



**Decision of the Commissioner for Environmental Information
on an appeal made under article 12(5) of the European Communities
(Access to Information on the Environment) Regulations 2007 to 2018
(the AIE Regulations)**

Case: OCE-128538-M9C1X7

Date of decision: 29 July 2024

Appellant: Right To Know CLG

Public Authority: Bord na Móna (BnM)

Issue: Whether BnM was justified in refusing access to the information sought relating to all purchase orders over €20,000 in 2019, 2020, 2021, and 2022 contained on an identified spreadsheet on the basis that the information is not “environmental information” within the meaning of the definition in article 3(1) of the AIE Regulations.

Summary of Commissioner's Decision: The Commissioner found that BnM was not justified in refusing access to the information sought relating to all purchase orders over €20,000 in 2019, 2020, 2021, and 2022 contained on the identified spreadsheet on the basis that the information is not “environmental information” within the meaning of the definition in article 3(1) of the AIE Regulations. He annulled BnM’s decision and directed it to undertake a fresh internal review decision-making process in respect of the information sought.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.



Background

1. On 30 June 2022, the appellant submitted a request to BnM seeking access to “a list/database/or spreadsheet of all payments (or purchase orders) of over €20,000 for the period 2019, 2020, 2021, 2022”. He commented that ideally the data should include:

- “Date: As an actual PO date (e.g., 2020-12-04) also referencing the relevant year and quarter
- Name of Supplier(s)
- Description of goods and/or services provided
- PO Amount”

The appellant also asked BnM to note the Public Service Reform Plan of 2011, stating “in which publication of such data is an obligation for all public bodies.”

2. On 27 July 2022, BnM informed the appellant that, due to “the broad nature of the request”, it required an extension of one month in accordance with article 7(2)(b) of the AIE Regulations, in order to make its decision.
3. On 23 August 2022, BnM issued its decision. BnM refused access to information it had identified as relevant to the appellant’s request on the basis that the information concerned is not “environmental information” within the meaning of the definition in article 3(1) of the AIE Regulations. The same day, the appellant sought an internal review of BnM’s decision. On 21 September 2022, BnM issued its internal review decision, wherein it affirmed its original decision.
4. The appellant submitted an appeal to this Office on 22 September 2022.
5. I am directed by the Commissioner to carry out a review under article 12(5) of the AIE Regulations. In doing so, I have had regard to the correspondence between BnM and the appellant as outlined above and to correspondence between this Office and both BnM and the appellant on the matter. I have also examined the information at issue. In addition, I have had regard to:
 - the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister’s Guidance);
 - Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - the 1998 United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); and
 - The Aarhus Convention—An Implementation Guide (Second edition, June 2014) (the Aarhus Guide)
6. I have taken account of the judgments of the Superior Courts in *Minch v Commissioner for Environmental Information* [2017] IECA 223 (*Minch*), *Redmond & Another v Commissioner for Environmental Information & Another* [2020] IECA 83 (*Redmond*), *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [2020] IEHC 190 (*ESB*) and *Right to Know CLG v. Commissioner for Environmental Information and Raidio Teilifís Éireann* [2021] IEHC 353 (*RTÉ*) and the decisions of the European Court of Justice in case C-316/01 *Glawischnig v Bundesminister für Sicherheit und Generationen* (*Glawischnig*) and case C-321/96 *Wilhelm Mecklenburg v Kreis Pinneberg - Der Landrat* (*Mecklenburg*). I have also had regard to the judgment of the Court of Appeal of England and Wales that is referred to in the latter three Irish judgments, *Department for Business, Energy and Industrial Strategy v Information Commissioner* [2017] EWCA Civ 844 (*Henney*).



7. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

8. In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and to affirm, annul or vary it. Where appropriate in the circumstances of an appeal, I will require the public authority to make available environmental information to the appellant.
9. My powers as Commissioner for Environmental Information apply only in respect of environmental information held by or for a public authority. In accordance with my Office's Procedures Manual, available at www.ocei.ie, my general practice in cases such as this, concerning a threshold jurisdictional question, is to limit my review to the preliminary matter of whether the information at issue is "environmental information" such that it falls within the remit of the AIE Regulations.
10. During the course of this review BnM provided this Office with a copy of the spreadsheet it had identified as relevant to the appellant's request. I am satisfied that the scope of this review concerns whether BnM was justified in refusing access to the information sought (i.e. the date, name of supplier(s), description of goods/services provided, and amount) relating to all purchase orders over €20,000 in 2019, 2020, 2021, and 2022, contained on the spreadsheet identified on the basis that the information is not "environmental information" within the meaning of the definition in article 3(1) of the AIE Regulations.

Preliminary Matter

11. It is clear from the comments of the Court of Appeal in Redmond, at paragraph 51, that the nature of a review by this Office is inquisitorial rather than adversarial in nature. The extent of the inquiry is determined by this Office and not the parties to the appeal.

Definition of "environmental information"

12. Article 3(1) of the AIE Regulations is the relevant provision to consider where the issue is whether information is "environmental information". In line with Article 2(1) of the AIE Directive, article 3(1) of the AIE Regulations provides that "environmental information" means:

"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). "

13. The AIE Regulations transpose the AIE Directive. The AIE Directive was adopted to give effect to the first pillar of the Aarhus Convention in order to increase public access to environmental information so that an informed public can participate more effectively in environmental decision-making. It replaced Council Directive 90/313/EEC, the previous AIE Directive. The right of access under the AIE Regulations is to information "on" one or more of the six categories at (a) to (f) of the definition. According to national and EU case law on the definition of "environmental information", while the concept of "environmental information" as defined in the AIE Directive is broad (*Mecklenburg* at paragraph 19), there must be more than a minimal connection with the environment (*Glawischning* at paragraph 25). Information does not have to be intrinsically environmental to fall within the scope of the definition (*Redmond* at paragraph 58; see also *ESB* at paragraph 43). However, a mere connection or link to the environment is not sufficient to bring information within the definition of environmental information. Otherwise, the scope of the definition would be unlimited in a manner that would be contrary to the judgments of the Court of Appeal and the CJEU.

Positions of the Parties

14. The appellant is of the view that the information sought relating to purchase orders over €20,000 contained on the spreadsheet identified is "environmental information".

15. In its decisions, BnM's set out its position that the information sought relating to purchase orders over €20,000 contained on the spreadsheet identified is not "environmental information" within the meaning of any of the paragraphs of the definition in article 3(1) of the AIE Regulations. The focus of its submissions to this Office concerned paragraph (c).

16. BnM referred to *Glawischning*, where the CJEU, in considering the previous AIE Directive, stated:

"Directive 90/313 is not intended, however, to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned in Article 2(a). To be covered by the right of access it establishes, such information must fall within one or more of the three categories set out in that provision." (*Glawischning* at paragraph 25).



17. BnM referred to *Minch*, noting that the Court of Appeal confirmed that article 3(1)(c) was not to be interpreted as providing a potentially open-ended or indefinite right of access, and where Hogan J stated:

“There must, however, be a plan or something in the nature of a plan. This requirement that the document constitute a plan or a policy thus curtails a potentially open-ended or indefinite right of access to documents and in this respect reflects the thinking of the Court of Justice in *Glawischnig*, as otherwise virtually any document generated by a public body which referred either directly or indirectly to environmental matters could come within the scope of Article 3(1)(c).” (*Minch*’ at paragraph 41).

18. BnM referred to *Redmond*, noting that the Court of Appeal identified that when considering article 3(1)(c) it is necessary in the first instance to examine the measure in question and not the information on that measure, and where Collins J stated:

“In my opinion, it is not correct to look at the information sought to see whether, in itself, it is information that can be described as “affecting or likely to affect” the elements and factors set out in Article 3(1), paragraphs (a) and/or (b). It is the “measure”, not the information “on” that measure, that is subject to that threshold test.” (*Redmond* at paragraph 57).

