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16<sup>th</sup> April 2021

**Re: Review of the European Communities Access to Information on the Environment Regulations 2007 – 2018**

Dear Sir / Madam,

Wind Energy Ireland (WEI) (formerly the Irish Wind Energy Association) welcomes the opportunity to make this submission to the public consultation on the review of the European Communities Access to Information on the Environment Regulations 2007 – 2018. WEI is the representative body for the Irish wind industry and are Ireland's largest renewable energy organisation with more than 170 members. We work to promote wind energy as an essential, economical, and environmentally friendly part of the country's low-carbon energy future.

Ireland has just over 300 operational wind farms, which represents an investment of over €7 billion, regularly powering 65% of Ireland's electricity needs. The wind energy industry also supports over

5,000 jobs and annually pays more than €45 million in commercial rates to local authorities<sup>1</sup>. We are a country with enormous renewable energy resources and are world leaders at incorporating onshore wind into the national grid.

Renewable energy provided 43 per cent of Ireland's electricity in 2020, with over 38 per cent of this coming from wind energy<sup>2</sup>. This is the highest share of electricity being provided by onshore wind in Europe, and this is expected to rise as we decarbonise our electricity system. In 2018 wind energy avoided 3.1 million tonnes of CO<sub>2</sub> and cut €432 million off our fuel import bill<sup>3</sup> demonstrating the huge contribution that onshore wind is making to climate action.

## Note on Recent AIE Case Law

A decision with considerable significance for the renewable energy industry was handed down on 25 January 2021 by Mr Justice Owens in the High Court. In *Right to Know CLG v Commissioner for Environmental Information and Raheenleagh Power DAC*, the Court overturned a decision by the Commissioner for Environmental Information (the Commissioner), which had found that an Independent Power Producer (IPP) namely, Raheenleagh Power DAC (RP), was not a "public authority" within the meaning of the European Communities (Access to Information on the Environment) Regulations 2007 (the AIE Regulations).

The AIE Regulations transpose Directive 2003/4/EC on public access to environmental information. The Directive was enacted by the EU to give effect to the provisions of the Aarhus Convention. The purpose of the Convention is to ensure that members of the public have sufficient access to information in order to be able to participate in decision-making by public authorities affecting the elements of the environment.

The decision heralds a significant new departure in relation to the rights of access of members of the public to information in relation to renewable energy developments. The Court has found that all privately owned IPPs with authorisations under the 1999 Act are now to be considered 'public authorities' for the purposes of the AIE Regulations.

The decision of the Court potentially brings all information held by IPPs within the ambit of the AIE Regulations, in so far as they are performing services or activities in relation to the environment. The operation of a wind or solar farm will therefore fall within the range of activities subject to the AIE Regulations.

The decision potentially subjects all internal communications concerning development of renewable energy infrastructure to public access, subject to certain defined exemptions under the Regulation. Those exemptions, which include the potential to withhold the release of information concerning commercially sensitive material, are interpreted on a restrictive basis and are only applicable where it

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<sup>1</sup> Economic impact of onshore wind in Ireland - KPMG - <https://windenergyireland.com/images/files/economic-impact-of-onshore-wind-in-ireland.pdf>

<sup>2</sup> <http://www.eirgridgroup.com/newsroom/electricity-consumption-f/index.xml>

<sup>3</sup> <https://www.seai.ie/publications/Energy-in-Ireland-2019-.pdf>

is in the public interest to withhold the information. There is also a presumption that environmental information should be released.

There has been a considerable expansion in recent years on what constitutes ‘environmental information’. The Courts have recently found that any information “on” an activity or measure affecting the elements of the environment would potentially come within the scope of the Regulations.

The AIE Regulations operate to apply to all environmental information ‘held by or for’ the public authority. While it would appear from the decision that the operative date for an IPP to be considered as a public authority would be the date of receipt of an authorisation to construct a generation station from the CRU, the AIE Regulations will apply to all environmental information held by the IPP as of that date, regardless of when such information was generated. The practical implications of this for IPPs are therefore considerable.

While an individual IPP may not be a ‘public authority’ until it achieves an authorisation, all information concerning any future development by that IPP may now be subject to release prior to any subsequent planning application as the IPP will be a ‘public authority’ at that point.

While it is too early to speculate on the full implications of the decision, it is undoubtedly one of the most significant in terms of its practical consequences for the renewable energy industry delivered in recent years.

## EIAR and Ireland’s Extensive Assess to Environmental Information

WEI and its members are committed to sharing information with all stakeholders. For those wind farm developments greater than 5 MW or five turbines, a full Environmental Impact Assessment Report (EIAR) is submitted to the Consenting Authority in support of a planning application. This EIAR sets out a description of the proposed development and a detailed baseline assessment per topics scoped into the appraisal. This detailed baseline assessment is supported by additional information set out in the appendices of the EIAR.

The EIAR also sets out an appraisal of potential impacts of the proposed development, any mitigation measures proposed as part of the development and finally, any potential residual impacts. So detailed is the information included in an EIAR, that a Non-Technical Summary is also prepared and made public as part of the planning application process.

WEI’s recommends that the information on the environment set out in an EIAR is suitable and already allows for extensive assess to environmental information.

## WEI response to the Department's Consultation Question No. 2, 'Should any specific part of the Regulations be amended'

For the reasons set out above, it is WEI's position that the Raheenleagh decision was an overstep and represents an expansion of the interpretation of public authority beyond that anticipated by the Directive, the AIE Regs, the Aarhus Convention, the Ministerial Guidelines and Aarhus Guide.

We are proposing a simple amendment to article 3(b) of [the European Communities Access to Information on the Environment Regulations 2007 – 2018](#):

WEI recommends the following additional wording to part (b) of the definition of, "Public Authority" to make it more in line with the wording of the Directive, the Aarhus Convention and the test in *Fish Legal* (the additional text is underlined for ease of reference):

*"(b) any natural or legal person performing and entrusted with public administrative functions normally performed by governmental authorities as determined under national law, including specific duties, activities or services in relation to the environment."*

## Conclusion

In summary we again thank DECC for the opportunity to respond to the consultation. We hope you will take account of our comments and suggestions in the final decision, and we are available to discuss any comments or questions you have in relation to our response.

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