

Para. 4 (a) (i) of decision VII/8i

In paragraph 4 (a) (i) of decision VII/8i, the Meeting of the Parties recommends that the Party concerned take:

(a) With regard to section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000:

(i) The necessary legislative measures to ensure that permits for activities subject to article 6 of the Convention cannot be extended, except for a minimal duration, without ensuring opportunities for the public to participate in the decision to grant that extension in accordance with article 6 (2)–(9) of the Convention;

Submission	Comment	Department response
Emerald and Western Star	It is not clear how these proposed amendments to the Planning and Development Act will be taken into account in the development of secondary legislation under Maritime Area Planning Act 2021; in particular with regard to Marine Area Consent as set out in Part 4 and Licenses Authorising Certain Maritime Usages in the Maritime Area as set out under Part 5. It will be important to ensure that there will be a consistency in the approach and that the requirements for AA and EIA for extensions to licenses for offshore site investigations and project deployments will be appropriately aligned and no more onerous than for other activities.	In respect of the Maritime Area Planning Act and in the case of development where planning permission is required, section 42 as amended will apply thus where EIA and or AA is required a new planning application will have to be made. With regard to maritime licencing, if an extension of duration is required and it is material a new licence application has to be made thus EIA and AA and public participation where required will apply.
Wind Energy Ireland (WEI)	The implications of these amendments to the Planning and Development Act for the development of secondary legislation under Maritime Area Planning Act 2021 are unclear. It will be important to ensure that there is a consistent approach to the requirements for AA and EIA for extensions to licenses for offshore site investigations.	See above.

<p>Environmental Law Officer of the Irish Environmental Network</p>	<p>It also must also be said it is very disappointing that the Department did not see fit to provide links to consolidations to assist the public on the changes made given the torturous path there has been to the current version of s.42 and the new s42B, and the difficulties of navigating that through the IrishStatueBook.ie website, and the absence of a consolidation of the updated Birds and Habitats Regulations – the original version of which is SI 457*/2011. Also the circulars provided to the Public Authorities were not included as part of the consultation – to either be commented upon, or indeed to assist understanding of how all these various changes work together / or indeed don't</p>	<p>An administrative consolidation of the Planning and Development Act, 2000, as amended has been drawn up by the Law Reform Commission. This is available at both the website of the Law Reform Commission (https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/html) and; www.gov.ie. (https://www.gov.ie/en/publication/c0ac2-planning-legislation-primary-legislation/). The Circulars provided to the Public Authorities are also available at www.gov.ie (https://www.gov.ie/en/circular/a0d0e-circular-letter-euipr-012021-amendments-to-section-42-of-the-planning-and-development-act-2000-as-amended-and-associated-planning-and-development-regulations-2001/)</p>
	<p>I wish to emphasise the message which comes across when you look at s.42 of the primary legislation of the Planning and Development Act, and the lack of clarity in that section around any further requirements of the Planning and Development Regulations and the extent to which they do or do not suffice to make clear when an extension of duration of a planning permission cannot happen under s.42 of the Planning and Development Act given the public participation required which is not provided for in the s.42 process. This is a particular issue given the lack of briefing to the public – but regardless the legislation should be sufficiently clear on its face to avoid confusing the public on their entitlements and rights under the Convention.</p>	<p>Under Section 42 as now amended an extension of duration is only permitted in relation to development which has been substantially commenced. In accordance with Section 42(8) of the Planning and Development Act, 2000, an extension of duration cannot be provided if EIA or AA is required in relation to the proposed extension. Instead a new planning application has to be made so that EIA and or AA and public participation requirements will apply.</p>
	<p>It is not intended to rehearse here the set of legislative changes which has given rise to this – but I wish to highlight that SI 456/2021 – expressly deleted ss</p>	<p>Section 42(1)(a)(i)(II) has been deleted as it provided for an extension of duration for un-commenced development or development where substantial works have not been carried out. Accordingly, a</p>

