Submission on

Ireland's Draft National Implementation Report (NIR) 2021 on the Aarhus Convention and the PRTR

Version 1 Draft

Introduction:

The opportunity to comment on the 2021 draft National Implementation Report, (NIR), for Ireland is of course welcomed, and the courtesy of the Department during the process was very much appreciated. In many respects also, the information provided is a very useful index to how the Convention is implemented in Ireland. However in some respects, some material differences on the assessment of implementation and its adequacies arise and these are reflected in the following remarks.

More generally however on the consultation itself, it is submitted that a more proactive engagement and discursive approach with the wider public and interested bodies would be preferable to the consultation approach taken here, which is simply to solely seek to review a litany of information detailed on the implementation of the Convention. The opportunities for remote/online engagement could have ideally been availed of more robustly in this process.

The breath of considerations arising under the Convention is immediately significant, coupled with the breath of areas encompassed within environmental law itself. However additionally, in the case of Ireland, further volume and complexity and different nuances are necessitated to distinguish different issues in our implementation across a further dimension of complexity and volume of different sectoral approaches. This is given the nature of Ireland's different sectoral approach to much of the legislative involved. So for example, a thorough discussion of the implementation of public participation obligations in Article 6, necessitates considering that across upwards of 10 sectors, some such as Planning having even further sub-divisions for different classes of developments such as strategic infrastructure vs strategic housing vs standard development, and all with very distinct implementation issues.

Thus given the volume of information and potential repetition and degrees of distinction needed, keeping engaged with a document of this nature, and agreeing on the level of detail warranted or which can be justifiably excluded, is quite onerous and challenging. A more discursive and engagement-based approach would be more likely to stimulate a meaningful exchange of perspectives, and lead to not only to a more accurate and shared view of compliance but would be more likely to drive improved compliance and implementation, and a shared understanding of the challenges and possible solutions which might be employed. It thus might be better placed to yield more constructive results from the NIR activity, particularly at national level.

In the context of this consultation response, I have therefore endeavoured to focus on practical implementation experiences, with a view to assisting the Department abstract from these the legislative issues and the other practical issues and obstacles which need to be reflected, and/or which I respectfully submit need to drive additions/corrections/amendments/refinements to the draft text. So by comparison with other submissions I would have made previously on the topic of Aarhus, there is less specific focus on legislation, and more a focus on an providing an experiential perspective of the implementation to assist the overall implementation assessment exercise.

In order to facilitate transparency and balance – it is requested that consultation responses be included in their entirety as an appendix to the final submitted National Implementation Report.

Queries or clarifications on this submission may be made to:
[redacted] Environmental Law Officer of the Irish Environmental Network
[redacted]

This consultation response has been prepared by the above. Due to multiple pressures of work the formulation and coverage is not ideal, however it is hoped that it will be of some assistance to the

Department in concluding its report, and to the objective of assessing and improving Ireland's compliance.

While the information contained within draws on the experience of working with our members, it does not necessarily reflect their views individually or collectively.

The section numbers in the commentary below relate to the titles in the draft NIR.

I. Process by which the report has been prepared

- The public consultation was expressly indicated as being on the draft National Implementation Report - not on what would have been arguably a more open consultation on the implementation of the Convention. Thus as a point of correction – the following text from the draft NIR would benefit from re-wording accordingly:

> "A public consultation inviting submissions regarding the implementation of the Aarhus Convention in Ireland was launched by the Department of Environment, Climate and Communications (DECC) on 26 November 2020. The submissions received will inform the drafting of Ireland's 3rd National Implementation Report"

- The following text should be clarified based on how the Department treats the input from submissions on the draft NIR:

> "The submissions received will inform the drafting of Ireland's 3rd National Implementation Report."

- It is also requested that submissions made on the Draft NIR are included as an appendix to the submission made to the Aarhus secretariat in the interests of balance and transparency and to better facilitate progression in Ireland's compliance and more effective implementation of the Convention.

II. Particular circumstances relevant for understanding the report

- Ireland's obligations under the Convention come from two channels with differing legal implications. This is given Ireland is a member of the EU which has ratified the Convention, and Ireland is a party to the Convention in it's own right. The following text from the draft NIR fails to reflect accurately these facts stating only that:

> "As Ireland has a dualist legal system, international agreements only have the force of domestic law when they are given effect in national law, thus it was necessary to implement fully all of the obligations that are contained in the Aarhus Convention prior to ratification of the Convention"

The text appears to rely on Art 29.6 of the Irish Constitution which states:

"No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas."

However the assertion fails to properly and adequately reflect the fact that:

a) Obligations flow to Ireland as a member of the EU which is itself a party to the AC and given the judgement of the Court of Justice of 8 Mar 2011, case c-240/09 EU:C:2011:125 , para 30, (LZ I) that the Aarhus Convention is an integral part of the EU legal order.

b) Art 29.4.6° of the Irish Constitute which effectively operates to set aside other aspects of the Constitution (including 29.6 above) in the face of EU membership obligations - providing as it does:

"No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State, before, on or after the entry into force of the Treaty of Lisbon, that are necessitated by the obligations of membership of the European Union referred to in subsection 5° of this section or of the European Atomic Energy Community, or prevents laws enacted, acts done or measures adopted by—

i the said European Union or the European Atomic Energy Community, or institutions thereof,

ii the European Communities or European Union existing immediately before the entry into force of the Treaty of Lisbon, or institutions thereof, or

iii bodies competent under the treaties referred to in this section,

from having the force of law in the State.bligations: ...."

c) EU law also includes Article 216 of the Treaty on the Functioning of the European Union, the second paragraph of which states that "Agreements concluded by the Union are binding upon institutions of the Union and on the Member States";

d) EU law also includes interpretative rulings of the Court of Justice which have invoked the requirements of the Aarhus Convention in relation to public participation and access to justice in respect of the secondary pieces of EU legislation such as the Habitats Directive and the Water Framework Directive.

In terms of EU law, therefore, Ireland cannot entirely rely on its own domestic legislation to define its Aarhus obligations, as is implied in the draft NIR text highlighted above.

The references later in this section to Ireland having transposed the EU Public Participation Directive and the AIE Directive serve to further underline the extent to which the obligations which derive consequent on our EU membership are not fully appreciated, as the obligation goes far beyond those directives named in the Draft NIR.

