



Ms Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Palais des Nations, Room 429-4  
CH-1211 GENEVA 10  
Switzerland

17 October 2023

**Re: SUBMISSIONS OF IRELAND ON CASE ACCC/2023/198**

Dear Ms Marshall,

**I. Introduction**

1. A communication has been received from Right to Know CLG and Uplift – A People Power Company in which it is alleged that there has been a failure by Ireland to comply with Articles 5 (in particular Articles 5(2), 5(2)(a), 5(3)(d), 6(3), 9(4) and 3(9)) of the Convention by:
  - (i) Failing to adopt general measures in compliance with Article 5. In particular, it is alleged that the Irish legislation giving general effect to Article 5 (including via transposition of Article 7 of the AIE Directive) is incomplete since it does not oblige public authorities to actively publish environmental information on the internet or at all;
  - (ii) Failing to ensure that environmental information relating to the regulation of development and land use is actively published on the internet in compliance with Article 5;
  - (iii) Providing that time limits for public participation under Article 6 are calculated from the date of receipt of the application and not from the date when the public concerned is given notice and can effectively access the application file;
  - (iv) Providing that the time limits to bring judicial review proceedings are calculated from the date of the decision and not from the date when the public and/or public concerned are given notice and/or can access all of the documents which contain the essence of the decision; and



- (v) Discriminating based on domicile, and for legal persons, their registered seat or an effective centre of their activities, by providing, in many cases, access only to paper copies of information in the offices of public authorities.
2. The communication was received on 21 February 2023 and was considered by the Compliance Committee at a hearing on 21 March 2023. By preliminary determination dated 24 March 2023, the Committee decided that the communication was admissible.
3. Ireland does not accept that it has breached the Convention in the manner alleged by the Communicants. The Communication is premised on an erroneous interpretation of national law and is not supported by any or any sufficient evidence. For the most part, the allegations are vague, general and made in the abstract. The focus of the Communication is alleged difficulties with accessing files from Planning Authorities or An Bord Pleanála (“**the Board**”) for the purposes of making submissions or observations in relation to applications for planning permission (a development consent). It is notable that the Communicants do not identify any situation in which they have had any difficulty in accessing any planning file or any difficulty in making a submission or observation on an application for planning permission. Indeed, the Communicants do not even assert that they are organisations which look to participate, or has ever participated, in public consultation processes in respect of applications for planning permission.
4. It is also notable that the Communication has been made without any prior engagement with relevant domestic authorities. While the Communicants have carried out various “surveys” of Planning Authorities, there does not appear to have been any further engagement with individual Planning Authorities. Nor have the Communicants sought to engage with either the Minister for Housing, Planning and Local Government or the Office of the Planning Regulator as regards the issues which arise in the Communication. Insofar as the aim of the Communicants may be to seek to improve the operation of systems in Ireland, it is both disappointing and surprising that it elected to move straight



to making a complaint to this Committee rather than seeking to engage with relevant domestic agencies.

5. In the circumstances, Ireland submits that the Communication does not disclose any non-compliance with the Convention and it should be dismissed.

## II. Implementation of the Aarhus Convention in Ireland

6. Before turning to the specifics of the Communication, it is necessary to explain the manner in which the Convention has been effect to in Irish law. The Convention was signed by Ireland on 25<sup>th</sup> June 1998 and ratified by Ireland on 20<sup>th</sup> June 2012, with it coming into force vis-à-vis Ireland in September 2012. Ireland has given effect to the relevant provisions of the Convention that relate to requests for access to environmental information by way of the transposition of Council Directive 2003/4/EC of the European Parliament and of the Council of 28<sup>th</sup> January 2003 and public access to environmental information and repealing Council Directive 90/313/EEC (“**the AIE Directive**”) by the European Communities (Access to Information on the Environment) Regulations 2007 (SI No. 133/2007) as amended by the European Communities (Access to Information on the Environment) (Amendment) Regulations 2011 and the European Communities (Access to Information on the Environment) (Amendment) Regulations 2014 and the European Communities (Access to Information on the Environment)(Amendment) Regulations 2018<sup>1</sup>. Those Regulations will, throughout this document, be cited collectively as “**the AIE Regulations**”.
7. In addition, section 1A of the Planning and Development Act, 2000 as amended (“**the 2000 Act**”)<sup>2</sup> gives further effect to the AIE Directive in Irish Law. Regulations made

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<sup>1</sup> An unofficial consolidated version of the AIE Regulations is available at <https://www.gov.ie/pdf/?file=https://assets.gov.ie/76993/e9998c0e-13c6-495e-a9c1-0e072a6a5879.pdf#page=null>

<sup>2</sup> A consolidated version of the Planning and Development Act, 2000 as amended is available at <https://revisedacts.lawreform.ie/eli/2000/act/30/section/50/revised/en/html>.



under the 2000 Act which are relevant to the issues in this Communication include the Planning and Development Regulations 2001 (“**the 2001 Regulations**”)<sup>3</sup> and the Planning and Development (Section 38) Regulations 2020 (“**the 2020 Regulations**”)<sup>4</sup>.

