

[Redacted]

Hi

Here is my feedback to the AIE consultation

Please redact all my personal data before publishing into the public domain to include but not limited to my email address, name, address, contact details.

Yours

[Redacted]

I am responding to the AIE consultation.

I have probably made circa 100 AIE requests many of which were well processed but there are a number of issues and gaps within the process

The core failings:

- Extension to time limits asked for without clear consideration as to why – usually sent on the very last day possible.
- Poor use of the public interest test with a typical not release vs release decision (remembering this is the opposite of what Aarhus intended)
- Internal review not really being truly independent and often siding with the original decision without seriously re-considering refusal reason. Additionally reviewer typical never refers back to the requestor to really understand the request and ensure that the original processor correctly interpreted the request.
- Poor record keeping of PA's leading to it being really hard to know what a PA hold (they have a responsibility to document/catalogue what they hold and publish that catalogue – this is often not the case)
- PA's often are unhelpful in codifying a request (in all the above I think there was only 1 instance where they came back and said let me help you) and being illusive as to what data they do hold (you have to be super specific)

Consultation Questions

Q1

What, in your opinion, are the positive benefits of the AIE Regulations?

They are a critical part of how we hold Public Sector Orgs to account and how we ensure transparency. They should be made as robust as possible and the State should in no way hinder or dissuade people from using the process to gain access to environmental data.

Q2

Should any specific part of the Regulations be amended?

If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.

Please note you must include the article of the AIE Regulations to which you are referring i.e.:

- Article 3 - Interpretation
 - As in the NAMA case the definitions are open to interpretation – without limiting anything which the current regs have the definitions should be simplified and the associated guidance documents to the regs clearly outline typical examples of what data is available.
- Article 4 – Scope
 - AIE is all about making it easier for the public to access environmental data – the legal terminology within “scope” is hard to understand and should be simplified – it should either be simplified here – or in the guidance notes which have to be taken into consideration by PAs
- Article 5 - A public authority shall-
 - A lot of public authorities (although they have got better at this) don't really make it easy to apply for AIE – they don't fulfil (b) or (c) or (d)
 - The regs should be toughened up to ensure bodies comply
 - (5) is still a long way from complete and should be given more robustness
- Article 6 - Request for environmental information
 - There has been a number of cases which has clarified this section – PA's should know that for example a tweet is now a valid AIE request – many do not. Guidance needs to be issued to ensure PA's understand that this should be as easy as possible for the requestor.
- Article 7 - Action on a request
 - “as soon as possible” is interpreted “on the last day possible” – this needs to be made more robust
 - (b) is often abused – and should be tightened to include “where some data has already been assembled this should be released even if the whole request cannot be fully responded to – this ties back to (a) “as soon as possible”
 - (5) “as soon as possible” usually means “on the last day” – this needs to be made more robust to serve the AIE purpose.

- (6) is rarely used and needs to be made more robust – I think in the 100 requests made I have never seen this properly implemented
- (8) in 100 request only ever seen this offered up once – this needs to be made more robust to put emphasis on the PA to help a requestor.
- (10) is always ignored and typically is “on the last day – the regulation needs to make a requirement on the PA to respond within this period specified by the requestor with a full and valid reason why the time frame of the requestor cannot be complied with – this should be monitored to ensure engagement and compliance. (clearly the requestor has to be reasonable but I made one request asking for a response within 2 weeks vs 1month for some data I knew they had to hand and they still took the full month to respond.
- Article 8 - Grounds that, subject to article 10, mandate a refusal
 - PA’s need to change their thinking to “this has to be released unless” and not “we will not release unless we have to”
 - I have seen many excuses used here some overturned by the commissioner and some by the high court
- Article 9 - Discretionary grounds for refusal of information
 - C) over relied upon and often not possible to substantiate especially where 10(1) can be engaged – again it should be “we will release as much as we can” rather than “how little can we release”. Pressure from commercial bodies have had an impact on trying to protect their commercial data which fails to support 10(1)
 - 2(b) is often used because Art 7(8) (assistance to formulate) is never offered – this is a gap in the reqs which needs tightening to ensure AIE request actually get properly serviced.
 - 2(c) is badly misunderstood – and clarity to what it means and robustness needs to be applied.
 - 2(d) often used and public interest test often very weak (“don’t tell them what we are thinking” often seems to be the mantra)
- Article 10 - Incidental provisions relation to refusal of information
 - (1) often not used but the high court has started to clarify – specifically the “relates” aspect which has a very long reach.
 - (3) public interest test often weighted towards “not release”
 - (4) again the word “restrictive” often ignored and any excuse used to not release
 - (5) there is often push back on this because effort is required to separate – often shows that 5(d) is not being complied with when used as an excuse not to release.
 - (6) often used as an excuse not to release – and often pushes time frames into months.
 -
- Article 11 - Internal review of refusal
 - See my opening comments on reviews

	<ul style="list-style-type: none"> • Article 12 - Appeal to Commissioner for Environmental Information <ul style="list-style-type: none"> ○ The OCEI is a disaster in terms of time frames and its ability to respond. Time limits should be codified into the regs as to when a response is expected – today sending a complaint to the OCIE is like sending into a black box with no idea on when a response is expected. • Article 13 - Appeal to high court on a point of Law <ul style="list-style-type: none"> ○ This is a massively expensive step if the Commissioner fails to do their job correctly. There should be a cheaper approach as a mid step between commissioner and High Court – perhaps as an Either/Or option. ○ Some form of mediation step with may be a time limit of 1 month after the commissioner decision would be useful here so as to give the not-cost-prohibitive access to justice without the full engagement of the high court. • Article 14 – Guidelines <ul style="list-style-type: none"> ○ What is published is weak and not living up to the Aarhus convention spirit. They generally are all about how to not help the requestor but to help the PA work through their processes. More substantial guidance needs to be put in place and needs emphasise that this is a right which a member of the public can exercise and which must be supported in the fullest possible way. • Article 15 – Fees <ul style="list-style-type: none"> ○ The Commissioner fee should be refunded if a complaint is not responded to within a time frame. Given a PA has 1 month + 1 month to respond – I think the Commissioner should be given a time limit of 2 months MAX – otherwise a refund of the fee should be made. This will have no impact on the number of complaints made because most people currently will pay the €50 in the first place.
Q3	Any other comments on the existing AIE Regulations and their implementation of the AIE Directive 2003/4/EC?