Public Participation on the Draft European
Communities (Access to Information on the Environment) Regulations 2023.

[redacted]

The proposal to exclude companies established under the Companies Acts or the Companies Act 2014 (no.38 of 2014) from the provisions of the proposed transposition, is a matter of the greatest concern. (See page 8, paragraph 2 (vi).

I outline some of the circumstances, which if the proposed alterations are adopted, will enable the national institutions to evade their responsibility to make available in a competent, truthful and timely manner, information relating to the protection of rare, threatened and legally-protected species of flora and fauna and the enduring safeguarding of their associated natural habitats. In this way, the proposed variations circumvent both the spirit of the EU Directive and clear the path for private for-profit companies, their agents and their commissioning bodies (usually the state) to control the flow and direction of significant data, information and knowledge and to ensure that high-level engagement with the NGO sector (largely operating in pro-bono capacity) will only take place on a very limited intellectual and ethical interface.

In the matter of data and information relating to the whereabouts and current conservation status of many endangered species of flora and fauna, including legally-protected species and their natural sites of occurrence, the necessary knowledge to ensure their protection is demonstrably not in the hands of the statutory bodies. Nor do many of these bodies (particularly local authorities) have the necessary in-house knowledge or technical skills, to utilise these data in such as manner as to protect measurably the species in question, in their natural sites and habitats. It becomes all too easy for these bodies to invoke lack of information as a tactic (plausible deniability), where the real deficit is one of cultural knowledge and respect for the surviving significant natural habitats and their associated species.

High-quality site-specific data of this kind are usually not gathered by local authorities, who instead employ other parties to conduct research and data-mining on their behalf. A great deal of information has thus been acquired by private companies working under contract from the state and receiving very substantial funding directly or indirectly from national bodies. Some of these data, as well as supporting interpreted information, is held by these commercial bodies and has not made its way into the national easily-accessible databases. Much of these data are acquired in the course of projects. They exist for the duration of a specific funding stream and are then closed. Many of the favoured companies employ subcontracted student ecologists who then move on to more permanent employment elsewhere, following the conclusion of each research project. Thus, it becomes impossible to oblige the various participants in this privatised process to account for their decisions and to explore any discontinuities in the reporting procedures. The data prepared in this way, may or may not be incorporated into national data bases, but not necessarily in the condition in which it was submitted initially. Data presentation is often formalised within very restrictive administrative and formal templates, which often do considerable violence to the quality of the initial primary research. It therefore behoves the various parties concerned that the initial field notes, records, images and essays are preserved for subsequent scrutiny by concerned parties.

Because such data are or can be sequestered on digital platforms that are not easily accessible to the general public, (though technically available to those with particular expertise in GIS, data analytics and modelling) it becomes almost impossible to penetrate the obstructive user interfaces and thus challenge the operations and decisions of policy makers.

It has become increasingly evident that these policy makers are operating in both information and knowledge vacuums, detached from the primacy of field data (biological records) that form the vast

bulk of the data generated by the national experts. Most of these county and national experts do not operate on a fee basis and are therefore better positioned to report at first hand on the condition and conservation status of many sites as they often live or visit these ecologically-crucial areas. The data-access methods and procedures currently in place need to be carefully examined with a view to ensuring that these occurrence data and associated filed knowledge, as contributed by pro-bono naturalists, are put to good purpose

Because primary data of this quality does not reach the national bodies, it therefore becomes impossible for these bodies to make these data accessible to any third party, for the simple reason that they do not have such content and have not put in place mechanisms whereby the requisite content can be provided by the original data creators and reporters, without fear of legal reprisal by affected parties.

Traditionally-deployed administrative blocking devices such as GDPR and commercial confidentiality are often invoked, the effect of which frustrates efforts to validate such data by expert NGO bodies and individuals. Again, because the state bodies can shelter behind these strategies, no serious public examination of the holdings of these off-the-books private companies can take place. Furthermore, there is no clear and affordable legal pathway in existence where the pro-bono national experts can scrutinise the quality, competence and veracity of the content of the data holdings of these private companies and the extent to which these data and subsequent decisions have been incorporated into the public arena. In addition, it is a matter of concern that the fees charged for these services are not easily ascertainable.

In the matter of charges to be levied, the indicated cost, (50 euro), is a trivial expenditure for those pursuing vexatious objections in the hope that other parties will compensate them to withdraw their objections. This matter is currently under review by An Oireachtas, and a proposal to draw up a list of approved ecologists is currently in gestation. How this list is to be prepared and the identity and relevant competence of the parties involved in the preparation of such a list will determine the ethical standards of the various practitioners in the EIS and other processes. There is no clear indication at to how these companies and individuals are to be afforded due recognition and indeed whether they become in effect judge-and-jury, and are subject to the customary enticements of clientelism, and the inducements and prospects of patronage. There is a compelling need to insert a clause to forestall the attempts by such opportunistic bad actors to exploit the proposed provisions and to enhance and protect the legal position of those who are best fitted to comment on the veracity and comprehensiveness of individual requests within the planning process. The same principle might apply to private companies, operating at the behest of the state and funded by it, who may be in a position to simply download the hard-won fruits and scholarship of generations of field naturalists.

Pivotal in all these issues is the manner in which the term “where appropriate” is utilised. It is unclear as to who determines what is appropriate and/or inappropriate. On present evidence, it is questionable as to when and whether various statutory bodies have the competence or even the basic ability to know the difference. If it is a matter of ensuring that the body of accumulated historical occurrence data can be utilised to protect species and habitats, then this has the potential to achieve some good. If, on the other hand, the regulations and spirit are to be so debased and wasted, then there is little point in progressing the matter further. It has already become all too easy

for the various statutory bodies to avoid and evade responsibility to even utilise existing national legislation. The proposed amendments, whilst superficially appearing to enshrine the spirit of the directive, have been modified in a manner that will stymie informed comment and stifle educated objection.