8. Ireland notes the information which has been provided by the Communicants under the heading “Brief Description of the Irish Planning System” and does not take issue with the content of that section, in so far as it goes.
9. It is also noted that, insofar as complaint is made in respect of non-compliance with Article 6, it is limited to those applications for development consent which come within Article 6.
10. While the Complaint is framed by reference to an allegation that there is no obligation placed on “public authorities” to publish “environmental information” on the internet or at all, the content of the complaint is, in fact, focused on the scope of the obligation placed on Planning Authorities and An Bord Pleanála (“**the Board**”) to publish certain information relating to the exercise of functions within the planning system.
11. While a general assertion is made that similar issues arise in respect of forestry, waste management, wastewater, marine, enforcement etc, it is not particularised or supported by any evidence. For that reason, that general assertion is not addressed further. For the avoidance of doubt, the assertion that there is a failure to comply with the obligations arising under the Convention in those areas is fully denied.

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[The Committee may wish to note that a general review and overhaul of Irish planning legislation is currently ongoing, with the 2000 Act intended to be replaced by a new enactment. It is anticipated that a Planning and Development Bill 2023 will be published by the Government in the coming weeks and will then be considered by the Oireachtas, the Irish legislature.](#)

<sup>3</sup> A consolidated version of the Planning and Development Regulations 2001 is available at <https://assets.gov.ie/135619/1ef55833-465c-48da-afc0-592a164fdd1d.pdf>

<sup>4</sup> The the Planning and Development (Section 38) Regulations 2020 are available at <https://www.irishstatutebook.ie/eli/2020/si/180/made/en/print>



12. It is necessary to explain the obligations which are placed on Planning Authorities and the Board to publish information relating to the planning system and, in particular, information relating to applications for development consent.

13. First, Article 5 of the AIE Regulations places certain general obligations on public authorities, including Planning Authorities and the Board. Article 5 states:

5 (1) A public authority shall:-

(a) inform the public of their rights under these Regulations and provide information and guidance on the exercise of those rights,

(b) make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means,

(c) ensure that environmental information compiled by or for it, is up to date, accurate and comparable,

(d) maintain registers or lists of the environmental information held by the authority and designate an information officer for such purposes or provide an information point to give clear indications of where such information can be found.

(2) The environmental information specified in sub article 5(1)(b) shall include at least:

(a) the texts of international treaties, conventions or agreements and legislation pertaining to them,

(b) policies, plans and programmes,

(c) progress reports on the implementation of items specified in sub articles (a) and (b), where these have been prepared by the public authority or are available in electronic form, and



(d) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment, where such information is directly relevant to the function of that public authority and is environmental information within the meaning of Article 3.

(3) In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, a public authority shall ensure that all information held by or for it, which could enable the public likely to be affected to take measures to prevent or mitigate harm, is disseminated immediately and without delay.

(4) Exceptions in articles 7, 8 and 9 may apply in relation to the duties imposed by this article.

(5) Public authorities may satisfy the requirements of this article by creating links to internet sites where the information may be found.

14. In particular, Article 5(1)(b) of the AIE Regulations places an obligation on a public authority to “*make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means*”. Article 5(2) identified some of the documentation to which this obligation relates but it should be noted that the list contained in Article 5(2) is not an exhaustive list of that which comes within the scope of Article 5(1)(b).

15. Second, there are a number of relevant obligations arising from the 2000 Act and regulations made under that Act. Section 7 of the 2000 Act requires a Planning Authority to “*keep a register for the purposes of this Act in respect of all land within its functional area*” and to “*make all such entries and corrections therein as may be appropriate in accordance with subsection (2), and the other provisions of this Act and the regulations made under this Act*”. A Planning Authority is required to enter onto the Register the information listed in section 7(2) of the 2000 Act. That list includes:

- The particulars of applications for development consent



- An indication of the fact that an environmental impact assessment report, remedial environmental impact assessment report, Natura Impact Statement or remedial Natura Impact Statement has been submitted with an application
- A decision as regards screening for EIA or AA
- The complete decision of the Planning Authority in respect of an application for development consent
- The complete decision of the Board in respect of any application for development consent
- The particulars of any warning letter issued as regards an allegation of unauthorised development
- The complete decision made under section 153 as to whether an enforcement notice should issue
- The particulars of any enforcement notice issued

16. Section 7(3) requires the Planning Authority to “*make the entries and corrections as soon as may be after the receipt of any application, the making of any decision or agreement or the issue of any letter, notice or statement, as appropriate.*”

17. The Planning Register must incorporate a map for enabling a person to trace any entry in the register (section 7(4)) and the information must be kept “*in a form which is capable of being used to make a legible copy or reproduction of any entry in the register*” (section 7(5)).