This failure to fully appreciate those further obligations gives context to the associated issues and gaps in our implementation of the convention across a whole range of EU legislation,

matters of direct effect, not to mention obligations in respect of the doctrine of consistent interpretation.

- Further to the comment above about the extent to which we are bound by our EU law obligations notwithstanding Art 29.6 of the Constitution - the following further issue with the wording and implication here is raised. In respect of the following draft text .(emphasis added) to say Ireland had "fully implemented" the provisions of the specified directives is an over-statement:

> "Prior to ratification, Ireland had **fully implemented** the provisions of the Aarhus Convention and the related EU Directives - Directive 2003/4/EC on Public Access to Environmental Information and Directive 2003/35/EC on Public Participation in respect of the drawing up of certain plans and programmes relating to the environment into national law.. "

It is suggested that "had made endeavours to transpose and implement many of the provisions" - would be more appropriate wording in the context.

For example simply consider the Aarhus Convention Compliance Committee's findings in respect of AIE access to justice requirements in case ACCC/C/2016/141 not to mention participation obligations in ACCC/C/2013/107 which arise in the context of both EIA and AC consideration.

Also Art 3(7) of the Public Participation Directive 2003/35/EC inserting Art 10A into the EIA Directive - elements of that remain both un-transposed and unimplemented. By way of just one associated example – consider the issues which arose in An Taisce v An Bord Pleanála, [2015] IEHC 604 to highlight the issues which arose in respect of the failures by Ireland to adequately transpose the obligations of fairness and equity under the Art 3(7) of Public Participation Directive, inserting Art 10A into the EIA Directive in the context of these being the EU's transposition of elements of Article 9(4) of the Convention.

III Legislative, regulatory and other measures implementing the general provisions in article 3, paragraphs 2, 3, 4, 7 and 8

- **Failure in respect of Article 3.**
  The concern with the text here and even the NIR template, is it fails to address the overarching obligation in the Convention Article 3(1) to: "take the necessary measures" . There is an implicit obligation to evaluate effectiveness in this obligation. Or in other words it necessarily requires the State not just to do - but to also evaluate the effectiveness of the measures taken, it order to determine the necessity for further or other actions.

  The draft response here in describing the further more detailed specified elements of article 3 - fails entire to consider the effectiveness or ineffectiveness of the actions taken and described.

  In that context consider the draft responses given in this section for example the obligations specified to assist the public with AIE, and the description of the legal obligation specified in the AIE regulations, and the training activities done. This is provided entirely without any evaluation of the efficacy of these measures.

  For example - there is no reflection of the extent of issues which persists and are experienced by the public being directed to the Freedom of Information regime where they are entitled to AIE, and the issue of the ability of public authorities to distinguish and apply the regimes correctly.

It is submitted for the draft implementation report to be a meaningful report on the implementation it needs to be more focused on evaluation and in providing evidence on the effectiveness or otherwise of the implementation, rather than a listing of activities and provisions. There is no evidence that there has been any such proactive approach to ensuring all necessary measures are being consistently identified and being pursued. Therefore it is submitted there is a serious issue of non-implementation of Article 3(1).

Neither is it clear what period of time is in focus here in the response for the evaluation of the implementation response. This is material information lest there be a rush to introduce measures in the lead up to the submission of the NIR, without any meaningful evaluation of their efficacy.

- **Article 3(3)**
  In respect of Art 3(3) it is disappointing to note the dearth of training initiatives proposed to assist the wider public appreciate their rights under the Convention and how it works in Ireland, and further discussion on this would be most welcome as further initiatives envisaged.

- **Practical information on JR**
  The information and the extent to which it can be really considered practical information provided to the public on notices about Judicial Review remains an issue, particularly at the time a member of the public receives a decision or is notified of it. This is particularly so in the context of the absolute variability of situations, timeframes and requirements which arise for consents from different sectors for example from planning to aquaculture to forestry to oil and gas consents etc.

- **Covid-19 pandemic issues:**

  Failure to adequately communicate changes in planning legislation and thus protect participatory and access to justice rights during the pandemic lockdowns – having implications for Art 3, Art 6 and Art 9

  This inadequacy of information as a practical aid to the public was severely compounded in the context of the Covid-19 pandemic experience. Even in the context of planning there has been a whole different range of provisions introduced with variable effects. It was particularly notable how information on the effect of the emergency covid-19 measures introduced had on JR timeframes was excluded from the initial FAQ documents produced by the Department with responsibility for Planning. Equally of concern was how An Bord Pleanála wasn't required to update people about the timelines changing for JR, to those who had received notices of decisions just prior to the effect of the initial approach to freeze the counting of time for periods specified in orders made under emergency powers.

  During the early phases of lockdown to control the spread of the pandemic, when Ireland's initial solution was to freeze the counting of time for the planning sector - there was no effective communication to really reach the wider public to alert them to the effect of the time-freeze on their participatory or access to justice rights.

  So for many by the time people may have become aware of a development, and came out of cocooning or were able to travel their normal routes and see a site notice, it would have still had the old dates for participation indicated on it. So they may well have assumed they had missed the opportunity to engage in the environmental decision-making. Information on Local Authority websites on the temporary pause on time would have moved on and been updated ,so they would necessarily even have become aware generally had they looked there.

While certain information was held on the Department of Housing Heritage and Local Government website many ordinary members of the public would not even have considered looking at that Department website.

Additionally while it is acknowledged generally that many parts of the country still suffer from poor internet access there was a total and complete failure to reach out to the public in an appropriate way and to leverage the many pamphlets and media briefings to ensure the public were aware of the effect of changes made to participatory and access to justice timeframes. Updates on Departmental websites in no way served to fulfil this gap.

- **Failure to provide for protection of Convention rights for sectors outside of Planning**

A further major issue in respect of honouring the general obligations of Art 3 quite apart from Art 6 and 9 arises particular across other sectors where there was environmental decision-making involved and where there was absolutely NO provision to accommodate the public and the difficulties during the worst periods of the pandemic lockdowns. In fact to the contrary the application of the Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020 allows for the conduct of appeals by phone line only. The practical application of this provisions by the Forestry Appeals Committee led to some egregious experiences for the public. Escalation of this to the various relevant Ministers, including the Minister with responsibility for Aarhus yielded slow and entirely disappointing results.