	42(1)(a)(i)(II) which expressly checked for the EIA and/or AA requirements for the original application, and this is highlighted in the F notes, see F371 in the LRC version.	new planning application must be made if the developer wishes to proceed with the project in which case EIA and or AA and public participation requirements will apply.
	Then, the language in the newly added ss(8) for s.42 is at best ambiguous, but it implies that the consideration for PP is only made in respect of the extension to the project.	Planning Permission has already been granted in respect of the development. The extension of duration is being provided in order to allow the completion of the development. If EIA/AA is required, an Extension of Duration cannot be granted and a new application for Planning Permission should be sought (including necessary EIA/AA procedures, which are subject to public participation).
	Therefore it seems that s.42 now fails to unambiguously and clearly consider the original nature of the development and where EIA and/or AA were required for the original project, and thus fails to comply with the requirement of Article 6(10) of the Convention which provides: (bold emphasis added)	The measures were taken to comply with Recommendation 4(a)(i) of Decision VII/8i which refers to Article 6(2)-6(9) of the Convention.
	It is therefore clear from the Convention – that the original character of the activity must be considered when revisiting a permission. But the new s.41 now fails to do, and a very, very serious gap would appear to arise, between what the convention envisages as triggering public participatory requirements and what s.42 now provides for consequently.	When screening for EIA/AA the impact of the Extension of Duration on the area must be taken into consideration, in conjunction with the cumulative impact of other projects in the area and it should be noted the development that has already been partially constructed. The principle behind an application for Extension of Duration is to allow for the completion of projects (which are approved development and have valid consent) and where the project is substantially completed. The development/project is not being extended, rather the time taken to complete it is.
	So in order to correctly determine the public participatory requirement both the historic and current character of the project need to be considered in terms of Article 6(1), and that means the effective screening determination required on participatory requirements needed under both Article 6(1)(a)	Planning Permission has already been granted in respect of the development. The extension of duration is being provided to allow the completion of the development. If EIA/AA is required, an Extension of Duration cannot be granted and a new application for Planning Permission should be sought (including necessary EIA/AA procedures, which are subject to public participation.)

	and also 6(1)(b). The legislative approach in the action plan does not appear to address this.	
	Moreover the reliance on consideration of classes of project as opposed to impacts of the projects in the changes made to the Planning and Development Regulations through SI 457/2021 – further compounds the approach in the PDA.	When screening for EIA/AA the impact of the Extension on the area must be taken into consideration, in conjunction with the cumulative impact of other projects in the area and of the project itself which has already been partially constructed.
	Furthermore, the changes to SI 457/2021 in respect of EIA seem to relate only to screening for Part 2 of schedule 2 so non-mandatory EIA and there are multiple other issues with these regulations which I would be happy to elaborate on in a dialog where the Department clarifies what is the legislative intent and strategy to deliver on a solution where either Public Participation is provided for, or projects/activities which trigger such requirements under the Aarhus Convention are not allowed have extensions of duration of their permissions under s.42 of the PDA.	An extension of duration is not permitted if EIA/AA is required. If EIA/AA is mandatory, an extension of duration would not be permitted.
	The changes made through SI 456/2021 to s.42 of the Planning and Development Act, PDA and the further requirements in the Planning and Development Regulations through SI 457/2021 and elsewhere – fail significantly to address compliance with the public participatory obligation under Article 6.10 of the convention which is the core issue in the findings as set out below – and it is that context the recommendations need to be read.	If EIA/AA is required in relation to the proposed extension, an Extension of Duration cannot be granted and a new application for Planning Permission should be sought (including necessary EIA/AA procedures, which are subject to public participation.
	As set out earlier – there is a need for complementary measures and a need to monitor and report on and react to the efficacy of the changes and the	The Action Plan does not require this.

	measures adopted, and this should be explicitly detailed in the action plan. T	
	I would also urge the Department to consider in time a much more proactive response – for example as highlighted in observations on ACCC/C/2013/107 – there are multiple other sections in the PDA which have the same and similar issue as s42 and these also need to be addressed in the spirit of a Party who has fully ratified the Convention, and where participation rights are compromised when revisiting permissions, and the focus should not just be limited to Planning.	These will be considered as part of the review of the Planning and Development Act currently being undertaken.