18. The Planning Register must be kept at the office of the Planning Authority and must be available for inspection during office hours (Section 7(6)(a)).

19. The Planning Register is currently regulated by section 7 of the 2000 Act. However, it was originally established by section 8 of the Local Government (Planning and Development) Act, 1963 and the Planning Register in its current form includes all information which will have been required to be placed on the Register since 1 October 1964 (when the 1963 Act came into force).



20. As regards the publication of applications for development consent, Article 2(1) the 2020 Regulations require that where an application for planning permission is made to a planning authority, the planning authority shall:

- (a) not later than 5 working days after the day on which it receives the application, or
- (b) where exceptional circumstances exist, as soon as practicable after the expiration of the period of 5 working days referred to in paragraph (a)

publish the application and all documentation accompanying the application on its internet website.

21. In other words, the 2020 Regulations place a mandatory obligation on Planning Authorities to publish on their website within 5 working days of receipt all applications for planning permission and all documentation accompanying that application. A similar obligation arises from Article 2(2) in respect of any document relating to a planning application received by the Planning Authority any time after the receipt of the application. This extends to, for example, submissions made by the public concerned or additional information provided by the applicant for permission.

22. The five day period between receipt of the application and publication is to enable a planning authority to carry out a review of the application for the purposes of validation and to ensure compliance with any other legal obligations relating to publication, for example, the General Data Protection Regulation (“**GDPR**”).

23. Section 38 of the 2000 Act requires a Planning Authority to place on its website within three working days of taking a decision in respect of a planning application the following documents:

- (a) a copy of the planning application and of any particulars, evidence, environmental impact assessment report, other written study or further information received or



obtained by the authority from the applicant in accordance with regulations under this Act;

(b) a copy of any submissions or observations in relation to the planning application which have been received by the authority;

(c) a copy of any report prepared by or for the authority in relation to the planning application;

(d) a copy of the decision of the authority in respect of the planning application and a copy of the notification of the decision given to the applicant; and

(e) a copy of any documents relating to a contribution or other matter referred to in *section 34 (5)*.

24. Section 146(5) – (7) of the 2000 Act place obligations on the Board as regards making available information in relation to its decisions both at its offices and on its website.

### III. Active Dissemination – incomplete legislation

25. At §11 – 16 of the Complaint, the Communicants outline a complaint in respect of the absence of specific legislation on active dissemination for certain categories of environmental information. Included in the complaint is an allegation that Article 5 of the AIE Regulations is defective.

26. First, it is noted that the complaint is, in fact, made by reference to Article 7 of the AIE Directive. It is unclear as to why a complaint of alleged non-transposition of Article 7 of the AIE Directive (which is denied) is being made to this Committee.



27. In that context, it is noted that the term “active dissemination” does not appear in the text of the Convention and the basis upon which it is alleged that there is an obligation on Contracting Parties to enact a legislative obligation on public authorities to “actively disseminate” environmental information by the publication of all environmental information within its possession on a website is not explained. The Communication contains no explanation of the basis upon which it is suggested that the broad nature of the obligation contended by the Communicants (i.e. that a public authority is required to publish all environmental information held by it on a website) arises from the Convention. There is no textual analysis of the Convention nor are any decisions of the Committee cited in support of the proposition. The only decision generally cited by the Communicants is that of ACCC/C/2015/131 United Kingdom, which relates to non-compliance that arose in the context of the failure to publish specific documents in the context of a single decision. While that decision acknowledges that websites are an important means of disseminating environmental information to the public, it does not go so far as to say that public authorities are required to publish every piece of environmental information held by them (including, for example, environmental information which pre-dates the coming into force of the Convention) on a website.
28. Insofar as the complaint being made is, in fact, a complaint of alleged non-compliance in respect of Article 5(3) of the Convention, Ireland denies that there is any failure to comply with that Article. Article 5(1)(b) of the AIE Regulations places an obligation on public authorities to make all reasonable efforts to maintain environmental information held by or for them in a manner that is readily reproducible and accessible by information technology or by other electronic means. That is a general obligation placed on public authorities which sits in parallel with other, specific obligations which arise in different contexts, including those which are explained above arising under planning legislation in particular. In that regard, the Communication is premised on a mischaracterisation of national law to the effect that the *only* obligation on public authorities to publish environmental information is that derived from the AIE Regulations and that this obligation, of itself, is insufficient. However, that premise is simply mistaken.



