive 85/337/EEC, since repealed and replaced by 2011/52/EU, as amended by 2014/92/EU) inserted by the Public Participation Directive.

Public participation in plans and programs relating to the environment is required by Directive 2001/42/EC (Strategic Environmental Assessment) and in the management of water bodies and river basins (required by Directive 2000/60/EC "Water Framework Directive").

The requirement of public participation has been implemented in a variety of different ways in the legislative framework, with an unevenness across different areas of environmental decision-making in the depth and ease of participation.

4.3.1 Planning Law

4.3.1.1 *General*

Planning permission has traditionally had a strong public participation element (despite recent attempts to roll this back)⁶⁴ that predates the Aarhus Convention and membership of the EU. The practice of requiring site notices and newspaper notices to be displayed in local papers to notify people of their right to participate, and the right of any person to make submissions and observations on a development are some of the strong points of public participation in the Irish planning and development framework.

Nevertheless, some matters of significant concern include the Strategic Housing Developments^{65 66} and Strategic Infrastructure Developments⁶⁷ which bypass the local authority stage and go directly to An Bord Pleanála and have shortened timeframes for submissions and observations.

⁶⁴ "Planning Bill would cause 'erosion of environmental democracy', Dáil committee hears" 28 February 2023 <https://www.irishtimes.com/ireland/housing-planning/2023/02/28/planning-bill-would-cause-erosion-of-environmental-democracy-dail-committee-hears/>

⁶⁵ Planning and Development (Housing) and Residential Tenancies Act 2016, No. 17 of 2016 <http://www.irishstatutebook.ie/eli/2016/act/17/enacted/en/print#sec11>

⁶⁶ Planning and Development (Strategic Housing Development) Regulations 2017, SI 271 of 2017 <http://www.irishstatutebook.ie/eli/2017/si/271/made/en/print>

⁶⁷ Sections 37A and 37B of the Planning and Development Act 2000.

Strategic Infrastructure Development⁶⁸ can generally be described as development which is of strategic economic or social importance to the State or a region. It also includes development which will contribute significantly to the fulfilment of any of the objectives of the National Planning Framework or any regional spatial and economic strategy for an area, or which would have significant effects on the area of more than one planning authority.

Public participation periods are restricted to 6 weeks,⁶⁹ which is much shorter than the period available on a normal residential or commercial development. This is controversial given these projects will, by their nature, be large complex developments for which drafting submissions or observations takes time.

To make matters more challenging for environmental NGOs, the controversial Planning and Development Act 2024 recently passed into law, but not yet commenced will drastically restrict public participation and access to justice rights in this area.⁷⁰ It is therefore our submission that such restriction should not be contemplated, but should be removed from the legislation prior to commencement.

4.3.1.2 *Planning participation and Covid-19*

Emergency legislation provided for the extension of planning deadlines, including deadlines for public participation, during the Covid-19 pandemic in order to ensure no one was prejudiced in the planning process as a result of Covid-19 disruptions.⁷¹ Legislation was also introduced which allowed certain types of Covid-19 related infrastructure to be built without planning permission⁷² at all (new categories of exempted development), and without environmental impact assessment or public participation. For example, this has resulted in the construction of a six-story extension to the Mater Hospital, Dublin, without any approval process.⁷³

⁶⁸ <http://www.pleanala.ie/sid/sidpp.htm>

⁶⁹ Section 37E, Planning and Development Act 2000.

⁷⁰ Planning and Development Act 2024, Part 9, Ch. 1, s. 286
<https://www.irishstatutebook.ie/eli/2024/act/34/enacted/en/html>

⁷¹ E.g. see Section 9 of the Emergency Measures in the Public Interest (Covid-19) Act 2020
<http://www.irishstatutebook.ie/eli/2020/act/2/section/9/enacted/en/html#sec9>

⁷² S.I. No. 93/2020 - Planning and Development Act 2000 (Section 181) Regulations 2020
<http://www.irishstatutebook.ie/eli/2020/si/93/made/en/print>

⁷³ “Mater Hospital is building a new wing using Covid planning exemptions” 6th June 2021
<https://www.thetimes.co.uk/article/mater-hospital-is-building-a-new-wing-using-covid-planning-exemptions-29fhmtnfj>

Given that the ACCC had issued a statement⁷⁴ that participation rights should not be impacted by Covid-19, this blanket exemption of what could potentially be very large infrastructure projects from any development control or public participation is concerning.