- It is nigh on impossible to conceive how the powers under the Planning and Development Act 2020 if fully leveraged could be compatible with the Aarhus Convention. They allow for the variation of statutory timelimits across administrative areas where required because of the Covid pandemic. So different time limit could apply to different local authorities and An Bord Pleanála for participation and access to justice rights. They therefore confound the issue of interest and impact of environmental decision-making with your place of residence, which is fundamentally at odds with the conventions rights.

The failure to flag and address such considerations during the preparation and passage of this legislation by those with core responsibility for the Aarhus Convention in Ireland must be resolved, whether this is as a consequence of political decision-making, resourcing and capacity or otherwise. But it clearly reflects that Ireland is not undertaking all measures to ensure its approach is compatible with the Convention. Circulating the statement from the Committee on the continued application of the Convention during the pandemic simply isn't adequate.

In conclusion – an in-practice experiential assessment of how we perform under Art 3 is lacking in the draft NIR, to balance the listings provided.

- **Article 3(7)**

Specifically in respect of Art 3(7) it would be more helpful to list all the relevant international fora and evaluate how the PPIF obligations have/have not been adhered to rather than to list those simply where there had been financial and technical support for public engagement/attendance.

The obligation in Article 3(7) also goes much further as it is **to uphold the principles of the Convention in international fora**. It is submitted this doesn't just mean Aarhus principles in terms of the conduct of those fora, but also extends to an obligstion uphold those principles in the substance of decisions and considerations in those fora.

Thus, It is very disappointing that Ireland has not been proactive in doing so for example in the context of the negotiations of the Open-ended intergovernmental working group for the new UN Convention on Human Rights and Transnational Corporations and other Business Enterprises. Ireland for example has not argued in these negotiations for the inclusion in the substantive text of Aarhus principles, nor has it supported those in civil society who have.

It is acknowledged that in response to a specific eNGO request, and following the matter being raised by eNGOs at the Working Group of the Parties in 2020, that the Aarhus Focal point did indicate to the Dept of Foreign Affairs resources they were available to assist re Aarhus considerations in the negotiations of the aforementioned UN treaty. However, ideally a more proactive engagement would have been welcome, and additionally Ireland should be proactive on this at EU level also.

- **Inclusion in various bodies:**

  In respect of the reference in the draft NIR to the inclusion of eNGO (Environmental Pillar) representation on the CAP consultative committee Common Agricultural Policy (CAP) Strategic Plan 2021-2027, there has been and remains a concern in respect of the imbalance of perspectives across the committee. The list of membership[1] speaks for itself.

  This issue of balance and limited representation is particularly so when one considers the breath and depth of environmental considerations which need to be represented in such a forum. For example – the issue of water and agriculture alone in an Irish context is particularly complex, quite apart from issues associated with air quality, climate change, biodiversity in general, specific groups of species such as farmland birds, waste management etc. To expect 2 environmental pillar resources and 1 other eNGO to be able to fully address such considerations and in the face of the multiple Government and farming interests is not a meaningful reflection of the convention.

  Neither is the overall capacity issue of eNGOs considered adequately in the context of the draft NIR text and the necessity to support effective engagement.

V. Further information on the practical application of the general provisions of Article 3

- Please see comments earlier above in respect of item III and in particular the issue of the failure to implement measures to evaluate the efficacy of measures employed.

VII. Legislative, regulatory and other measures implementing the provisions on access to environmental information in article 4

- An issue still remains in respect of basic errors in processing AIEs and the quality of internal reviews. There is no mechanism for really addressing these issues. The remit of the OCEI does not extend to this and their focus is simply a particular appeal rather than any performance improvement. Thus the burden falls over and over on the

[1] https://www.gov.ie/en/collection/ab894-cap-post-2020-consultative-committee/#membership

public, or dedicated eNGOs in this space, who have to not only suffer the injury of a mishandled AIE request but then have to pay €50 for an appeal and wait upward of a year to have it decided, and without any broader follow-through to ensure the authority does not repeat the failure.

A recent example of this was where an authority initially appeared to have no AIE capacity at all. There was no information on their website and they failed to respond to an AIE request correctly. An Appeal was made and the applicant engaged to assist the authority and eventually a satisfactory outcome was arrived at. The OCEI did not assist. Subsequently further AIE request were made. Most recently when a further AIE requests were made, the authority extended the period for a further month as they are in theory entitled to do, albeit arguably not so in this instance. However, putting that to one side, at the end of the further month, the authority then impermissably sought to extend the decision period again, as if for the first time. The request was then put to internal review – and the original decision (of which there was effectively none) was then upheld following the full month for the internal review with a simple letter saying the decision was upheld.

There is no effective complaints mechanism to handle such issues. It is submitted that to really be delivering on the obligation to ensure all necessary measures are being employed, then, at the very least, there should be a feedback mechanism and that should be transparent and accessible so information on issues experienced can be assessed and shared, in addition to driving resolution and improvement.

VIII. Obstacles encountered in the implementation of article 4

- **Delays in appeals and JR on AIEs – undermine the efficacy of Art 4 rights.**

  The ACCC has recently made a finding against Ireland in case ACCC/C/2016/141 in respect of compliance of the AIE regime with Article 9(4) of the convention. It is submitted the issue of delay in the processing of appeals by the OCEI and judgements from the Courts, and the further issue of no directions being issued by the courts to facilitate adequate remedy have operated to fundamentally undermine the credibility and effectiveness of the AIE regime in Ireland.

  There has been a consistent and ongoing failure to provide for adequate resources to process the volume of appeals and to deal with the backlog. The delays are a deterrent to anyone seeking to appeal, as by the time they receive the information, it is in many instances irrelevant or so out of date. In fact they are at this point a deterrant to people making AIE requests. The frustration of eNGOs in particular and environmentally active members of the public is something I have often witnessed and experienced. The findings were finalised on 09/11/2020 and I am not aware of any steps taken to address the issue of backlog let alone proposals to bring Ireland into compliance on this most fundamental of issues.

IX.Further information on the practical application of the provisions of article 4

- **Approach to providing access to "environmental information in public consultations**

  Notwithstanding the transposition of the definition of "environmental information", basic issues are still experienced with public authorities refusing access even to submissions made in response to public consultations. This is even where it has been indicated clearly on the relevant Department's website at the time of the consultation that the submissions will be accessible under AIE requests.

Not only are the public consultations not published, in time to facilitate meaningful public engagement, and engagement of members of our legislature with subsequent decision-making processes as was the case in recent Forestry legislation consultations, but additionally requests are refused on the basis that consultations for example on the changing of access to justice provisions do not constitute environmental information.