Para. 4 (a) (ii) of decision VII/8i

In paragraph 4 (a) (ii) of decision VII/8i, the Meeting of the Parties recommends that the Party concerned take:

- (a) With regard to section 42 (1) (a) (i) and (ii) of the Planning and Development Act 2000:
- (ii) The necessary steps to ensure the prompt enactment of the measures to fulfil the recommendation in subparagraph (i) above;

Submission	Comment	Department response
Emerald and Western Star	It is not clear how these proposed amendments to the Planning and Development Act will be taken into account in the development of secondary legislation under Maritime Area Planning Act 2021; in particular with regard to Marine Area Consent as set out in Part 4 and Licenses Authorising Certain Maritime Usages in the Maritime Area as set out under Part 5. It will be important to ensure that there will be a consistency in the approach and that the requirements for AA and EIA for extensions to licenses for offshore site investigations and project deployments will be appropriately aligned and no more onerous than for other activities.	In respect of the Maritime Area Planning Act and in the case of development where planning permission is required, section 42 as amended will apply thus where EIA and or AA is required a new planning application will have to be made. With regard to maritime licencing, if an extension of duration is required and it is material a new licence application has to be made thus EIA and AA and public participation where required will apply.

Para. 4 (b) (i) of decision VII/8i

In paragraph 4 (b) (i) of decision VII/8i, the Meeting of the Parties recommends that the Party concerned take:

(b) The necessary legislative or regulatory measures to ensure that:

(i) Appeals under the Access to Information on the Environment Regulations to the Office of the Commissioner for Environmental Information or the courts, whether commenced by the applicant or any other person, are required to be decided in a timely manner, for instance by setting a specified deadline;

Submission	Comment	Department response
1.	The proposed measure does not state what specified deadline OCEI must meet.	This will be addressed in the forthcoming regulations.
	The proposed measure requires only that OCEI 'respond' to appeals within the specified time instead of ACCC's recommendation that appeals 'be decided' by a specified deadline.	Draft Plan amended to 'issues a decision'.
	The proposed measure does not contain a remedy to delay in the courts as identified in the ACCC's findings. The continued absence of a remedy was noted and underlined 2 by the report of the ACCC, and later endorsed at the Meeting of the Parties	This will be addressed in the forthcoming regulations.
Emerald and Western Star	We support appropriate and clearly stated timelines be put in place to deal with 'Access to Information on the Environment'. These timelines should be sufficient to allow for appropriate delivery by the relevant agency/department.	Noted.
Wind Energy Ireland (WEI)	We would support appropriate and clearly stated timelines for dealing with 'Access to Information on the Environment' requests. These timelines should be sufficient to allow for appropriate delivery by the relevant agency/department	Noted.
Environmental Law Officer of the Irish Environmental Network	the same sort of comments in respect of the need to stipulated further actions and actors in respect of monitoring, evaluation, reporting on the efficacy of the changes and measures made in respect of the other communications stand here also.	Noted.

	<p>there is no indication of any complementary implementation measures to communicate to the wider public the proposed changes once made to the AIE regulations in respect of new deadlines, and clarifications on rights to cost benefit analysis and obligations on the Courts. The public and other key stakeholders need to be appraised so they are in a position to be able to leverage their rights</p>	<p>Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations. The public and key stakeholders will be informed of progress. Training will be provided to Public Authority officials.</p>
	<p>It is very disappointing that the measures indicated again are so limited in scope being a legislative change only</p>	<p>Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations. The public and key stakeholders will be informed of progress. Training will be provided to Public Authority officials.</p>
	<p>Additionally they are entirely vague and only indicate a specific deadline will be included in the updated AIE regulations – there is no indication at all what that timeframe/deadline would be</p>	<p>This will be addressed in the forthcoming regulations.</p>
	<p>There is no discussion or indication of what considerations will inform the specification of that deadline.</p>	<p>This is being addressed between DECC and the OCEI.</p>
	<p>Very particularly there is no indication of or what other changes or wording would be used to ensure that the public's rights to participation or access to justice are not impacted through a delay in accessing information. This was a core point made in the observations including the lead up to the ACCC's draft report on progress to the MoP. AIE is often not an end in itself and the timeframes for them to support the interplay within the pillars of the convention need to be compatible with other environmental decision-making processes as they are implemented in Ireland, and how ultimately compliance with Article 3(1) of the Convention will</p>	<p>Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations.</p>