4.3.1.3 Environmental Impact Assessment (EIA)

Any project subject to Environmental Impact Assessment (which means certain types of projects meeting certain thresholds, and any project that meets the criteria of having a significant effect on the environment) generally have a requirement for public participation thanks to implementation of the EIA Directive 2011/92/EC⁷⁵ as amended by 2014/52/EC.⁷⁶

Ireland was one year late in implementing new amendments that improve public participation under the new EIA Directive (European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018) and it is open to question the extent to which the regime introduced fully implements the Directive. The amendments that were introduced to implement the new Directive have been described as taking “*legal complexity and legislative fragmentation to a whole new level, even by Irish standards*”.⁷⁷

It is noteworthy, and a matter of some importance of Zero Waste Alliance Ireland, that this country has not yet implemented these provisions for Waste Licensing, an activity which is under the control of the Environmental Protection Agency. Even though the licence applications and the relevant documentation are available on the Agency’s website, together with copies of the relevant Environmental Impact Assessment reports (EIARs), and the reports of inspections by Agency staff, it is extremely difficult to discover the ultimate fate of many types of discarded materials classified as “waste”. It is our experience that EIARs produced by the waste industry may be more “intentional” than pointing to activities which will actually be carried out, following the granting of a waste licence. This problem is not helped by the notable obscuring of information by the waste industry, so that the exporting of waste, or burning discarded materials

⁷⁴ Statement on the application of the Aarhus Convention during the COVID-19 pandemic and the economic recovery phase ECE/MP.PP/C.1/2020/5/Add.1 (unece.org)

⁷⁵ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1–21, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0092>

⁷⁶ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 124, 25.4.2014, p. 1–18 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052>

⁷⁷ Ryall, Á. (2018). *Challenges and Opportunities for Irish Planning and Environmental Law*. Irish Planning and Environmental Law Journal, 3(25), 104 -111.

as a fuel or a co-fuel by certain industries is reported as “materials recovery” or simply “recovery”, or similar expressions.

There are some areas such as forestry,⁷⁸ aquaculture,⁷⁹ and peat extraction⁸⁰ where thresholds for when a project requires EIA are set so high that they take almost all projects out of the purview of the public participation and environmental impact assessment process.

Additionally, NGOs have raised concerns regarding project splitting,⁸¹ where applicants attempt to keep projects within these thresholds and avoid triggering the EIA and participation obligations. This is the subject of a (second run) High Court decision in *EPA -v- Harte Peat Ltd [2014] IEHC 308*, where the Court found that multiple separate projects by different owners in the same area should be assessed cumulatively (not currently the case).

4.3.1.4 *Aquaculture & Foreshore*

Aquaculture licenses are granted by the Minister for Agriculture, Food and the Marine. Foreshore leases and consents are considered ‘companion’ licenses to aquaculture licenses and are also granted by application to the Minister for Agriculture, Fisheries and the Marine. There are fees involved for third party appeals cost.

The legal framework for offshore development and resource exploitation has been described as “opaque” in a 2017 review of Ireland’s aquaculture licensing process.⁸² The Maritime Area Planning Act 2021, in progress since 2013 was an attempt to improve this and bring certain offshore developments within the purview of An Bord Pleanála. However, issues brought forward in the 2017 review remain relevant today, as evidenced by its citing by the High Court in 2024 stating the process is ‘unworkable, outdated and in need of root-and-branch reform’.⁸³

4.3.1.5 *Forestry*

Like aquaculture licensing, recent legislation introduced many changes in this area. Under the Forestry (Miscellaneous Provisions) Act 2020, and the

⁷⁸ Removal of 70 hectares of coniferous forest.

⁷⁹ Freshwater fish breeding of over 1 million smolts. Above 100 tonnes per annum fish production in sea water (Planning and Development Regulations 2001 – 2019, Schedule 5)

⁸⁰ Above 30 hectares (Planning and Development Regulations 2001 – 2019, Schedule 5)

⁸¹ <https://www.thejournal.ie/climate-change-ireland-1186621-Nov2013/>

⁸² Moylan, M., Ó'Cinnéide, L., & Whelehan, K. (2017). *Review of the Aquaculture Licensing Process*. Dublin: Department of Food, Agriculture and the Marine.