In a very current example the Internal Reviews upheld this position. An appeal to the independent review body the Office of the Commissioner for Environmental Information, OCEI has not determined the appeal which is now nearly 9 months old. This is despite there being an on-point precedent decision of the OCEI on which they can rely.

This is an example of how merely having a transposed definition is not an adequate assessment of the effectiveness of the implementation, and how a whole class of information should be clearly flagged as something which should be proactively disseminated and/or clearly accessible via AIE to avoid confusion, delay and obstruction, and the associated implementation issue and impingement on rights.

- Statistical information issues:

  Information on deemed refusals should additionally be provided in the finalised NIR, as it is important for showing a fundamental issue with the processing of appeals.

  Statistical information which merges "granted" and "partially granted requests" is merged in the draft NIR. This does not provide an adequate perspective on the real nature of access provided.

- No information is provided on the time taken to process requests. The obligation is "as soon as possible" . But it is practically always the case in my experience, and with those whom I engage with regularly on such matters, that the full periods permitted are invariably taken to process a request. Additionally, authorities often acknowledge they do not have the resources or have other issues to deal with which take priority over the processing of AIE requests, and view FOI as being more important, particularly if there is request is from the media. There does not appear to be an appropriate reflection that the obligations pertaining are legal ones, and the rights involved are Human Rights, underpinned by European and International law obligations, or of the principle of equivalence.
  Instead the experience is one of providing/requesting a service, which comes low down the public authorities priority list.

  Finally, the fact DECC advises statistics should be published by public authorities is simply not sufficient to drive the level of compliance needed in this space, nor does it appear to adequately and actively monitor the experience of AIE processing or to be resourced to do so.

X. Website addresses relevant to the implementation of article 4

- While the following is probably more a comment on practical implementation issues - it is considered worth reflecting the following under this heading: It remains unintuitive and often not immediately evident where to find the webpages dealing with AIE for public authorities. This is particularly so for Local Authorities, and indeed some Government Departments, particularly under the new Gov.ie website.

The following should be taken as a comment on both part XI and XIII

XI. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in article 5

XIII. Further information on the practical application of the provisions of article 5

- **Issues in respect of Art 5(2): Government Dept websites – issue with obligations of transparency and the obligation to make information effectively accessible.**

- **Standards and approaches to websites for Public Authorities:**

The text of the draft NIR in respect of the high standards obligated in such websites does not accord with the practical experience outlined below, and further is an impediment to proactive dissemination of information.

The text on the draft NIR under heading XI, refers to the migration of a number of Departmental websites over to the central Gov.ie website. But it fails to address the issues associated with this. The under heading XIII it refers to regulations on the high standards which public authorities websites must adhere to.

However the manner in which the migration to the central Gov.ie website has been handled is a major issue, and has created significant issues with the accessibility of information governed by the Convention.

There has been a total lack of clarity for the public on the transition between old and new websites, with some elements of a Department's website being transitioned to the new site and others continuing to run on the old site.

The Department of Agriculture Food and Marine is possibly one of the most egregious examples of this and this has severely impacted visibility and dissemination of information for the public on forestry licensing, including on decisions.

The implementation and execution of this IT programme to migrate websites which has gone on over a prolonged periods has in no way complied adequately or observed the obligation of public authorities to provide for dissemination of information, and the obligations in respect of transparency and making information effectively accessible as required by Art 5(2)

It has not even been clear on occasions which version of a Department's website you need to look to with certain information being maintained on the old site, and other information on the new one, and confusing/misleading notifications posted on the websites. Evidence has been maintained of this and is available to support these assertions, given the gravity of issues which has arisen for public participation and access to justice in particular in respect of forestry licencing in the last months in particular.

The Department of Environment, Climate and Communications, which has responsibility for the Aarhus Convention is another example. It is responsible for processing applications and making decisions on a number of environmental matters. In advance of responding to this consultation, right up to the point of writing these comments, I had been unable to find time of writing where such applications are listed and where the decisions are published on oil and gas applications for development including for associated surveys. This is even despite a concerted effort and as someone familiar with both IT and Government websites.

Following a very desperate search, I finally found the information on applications made and on decisions made. But it is effectively hidden under an entirely misleading heading and webpage which appears only to be directed to those who would wish to make an application: https://www.gov.ie/en/service/apply-to-undertake-activities-under-a-petroleum-authorisation/

To fully appreciate the level of mis-direction involved, it is important to also realise that you get to the page above by clicking on a link within the text of a page which exists above this (https://www.gov.ie/en/policy-information/bf1b50-oil-and-gas-exploration-and-production/) and

where the text associated with the link in no way indicates this is where you will find actual applications and decisions on drilling or geo-phys surveys as it relates to different matters entirely.

Apply to Undertake Activities under a Petroleum Authorisation

Every three months, the Department of the Environment, Climate and Communications (DECC) publishes an update on the petroleum authorisations (called an "Acreage Report"), together with an associated Concession Map showing their locations offshore.

The Minister is required to present a Six Monthly Report to the Oireachtas, which includes details of all active petroleum authorisations.

The Strategic Environmental Assessments (SEA) Directive (EU Directive 2001/42/EC) requires that an environmental assessment is carried out on certain plans and programmes which are likely to have significant effects on the environment. DECC has completed five SEAs in advance of the award of exploration authorisations.

The new Gov.ie website needs to be radically reviewed and the programme transitioning to it to mitigate against the issues being experienced, and the compromise of obligations to disseminate information.

The text of the draft NIR in respect of the high standards obligated in such websites does not accord with the practical experience outlined above, and it is also an impediment to proactive dissemination of information.

- **Article 5(2)(a) and functions of public authorities**

For most public authorities there is no detail of the register of environmental information they hold given their functions. So there is a serious failure in respect of the effective and meaningful implementation of Art 5(2)(a):

"2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:

(a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;"

- **Specific issues for Art 5 in the context of Marine**

Information in respect of functions and where information can be ascertained particularly in respect of incidents in the marine environment is of serious concern, with the relevant authorities apparently not even knowing where the information can be found in addition to misleading information being posted on Department websites.
As an example I requested the information on an oil slick ("an emission into the environment" in Bantry Bay on Monday 27th April to admin@irishcoastguard.ie . This was further to an examination of their responsibilities and information on the Dept of transports website.

