



About Voice of Irish Concern for the Environment

With over twenty-years' experience in waste and water policy development, public awareness and outreach to communities and companies to encourage behaviour change, VOICE has become one of the leading environmental charities in Ireland. We offer policy proposals both on a national and EU level on waste and the circular economy initiatives as well as support bottom-up community and individual engagement. We move beyond merely running public awareness events and workshops by asking and helping individuals, communities and businesses to become active participants in achieving sustainable change in their local or business environments. We often work in collaboration with the government, local authorities, community groups, other NGOs and businesses to affect positive behaviour change.

We wish to submit the following observations and recommendations in response to the Department of the Environment, Climate and Communications call for public consultation on the review of the European Communities (Access to Information on the Environment) Regulations 2007-2018.

Q1 What, in your opinion, are the positive benefits of the AIE Regulations?

- AIE is essential for transparency in environmental matters
- It encourages broad participation in environmental matters.
- A failure of fast and effective access to information has a chilling impact on the public at large who cannot afford the delays through budgetary or temporal constraints.

VOICE has used AIE requests in the past to develop a national report on litter management in Ireland. This report highlighted a national issue through collating local data. Our experiences in this exercise as well as through engaging with the AIE system on projects subsequently inform our submission. The AIE system offers a substantial ability to access environmental information but also ensures that holders of information on the environment are held to account and are seen to be acting in a transparent way when conducting business effecting the environment.

This requires an AIE system that is responsive and for the public at large to be adequately informed of the regulations and their use.

Often times environmental information is required in a timely manner, therefore information requests which have been lodged for some years, as is the case in some instances before the Commissioner for Environmental Information (OCEI), have to be seen as a failure of the system.

This may be particularly pertinent to the NGO or community group sector who can use this information to plan or evaluate projects within the timescales of the funding calls, allowing for projects effecting the environment to be planned or evaluated in an effective manner.

Therefore the current situation, as highlighted by the Aarhus compliance committee in C-141, whereby appeals to the office of the ombudsman typically take up to a year, undermines the effectiveness of the regulations. These delays undermine public confidence in the system that should provide 'broad access' to environmental information.

Where provision of environmental information is the default, it will encourage greater transparency in environmental matters and engender greater confidence and participation in the AIE system.

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 - Broad definition of a public authority in line with recent Court rulings.

VOICE recommends that Article 3 (1) of the AIE regulations defining a “public authority” be broadened to include any natural or legal persons carrying out duties, activities or services in relation to the environment under licence by the state, or services previously undertaken by public authorities. For example, waste management services were once provided by local authorities and are normally provided by local authorities or municipalities in most EU countries. This type of commercial arrangement, while currently done by private companies, provides a public service for the protection of the environment and such enterprises should be included in the definition of public authority.

This amendment is required in order to bring the Irish regulations into line with reasoning in the CJEU findings in Fish Legal case¹ on the definitions of a public authority in Directive 2003/4 as well as the more recent Irish high court finding in Right to Know CLG and the Commissioner for Environmental Information & Raheenleagh Power DAC².

The latter case highlights the need to adjust this definition in the regulations as Justice Alexander Owens found the Commissioner had erred in law in the case. In this judgement, the justice explicitly cites certain utilities such as *“railways, canals, water, sewerage, waste disposal, electricity, gas and telecommunications that organs of State may be engaged in their establishment, regulation and upkeep, and to secure continuity of supply. The State may entrust responsibility for provision of these services to entities which meet defined criteria.”* The justice cites further that the entrustment of public services to commercial operators by Irish statute as discussed by the CJEU as being an aspect of the definition of Public authority.

This would also be in line with the Aarhus Convention objectives under Article 1 (b) to achieve *“the widest possible systematic availability and dissemination to the public of environmental information”*. Clarifying this position would also go some way to alleviating the issues with regards to the timely access to environmental information, through a reduction in article 11 reviews, article 12 appeals and article 13 appeals, an issue for which Ireland was the subject of in a finding by the Aarhus Compliance Committee³

We recommend amending the definition of ‘public authority’ as such:

‘Public authority’ shall mean: (a) government or other public administration, including public advisory bodies, at national, regional or local level; (b) any natural or legal person performing public administrative functions, which includes companies licensed by government or other public administration to deliver such functions under national law, including specific duties, activities or services in relation to the environment; and (c) any natural or legal person having public

¹ C-279/12

² [2021] IEHC 46

³ ACCC/C/2016/141

responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b).”

Article 5 Informing the public of their rights & maintaining a digital record.

Under Article 5(1) of the AIE regs, a public authority is under an obligation to inform the public of their rights under these regulations. To date there has been a very limited structured approach to this as pointed out in the EJNI briefing Nov 2020. The establishment of a system for engaging the public with the environmental information as well as supports for public bodies in proactively making environmental information available should be made a key feature within the regulations.

Public bodies need to be encouraged to provide environmental information online in order to promote transparency and thus reduce the reliance on requests. This follows the recommendations of the EEB to member states in the ‘For your information’ report⁴.

All information provided should be open source and free so that people are able to digest and reuse the environmental information in a way that can be beneficial to everyone.

Article 8 – Ensuring that access to information is the default.

While there are certainly situations where information sought can be refused, and noting the requirement that grounds for refusal be “*interpreted on a restrictive basis*” in article 10(4), it is important that the default position for all public authorities be the release of information, and this should be formalised within article 8. This should also be applicable through the Article 11 Internal Review procedures, and the Article 12 appeals process.

Article 11, 12 and 13 Reducing delays and broad public participation

The system as currently implemented is fraught with delays, while the costs for judicial reviews of decisions can lead to an extreme chilling effect on interested parties pursuing claims. The failure to decide appeals in a timely manner by the OCEI and the Courts was the subject of the communication c-141 of the ACCC where Ireland was found to be failing to comply with the requirement under article 9(4) of the convention. This is reflected also in the European Environmental Bureaus advice on the Aarhus Convention recommending that public bodies “*only extend the time to process requests in very exceptional cases*”

Ireland has already to be found by the compliance committee to be lacking in the area of public participation in ACCC/C/2013/107. As shown in ACCC/C/2016/141 the OCEI appears to treat FOI requests preferentially and with significantly greater speed. We suggest that the office be given greater resources to deal with AIE submissions in a more timely fashion but also to ensure that public bodies are fulfilling their responsibilities to respond in a timely fashion. Through engagement in this the system can be seen to be a valuable resource and an instrument ensuring transparency. Public and NGO bodies are more likely to engage with the system if they see it as effective and unlikely to end up in court and accruing fees.

Q3Any other comments on the existing AIE Regulations and their implementation of the AIE Directive 2003/4/EC?

While the above submission concentrates on the regulatory requirements to improve the system in Ireland, it should also be noted that the effective implementation of these regs is reliant on public authorities being sufficiently supported and funded to carry out their duties.

⁴ [For your information - EEB - The European Environmental Bureau](#)

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Where environmental information is provided in advance in an open accessible and transparent way this will increase trust in the system with the public, and reduce the burden on the public authorities as well as the regulator in dealing with submissions.

An additional benefit of increased availability of environmental information will be the better provision of services and projects to improve the environment by allowing community groups, NGOs and other actors to better design, target and act on environmental projects across the country, resulting in improved outcomes from initiatives such as the Community Environmental Action Fund.