⁸³ <https://www.friendsoftheireishenvironment.org/press-releases/aquaculture-licensing-system-unworkable-outdated-and-in-need-of-root-and-branch-reform-high-court>

regulations made under the Act, a fee is charged for participation (€20 per observation), access to information (€20 per man-hour required to retrieve and produce the information) and a large fee for appeals of €200.

The stated intention of the introduction of the €200 fee for appeals appears to be to act as a barrier to appeals, which is contrary to the provisions and purpose of the Aarhus Convention. This appears to have had the effect also of reducing appeals.

4.3.2 Legislation & Participation

As this is a process designed primarily to be used by developers, it is likely that the public are less aware of the obligation to prepare an EIAR (Environmental Impact Assessment Report) or NIS (Natura Impact Statement, required under the Habitats Directive to ascertain risks to protected species) for certain projects, and the implications this has for bringing projects within the public participation provisions in the EIA Directive.

The public are also likely to be less aware of the more complex process under EPA Licensing and Strategic Infrastructure.

The area of public participation is one where there is an unfulfilled need for capacity building in general regarding people's understanding of the fundamental nature of the right to public participation and the specific processes through which this right can be exercised.

As discussed earlier on in this submission, public participation in plans and programmes appears to be problematic. Government departments don't seem to be aware of the obligation to utilise the central electronic portal established for carrying out public consultations and still restrict to publishing on their own websites.⁸⁴

Another issue highlighted by NGOs⁸⁵ is the inconsistent practice when it comes to "taking into account" contributions to public consultations. The extent to which written feedback is provided on the submissions varies widely, with some public bodies providing a written response to each comment, and some public bodies

⁸⁴ E.g. Consultation on Draft Integrated Implementation Plan 2019-2024 & associated Strategic Environmental Assessment (SEA) & Appropriate Assessment (AA) running from 28th November 2018 to 1st February 2019
<https://www.nationaltransport.ie/consultations/consultation-on-draft-integrated-implementation-plan-2019-2024-associated-strategic-environmental-assessment-sea-appropriate-assessment-aa/>

⁸⁵ Finding Common Ground Report on Aarhus Implementation Ireland 2022
<https://static1.squarespace.com/static/62821548d89ad1244a3b1509/t/62b217f33b64af02534730e7/1655838713431/Aarhus+ireland+Report+210622.pdf>

providing no responses whatsoever, and often not publishing submissions or only publishing them after long periods of time have elapsed.

The Government has produced Guidelines on Public Consultation (Department of Public Expenditure and Reform, 2016), which are adhered to by some but not all bodies, as evidenced by multiple examples provided throughout this submission. Consistency would be desirable in this area.

Additionally, these guidelines and indeed many of the public participation systems described above (planning, EIA, licensing) treat the public as a homogenous mass and make no attempt to provide nuanced public participation mechanisms that recognize the demographic or other diversity of the population being consulted with,⁸⁶ resulting in indirect exclusion of groups from consultations. For example, the over-reliance on online means of mass consultation with the general public may exclude those who do not have access to the internet⁸⁷ or appropriate device to type a submission on.

4.3.5 Our Concluding Observations on Public Participation – Articles 6, 7 and 8 of the Convention

Public Participation in development consent and licensing applications is affected by issues like time restraints, access to experts and lack of capacity in terms of know-how. This is exacerbated by the ever-increasing number of applications that now bypass the County Council stage and go directly to An Bord Pleanála.⁸⁸

There are considerable challenges for ordinary members of the public attempting to participate in these decision-making processes. The requirement of fees for submissions and appeals remains a massive block to public participation in licensing and planning decision making. Additionally, public participation is eliminated or drastically reduced in areas like forestry or aquaculture by injudicious use of thresholds. The procedures for public participation in applications like aquaculture are arcane and difficult to utilise for ordinary members of the public.