In terms of the information disseminated on functions and which should have assisted me finding the information I needed – the above and the following The Coastguard has a key role in respect of marine pollution. I refer to the following URL:

https://www.gov.ie/en/policy-information/eda64a-the-irish-coast-guard/

I have maintained in PDF form a printed copy of this from the time.

This webpage includes *inter alia* the following responsibility for the Coastguard:

> "The Irish Coast Guard has responsibility for Ireland's system of marine communications, surveillance and emergency management in Ireland's Exclusive Economic Zone (EEZ) and certain inland waterways.
>
> It is responsible for response to, and co-ordination of, maritime accidents which require search and rescue and counter-pollution and ship casualty operations."

and

> "The Irish Coast Guard is responsible for developing and co-ordinating an effective regime for:
>
> > preparedness and response to spills of oil and other hazardous substances within the Irish Pollution Responsibility Zone"
>
> I noted that the Coastguard's headquarters are indicated as being in the Dept of Transport:
>
> **"Irish Coast Guard Headquarters**
> **Address:** Department of Transport, Tourism and Sport, Leeson Lane, Dublin 2"
>
> **I also noted the administrative email for the Coastguard** admin@irishcoastguard.ie
>
> I also noted that the policy area and remit are with the Dept of Transport, Tourism and Sport.

In light of this information I sent an email simply asking for some information on the 27th of April to the coastguard, and this is what transpired:

- Two days later on the 29th of April I was emailed a one line response as follows: Please liaise directly with PressOffice@dttas.gov.ie"
- I then emailed them directly did not hear anything back.
- So I made an AIE request on the 30th April to both.
- On the 5th of May over a week following my initial query and 5 days after my AIE request – I was advised to contact the Port of Cork!
- I eventually got some information on the 12th of May.

The issues here is one of lack of meaningful dissemination of information on responsibilities, functions and where to get information is unacceptable. Despite having flagged that itself as an issue – there has been no meaningful correction in the Dept website information at time of writing.

Recent issues experienced in the last weeks in respect of the presence and operation of seismic survey vessels further evidence the difficulty even for experienced eNGOs in ascertaining how to find out what authorisations might be involved and what authorities would be involved in the context of activities in the marine and what enforcement authorities might be called upon.

- **Access to planning files.**

The Draft NIR also states:

> "An Bord Pleanála's website and those of the 31 local planning authorities provides information on planning related matters"

This text needs to be modified as it is significantly misleading. An Bord Pleanála's, ABP own planning files are only accessible in hard copy. To fully appreciate the significance of this it must be reflected that not only is ABP an appeal body for appeals from all Local Authority planning decision across the entire country, but it is also the decision maker of first instance on Strategic Infrastucture decisions and Strategic Housing Developments. Judicial Review is the mechanism for reviewing a decision of ABP and inspection of the file is fundamental to any decision to proceed to JR a decision of the Board. The issue of access to a paper file based in an office in the city centre of Dublin which may be of interest to people across the country is a significant issue with inadequate provision and accessibility of information. The issue of paper file and access to it has become particularly vexed in the context of the Covid-19 pandemic and remains unresolved.

Further in respect of local authorities, while they have the capacity to maintain both paper and online planning files – there can be delays to putting the files online. New regulations introduced in 2020 S.I. 180/2020 require an authority to put the file online within 5 days. However it does not have to do so if exceptional circumstances exist. Such circumstances include unforeseeable circumstances or if there are a large documents of a large volume of documents. In the circumstances therefore – the LA is allowed further time to put the documentation online with no outside limit – but the public are not afforded further time to participate.

Again these issues of access to planning files have become a particularly egregious issue in the context of the Covid-19 pandemic.

They also needs to be additionally considered under Article 6 – public participation.

- **Implementation issues with Art 5(3) on licences applications and decisions (Forestry)**

While issues with access to licence applications and decisions in forestry are dealt with under Article 6 Public Participation also – it is submitted that they are also an issue under under the general provision of Article 5(3) which provides:

> " Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks."

The list which follows merely represents specific absolute requirements and is not exhaustive as it prefaced by "should include".
In the context of ratification in 2012 – and the status of information technology – and the imperative to provide access to licencing applications – it is of grave concern that in 2020 – actual forestry licence

applications and actual decisions were not available electronically. This does not reflect a proper implementation of Article 5(3).

Most egregiously was the implementation of a charge of €20 to process an email request seeking a copy of an application for a forestry licence or a forestry decision imposed under SI 417/2020.[2] To be clear – the applications were not available online. It was necessary to email to request a copy of them in order even to decide if you wanted to make a submission on them. However the regulations in Art 2 define submission as "any communication". So even the email requesting a copy of the application was treated as a submission, and before it could be entertained a fee of €20 had to be paid. It is important to note this was applied even during periods of restricted movements owing to the pandemic, and where in situ inspection of the file was impractical, not to mention the volume of files some communities would have been interested in – and the distances they would have had to travel to inspect the files. Evidence of the experience of this and separate additional charges then for copies of the application or decision, separate to the AIE regime have been meticulously maintained. The approach evidenced represents serious issues in respect of public participation and dissemination obligations.

- **Implementation issues with Art 5(3) on legislation.**

There are serious issues with the effective accessibility of legislation in Ireland. Only certain legislation is available in consolidated form, under an invaluable service provided by the Law Reform Commission, LRC. But it is does not cover all acts, nor is it necessarily immediately updated. Furthermore secondary legislation or Statutory Instruments which can particularly in the environmental sphere constitute an incredibly large and significant element of provisions are regrettably not consolidated by the LRC. Exceptionally, an informal consolidation of the Planning and Development Regulations, 2001 and of the AIE regulations are provided by Government Departments. But this in no way addresses the wide body of regulations which are not consolidated.

The electronic Irish Statute Book, (eISB) now provides a complete legislative history for all instruments made in or since 1997, given the involvement of the Law Reform Commission, (LRC) in the task. However, there are limitations to the information available in the eISB for example: commencement of provisions enacted prior to 1998, and associated secondary legislation are not available. Also according to the LRC: "Prior to 1997 a user cannot rely on the information contained on eISB to be a complete statement of effects to secondary legislation". A comprehensive overview of issues, is set out in the following comprehensive issues paper produced by the Law Reform Commission: https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/37670
The above consultation report from the LRC also describes its "non-statutory" role in relation to the production of some consolidated texts of primary legislation, and describes in detail associated issues and limitations. The timeframes vary for the availability of an updated consolidation of an Act following on an amendment, and they carry a disclaimer in respect of errors or omissions. While the service is invaluable it needs to be significantly augmented in order to comply with Article 5(3).

