

5<sup>th</sup> August 2023

Right to Know CLG  
25 Herbert Place  
Dublin 2

By email: [requests@righttoknow.ie](mailto:requests@righttoknow.ie)

## Re: AIE Request COSEC00416

Dear Sir/Madam,

I refer to your request under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (S.I. No. 133 of 2007, S.I. No. 662 of 2011, S.I. 615 of 2014 and S.I. No. 309 of 2018) (hereafter referred to as the AIE Regulations), for access to information held by Bord na Móna Plc. in relation to:

- Copies of Board Meeting Minutes for all Bord na Móna subsidiary companies for 2022 – 2023.

A representative list of which is as follows:

- Bord na Móna Energy Limited
- Bord na Móna Biomass Limited
- Bord na Móna Powergen Limited
- Edenderry Power Limited
- Edenderry Power Operations Limited
- Cushaling Power Limited
- Edenderry Supply Company Limited
- Renewable Energy Ireland Limited
- Mount Lucas Wind Farm Limited
- Mount Lucas Supply Company Limited
- Bruckana Supply Company Limited
- Bord na Móna Fuels Limited
- BnM Fuels Limited
- Bord na Móna Horticulture Limited
- Bord na Móna UK Limited
- Bord na Móna Environmental Limited
- The Greener Gardening Company (Kirkby) Limited
- White Moss Nominee One Limited
- White Moss Nominee Two Limited
- Bord na Móna ESOP Trustee DAC
- Bord na Móna Resource Recovery Limited

- Bord na Móna Recycling Limited
- Bord na Móna Property DAC
- Bord na Móna Treasury DAC
- Derryarkin Sand and Gravel DAC
- Bord na Móna Trustee Company DAC
- Cloncreen Wind Farm DAC
- Cloncreen Wind Farm Holdings DAC
- Cloncreen Supply DAC
- Bord na Móna New Business Limited

## **Decision**

The following subsidiaries were incorporated under the Turf Development Act 1998 and are therefore subject to the provisions of Part III of the Act, including the power by Bord na Móna plc. to issue written directions to those subsidiaries to perform their functions in compliance with such directions under Section 37(5):

- Bord na Móna Horticulture Limited
- Bord na Móna Environmental Limited
- Bord na Móna Biomass Limited
- Bord na Móna Energy Limited
- Bord na Móna Fuels Limited

Accordingly, having regard to the decision of the High Court in *Bord na Móna plc. v. The Commissioner for Environmental Information* [2023] IEHC 57, such subsidiaries hold information for Bord na Móna plc. for the purposes of the AIE Regulations.

## **Schedule of Records**

The following records in respect of the above 5 subsidiaries have been identified as relating to your request:

1. Signed Minutes Bord na Móna Horticulture Limited 14 July 2022
2. Signed Minutes Bord na Móna Horticulture Limited 20 December 2022
3. Signed Minutes Bord na Móna Horticulture Limited 24 January 2023
4. Signed Minutes Bord na Móna Environmental Limited 14 July 2022
5. Signed Minutes Bord na Móna Biomass Limited 08 April 2022
6. Signed Minutes Bord na Móna Biomass Limited – AGM 14 July 2022
7. Signed Minutes Bord na Móna Biomass Limited 04 April 2023
8. Signed Minutes Bord na Móna Energy Limited - AGM 14 July 2022
9. Signed Minutes Bord na Móna Energy Limited 24 January 2023
10. Signed Minutes Bord na Móna Energy Limited 15 March 2023
11. Signed Minutes Bord na Móna Fuels Limited 14 July 2022
12. Signed Minutes Bord na Móna Fuels Limited 24 January 2023

## **Environmental Information**

The vast majority of the information contained in the above board minutes does not constitute “environmental information” within the meaning of Article 3(1) of the AIE Regulations, including:

- Procedural Companies' Act matters;
- De-registration of a foreign subsidiary;
- Appointment/resignation of directors;
- Company seal register;
- Approval of financial statements and directors' report;
- Interim dividends;
- Inter-company loans;
- Proposed capital contribution to the company reserves by the parent company;
- Treasury matters, involving the restructure of the balance sheet of a subsidiary company.

Environmental information is defined at Article 3(1) of the AIE Regulations as:

*“any information in written, visual, aural, electronic or any other material form on—*

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,*
- (b) factors, such as substances, energy, noise, radiation, or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,*
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,*
- (d) reports on the implementation of environmental legislation,*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)”.*

The above-mentioned matters clearly do not come within any of these categories. In the main they consist of various procedural matters related to the running of the various subsidiaries which do not involve the state of the elements of the environment, factors affecting or likely to affect such elements, measures or activities likely to affect said elements and factors or designed to protect such elements or the state of human health and safety. They do not involve any environmental legislation, much less an implementation of environmental legislation and nor do they entail any cost-benefit or other economic analyses and assumptions used within a framework of measures and activities likely to affect said elements and factors or designed to protect such elements.