Current public participation provision varies widely across the decision-making processes and is inconsistent. It is unlikely that it meets the requirements of the

⁸⁶ Finding Common Ground: An All-Ireland Implementation of the Aarhus Synthesis Report November 2022 https://ejni.net/wp-content/uploads/2022/11/AARHUS_ALLISLAND_report.pdf

⁸⁷ Household Connectivity, CSO 2024 <https://www.cso.ie/en/releasesandpublications/ep/p-issnict/internetcoverageandusageinireland2024/householdinternetconnectivity/>

⁸⁸ E.g. Applications under the Strategic Housing Development framework: <https://www.pleanala.ie/en-ie/strategic-housing-development>, and the Strategic Infrastructure Development framework: <https://www.pleanala.ie/en-ie/strategic-infrastructure-development-guide/sid-types-of-strategic-infrastructure-development>

Aarhus Convention. It is our submission that consideration could be given to the following:

- Public Participation processes should be streamlined and updated to fulfil the obligations under the Aarhus Convention;
- The establishment of a central point or portal for public participation in the various types of decision making (like all local authority and An Bord Pleanála applications, IED Licensing and Aquaculture, Felling and Peat licensing), and a similar procedure in each case. This way the public would only have to be educated in one method, and promotion efforts would be maximised (For example, see the Public Consultation Portal⁸⁹ for Strategic Environmental Plans and Policies currently in place);
- The removal of fees;
- Revise the legal frameworks across areas like forestry, aquaculture, peat extraction and strategic infrastructure;
- There is a huge unmet need for capacity building and education to inform the public of the various ways in which they can participate in environmental decision-making. The public lack knowledge of their rights, the expertise to navigate the diverse systems, and resources like time and access to technical expertise. The establishment of an independent technical panel of experts, funded by the State, who provide assistance to the public making submissions and observations, could address this issue;
- Address concerns regarding inclusiveness of participation and the extent to which the systems described facilitate participation by more marginalised groups;
- The Aarhus Convention mandates early participation⁹⁰ when all options are on the table, including what is known as the “zero option” or the possibility of not going ahead with the project at all. This is not really given proper effect to under EU law, and consequently is not part of the Irish legal framework. There is no obstacle to Ireland offering a higher level of legislative provision for Aarhus rights than the EU legal framework mandates, and some consideration should be given to mandating much earlier public participation to ensure genuine discussion takes place; and,

⁸⁹ <https://www.gov.ie/en/consultations/>

⁹⁰ Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, UNECE 2015
https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf

- In some jurisdictions, public participation takes place on screening and scoping applications⁹¹ (early-stage decisions made by the public authority as to whether EIA is required (screening) and what the contents of the EIAR should be (scoping)). These approaches should be reviewed for compatibility with the various different Irish environmental decision-making frameworks.

4.4 Access to Justice – Article 9 of the Convention

There is no specific EU law covering access to justice at Member State level (all attempts to create an access to justice directive have been blocked by the Member States). There is a provision in the EIA Directive which implements some of the access to justice provisions of the Aarhus Convention. There is no single specific piece of legislation addressing the right of access to justice in environmental matters in Ireland. EU studies indicate huge problems with access to justice in all Member States⁹² but Ireland is often singled out for particular criticism.⁹³

There is a framework for judicial review of environmental decisions⁹⁴ which is the main way that the right of access to justice is vindicated. This is a questionable regime that has been the subject of multiple legislative reforms aimed at bringing Irish law into compliance with EU law that have generally been regarded as unsatisfactory.

4.4.1 Court Costs and Civil Legal Aid

Court costs are a huge barrier to access to justice, and in the context of a drastically underfunded and dysfunctional Civil Legal Aid Scheme,⁹⁵ there is no assistance for Plaintiffs seeking to challenge environmental decisions, as legal aid is mostly restricted to family law cases by funding restrictions. NGOs cannot

⁹¹ Milieu Ltd. (2017). *Environmental Impact Assessment of Projects Guidance on Scoping* (Directive 2011/92/EU as amended by 2014/52/EU). doi:10.2779/286012

⁹² <https://worldjusticeproject.org/our-work/research-and-data/global-insights-access-justice-2019#:~:text=Justice%20problems%20are%20ubiquitous%20and,turn%20to%20lawyers%20and%20courts.>

⁹³ EU official castigates Government over environmental court costs – The Irish Times 21st January 2022 <https://www.irishtimes.com/news/environment/eu-official-castigates-government-over-environmental-court-costs-1.4782718>

⁹⁴ A combination of judicial review under Order 84 of the Rules of the Superior Courts and Section 50, 50A and 50B of the Planning and Development Act 2000.