29. It is evident from the language used in Article 5 of the AIE Regulations that the obligation which it places on public authorities correlates with that which arises from Article 5 of the Convention. The obligation arising from Article 5 of the Convention is to ensure that environmental information *becomes progressively available* in electronic databases which are easily accessible to the public through telecommunications networks. That obligation is discharged (i) by the imposition, through Article 5(1)(b) of the AIE Regulations, of a general obligation to make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible by information technology or by other electronic means *and* (ii) by reference to other, more specific statutory obligations to publish certain environmental information online.
30. In the circumstances, the Communicants have not discharged the burden of establishing that there is any legislative lacuna in Irish Law

#### IV. **Active Dissemination Effectiveness and Transparency**

31. The “survey” conducted by the Communicants and on which it relies has little or no evidential value and does not demonstrate any absence of compliance with the Convention.
32. The survey comprises two parts. The first question seeks information on the “policy/procedures” for the dissemination of environmental information pursuant to Article 7 of the AIE Directive. It is noted that the request is made as regards the obligations under the Directive, rather than any national law which implements the Convention and, in those circumstances, it is not clear that the question is strictly relevant to a question as to compliance with the obligations under the Convention. Neither the AIE Directive nor the Convention include an obligation on public authorities to publish policies for the dissemination of environmental information. However, it is evident from the responses that the Planning Authorities were generally aware of the obligations placed on them by the AIE Regulations.



33. The second query – inviting addressees to identify the different categories of environmental information that they disseminate pursuant to Article 7 of the AIE Directive and where the public can access them - is framed so broadly that it could be said it is designed to be difficult provide a response which the Communicants would consider adequate. Indeed, it notable that the responses from the Planning Authorities look to engage with the request in good faith and guide the Communicants to information which is relevant to its request, while also demonstrating that they are familiar with the national law obligations which arise under the AIE Regulations.
34. Insofar as the Communicants now say that some of the Planning Authorities misunderstood the nature of the request, it is surprising that the Communicants did not elect to further engage with those Planning Authorities to clarify its request, nor did the Communicants exercise their right of internal review or appeal to the Commissioner for Environmental Information. This is particularly relevant in the case of the Planning Authorities from which no response was received.

#### V. **The Planning Portal**

35. As explained above, there is a statutory obligation on Planning Authorities to maintain a Planning Register to which the public has access.
36. Much of this aspect of the Complaint is directed at the fact that the Planning Register is not fully available on the websites of individual Planning Authorities. As noted above, the Planning Register has been in existence since 1964 and in its current form since 2000, before the Convention came into force in respect of Ireland. It contains an enormous volume of information and it is not currently practical for the entirety of that Register to be placed on the websites of individual Planning Authorities.
37. However, each Planning Authority maintains a website on which they publish environmental information, including information relating to applications for



development consent which come within the scope of Article 6 of the Convention. The suggestion by the Communicants that information relating to applications for development consent or planning permission is not available online is simply incorrect, as will be addressed further below.

38. In addition, in recent years, Ireland has developed an ePlanning Portal, which is available at <https://planning.localgov.ie/>, and is a single online location at which applications for planning permission can be made and at which the public can find both documentation in relation to pending applications for the purposes of making a submission and decisions in respect of those applications.
39. As of September 2023, 23 Planning Authorities are integrated into the ePlanning Portal. The remaining eight Planning Authorities will be integrated into the ePlanning Portal in 2024. As all 31 Planning Authorities are progressively integrated into the ePlanning Portal, it will increase the consistency between Planning Authorities as to the manner in which information relating to applications for development consent are presented online as regards file types etc.
40. The Local Government Management Agency has also published guidelines for Planning Authorities in respect of what documentation included with an application for planning permission is to be published online. That Guidance is publicly available on the ePlanning Portal<sup>5</sup>.
41. While the Communicants take issue with the categorisation of certain documents as private or confidential, it is evident from the extract from the Guidelines which accompanies the Communication that this is to account for situations in which documents or information are required to be kept confidential, for example, on foot of obligations arising from the GDPR in relation to personal data. Insofar as any member of the public considers that information has been improperly withheld in respect of an

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<sup>5</sup> The Local Government Management Agency Guidelines are available at <https://planning.localgov.ie/what-online-planning>



individual application, it is open to them to make a request for that information in accordance with the AIE Regulations and it will be for the Planning Authority to justify its decision not to publish that information.

42. The suggestion that the classifications used in the Guidelines are arbitrary is entirely misconceived. It is evident that the documents which are generally classified as confidential are those which are likely to contain personal data of individuals and thus cannot be disclosed having regard to the obligations which arise under the GDPR.
43. Insofar as complaints are made in respect of “functionality”, it is not accepted that there are difficulties with the manner in which information is published online or that such information is not accessible to the public such that there is an absence of transparency. In that regard, it must be emphasised that the complaints made are general assertions as to the fact that the public are not able to access information without any evidence being provided to support that assertion. Insofar as there are individual instances in which there may be difficulty accessing an individual file, that can be resolved with the particular Local Authority.
44. Furthermore, the continued roll out of the ePlanning Portal will enable ongoing improvements as to the manner in which information is presented online.