The lack of consolidation is problematic not only when the public or decision-making bodies wish to ascertain the requirements, but also in the context of law-making when changes are proposed. In order to appreciate the effect of a change – it may be necessary to consolidate an Act to bring it up to date and on top of that apply the proposed changes and to at times also consider that in the context of effect on regulations. The pace and number of changes may not be readily appreciated by those not familiar with irish legislation – but this is a significant issue. It is all the more significiant when one realises that under the current administration sometimes there can be little more than 24 hours to review published bills, consolidate them, and prepare and submit amendments. The window of time

[2] http://www.irishstatutebook.ie/eli/2020/si/417/made/en/print

can be even less as bills pass between the houses of our Oireachtas. So the issue of publication and effective accessibility of legislation is a major issue of concern and is no way adequately reflected in the draft NIR.

- PRTR information. On first glance there would seem to be an improvement on the access to register of sites covered by PRTR requirements, as there were serious issues with the application used previously and installing versions thereof. However when an ordinary member of the public simply tries to access the register after reading this text[3] on

  "**PRTR Protocol**
  The PRTR Protocol seeks to reduce the burden of pollution and waste by establishing publicly accessible national pollutant registers. The Protocol requires each of its Parties to establish and maintain a publicly accessible national PRTR that meets certain requirements which are set out in the Protocol. The Irish PRTR, which was launched in 2007, is maintained by the Environmental Protection Agency and is available here."

On clicking on the link at the above "here" they are brought to this link with a map https://gis.epa.ie/EPAMaps/PRTR. While it is fairly intuitive to select a site of interest and click on it – but then you simply just get a CSV file without any guidance on how to deal with that, or even to outline what information is contained therein. This does not suffice for a sufficiently accessible standard of information for the register.

- **Access to judgments**

The issue of ex tempore judgments remains an issue, and access to Irish Law Reports summaries is not available for the General Public even for some important judgments. Also an issue remains in respect of judgments before 2001. *A*
The wording of the following from the draft NIR should be updated accordingly to accurately reflect the situation.

> "The new Courts Service website, https://www.courts.ie/, provides easy public access to courts information, including an easily searchable database of judgments of every court, from January 2001 to present. The Courts Service has produced some guidance documents and short video introductions to some of the site's features in order to help users to find their way around."

XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in article 6

- **Failure to address Article 6(1)(b) obligations.**

The following opening remark for the response under title XV in the draft NIR reflects one of the most fundamental issues with Ireland's failures in respect of Art 6, as Ireland largely fails to reflect the additional obligations under Article 6(1)(b), as the focus lies with Article 6(1)(a) and projects governed by the public participation directive 2003/35/EC namely EIA and IED projects.

[3] https://www.gov.ie/en/press-release/f2ed0-feedback-invited-on-how-ireland-is-implementing-international-conventions-on-environmental-law-and-justice-and-pollution-registers/#:~:text=The%20PRTR%20Protocol%20seeks%20to,set%20out%20in%20the%20Protocol.

"The provisions of Articles 6 of the Convention fall within the competence of the European Union, Directive 2003/35/EC, providing for public participation in respect of the drawing up of plans and programmes relating to the environment."

Thus serious failures arise in respect of public participation on many decisions where likely significant effects on the environment may arise and which should be considered additionally under Art 6(1)(b).

The matter becomes doubly complex where the national discretion is limited as the obligations arise consequent on EU Directives. Public participation (PP) is not expressly provided for in Ireland on Appropriate Assessments, (AA) – even following on the judgment in case c-243/15. (In fact it is interesting to note that only the cost protection, and the most limited interpretation of the cost protection arising from that judgment from November 2016 was finally applied in end Oct 2018 nearly some 2 years later).

PP in an AA may arise and be provided for in Ireland in the context of a decision which may involve a permission or a consent where PP is otherwise triggered, but not purely on the basis of the obligation to provide for PP in an AA. Additionally it is not provided for in respect of decisions involving assessments implicit in Art 4 of the WFD as clarified in case c-461/13 and indeed no such decisions are even provided for in Irish legislation – thus totally compounding the issue and despite that judgment dating back to 1 July 2015. Neither are they provided for in decisions associated with Articles 12-16, and clearly unquestionably are required in respect of derogation decisions under Art 16 of the Habitats Directive. These are but some examples.

- **Failures in respect of Article 6.10**

The draft NIR text fails to reflect the finding in case ACCC/C/2013/107 which despite findings in August 2018 – the legislation remains un-amended, and the proposal submitted by Ireland in Oct 2020 will not suffice to resolve the issue.

Neither has Ireland proactively sought to address similar issues which arise in respect of changes to duration of permissions elsewhere in the planning acts on the same basis and principles of the findings in the above case.

XV. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in article 6
XVI. Obstacles encountered in the implementation of article 6
XVII. Further information on the practical application of the provisions of article 6

- **Access to Forestry licence applications and decisions – Art 6 in particular 6(6) and 6(9)**

Please note: To avoid having to repeat these considerations in respect of the obvious implications of barriers to participation flowing into barriers to access to justice – these implementation issues outlined here should be reconsidered under Articles 9(2) and 9(3).
Additionally the information provided here should be considered as informing the response appropriately under headings XV, XVI and XVII for Article 6.

Earlier comments in respect of Art 5 and forestry should be considered here again.

The recent historic and current issues with access to forestry licence applications and decision are held to be incompatible with Article 6 of the Convention, and a failure to implement it properly.

Effective notification and Access to the application information is the fundamental thrust of Article 6 objective of providing for effective public participation. Yet the current situation for forestry set out here is in respect of a veritable paywall of charges around participation with further practical obstacles to further compound the barriers.

While the location and layout of certain afforestation licence applications can now be viewed by virtue of a map viewing tool introduced in the last couple of months - this does not currently appear to be the case for other forestry licences such as felling* and roads* so there remains a huge issue for certain licence types.

The licence viewer while it at least gives some sense of place, it does not provide essential detail on the application nor does it provide access to accompanying documentation. The only information that is available to the public for free is simply a basic list of applications with highlevel information only.