⁹⁵ <https://www.iccl.ie/news/progress-on-rule-of-law-in-ireland-has-stagnated-report-finds/>

avail of legal aid for environmental (or any) cases due to statutory restriction of legal aid to “natural persons”.⁹⁶

Current rules regarding costs are contained in 50B(2)-(4) of the Planning and Development Act of 2000, and provide “*each party to the proceedings, including the notice party, shall bear its own costs*”, but with provision in s.50B(2A) for the successful party to recoup their costs. This provision struck an appropriate balance of removing the risk of being exposed to the costs of the other side if the Plaintiff is unsuccessful, while preserving “no-foal-no-fee” litigation by retaining the possibility of recouping of costs if successful. This has been described by Ryall as a successful intervention.⁹⁷

This arrangement works well for well-established environmental NGOs who have access to legal professionals willing to run public interest court cases pro-bono (for free) or no-foal-no-fee (getting paid if they win). However, newer grassroots organisations formed in response to challenges arising in local areas would have no idea how to get access to such legal professional advice, and the courts system is almost impossible to use effectively without it. Also, individuals who become aware of breaches of environmental law or who wish to challenge the outcome of public participation or access to information procedures would be in a similar position. Those who cannot afford to risk hundreds of thousands of Euros on litigation are therefore still excluded from meaningful access to justice in Ireland.

The lack of meaningful civil legal aid in environmental cases and for environmental NGOs is therefore particularly significant in this context. In order to ensure court proceedings in Ireland truly comply with the requirement of being “not prohibitively expensive” more needs to be done to support access to justice financially.

This is set to change with the passing of the controversial Planning & Development Act 2024 which will introduce an environmental legal aid scheme that will give the Minister control over who gets access and the level of fee recovery available to Plaintiffs. This has not been passed into law and it is recommended that this scheme be reviewed prior to introduction, with open

⁹⁶ *Friends of the Irish Environment CLG -v- the Legal Aid Board* [2020] IEHC 454, Hyland J. 15th September 2020 https://www.courts.ie/ga/acc/alfresco/fe3f46ca-1aab-4a57-9c49-0aeeb6ad6d3c/2020_IEHC_454.pdf/pdf

⁹⁷ Ryall, Á. (2018). *Challenges and Opportunities for Irish Planning and Environmental Law*. Irish Planning and Environmental Law Journal, 3(25), 104 -111.

consultation on the proposals with those who will be utilising the scheme which did not happen prior to passing the legislation.⁹⁸

4.4.2 Standing Rights

Standing rights (or *locus standi*) are the entitlement to bring a court case. Currently NGOs enjoy broad standing rights under Irish law to bring environmental challenges, and all members of the public who participate in the decision-making process also generally enjoy the right to challenge decisions.

The new Planning & Development Act 2024 seeks to restrict access to justice and narrow the previously broad standing of NGOs. It imposes additional standing requirements by changing the definition of the requirement ‘sufficient interest’ to mean ‘materially affected’. It is not clear exactly how the courts will interpret this, but it seems to be an attempt to return to the previously impugned ‘substantial interest’ standing criteria, which required the litigant show that they are particularly or specially affected by the proposals. This might be satisfied only by owning land adjacent or near to the proposed development or an economic interest affected by the decision. Previous case law shows that ‘substantial interest’ was a very high standard to reach.⁹⁹ This phrase was previously introduced under the Planning & Development (Amendment) Act 2006, but had to be removed as it was incompatible with EU law, and it was replaced by the original text, “sufficient interest”.¹⁰⁰

The 2024 Act, in section 286, will also introduce new strict requirements on unincorporated associations that will strip away the protection guaranteed by their right of freedom of association, by requiring such NGOs to file an affidavit when initiating legal action, disclosing the names of the members of the organisation that voted in favour of taking the legal action, leaving them open to attack. It also dictates that such a body cannot initiate litigation without the approval of two thirds of their members, regardless of the decision-making structure such an organisation has adopted in their constitution or establishing rules. The section also will eliminate some of the key actively litigating incorporated NGOs in the State by membership thresholds that are extremely high for a small sector in a small country.