	be assured and supported through this deadline.	
	There is no discussion on the outcome of the consultation on the AIE Regulations or any wider context for the changes proposed within those regulations following on the consultation.	33 Submissions received and have been fully reviewed. All submissions are available to view on gov.ie. (https://www.gov.ie/en/consultation/53b81-public-consultation-on-the-review-of-the-access-to-information-on-the-environment-aie-regulations-2007-2018/)
	There is no indication of what the legislation will provide for if the deadline is not met.	This will be addressed in the forthcoming regulations.
	There is no indication any complementary measures or changes to ensure that this deadline will be adhered to	Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations.

Para. 4 (b) (ii) of decision VII/8i

In paragraph 4 (b) (ii) of decision VII/8i, the Meeting of the Parties recommends that the Party concerned take:

(b) The necessary legislative or regulatory measures to ensure that:

(ii) There are mandatory directions in place to ensure that, should a court rule that a public authority or an information request falls within the scope of the Access to Information on the Environment Regulations, the underlying information request is thereafter resolved in an adequate and effective manner;

Submission	Comment	Department response
1.	To note OCEI's continuing practice of halting its consideration of multiple exemptions once it has found one that is both exempt and not overridden by the public interest test.	Noted, submission sent to OCEI for consideration.
	In cases where not all exemptions have been considered it is doubtful a court would overturn OCEI's decision and order the release of information. In those circumstances remittal to OCEI seems more likely and so the proposed measure, of itself, would not provide for an effective resolution.	Noted, submission sent to OCEI for consideration.

	The measure should require as a preliminary that both threshold issues and all raised exemptions have been put to the requester, and any interested party, and have been decided upon by OCEI. A court, if asked, would then be in a position to resolve the request.	Noted, submission sent to OCEI for consideration.
	As already noted ACCC has written that it views timeliness and effectiveness “in a systemic manner.”	Noted.
Emerald and Western Star	We recommend that that AIE information is adequately described so it is clear from the outset what it includes and ideally should not require court proceedings to determine. While the DECC website and AIE form provide an adequate description of requirements; it is recommended that a more user friendly and accessible guidance document should be considered for use by the public which clearly outlines what AIE data is, what it is not, when it can be requested, how it can be requested, what the processes are to follow, the timelines etc.	Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations.
Wind Energy Ireland (WEI)	We would recommend that that AIE information is adequately described so it is clear from the outset what it includes and ideally should not require court proceedings to determine. While the DECC website and AIE form provide an adequate description of requirements; it is recommended that a more user-friendly and accessible guidance document should be which clearly outlines what AIE data is, what it is not, when it can be requested, how it can be requested, what the processes are to follow, the timelines etc.	Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations.
Environmental Law Officer of the Irish	The action plan fails to respond to the issue in the findings around the Court’s failure to	This will be addressed in the forthcoming regulations.

Environmental Network	provide direction. Ireland needs to go beyond any perceived limitation in the Recommendation to address the failure identified in para 133 (b) of the findings	
	So the non-compliance issue lay in the failure to provide direction – rather than in complying with the Court’s direction. The recommendation is non-binding – but the compliance failure is absolute and is what must be addressed. The actions proposed in the draft action plan has focused on compliance with the Court’s direction or order – which in the context is both missing the core point of the finding highlighted above.	Noted.
	The issue which needs to be addressed in the action plan would seem to be to appropriately impress upon the Courts the duty to ensure they provide for “adequate and effective” remedies in line with the Convention in the context of their review.	Noted.

