



# Community Law & Mediation

## **A submission by Community Law & Mediation to the Department of the Environment, Climate and Communications on the review of the European Communities (Access to Information on the Environment) Regulations 2007-2018**

CLM supports the enhancement of public access to environmental information, facilitating public participation in decision-making processes, and ensuring access to justice in environmental matters, in line with the principles of the Aarhus Convention.

### **The Aarhus Convention**

The Aarhus Convention, or the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, is an international convention signed by the European Union and its member states in 1998, and ratified by the European Union on 17 February 2005. It was ratified by Ireland on 20 June 2012 and entered into force accordingly on 18 September 2012. The Convention reflects a commitment to transparency, citizen engagement, and environmental justice. Its three core pillars include access to information, public participation, and access to justice in environmental matters. The Convention firstly grants individuals and communities the right to access environmental information held by public authorities. This transparency empowers citizens to make informed decisions about their environment and actively participate in shaping environmental policies. Secondly, the convention promotes inclusive public participation, enabling diverse voices to contribute to environmental decision-making. Lastly, it provides a legal framework for access to justice, ensuring that individuals can challenge decisions that violate environmental laws. The pillars aim to collectively democratize environmental decision-making processes and ensure that citizens play a central role in shaping policies that impact their surroundings. The Convention specifically identifies the need to guarantee all three pillars of the Convention in order to protect the right of every person to live in an environment adequate to his or her health and well-being.

### **Access to Information on the Environment (AIE)**

Access to Information on the Environment (AIE) (together with the two other pillars) is designed to contribute to “the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”. Any reform of the Regulations must produce a strong legal framework that promotes access to environmental information and recognize the first pillar as an integral part of meaningful and proper implementation of the remaining pillars of the Convention. AIE is intended to empower individuals and communities by fostering transparency, accountability, and inclusivity in environmental governance. It recognizes the intrinsic connection between informed public participation and environmental protection. Information, when easily accessible, becomes a powerful tool for citizens to engage meaningfully in environmental decision-

making. It not only enables individuals to understand the environmental challenges facing their communities but also equips them to contribute constructively to the formulation and implementation of policies.

AIE should encourage public authorities to proactively disseminate information related to environmental policies, plans, and activities, fostering a culture of openness and dialogue. This, in turn, would enhance public trust in governmental institutions. Finally, AIE can act as a catalyst for environmental protection and conservation by enabling timely access to information on emissions, pollutants, and other environmental factors. This information arms individuals and organizations with the knowledge needed to hold public authorities accountable for environmental decisions. By upholding the principles of transparency, public participation, and access to justice, AIE can empower individuals to actively contribute to the preservation and enhancement of the environment for current and future generations.

### **Accessibility of environmental information**

CLM proposes amendments to Article 6 of the Regulations to improve the accessibility of environmental information and to reduce the barriers to accessing such information. The legislation should be drafted so as to promote ease of access for the public at large and to reduce administrative barriers and hurdles that do not serve a clear rational purpose.

Specifically, CLM proposes removing the obligation as set out in Article 6 for a request for environmental information to be made in writing, instead making provision of a request to be made in writing or orally. CLM proposes omission of the alternative requirement that the request be submitted online as this has the potential to indirectly discriminate against those who do not have access to digital resources and supports or are not computer literate. In addition, CLM proposes omitting the obligation on the requester to state that the request is being made under the Regulations, as in our view such information is overly technical, not needed and creates an unnecessary administrative hurdle.

It is noted that a request for information under the General Data Protection Regulation can be made orally and that similar principles in relation to promotion of ease of access apply in the application of those protections.

### **Timeliness of access to environmental information**

In November 2020, the Aarhus Convention Compliance Committee (ACCC) made findings of non-compliance against Ireland (ACCC/C/2016/141). The State committed to amending the Regulations in response to these findings, yet they remain largely unaddressed. Many requests for environmental information are made in the context of public participation in environmental decision-making procedures such as planning/licensing decisions or public consultations. Such information requests are time sensitive and the habitual use of the two-month outer time limit as the “real” deadline by public authorities results in the frustration of these public participation rights. There is no real participation without informed participation. The findings of non-compliance against Ireland (ACCC/C/2016/141) highlight fundamental issues regarding respect for the right to access information, shown by delays in the appeal and court processes.

We therefore propose an amendment to the wording in Article 7(2), so as to place an obligation on the public body to set out substantial and stated reasons for the need for an application of a two-month rather than a one-month time limit to make a decision on the request.

### **Costs considerations**

Article 15(4) of the AIE Regulations prescribes three categories of person that pay a reduced fee of €15 (not €50) for an appeal to the Commissioner. The category should include non-governmental organisations (NGO). The resources of the NGO sector are scarce and it is unfair to expect them to fund access to a remedy before the Commissioner.

We therefore propose an amendment of Article 15 in order to extend the reduced appeal fee to non-governmental organisations.

### **Comments on the Draft Regulation.**

Community Law and Mediation supports the proposed changes, in the draft regulation, to the general duties of public authorities in respect of environmental information. In particular, we welcome the proposal to expand the statutory duties to include a proactive obligation to inform the public where certain important information may be requested and where it may be located for review. The draft proposal to require public authorities to organise their environmental information with a view to its active and systemic dissemination to the public by electronic means is also welcome and could have a significant impact upon how such information is gathered in the future. Both of these proposals will increase transparency and accountability on environmental matters

Community Law and Mediation also welcomes the proposed changes to the rules in respect of invalid requests. The obligation to contact the requester and to allow them to 'cure' any invalidity in respect of requests which are too broad, is a sensible amendment which should make the process quicker and easier for both requesters and public authorities.

We have significant concerns in respect of the proposed changes to the grounds for refusal of access to information. The removal of "having regard to the volume or range of information sought" from "manifestly unreasonable" in section 7 would appear to open up the definition of manifestly unreasonable to matters other than the volume of information sought, but without providing any guidance on how the term is to be understood. It is not clear why this change has been made or what problem the change seeks to address. This amendment will necessarily have the effect of restricting access to information by broadening a category for refusal, but will also introduce an unwelcome element of confusion for decision makers and public authorities.

### **Key recommendations**

In summary, CLM makes the following specific recommendations:

- Amendments to Article 6 to reduce administrative barriers to requests for environmental information to ensure accessibility of that information.
- Amendments to Article 7 to ensure timeliness of access throughout the process, including initial request.
- Amend Article 7 to re-insert "having regard to the volume or range of information sought" to clarify the definition and scope of "manifestly unreasonable."
- Amendment to Article 15 to extend the reduced appeal fee to non-governmental organisations.