⁹⁸ [Planning and Development Act 2024](https://www.irishstatutebook.ie/eli/2024/act/34/enacted/en/html)
<https://www.irishstatutebook.ie/eli/2024/act/34/enacted/en/html>

⁹⁹ *Harding v Cork County Council* [2008] IESC 27.

¹⁰⁰ Environment (Miscellaneous Provisions) Act 2011, s.20.

These are retrograde steps and represent an attack on access to justice rights for NGOs. It is recommended that these provisions are removed prior to commencement of this legislation.

The new Act seems to be incompatible with Aarhus Convention requirements on access to justice and previous case law requiring broad standing rights for NGOs.¹⁰¹

These changes were originally circulated in the General Heads of the Housing, Planning and Development Bill 2019. Consultation on this bill attracted 294 submissions, the overwhelming majority of which were critical.¹⁰² However, despite this, the government proceeded with most of the elements in that draft, and did not engage in any further consultation, despite introducing much more widespread and fundamental changes in the Bill as eventually sent to the Dáil in 2022, and cut off debates using the “guillotine” on the bill as it progressed through the Dáil and Seanad.¹⁰³

4.4.3 Attacks on Access Rights

These attempts to place barriers in the way of access to justice, when so many barriers already exist, represents a retrograde step in terms of fulfilment of the obligations of the Aarhus Convention. As mentioned above under the discussion on Art 3(8), these attacks on access rights are motivated by misconceptions about environmental democratic rights, such as that they prevent development, and cause delays in the planning system. The reality is that such rights are very difficult to exercise (due to factors like costs barriers and lack of capacity to use the legal system); and, where such cases are taken, they are usually taken by NGOs in cooperation with pro bono lawyers, who vet cases very carefully on merit. They must satisfy a judge in a leave application that the application has substance and is not vexatious. There cost, time and thresholds for leave are so onerous that vexatious claims are unlikely.

The misattribution of the causes of delay to those exercising their environmental democratic rights, is likely generated by industry lobbyists in an effort to lower regulation of various types of projects. The lowering of environmental checks and balances on development consent processes is obviously undesirable, particularly as such checks and balances have not yet reached a level where they

¹⁰¹ “LZ No. 1” Case 240/09, “Djurgården” Case C-263/08, “Trianel” Case C-115/09.

¹⁰² Overwhelming majority of submissions on government’s controversial planning law proposals object to restrictions on access to justice for citizens, NGOs, and others – TheStory.ie at <https://www.thestory.ie/2021/07/28/overwhelming-majority-of-submissions-on-governments-controversial-planning-law-proposals-object-to-restrictions-on-access-to-justice-for-citizens-ngos-and-others/>

¹⁰³ <https://www.thejournal.ie/planning-bill-guillotine-6406146-Jun2024/>

fully comply with international environmental law norms. The reality is that there is much under-regulation rather than over-regulation, and deregulation is not an appropriate response in the context of a climate and biodiversity emergency.

4.4.4 Delays in the Court System

As discussed earlier in this submission, delays in Ireland's court system are historical and remain prevalent today. For example, at the end of December 2024 the number of prosecutions waiting to be dealt with were running into 2027.¹⁰⁴ Such significant delays pose a barrier to access to justice because justice itself will be delayed, and a reputation of significant backlogs might discourage the public from exercising this right in the first place.

While recent resourcing of the courts by increasing the number of judges is welcome and well overdue, this falls far short of the investment required to render our courts system fully functional, and further investment, including increased administrative staff levels, is required.

The Courts Proceedings (Delays) Act 2024¹⁰⁵ (not yet commenced) seeks to penalise parties who delay in their conduct of civil proceedings, but this does not address core infrastructure and staffing issues leading to delays, and is unlikely to impact on environmental judicial review proceedings.

4.4.5 Capacity Building

There is no coherent framework for educating the public about how to exercise their rights to access justice in relation to the environment. Initiatives like Citizen's Information provide general information about the legal system and Free Legal Advice Centres (FLAC) can give people legal advice but neither of these organisations specialise in the complexities of environmental litigation.