Para. 4 (c) (i) of decision VII/8i

In paragraph 4 (c) (i) of decision VII/8i, the Meeting of the Parties recommends that the Party concerned take:

(c) The necessary legislative, regulatory, administrative and practical measures to ensure that:
(i) Access to cost-benefit studies used in environmental decision-making is not refused on the basis that it is not “environmental information” within the meaning of article 2 (3) (b) of the Convention;

Submission	Comment	Department response
Meath County Council	Local Authorities would appreciate some practical guidance from in Dept which would be specific to service areas. Training sessions tailored to the various Sectors or Local Government sections such as Planning / Environment & Transport would be very practical.	Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations. Training will be provided to Public Authority Officials.

	In relation to Planning Sections – guidance is required as to what extent financial information in relation to planning conditions should be released and is there any conflict with such disclosure of such financial details under FOI.	Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations. Training will be provided to Public Authority Officials. The Department facilitates meetings of the AIE Officers Network Group where such issues can be discussed.
Emerald and Western Star	With regards to access to information which may inform a cost benefit analysis of an environmental decision; the amended legislation should ensure that data which is commercially sensitive to a specific project should not be eligible for release under AIE.	Covered by Article 9(1)(c) of the European Communities) Access to Information on the Environment) Regulations 2007 to 2018.
Wind Energy Ireland (WEI)	With regards to access to information which may inform a cost benefit analysis of an environmental decision; the amended legislation should ensure that data which is commercially sensitive to a specific project should not be eligible for release under AIE.	Covered by Article 9(1)(c) of the European Communities) Access to Information on the Environment) Regulations 2007 to 2018.
Environmental Law Officer of the Irish Environmental Network	the same sort of comments in respect of the need to stipulated further actions and actors in respect of monitoring, evaluation, reporting on the efficacy of the changes and measures made in respect of the other communications stand here also.	Noted.
	there is no indication of any complementary implementation measures to communicate to the wider public the proposed changes once made to the AIE regulations in respect of new deadlines, and clarifications on rights to cost benefit analysis and obligations on the Courts. The public and other key stakeholders need to be appraised so they are in a position to be able to leverage their rights	Noted, updated Ministerial Guidelines will be issued following publication of the revised AIE Regulations. The public and key stakeholders will be informed of progress. Training will be provided to Public Authority officials.

Para. 4 (c) (ii) of decision VII/8i

In paragraph 4 (c) (ii) of decision VII/8i, the Meeting of the Parties recommends that the Party concerned take:

- (c) The necessary legislative, regulatory, administrative and practical measures to ensure that:
(ii) Appeals under the Access to Information on the Environment Regulations to the Office of the Commissioner for Environmental Information are required to be decided in a timely manner, for instance by setting a specified deadline;

Submission	Comment	Department response
Emerald and Western Star	We support appropriate and clearly stated timelines are put in place to deal with appeals to decisions made on 'Access to Information on the Environment'. These timelines should be sufficiently timed so that they can be appropriately managed by the agency/department in reviewing the appeal.	Noted.
	Finally, given the outcome of the High Court decision of the 25th of January 2021 with respect to Right to know CLG Vs Commissioner for Environmental Information and Raheenleagh Power DAC (Notice Party), we would recommend that proposed updates to AIE guidance be consulted with all independent power producers given that they are now brought within the ambit of Access to Information on the Environment Regulations 2007.	Noted.
Wind Energy Ireland (WEI)	We would support appropriate and clearly stated timelines for dealing with appeals to decisions made on 'Access to Information on the Environment'. These timelines should be sufficient so that they can be appropriately managed by the agency/department in reviewing the appeal.	Noted.