## **VI. Active Dissemination – compliance with planning conditions and planning enforcement**

45. This aspect of the Compliant relates to (i) compliance documentation which demonstrates the manner in which a developer will have complied with specific conditions attached to an individual grant of planning permission and (ii) planning enforcement files maintained by Planning Authorities.
46. As regards the first aspect of the complaint, it is noted that the vast majority of Planning Authorities have confirmed that this information is available on their websites. The



Department of Housing Planning and Local Government intends to engage with Local Authorities in relation to the publication of files online with a view to having a consistent approach across all Local Authorities.

47. As regards, the second aspect of the complaint, a Planning Authority has powers under Part VIII of the 2000 Act to investigate and take enforcement action in respect of allegations of unauthorised development. Where a complaint of unauthorised development is made, a Planning Authority is obliged by section 152 of the 2000 Act to issue a warning letter to the person carrying out the alleged unauthorised development and carry out an investigation into that allegation.
48. A Planning Authority is required by section 153 of the 2000 Act to take a decision on whether to take enforcement action and it is an objective of the Act for such decisions to be taken within 12 weeks of the issuance of a warning letter.
49. The 2000 Act provides for a range of enforcement actions which may be taken by a Planning Authority if they conclude that unauthorised development has occurred. Section 154 permits it to issue an Enforcement Notice on foot of which a developer may be directed to cease or not commence unauthorised development or to carry out any development out in accordance with a planning permission. Failure to comply with an Enforcement Notice is a criminal offence.
50. Separately, section 160 of the 2000 Act permits a Planning Authority to take civil proceedings in the Courts in respect of alleged unauthorised development.
51. As the investigation into an allegation of unauthorised development can lead to the imposition of criminal or civil liability, there must be caution as to the extent of the information which is made publicly available during the course of any investigation so that such investigation is completed in accordance with the rights of fair procedures and natural and constitutional justice.



52. However, a decision as to whether enforcement action is taken is one which is publicly available and is notified to any individual who made a complaint of unauthorised development in respect of the individual development (Section 154(2) of the 2000 Act). Proceedings taken under section 160 of the 2000 Act are obviously heard in public. Further, a decision on the issue of an Enforcement Notice along with the reasons for that decision is required to be entered into the Planning Register, along with particulars of the Enforcement Notice (section 153(4) of the 2000 Act and section 154(10) of the 2000 Act).

## **VII. Applications for development consent – procedure and provision of information**

53. A central aspect of the complaint made by the Communicants is premised on an allegation that there is no obligation on Planning Authorities to publish on their websites applications for planning permission or documents relating to those applications. That is simply incorrect and the argument made by the Communicants is premised on a fundamental mischaracterisation of national law.

54. By way of preliminary comment, it is not accurate to suggest that the Irish planning system “requires” the submission of applications for planning permission to be made in hard copy form. The roll out of the ePlanning Portal to Planning Authorities has facilitated the lodgement of applications electronically. Further, as noted by the Communicants, there are certain instances in which applicants for planning permission are required to lodge documents in electronic format, as well as hard copy.

55. The Communication also does not accurately reflect the manner in which the public are notified of an application for planning permission. The public concerned are notified within two weeks prior to the lodgement of any application for planning permission by the publication of a Site Notice at the site of the proposed development and a Newspaper Notice in an approved newspaper (Article 17 of the 2001 Regulations).



56. In addition, in respect of applications which are accompanied by an EIAR, it is necessary for information relating to the application to be published on the EIA Portal<sup>6</sup> within two weeks prior to the lodgement of the application. The EIA Portal is an online map-based website provided by the Department of Housing, Local Government and Heritage as an electronic publicly accessible notification tool to inform the public of requests for development consent accompanied by an EIAR. The EIA portal is an additional tool to inform the public, in a timely manner, of EIA applications and provides a URL link to the relevant competent authority website where detailed information pertaining to the application can be found.
57. The EIA Portal identifies, on a map, the location of each application for development consent accompanied by an EIAR. It also lists the name of the applicant, the type of development proposed and the competent authority to which the application was made. The newspaper notice relating to the application is also be provided on the EIA Portal. A link to the information on an application on the competent authority's website is made available after the application has been received by the relevant competent authority.
58. Following receipt of an application for planning permission it will be available for inspection at the offices of the Planning Authority (Article 18(1)(e) of the 2001 Regulations and Article 26(9) of the 2001 Regulations).
59. As explained above, the 2020 Regulations also place a mandatory obligation on Planning Authorities to publish on their website, within 5 days of receipt, applications for planning permission and any documents received in respect of that application. That is an ongoing obligation that subsists during the course of the application being considered by the Planning Authority. In other words, if additional documentation or submissions from the public are received after the lodgement of the initial application, they must also be published online within 5 days of receipt.