So for example afforestation it is just information on the contract number, indication if it's felling or afforestation – a townland name which is no way suffices to identify its location, even with the County name, area/size and nature of planting. In short this is not sufficient to assist you decide on making a submission on an application, let alone make an informed submission.

So, according to the website text below - the substantive information on the application has to be purchased.

https://www.gov.ie/en/publication/e305a-public-consultation-on-licence-applications-for-felling-afforestation-forest-roads-and-aerial-fertilisation/

This appears to be a further escalation in the paywall issue from the contentious charges introduced in October 2020. I have mapped in detail the experience on fees charged across different types of licence applications, depending on when they were requested during the participation window, during the appeal window, and after the appeal window, and regardless of the fact that JR window exists beyond that.

Additionally there is a further requirement to pay a fee of €20 to make a submission/observation on an application.

Additionally in respect of decisions and Article 6(9), while Art 21(3) of SI 191/2017 previously required substantive decision information to be published – the Department was not observing this, and instead obliged people to write in to request it unless you had participated.

Even more problematically however was the experience of individuals who have indicated to me they were advised to request the information via AIE.

When an eNGO colleague misguidedly sought decision information by AIE, they were advised by DAFM officials that extensive AIE charges would be levied. This was instead of advising them the information was available to them via ordinary request and free of charge.

When the eNGO came to the IEN Environmental Law Officer for guidance – they were advised by the IEN ELO of their entitlement to decision information free of charge. The issue of their experience was highlighted/escalated to the Department who have continued to fail to provide the information

requested, even 6 months thereafter, and who also refused the AIE incorrectly on the ground of manifest unreasonableness, without reference to the prior charging issue they had tried to impose.

Even more egregiously, the regulations obligating the publication of decisions were then changed in October 2020, and charges for access to the decision were imposed unless you participated in the decision. The regulations were introduced to transpose the EIA Directive, where the publication of the substantive elements of the decision is a legal obligation under Article 9 of the Directive . This has reflected a deeply concerning approach to participatory and access to justice rights in recent months.

To participate in the forestry licencing decision making process – you have to pay €20 – so in effect you are being also charged for the decision in addition to participation.

The rates for copies of the decision are set out in regulations and are more excessive than AIE.

However to get the decision in time to appeal a decision (28 days to appeal) – you would need to pay the increased rate.

The issue with access to decision information also needs to be seen in the context of the need to consider cumulative impacts, and to consider the effect of multiple conditions and conditions imposed or not imposed. This is a issue which is valid consideration for what you might want to include in your submission and so for you participatory rights. So you may need to consider many other recent and historic decisions in making your submission. Given the significant volumes of licencing decisions – they charges here are a major barrier to public participation, quite apart from the in principle breaches of Article 6 and 5.

The obvious knock-on implications for access to justice are self-evident.

The additional time taken to manage the access and payments is a further barrier. This was particularly so given the very limited payment options available, and the further delays encountered in responding to emails seeking copies of the licence applications – sometimes running to 10 days in the context of a 30 day window to make a submission from the publication of the application or a 28 day window to appeal.

In order to avoid having to repeat all of this experience under article 9(2) and 9(3) – I will add here that the issue of time to pursue an administrative appeal is 28 days. This is further curtailed given the appeals committee website indicates it will only entertain appeals delivered by post and it confirmed via email in November of 2020 it has no facility to process electronic payments.

- **Aquaculture Article 6 participation issues:**

It is entirely unclear at time of writing in Jan 2020 where the public is supposed to view aquaculture licences.

The new DAFM website on Gov.ie does not appear to have any page on aquaculture licences. The link to the old website is provided but the notice on it appears to indicate it is redundant stating:

"Latest Alert Information

The Department website is moving to www.gov.ie/agriculture. Please go to our new website for the latest content."

Naturally, I apologise if this is an oversight on my part. But I have expended some time searching.

I would also note that previously there was an issue with aquaculture licences and participation and notification information obligations under Article 6(2), as no information was published/indicated on the Department website on when the consultation window ran for the consultation window on the licensing decisions commenced and concluded. Notices might only be published in a local newspaper. Also applications might have been submitted some 10 years before a decision was made on them (decisions in Wexford Harbour in late 2019 included decisions on applications made in 2008 and years susbsequent to that). In summary you really had to write to the Department to seek this information on when the participation window was.

So for example if you navigated on the old website to aquaculture licence applications for Wexford this is what you would see – making it clear that even to find out when the consultation is – you have to write in:

> "This section contains details of New and Renewal Aquaculture/Foreshore Licence Applications.
> Public Consultation Periods exist for each application based on the date of the Public Notice in the relevant Newspaper. Please contact the Aquaculture & Foreshore Management Division for specific deadlines for individual applications as comments received outside the deadline cannot be accepted under the Public Consultation phase.
> **Bannow Bay**
> **Overall Map of Bannow Applications (pdf 693Kb)**
> 1. T03/86 Application Form S B S Ltd. (pdf 8,279Kb)
> - Bannow Bay Appropriate Assessment
> - Appropriate Assessment Conclusion Statement for Aquaculture Activities in Bannow Bay SAC, Bannow Bay SPA, including consideration of Ballyteigue Burrows SPA, Keeragh Islands SPA and Saltee Islands SPA (pdf 375Kb)
> - Aquaculture Marine Shellfish (Inter, Sub-Tidal)(Structures) Template (pdf 221Kb) "

- **Consultations in holiday periods.**

Consultations still continue to be run over public holiday periods and much effort has to be expended in seeking to provide for reasonable periods for effective participation. There is nothing in Irish legislation that I am aware of that properly addresses the requirements of the convention in this regard, nor is there in practice and it is a continued struggle.

XX. Opportunities for public participation in the preparation of policies relating to the environment provided pursuant to article 7

- **The timeframes for participation in SEA**

The duration of participation periods for SEA consultations are of concern. The volume of documentation is typically very significant, and involves detail on the programme itself, an environmental report and an appropriate assessment. They are also likely to involve review of a number of associated and background documents. It also is likely to involve consideration of underlying legislation and potentially issues around its transposition if EU law is involved.

Further issues arise for eNGOs where multiple consultations may be running in tandem. There is typically no effort to flag accurately the window when these consultations arise, and they often occur right at the far end of Ireland's obligation to deliver the output so flexibility to accommodate generous timeframes for public participation are often limited.

