



Environment Policy Section
Department of the Communications, Climate Action and Environment
Newtown Road
Wexford
Y35 AP90

27th October 2016

Re: Public Consultation on the implementation of the UNECE Aarhus Convention in Ireland.

Dear Sir/Madam,

The Irish Waste Management Association (IWMA) offers the following response to the current consultation on the above referenced consultation.

About the IWMA

The IWMA is comprised of c.40 Member Companies that are each engaged in managing waste in Ireland. Our members' employ more than 4,300 people directly and support many other jobs indirectly. Their activities cover the following areas of waste management:

- waste collection,
- pre-treatment & transfer,
- materials recycling,
- composting,
- bioenergy / anaerobic digestion,
- waste to energy / incineration,
- hazardous waste management,
- Healthcare waste management and
- landfill disposal.

Our members collect 75% of the household waste currently managed in Ireland and the vast bulk of the commercial, industrial and hazardous wastes.

Our members processed approximately 3.5 million tonnes of waste at our 66 non-hazardous and 11 hazardous waste facilities in 2013. The bulk of this waste was recycled or otherwise recovered. All our member's facilities are either licensed by the EPA or operated under a local authority permit.

The Aarhus Convention

It appears to the IWMA that Ireland is not fully compliant with the Aarhus Convention. Under Article 4 of the Convention, Members of the public are entitled to request environmental information from public bodies and these bodies are obliged to provide this information. Using the Access to Information on the Environment (AIE) procedures, associated with the Aarhus Convention, our members have requested access to Annual Environmental Reports (AERs) on permitted waste facilities that are held by local authorities and in many cases they have been refused access to such information, usually on the grounds of ‘*commercial sensitivity*’.

This is inconsistent with the publication of AERs for licensed sites on the EPA website. The AERs for the permitted sites are no more ‘*commercially sensitive*’ than the AERs for the licensed sites, so this is clearly a poor excuse for not making the reports available in response to AIE requests.

The exemption in relation to commercial sensitivity is written as follows in Article 4, Paragraph 4(D) of the Convention:

“The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed.”

Guidance provided by UNECE¹ elaborates on this by stating:

“Under the Convention, public authorities are allowed to withhold certain, limited types of commercial and industrial information from the public. This exemption from the obligation to disclose information is predominantly focused on protecting legitimate economic interests of private entities; however, it may also be used to protect legitimate economic interests of public bodies or the State itself, provided that the requested information is of a commercial or industrial nature.

For public authorities to be able to withhold information from the public on the basis of commercial confidentiality, that information must pass several tests.

First, national law must expressly protect the confidentiality of that information. This means that the national law must explicitly protect the type of information in question as commercial or industrial secrets.

Second, the confidentiality must protect a “legitimate economic interest”. In this regard, it would be difficult for an enterprise operating in a monopolistic manner, such as certain State-run enterprises, to assert a claim of commercial confidentiality, since there are no competitors that could gain an advantage by access to the information.”

The withholding of waste permit AERs on grounds of ‘*commercial sensitivity*’, fails the first test. We are unaware of any National Law that supports the confidentiality of the data contained in waste permit AERs. If there was (or is) such a law, our members would be equally entitled to request confidentiality for the waste licence AERs that they submit to the EPA each year.

¹ The Aarhus Convention - An Implementation Guide – UNECE, 2014.

We also contend that Ireland is non-compliant with Article 5 of the Convention. Information on licensed wastes facilities is publicly available on the EPA's website and that partially fulfils Ireland's obligations. However, until such time as the AERs on the permitted sites are publicly available on a website, we argue that Ireland falls short of full compliance with Article 5.

The waste permit AERs contain information on environmental emissions as well as details on waste recovery and waste disposal operations at these sites. These are clearly matters of environmental significance that are covered by the Aarhus Convention and the public is entitled to access to this information. The public has a right to know if operators of permitted sites are emitting pollutants or are breaching the limits set in the permits. The public is also entitled to check the AERs to see if waste is sent to legal outlets after treatment or transfer at the permitted sites. Without such access, the rights granted to the public under the Aarhus Convention are being denied by the Irish State.

We respectfully ask that you amend this non-compliance in advance of any declaration to the EU Commission that suggests that Ireland is currently in full compliance with the Aarhus Convention.

Yours Sincerely,

A handwritten signature in cursive script that reads "Conor Walsh".

Conor Walsh
IWMA Secretary
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