A relatively new initiative, the Centre for Environmental Justice,¹⁰⁶ is run by Community Law Mediation, and provides specific clinics on environmental issues to the public. Court procedure is arcane, with large portions of it consisting of unwritten conventions of behaviour that remain inaccessible to those outside the legal profession. Procedures that are written are excessively complex and difficult to navigate. There is little or no use of electronic or digital technology to create efficiencies/user friendliness. The evolving jurisprudence of the court on environmental access to justice has grown excessively complex and difficult to

¹⁰⁴ <https://www.irishnews.com/news/uk/courts-backlog-requires-radical-answers-head-of-review-says-QQVBSHUHAVKJFKWSGVUXHHHF4Y/>

¹⁰⁵ [Court Proceedings \(Delays\) Act 2024](https://www.irishstatutebook.ie/eli/2024/act/12/enacted/en/html)
<https://www.irishstatutebook.ie/eli/2024/act/12/enacted/en/html>

¹⁰⁶ <https://communitylawandmediation.ie/centre-for-environmental-justice/>

comprehend.¹⁰⁷ There is no consistent education and outreach for the public on their legal rights in general (other than the Citizens Information initiative). There has historically been great difficulty in accessing documents from comparable previous court cases, meaning that important facts and context are often missing from final written judgements and that lay litigants cannot easily model the patterns of previous successful cases.¹⁰⁸

As a consequence, it is probable that most citizens are unaware of their environmental and participatory rights, unable to use the courts system without expensive legal assistance, and also unaware of their access to justice rights consequent on this. Indeed, the state itself seems to lack an awareness of the public's right to access justice in relation to the environment, as demonstrated by recent legislative proposals seeking to restrict access to justice in planning decisions.

4.4.6 Our Concluding Observations on Access to Justice – Article 9

The extent to which there is real access to justice in Ireland, in general, as well as in relation to the environment has frequently been called into question by many stakeholders including FLAC (Free Legal Aid Clinics), PILA (Public Interest Law Alliance) and the former Chief Justice Mr. Frank Clarke.^{109 110}

NGOs have been found by the High Court to be ineligible for the State funded Civil Legal Aid Scheme.^{111 112}

¹⁰⁷ E.g. see criticisms of this by an EU Commission DG Environment official in EU official castigates Government over environmental court costs – The Irish Times 21st Jan 22 <https://www.irishtimes.com/news/environment/eu-official-castigates-government-over-environmental-court-costs-1.4782718>

¹⁰⁸ While the High Court Practice Directions now provide for limited access to litigation submissions (<https://www.courts.ie/content/access-written-submissions>), this does not include “pleadings” which ground the case, and the CJEU has ruled in case C-470/19 that the Courts Service is a judicial authority and therefore exempt from FOI/AIE requirements, jeopardising the continuance of such arrangements. <https://curia.europa.eu/juris/document/document.jsf?text=&docid=239890&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=130971>

¹⁰⁹ <https://www.pila.ie/resources/bulletin/2017/10/11/chief-justice-frank-clarke-identifies-access-to-justice-as-a-key-priority-in-speech-at-opening-of-the-new-legal-term>

¹¹⁰ <https://www.irishtimes.com/news/crime-and-law/rules-must-be-changed-to-widen-access-to-justice-chief-justice-1.3234950>

¹¹¹ FIE v The Legal Aid Board (2020) 15th September 2020. https://www.friendsoftheireishenvironment.org/images/Access/FIE_judgment_14_Sept_2020_final_approved.pdf

¹¹² EJNI costs handbook EJNI-Costs-Handbook-Dec-2024.pdf CLM Environ Justice Report Environmental-Justice-in-Ireland-230322-1.pdf

It is apparent that the barriers to access are many and increasing. Court costs, delays and dysfunction in the courts system due to decades of chronic underfunding, obscure and arcane legal rules for running cases which are impossible for the lay person to understand (or even lawyers) and which must be exercised under ever-tightening timeframes mean that access to environmental justice in Ireland remains an aspiration rather than a reality. In the absence of strong EU law measures, this area is underdeveloped compared to the other two pillars of information and participation.