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<sup>6</sup> The EIA Portal is available here <https://housinggov.ie/maps.arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104ecbb206e7e5f84b71f1>



60. The 5 day period is to allow for the validation of the application and, in particular, for a review of the documentation to ensure compliance with other legal obligations including under the GDPR. During the 5 day period, the application will be available for inspection at the office of the Planning Authority.
61. The Communicants suggest that the five day period for publication only runs from the point an application for planning permission is validated. That is not correct and there is no national law authority to support that proposition. The 2020 Regulations expressly provide that the 5 day period runs from the receipt of the application: *“not later than 5 working days after the day in which it receives the application”* (Article 2(1)(a) of the 2020 Regulations). The Planning Authority can carry out the validation process during that period and if, in the 5 day period, the application is found to be invalid, there is no obligation to publish it. However, if there is no decision on validation in that period, then the obligation is on the Planning Authority to publish the application within five working days from the day on which it was received. Any suggestion to the contrary is a mischaracterisation of the position in national law. At the time that the 2020 Regulations were signed into law, Planning Authorities were provided with Circular Letter PL 07/2020<sup>7</sup>, which informed them that the obligations arose on receipt of the application.
62. In that regard, it can also be confirmed that there is no concept in national law of “pre-validation”.
63. Insofar as there may be individual instances where Planning Authorities do not comply with the obligation to publish under the 2020 Regulations, it is open to the public, including the Communicants, to bring that to the attention of the Planning Authority or to the Department of Housing, Planning and Local Government or to the Office of the Planning Regulator so that the position can be rectified.

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<sup>7</sup> Circular Letter PLO 07/2020 is available here <https://www.gov.ie/pdf/?file=https://assets.gov.ie/117405/f00ec5e4-2ace-4a0d-a299-17e53be3629e.pdf#page=null>



64. While the obligations under the 2020 Regulations apply to all applications for planning permission (including those which fall outside the scope of the Convention), there is a separate obligation under section 38(3)(b) of the 2000 Act, which applies where a planning application is accompanied by an environmental impact assessment report, as follows:

(i) a document referred to in *subsection (1)(a)* a copy of the planning application and of any particulars, evidence, environmental impact assessment report, other written study or further information submitted by the applicant which is received or obtained by a planning authority shall be placed on its website for inspection and be made available for inspection and purchase by members of the public during office hours of the authority from as soon as may be after receipt of the document and may also be made available for inspection by the authority in other electronic form,

(ii) a document referred to in *subsection (1)(b)* a copy of any submissions or observations in relation to the planning application which is received or obtained by a planning authority shall be made available for inspection and purchase by members of the public during office hours of the authority from as soon as may be after receipt of the document until a decision is made on the application and may also be made available by the authority for inspection by placing the document on the authority's website or in other electronic form, and

(iii) a document referred to in *subsection (1)(c)* a copy of any report prepared for or by the planning authority, *(d)* a copy of the decision of in respect of the planning application and a copy of the notification of the decision given to the applicant or *(e)* a copy of any documents relating to a contribution or other matter referred to in *section 34 (5)* (which makes provision for points of detail to be agreed between the applicant and planning authority subsequent to the grant of planning permission) which is received or obtained by a planning authority shall be placed on its website for inspection within 3 working days of the giving of the decision in respect of the application.



65. A Planning Authority will also publish a weekly list of the applications for planning permission received by it (Article 27 of the 2001 Regulations). A similar list is published by the Board in respect of appeals received by it and applications received directly by it. The descriptor of the Weekly List as a “*primary source information in relation to planning applications made and received by a planning authority*” by the High Court in 2008, must be seen in light of more recent developments as regards the notification of the public, including the EIA Portal in respect of applications accompanied by an EIAR and the mandatory obligation to publish every application on the relevant website introduced by the 2020 Regulations.
66. It is therefore not correct to suggest that it can take two weeks for the public to be notified of an application for planning permission. Notification occurs prior to the lodgement of the application and is supplemented by notice being included in the Weekly List and the publication of the application documentation online within 5 days of receipt of the application.
67. As regards the alleged asymmetry which exists in relation to the manner in which public holidays are treated under the 2000 Act, it can be noted that as submissions or observations on an application for planning permission can now be made online through the ePlanning Portal, the public is not confined to having to lodge them with the Planning Authority during office hours. They can be made at any point of the day, including on weekends and public holidays.
68. As regards the publication of decisions, it is not correct to suggest that it takes two weeks for the public to be notified of a decision of a Planning Authority. In addition to the direct notification given to the applicant for planning permission and members of the public who made submissions or observations on the application, section 38(1) of the 2000 Act requires the publication of the decision and underlying documentation on the website of the Planning Authority within 3 working days of the decision being made. The public is *also* notified by way of the Weekly List.



