

From: [DECC Aarhus](#)
To: [DECC Environment Policy](#)
Subject: FW: European Communities (Access to Information on the Environment) Regulations 2023
Date: Sunday 7 January 2024 21:22:06

From: [REDACTED]
Sent: Sunday 7 January 2024 21:21:50 (UTC+00:00) Dublin, Edinburgh, Lisbon, London
To: DECC Aarhus
Subject: European Communities (Access to Information on the Environment) Regulations 2023

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To whom it may concern

A colleague has collated our concerns in relation to the Access to Information on the Environment Regulations as outlined below.

Please accept this as my submission.

Kind regards

[REDACTED]

Draft of

REGULATIONS

entitled

European Communities (Access to Information on the Environment) Regulations 2023

<https://www.gov.ie/en/consultation/ce756-public-consultation-on-proposed-amendments-to-the-access-to-information-on-the-environment-aie-regulations-2007-2018/>

The closing date for submissions has been extended to 5.30pm Monday 8 January 2024

Submissions should be sent by email to [aarhus@decc.gov.ie](mailto: aarhus@decc.gov.ie) or by post to:

Thank you for this opportunity to contribute to the Public Participation on the **Draft European Communities (Access to Information on the Environment) Regulations 2023**.

I would like to provide the following suggestions in order to provide clarity and avoid obscurity in transposition of the **EU DIRECTIVE on Public Access to Environmental Information (2003/4/EC)** into Irish Law.

Page 8:

“public authority”, subject to paragraph (2), means—

and includes the following:

(vi) a board or other body (other than a company established under the Companies Acts or the Companies Act 2014 (No. 38 of 2014)) established by or under statute;

Please delete highlighted bracketed section of point (vi) as it contravenes the legal principle that:

*“Member States must not adopt or allow national institutions with a legislative power to adopt a measure by which the Community nature of a legal rule and the consequences which arise from it are **obscured**”.*

Deletion of this bracketed section is necessary in order to avoid confusion **and make it abundantly clear that all legal persons are included under this section of the Directive**; and in order to avoid further unnecessary legal challenges which will waste public monies such as:

(NAMA vs The Environmental Commissioner (2015) <https://ie.vlex.com/vid/nama-v-commissioner-for-792973913>)

Page 15:

(2) (a) A public authority shall make a decision on a request and, **where appropriate, make the information available to the applicant as soon as possible and, in any case, subject to subparagraphs (b) and (c), not later than one month after the date on which such request is received by the public authority concerned.**

Delete “where appropriate” – and replace with “where it has the requested information in its possession”.

“Where appropriate” is too subjective in this context and obscures Article 3.2 of the Directive.

Page 18:

(10) Where a request is made for environmental information and in the opinion of the public authority release of the information may adversely affect—

(b) **the interests of a person** who, voluntarily and without being under, or capable of being under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information,

Please amend the highlighted section, and replace with “**the interests or protection of any person**” as per the Article 4.1 of the Directive.

Page 20:

7. (1) Subject to Regulation 8, a public authority may refuse to make available environmental information in accordance with Regulation 6—

(a) subject to paragraph (2), where disclosure of the information requested would adversely affect one, or more, of the following:

(iii) the protection of the environment to which that information relates;

Please insert “, **such as the location of rare species**” after the highlighted text above as per Article 4.1 (h) of the Directive.

Reason: To safeguard any such data which are now held by companies, such as the National Biodiversity Data Centre (NBDC) [a Company Limited by Guarantee (CLG)], or Compass Bioinformatics, the data handling element of NBDC and a Private Company Limited by Shares (LTD); and ensure that these data are not released into the hands of unscrupulous individuals.

Page 27:

(4) The Commissioner may at any time endeavour to effect a settlement between the parties concerned of the matter concerned and may for that purpose suspend, for such period as may be agreed with the parties concerned, **and if appropriate discontinue, the review concerned.**

For clarity, please insert the following in the highlighted section.

“and if appropriate, with the agreement of parties concerned, discontinue, the review concerned”.

Page 28:

(7) (a) Where the Commissioner varies or annuls the decision under paragraph (5)(b), the Commissioner shall remit the decision to the public authority, **or where appropriate**, require the public authority to make available environmental information to the applicant.

Please replace the highlighted text “**or where appropriate**,” with the word “**and**”

To allow for an expeditious release of the environmental information requested, as per Article 6.1. of the Directive.

Page 33:

Fees for appeals

14. (1) Subject to paragraph (2), a fee of €50 shall be charged for making an appeal to the Commissioner under Regulation 10.

(2) A fee of €15 shall be charged in respect of an appeal pursuant to Regulation 10 by—

- (a) a holder of a medical card,
- (b) a recipient of a social welfare payment **that is subject to a means test**,
- (c) a dependant of a person referred to in subparagraph (a) or (b), or
- (d) a person referred to in Regulation 10(1)(b).

Please note Article 6.1 of the Directive states that “**Any such procedure shall be expeditious and either free of charge or inexpensive**”

A charge of €50 is prohibitively expensive for many people in Ireland today and with respect to social welfare recipients, the addition of “**that is subject to a means test**” in this iteration of the DRAFT REGULATIONS is particularly abhorrent.

Please remove “**that is subject to a means test**”; and additionally, **please provide for people who simply do not have €50 to exercise their rights under the Directive.**

References:

- Draft of R E G U L A T I O N S entitled European Communities (Access to Information on the Environment) Regulations 2023

<https://assets.gov.ie/276559/c3a77cd8-7a90-4344-9cba-b9dc2dc1030c.pdf>DIRECTIVE

- 2003/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

- DIRECTIVE 2003/35/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

https://eur-lex.europa.eu/resource.html?uri=cellar:4a80a6c9-cdb3-4e27-a721-d5df1a0535bc.0004.02/DOC_1&format=PDF