Therefore, all such information contained within the Board minutes relating to the above-mentioned matters is refused on the basis that it does not constitute environmental information.

The remaining information contained within the Board minutes which may constitute environmental information involves:

- a) A PRAI indemnity contained within the Signed Minutes Bord na Móna Energy Limited - AGM 14 July 2022;
- b) Property transactions related to wind farm projects contained within the Signed Minutes Bord na Móna Biomass Limited 04 April 2023 and Signed Minutes Bord na Móna Energy Limited 15 March 2023.

In relation to a), I am also not of the view that information with regard to an indemnity given to the PRAI in relation to applications for registration of property constitutes environmental information. Plainly it cannot be deemed environmental information pursuant to paragraphs (a), (b), (d), (e) and (f) of the definition within Article 3(1) of the AIE Regulations. The only basis upon which it could potentially amount to environmental information is paragraph (c).

In respect of Article 3(1)(c), as was made clear by Collins J. in the Court of Appeal in *Redmond v. Commissioner for Environmental Information* [2020] IECA 83, when considering this category, one needs in the first instance to examine the measure in question and not the information on that measure. Thereafter, the test for determining whether or not a measure or activity is likely to affect the environment is, “*if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly.*”

The measure/activity involved in the PRAI indemnity is a decision of the Board of Bord na Móna Energy Limited as to whether or not to permit Bord na Móna Energy Limited to grant an indemnity to the PRAI, in relation to applications for registration of land. I cannot see how there is a real and substantial possibility that a decision to permit Bord na Móna Energy Limited to grant such an indemnity in relation to land registration applications before the PRAI, will have any affect on the environment, either directly or indirectly,

In relation to property transactions related to wind farm projects, whilst conceded that this may amount to environmental information, such information is commercially sensitive. The transaction referred to in the minutes of Bord na Móna Biomass Limited dated 4<sup>th</sup> April 2023 involves a transaction with a third party, with information regarding the price agreed and the valuation of the land being commercially sensitive. Further, the minutes of Bord na Móna Energy Limited dated 15<sup>th</sup> March 2023 contain commercially sensitive information regarding the associated wind farm project. Therefore, the exemption under Article 9(1)(c) is applicable.

In addition, disclosure would adversely affect the confidentiality of the proceedings of a public authority in accordance with Article 8(a)(iv) and/or concerns the internal communications of a public authority pursuant to Article 9(2)(d). The information contained within the relevant Board minutes involves decisions recording the deliberations of the applicable Boards, which has not been disclosed publicly.

I have considered the public interest in accordance with Articles 10(3) and (4) of the AIE Regulations and I am of the view that the public interest against disclosure outweighs that in favour of disclosure. Clearly, there is a public interest in ensuring that the deliberations of the

board of a public authority and/or any subsidiary boards to which the AIE Regulations apply, remain confidential and not subject to disclosure, to enable the proper functioning of the public authority/any subsidiary.

## **Other Subsidiaries**

With regard to the other subsidiaries of Bord na Móna plc. beyond those five referred to above, they were not formed under the Turf Development Act 1998 and nor are they subject to the provisions of Part III thereof. Therefore, they do not hold information “for” Bord na Móna plc. within the context of the AIE Regulations. Such subsidiaries have refused their consent to the disclosure of any information the subject of your request.

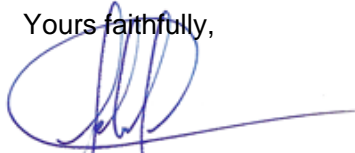
## **Right of Review**

Under Article 11 of the AIE Regulations you have a right to request an internal review of this decision. An internal review involves a complete reconsideration of the matter by a member of the staff of Bord na Móna plc, unconnected with the original decision, of the same or higher rank than the original decision-maker, who may affirm, vary or annul the original decision.

If you wish to request an internal review, you can do so in writing to [InformationOfficer@bnm.ie](mailto:InformationOfficer@bnm.ie), referring to this decision and quoting the AIE reference number. This request must be made within one month of the date of receipt of this decision. The decision of an internal review will be communicated to you within one month of receipt of your request for an internal review.

You can contact [InformationOfficer@bnm.ie](mailto:InformationOfficer@bnm.ie) if you require any assistance in relation to your request.

Yours faithfully,



Dr. John MacNamara  
Corporate Sustainability Lead