69. As regards the publication of information online by the Board, it maintains a website<sup>8</sup> at which it is possible to access copies of its decisions and underlying documentation. In addition the public can inspect the files maintained by the Board at its offices in Dublin or can obtain information from it by request.
70. The Board primarily hears appeals from decisions of the Planning Authorities, in respect of which information will have been already made available online. There are certain classes of applications which are made directly to it, including in respect of development classified as strategic infrastructure development in respect of which the Board has the power to request the developer to create a website on which the application documentation will be published (Article 210(4) of the 2001 Regulations).
71. As noted by the Communicants, the Board ordinarily receives a copy of the file from the Planning Authority in hard copy format. A programme is currently being rolled out whereby a copy of the Planning Authority file is provided to the Board in an electronic form.
72. Since December 2021, the Board can accept online observations with fee payment for both Strategic Infrastructure Development Cases and Normal Planning Appeal cases. It will also be possible for members of the public to make online observations in respect of forthcoming applications for development consent for offshore renewable energy developments. Legislative amendments required to enable the Board to accept normal planning appeals online are currently being considered by the Department in the context of overall amendments required to facilitate the move to online planning systems.
73. The development and roll-out of the Board's ICT systems to better enable e-planning is a significant priority and it is intended to facilitate applications and appeals to be made online, linking with the ePlanning Portal initiative.

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<sup>8</sup> [www.pleanala.ie](http://www.pleanala.ie)



74. In April 2021, the Board launched its new upgraded website, which is more user-friendly, informative and will further help to improve communications and interaction between the Board and the public. To assist with the continued development and enhancement of online services, an external company obtained specific feedback from targeted user groups such as the public, agents, and local authorities which led additional improvements to be made to the website, including advanced search facilities through maps and a generally more user-friendly presentation of the search facility.

### **VIII. Nature of the alleged non-compliance**

75. Ireland denies that there has been any breach of the obligations arising under any of Article 3(9), 5(2), 5(2)(a), 5(3)(d), 6(3) or 9(4) of the Convention. The allegations made are both unsupported by evidence and premised on a mischaracterisation of national law. Further, the Communication does not identify how many of the complaints arise under the Convention, save that there are general allegations of non-compliance.

76. As regards the allegation that there is non-compliance with Articles 5(2) and 5(2)(a) of the Convention, Ireland replies as follows:

- a. As explained above, this allegation is premised on a mischaracterisation of national law. Notification of an application occurs within two weeks in advance of the lodgement of the application. An application is immediately available for inspection at the office of a Planning Authority after it is lodged and it must be published online within 5 working days. The precise time periods in which public participation is permitted is a matter to be determined by Contracting Parties in accordance with their national procedural requirements. Information in respect of applications for planning permission is effectively accessible through a variety of means and general complaints as to the absence of electronic information (which are not rooted in fact and ignore the impact of the 2020 Regulations) is not sufficient to ground a finding of non-compliance. In that regard, it is noted



that there is no evidence of the Communicants not being able to participate in any development consent process, nor is there any evidence of the Communicants not being able to access any environmental information, in particular, any application for planning permission.

- b. The complaint at §66(b) relates to the absence of “*policies and procedures in relation to compliance with Article 5(2)(a)*”, an obligation which the Communicants accept do not exist in the Convention. In these circumstances, it is not something which would warrant a finding of non-compliance. It is evident from the responses from Planning Authorities that they sought to engage with the Communicants in good faith and to provide it with information relevant to its requests, including by explaining the manner in which environmental information could be accessed. The Communication does not, in fact, disclose any failure to comply with Article 5(2)(a) or any failure to provide information about the type and scope of the environmental information held by the relevant public authorities or the terms and conditions on which it can be accessed.
- c. A restriction on access to certain information on the ePlanning Portal may be necessary to comply with other legal obligations, including those under the GDPR. The Communicants have not demonstrated any case in which information was improperly restricted on the ePlanning Portal. Insofar as the Communicants consider that any information has been improperly restricted, it can make a request for access to environmental information and require the Planning Authority to justify the restriction on that information.

77. As regards the allegation that there is non-compliance with Article 5(3)(d) of the Convention made at §67 of the Communication, Ireland replies as follows:

- a. The obligation in Article 5(3)(d) is to make information progressively available through electronic databases. That does not import an absolute obligation to publish all environmental information on a website.



- b. The Planning Register is a record of a wide variety of decisions of Planning Authorities, not all of which may come within the scope of Article 9(3) of the Convention. The Communicants have not specified those decisions which must be included on the Planning Register which it considers to come within Article 9(3) and the position of Ireland is fully reserved in that regard. There is no absence of access to the Planning Register, which is something that dates from 1964 and therefore, would not be subject to the Convention in its entirety. As explained above, the majority of Planning Authorities have confirmed to the Communicants that compliance information is available online. The position as regards enforcement files is explained above, and the publication of that information depends on the status of an investigation and whether any enforcement action is to be taken.
  