It is our submission that, to address these issues, the following changes should be made:

- Address deficiencies in the legal aid system, such as the lack of legal aid for environmental cases, and the underfunding of the legal aid system (in order to ensure compliance with Art 9(5) of the Aarhus Convention).
- Underfunding/understaffing in the courts service should be urgently addressed.
- Modernisation of the courts system and the adoption of digital technologies has great potential to increase access to justice.
- Address court costs, including filing costs, stamp duty on court filings and lawyers' fees.
- Consideration should be given to setting up a specialist environmental court.
- Consideration needs to be given to a fully funded civil legal aid scheme which encompasses environmental and public interest cases, including those taken by NGOs.

5. CONCLUDING OBSERVATIONS

In conclusion, our analysis in this submission (prepared in response to the DECC public consultation on the Aarhus National Implementation Report 2025) has revealed systemic shortcomings in Ireland's implementation of environmental democracy rights — Access to Information, Public Participation, and Access to Justice — as enshrined in the Aarhus Convention. Despite some incremental progress, there remains a profound lack of governmental support for the environmental NGO sector, which continues to operate in conditions of chronic underfunding and legal vulnerability.

Most significantly, the current legal and institutional frameworks fail to adequately protect environmental defenders, leaving them exposed to harassment, SLAPP litigation, and insufficient whistle-blower protections. And, as we have shown, this has had the unfortunate (but not unexpected) result of making defence of the environment more challenging and difficult.

Access to environmental information, while apparently robust on paper, is weakened in practice by limited capacity building, poor implementation, and systemic delays. Key public bodies lack the training, resources, and cultural commitment to transparency, and the OCEI remains critically underfunded. A stronger legislative and administrative framework is needed to ensure that environmental data is generated, disseminated, and accessible in a timely and user-friendly manner.

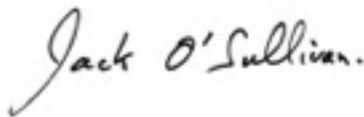
Public participation is equally constrained by procedural complexity, inconsistent standards, high fees, and a lack of support mechanisms. Many processes bypass meaningful public engagement entirely, especially in key sectors such as aquaculture, forestry and certain types of agricultural developments, all of which have significant environmental implications. These structural barriers particularly affect marginalised communities and individuals without access to technical expertise. Clearer procedures, a central participation portal, earlier engagement in decision-making, and better public education are essential to enable inclusive, informed participation.

It is also our submission that Access to Justice is the weakest of the three pillars of the Aarhus Convention as currently implemented in Ireland. High costs, legal complexity, under-resourced courts, and the exclusion of NGOs from civil legal aid create significant barriers. These issues have been acknowledged by legal experts and civil society alike, and without immediate reform — including proper funding, legal aid for environmental cases, digital modernisation of the courts, and the establishment of a specialised environmental court — environmental justice will remain out of reach for many.

It is our further and final conclusion that, considering all issues coherently, urgent and comprehensive reforms are needed to deliver on Ireland's Aarhus Convention commitments. These include: increased funding for environmental NGOs and oversight bodies, full transposition and implementation of relevant EU directives, the removal of financial and procedural barriers to participation and justice, and the political will to support a more transparent, inclusive, and fair environmental governance system. A holistic and rights-based approach to environmental democracy must be embraced — not only to comply with international obligations, but to secure a just and sustainable future amid the pressing climate and biodiversity crises.

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

07 April 2025

This submission was researched and written by Sara Borkent (ZWA Board Member), Patrick Meighan (ZWA Member), Jack Coffey (ZWA Chairman), and with a significant contribution by Alison Hough (ZWA 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 (ZWA founder member and Vice-chairman); and was edited by Sara Borkent and Jack O'Sullivan.

This submission draws on the work done in the 2022 IRC Funded Report "Finding Common Ground – Ireland Report" co-produced by Alison Hough BL and Friends of the Irish Environment.¹¹³

ZWAI-ACNIR-02b Tracked changes in text of ZWA Submission on Aarhus Convention NIR, 07-April-2025 .docx

¹¹³ Hough, A. (2022) Ireland Report - Finding Common Ground
<https://www.findingcommonground.ie/ireland-report>