Other Comments

Submission	Comment/ Recommendations	Department response
Environmental Law Officer of the Irish	Provide for opportunities for constructive dialog and discussion with key stakeholders and	Public Consultation was held on the draft ACCC Plan of Action, 5 submissions were received which can be viewed on gov.ie.

Environmental Network	communicants to resolve serious issues with the proposals in the draft action plan, in order to build a participative approach to robustly resolving the issue of non-compliance prior to it's submission.	(https://www.gov.ie/en/consultation/c4eee-consultation-on-the-draft-accp-plan-of-action/)
	“Following the consultation – further active dialog and engagement with Stakeholders and the Communicants was conducted in order to discuss concerns and to facilitate constructive engagement to resolve issues and concerns in the action plan and to share perspectives with a view to building a robust participatory approach to Ireland’s action plan to bring it into compliance.”	All Stakeholders will be updated on progress.
	This section is updated to reflect further measures in respect of communication and outreach to the public and other stakeholders so they are aware of the changes and the implications for their rights and a comprehensive communication, awareness, guidance materials, website updates and appropriate training materials prepared etc	All Stakeholders will be updated on progress.
	To support the specification of these further outreach and education measures – it will be important to consult further as proposed in the overarching recommendation above.	Noted.
	The detailed measures specified for each of the communications will also need to be updated accordingly. It is not intended in this submission to reflect this recommendation in respect of each of the communications and it should be taken as read.	Noted.
	In the proposed dialogs - further detailed consideration should be given to the issue of remedies required as a consequence of the failures occasioned through the non-compliances.	This will be addressed in the forthcoming regulations.

	<p>Regrettably this latest set of changes is no different. It came as a surprise to many I expect interested in such matters in the wider public – that a whole range of further changes have been made, notwithstanding a late update to the ACCC by Ireland in October 2021. This is particularly because they have been made through regulations including to change primary legislation, and regulations changing regulations. Therefore the came without the Oireachtas oversight associated with primary legislation. Given the extent of Planning Legislation which the Government pressed through the Oireachtas over the period this is disappointing, particularly as it would seem that questions may well arise as to the legality of the changes made to primary legislation through Statutory Instruments – a point to which I return below. Also given the lack of clarity on an overall legislative approach it has been also impossible to determine at points in time whether the legislative strategy was in fact changing, and a different path being followed particularly given the controversial introduction of s.42B and it’s implications, and the failure of Ireland to communicate this as I highlighted in my observations in June 2021.</p>	<p>The legislative changes were made by way of Commencement Order (commencing provisions that were already on the statute book) or by EU Regulations (transposing EU Directives - pursuant to the European Communities Act 1972). Measures provided for under S42B were introduced on a temporary basis in response to the Covid pandemic. Similar to other changes to Section 42 will only apply if EIA and AA are not required and provided that substantial works are carried out.</p>
	<p>The action plan now sets out the actions as work done, rather than legislative changes to be made, and details the current legislative context.</p>	<p>The proposed legislative changes were provided to the Aarhus Convention Compliance Committee in 2021. As the Plan of Action is not required to be submitted until July 2022 and final Progress Reports submitted until October 2024, the legislative changes have been commenced at the earliest available opportunity (as outlined to ACCC in 2021).</p>
	<p>I note this circular was provided to the ACCC in October 2021. Nothing equivalent has been put out to assist the public in this</p>	<p>An administrative consolidation of the Planning and Development Act 2000, as amended has been drawn up by the Law</p>

	<p>consultation or indeed to assist them in coming to grips with the new legislation and changes, and the multiple elements of them.</p>	<p>Reform Commission. This is accessible at both the website of: The Law Reform Commission (https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/html) and; www.gov.ie. (https://www.gov.ie/en/publication/c0ac2-planning-legislation-primary-legislation/).</p> <p>The Circulars provided to the Public Authorities are also available at www.gov.ie (https://www.gov.ie/en/circular/a0d0e-circular-letter-euipr-012021-amendments-to-section-42-of-the-planning-and-development-act-2000-as-amended-and-associated-planning-and-development-regulations-2001/).</p>
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