XXIV. Efforts made to promote public participation during the preparation of regulations and rules that may have a significant effect on the environment pursuant to article 8
XXV. Obstacles encountered in the implementation of article 8
XXVI. Further information on the practical application of the provisions of article 8

The following information I hope will be useful in informing some further considerations and updates and changes to the draft text in the above titles XXIV- XXVI

- **Issues with consolidated texts of legislation.**

Please see earlier comments re Article 5 and issues with lack of access to consolidated legislation, and the practical issue this presents for the public in engaging with the legislative process.

- **Timeframes for passage of legislation and public participation implications.**

The timeframes dictated by the current administration for the passage of legislation have been particularly problematic in terms of public participation and indeed even in terms of participation of members of the Oireachtas themselves.

Forestry legislation for example was published late on a Monday afternoon, with no clarity on the deadline for amendments the following day and the commencement debate was scheduled for Tuesday afternoon. This meant there was literally hours to engage with the Senators before they had to speak on the proposed bill, and in tandem finalise their amendments. The issue was even more problematic as one of the key pieces of underlying legislation which was being amended wasn't consolidated, nor were a number of key regulations.

The issue of participation was further exacerbated, when the deadline for amendments for the subsequent Dáil stage of the Bill was set before the Seanad had even an opportunity to amend the bill in Committee and Report stage. This testified to the fact the Government wasn't really prepared to accept any amendments, as was the case for the Dáil stage of the bill given the zero timeframe allocated for the final Seanad stage, as it was evident there was no time allotted to consider any changes made in the Dáil as the Government did not intend to allow any changes at the Dáil stage.

The whole process exposed the mockery to public participation in the legislative process, as the ability to engage meaningfully with public representatives over the bill was so compromised.

Similar experiences have happened in the context of the Planning and Development Bill 2020, with the scope of the bill being changed radically during the passage of the bill and only after it had moved from the Seanad to the Dail.

The matter of timing for legislation is left to the negotiations of the Business Committee and the power and influence of the Government majority and it appears no consideration is either obligated or observed in respect of complying with the Article 6 convention obligations in respect of matters covered by Article 8.

Pre-legislative scrutiny has in recent months also typically not provided for input from the wider public in recent scrutinies conducted.

- **Regulatory Impact Assessment**

While the Draft NIR refers to the the Regulatory Impact Assessment process, I have not seen a Regulatory Impact Assessment for any legislation enacted in the last 12 months, and in fact don't believe I have seen one on any environmental legislation enacted in this last implementation reporting period.

XXVIII. Legislative, regulatory and other measures implementing the provisions on access to justice in article 9

- **Re Article 9(1) which must be read in conjunction with 9(4) – the findings of the ACCC in ACCC/C/2016/141 should be reflected.**

- **Article 9(2) and 9(4) in respect of decisions, acts or omissions covered by Article 6(1)(b).**

As highlighted earlier in respect of Article 6 – there is an inadequate appreciation in Ireland's implementation of the scope of matters covered by Article 6(1)(b) and given the dependence of Article 9(2) on the scope of matters covered by Article 6 – this necessarily means there are gaps in clearly legislating for a whole range of access to justice matters which should be provided for – eg derogation licences under Art 16 Habitats, or clearly for Article 4 Water Framework Directive assessment decisions, as clarified by the CJEU in c-461/13 and indeed the access to justice requirements clarified by the Court in Protect Natur, c-664/15, for the Water framework Directive and consequential broader obligations. However neither section 50B of the Planning Act nor the Environment (Miscellaneous Provisions) Act, 2011, (EMPA), list such decisions, to ensure they are afforded the cost protection solution Ireland has implemented for other Aarhus matters, nor are the further requirements of Article 9(4) addressed

- **Article 9(2) and 9(3) – environmental damage test in Environment (Miscellaneous Provisions) Act, 2011.**

Despite the clarification from the CJEU in NEPPC case back in March 2018, in para 65 of c-470/16 on questions 6 and 7 – that the environmental damage test provided for in the Irish EMPA legislation as a pre-condition to secure the protective costs was impermissible – this provision still persists in the Irish Act.

- **Article 9(2) and 9(3) – a finding that an application is "frivolous and vexatious" cannot take you outside the protection against prohibitive costs required by Article 9(4)**

The Environment (Miscellaneous Provisions) Act, 2011, and section 50B of the Planning and Development Act provide for a rather sensible solution to the issue of prohibitive costs well suited to the particular and unique challenges of the Irish context. However, as set out in Irish law under both EMPA and s.50B as referred to above, that protection can be punctured in certain circumstances, including if the applicantion is found to have been "frivolous or vexatious".

The CJEU clarified in case c-470/16, NEPPC back in March 2018, in para 65 of the judgment on questions 6 and 7 – that such considerations could not take you outside the safety net required to be provided that costs cannot be prohibitively expensive. Yet Ireland has not legislated expressly for this, and the matter lies with the discretion of the courts.

- **Re Article 9(4) as highlighted earlier there is a failure to transpose and implement the requirements of fairness and equity.**

- **Re 9(3) the issue of costs for administrative appeals has not been satisfactorily implemented for a number of non-judicial appeals for example Aquaculture and Forestry.**

  Given the nature of Aquaculture decisions which are made on an individual licence basis with multiple licences being granted simultaneously for a single areas – a harbour for example – then impact of costs can be prohibitive. Recent experiences for example estimated the cost of dealing with one harbour as being in the order of €6,000 and for eNGOs they might need to consider multiple harbours in succession. It is not sufficient nor viable to appeal only one licence as should the others proceed – then the effect of the appeal on one is set at nought.

  In Forestry, the volumes of licence applications which can occur can be significant and which a community or concerned member of the public or an eNGO may wish to appeal. Thus the cumulative impact of the costs has to be considered. Some communities can face up to 100 applications just of one type of licence in their area for example on afforestation in a year, and there may then be additional felling and forest road licences and licences in adjacent counties which may have significant impacts locally. (Supporting stats available on request) At a rate of €200 per appeal on top of the participation charges flagged earlier – the overall effect on the cost access to justice and associated barrier is very concerning. There has been a total failure to adequately consider this in the context of legislation and associated regulations made in the last months of 2020.

- **eNGO standing**

  SI 342/2014 S.I. No. 352/2014 - European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014 provides for standing for eNGOs across a range of sectors, but it limits it to EIA decisions. This is not consistent with the standing requirement for eNGOs in the Convention.