**Additional statement input from Attracta Uí Bhroin, on behalf of European EcoForum, on**

**Agenda Item 4 Substantive Issues: 4(c) Access to Justice.**

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**Please Note: Italicised text unlikely to be delivered given time constraints but it is left in for context, together with the supporting footnotes.**

I am Attracta Uí Bhroin, *Environmental Law Officer of the Irish Environmental Network, speaking for European Ecoforum.*

On the 25th anniversary of this progressive and far-seeing Convention, it's troubling to reflect on some of its more deeply disturbing context today. As a European and Irish citizen, I wish to focus on issues there.

As we all know, access to justice is a fundamental element of the rule of law, and so Judicial Review is a fundamental element of the architecture of the Rule of Law. It is an integral part of the balancing act in a democracy, where the power the public cedes to Governments to make laws and decisions binding on us, has the essential safety mechanism to hold that power and the lawfulness of decisions up to the scrutiny of our Courts. Even if you think you will never go to Court – we know how important it is that some brave soul can, and that public authorities know they can and will be held to account before our judiciary. But too often Judicial Review is cast as the recourse of contrarians, when it is a central to what we value in our democracies, and not just some technical legal right under various legal instruments.

In Ireland draft legislation has been published representing a wholly disproportionate, unjustified and unprecedented regression in respect of the implementation of access to justice rights in Ireland. The changes are across the board, impacting on *i.a.* standing; scope of review; costs; adequacy of remedies; fairness of review; an arguably impermissible intrusion into the separation of powers and the rights of the Court to order its own business.

The coalition of voices **opposed** to these changes is now quite unique and extraordinary. *It includes eNGOs the public and academics, bodies of barristers and solicitors representing the public and Developer interests, Professional Planning Bodies, and more recently even key members of the construction and home building sector.* The common concerns are: the destabilising effect of the changes; the extent and complexity of litigation the restrictions on rights will drive and the associated delays, the further over-burdening of an already under-resourced judiciary, which is then compromised in dealing with other cases, and the uncertainty which will contaminate and delay the whole system.

*The Irish Supreme Court gave judgement[1] last November, in a case bringing much needed clarity on a longstanding interpretation issue of rules on costs in certain environmental cases in Ireland. With great prescience, it reflected pointedly in its opening paragraph on the Irish experience:*

> *"In a period of a little over a decade, the provisions intended to give effect to the 'not prohibitively expensive' requirements of the Aarhus Convention … have generated at least thirty-five reserved judgments of the High Court, four decisions of the Court of Appeal, three references to the Court of Justice of the European Union, one judgment of that Court (so far) and, now, this decision of this Court"*

*It's warning was not heeded. On foot of that judgment, the new draft legislation was published with controversial and clearly non-compliant changes across the Board on virtually all aspects and characteristics required for review.*

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[1] HEATHER HILL MANAGEMENT COMPANY CLG AND GABRIEL MCGOLDRICK - AND - AN BORD PLEANÁLA, neutral citation [2022] IESC 43.

*It doesn't bear computing the potential for litigation when one considers the volume of cases the Supreme Court highlighted was triggered by just the requirement of "Non-Prohibitive Expense" of Article 9(4) alone.*

The changes proposed to the Irish costs regime, (undoubtedly now the highest in the EU), are **entirely unacceptable.** They will leave access to the courts subject to political control and the vagaries of the exchequer, in some sort of yet to be specified civil legal aid scheme. Ireland can't provide an adequate civil legal aid scheme for children despite the best efforts of the judges, lawyers, NGOs and professionals involved – so what hope for the environment?

The data referenced in the footnote to this address - evidence that environmental Judicial Review is not abused and is exceptional[2]. The double injury is that these changes purportedly to speed up development, will in fact delay it.

We see the same pattern at the EU level with the REPowerEU initiative. The rule of law is one of the founding values of the European Union,[1] as well as a reflection of our common identity and common constitutional traditions. The rhetoric on the EU's value of rule of law understandably increased with the illegal invasion of Ukraine. It is therefore deeply inappropriate that as part of the EU's legitimate pursuit of energy security response together with one for climate change, that arguably key elements of rule of law requirements appear to be a serious first casualty. This is in terms of efforts to bypass existing safeguards, principles and rights in advancing REPowerEU. Both in terms of process and substance – the changes associated with it have been deeply disturbing. [3] It is not surprising that many consider that both the war and climate change are being exploited by industry to drive a de-regulatory agenda within the EU.

So I am going to close by asking the questions:

- Why when it is counter-productive and dysfunctional to our key development objectives, is there such a consistent attempt to undermine fundamental principles of rule of law and access to justice?
- Why are political administrations so enamoured of such changes, and what to do we need to do to stop it as it risks delaying the urgent development responses we need to address the existential challenges of our time?

Thank-you for your consideration.

[2] Just 3% of An Bord Pleanála's decisions in 2021 were subject to JR even amidst the notorious Strategic Housing issues, it is responsible for strategic infrstrcuture decisions and appeals. So that's just 0.25 percent of all planning decisions. These figures are based on the Office of the Planning Regulator's latest Annual review of Planning, in 2021

[3] For further detail see ELNI Review "Towards a Green Energy Transition: REPowerEU Directive vs Environmental Acquis? Jerzy Jendrośka and Alina Anapyanova and ClientEarths paper: "RePower EU Proposal for a REDII amendment"