- c. Decisions of the Board are published online and there is access for the public to their files. There is no evidence in the Communication to suggest that there are any restriction on public participation arising from the manner in which information is published in respect of Board decisions. The Board are continuing to make progress in the development of ePlanning and this is something in respect of which there will be further roll out of ePlanning in Ireland. The manner which the files of Local Authorities are published online has been explained in detail above.
  
- d. There is no evidence to suggest that public participation has been restricted or impacted by the fact that the entirety of the Planning Register and the totality of the Board files are not available online. The public have extensive access to that information and have an entitlement to obtain such information from both Planning Authorities and the Board.

78. As regards the allegation at §68 of the Communication, that there is non-compliance with Article 5(3)(d) of the Convention, Ireland replies as follows:



- a. There is no absolute obligation to publish information which comes within the scope of Article 5(2)(b)(i) on a website.
- b. Ireland repeats that placing the totality of the Planning Register online is not practical where the information on it dates from 1964. Planning Authorities publish an extensive amount of information online, including through the ePlanning Portal which is a single portal through which members of the public can access applications for planning permission and make submissions on those applications.
- c. The files of the Board can be accessed at its offices and also by request to the Board.
- d. There is no evidence that the Communicants have not been able to access any particular information on either the Planning Register or on a file of the Board.

79. As regards the allegation that there is non-compliance with Article 6(3), Ireland replies as follows:

- a. The factual basis upon which this allegation is premised on a mischaracterisation of national law. In particular, the Communicants misinterpret national law in stating that the 2020 Regulations only require publication of a planning application within five working days after it has been validated by the planning authority. The requirement is publication within 5 working days after receipt of the application; the public are also notified of the making of the application within 2 weeks before it is submitted and can inspect it at the offices of the Planning Authority immediately after it has been submitted.



- b. There is no evidential basis for the allegation made and it has not been established that the Communicants – or the public more generally - has been unable to prepare and participate effectively during the environmental decision-making.

80. As regards the allegation that there is non-compliance with Article 9(4), Ireland replies as follows:

- a. While not specifically referenced at §70 of the complaint, it is presumed that the allegation of non-compliance in respect of Article 9(4) is made in respect of section 50(6) of the 2000 Act as a reference to this section is made at §64 and footnote 40. Section 50(6) contains the time limit by which an application for Judicial Review can be made in respect of a decision of a Planning Authority or the Board taken under the 2000 Act. The 8-week time limit in that section commences on “*the date of the decision or, as the case may be, the date of the doing of the act...*”. The 8-week time limit can be extended where the criteria in section 50(8) of the 2000 Act.
- b. Article 9(4) must be read in conjunction with Article 9(3), which provides that access to review procedures is subject to meeting the criteria laid down in national law. The time limit contained in section 50(6), including the date on which it commences, is a matter to be determined by reference to the national law of a Contracting State.
- c. It can be noted that the Irish Supreme Court has concluded that the time limit contained in section 50 of the 2000 Act is compatible with the obligations arising under European Law, including the EIA Directive (see, *Krikke v Barrnafaddock Sustainable Electricity Limited* [2022] IESC 41).
- d. The complaint is, again, premised on a mischaracterisation of national law as it fails to make any reference to the fact that the time limit in section 50(6) can be extended where the criteria in section 50(8) are met.



- e. The complaint is made in the abstract as it contains no evidence of any person not being able to take an application for Judicial Review because the time limit commenced on the date on which a decision was made. At most, the Communication contains an unsupported allegation that files are lost by the Board and a survey of how long it took to get some files, which demonstrates that in most cases files were provided very promptly. That is not sufficient to warrant a finding of non-compliance with Article 9(4).

81. As regards the allegation that there is non-compliance with Article 3(9), Ireland replies as follows:

- a. The Communicants are companies limited by guaranteed who is based in Ireland and, therefore, cannot assert that there has been a violation of the rights of companies whose seat is outside of Ireland.
- b. There is no evidential basis for the allegation of non-compliance with Article 3(9) and no evidential basis for the allegation that companies whose seats are outside of Ireland are discriminated against as regards access to information. The nature of the alleged discrimination is not evident from the contents of the Communication and it is noted that none of the facts which are pleaded in the Communication relate to this allegation. Similarly, there is no evidence in the Communication that persons outside of Dublin are discriminated against as regards access to the files of the Board.
- c. The complaint is made entirely in the abstract without any supporting evidence and should be dismissed.

## IX. Conclusion

82. For the reasons set out above, the Communication does not disclose any non-compliance with the Convention, including Article 5, Article 6(3), Article 9(4) and 3(9) thereof.



Kind Regards,

Elaine Kennedy  
National Focal Point - Aarhus Convention