19. BnM then went on to refer to Collins J’s comments regarding the test for determining whether or not a measure or activity is likely to the environment:

“...if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly. Something more than a remote or theoretical possibility is required (because that would sweep too widely and could result in the “general and unlimited right of access” that *Glawischnig* indicates the AIE Directive was not intended to provide) but it is not necessary to establish the probability of a relevant environmental impact (because that would, in my opinion, sweep too narrowly and risk undermining the fundamental objectives of the AIE Directive).” (*Redmond* at paragraph 63).

20. BnM contended that the measure/activity in this case involves the payment to suppliers for goods or services rendered. It submitted that there is not a real and substantial possibility of the act of payment to such suppliers affecting environmental elements or factors. It stated “[p]aying such suppliers has no environmental impact whatsoever, beyond the purely remote or theoretical. It is simply a financial transaction, involving the transfer of funds from one entity (BNM) to various other persons or entities.” In its internal review decision, BnM also made the following comments:

“It cannot be said on the basis of any reasonable analysis that details of payments to suppliers amount to information on a “measure” or “activity” in respect of which there is a real and substantial possibility of same affecting the environment, either directly or indirectly. Payments by Bord na Móna plc. to suppliers constitute payments for the supply of goods or services under various contractual arrangements between Bord na Móna plc. and the supplier in question. The activity of paying a certain supplier a particular amount for a good supplied or a service rendered, is not capable of having any effect on the environment, there being no connection (beyond the purely remote or theoretical) between such payment and any element of or factor relating to the environment.”



21. BnM, in its submissions, further stated that without prejudice its position that the payment to suppliers does not constitute a measure/activity affecting or likely to affect the environment within the meaning of article 3(1)(c) of the AIE Regulations, it is of the view that the list/database/spreadsheet requested does not constitute information “on” that measure/activity, as further required by article 3(1) of the AIE Regulations.
22. BnM noted that this issue was considered in *Henney* and Collins J referred to this in *Redmond* where he stated that *Henney*:

“...indicate[d] that there may be some scope for debate on that issue, with Beatson LJ suggesting that regulation 2(1)(c) should be “read down” by reference to the purpose of the Aarhus Convention and the AIE Directive to provide for access to environmental information so as to enable members of the public to be better informed and better able to contribute to environmental decision-making. Information not relevant or useful to that purpose, he suggests, may not be required to be provided.” (*Redmond* at paragraph 99)
23. BnM also noted that *Henney* was referred to in this Office’s decision in case OCE-94897-N8Y8Y3, which stated:

“*Henney* also makes it clear that the definition should be applied purposively having regard to matters such as “the purpose for which the information was produced, how important it was to that purpose, how it is to be used and whether access to it would make the public better informed about, or to participate in, decision-making in a better way” (see paragraph 43)” (OCE-94897-N8Y8Y3 at paragraph 17).
24. BnM contended that a list/database/spreadsheet of payments to suppliers does not enable members of the public to be better informed or better able to contribute to environmental decision-making. It stated that the list/database/spreadsheet exists as a record of supplier payments and does not involve and nor can it have, any influence on decision-making relating to the environment. It contended that it is too remote from any measure or activity affecting or likely to affect the environment. It submitted that, therefore, it is neither useful nor relevant to the purposes of the Aarhus convention or the AIE Directive, and so does not constitute information “on” a measure or activity affecting or likely to affect the environment, in accordance with article 3(1) of the AIE Regulations.
25. In subsequent submissions to this Office BnM again referred to *Minch*, noting that the requested list/database/spreadsheet of payments to suppliers, “does not constitute any form of ‘plan or policy’. The purpose of the list/database/spreadsheet is to keep a record of payments to suppliers and this has no environmental impact.”
26. Finally, in its internal review decision, BnM referred to the Public Service Reform Plan 2011 noted by the appellant in its request. It stated that it had since been superseded and it “is not relevant to requests under the AIE Regulations, which fall to be determined exclusively in accordance with the Regulations. The duty of a public authority as expressed in Article 7(1) of the Regulations is, ‘to make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority.’ Accordingly, if information does not constitute environmental information, there is no duty upon a public authority to make same available under the [AIE] Regulations.”



Analysis and Findings

27. In my view, paragraph (c) of the definition, which provides that “environmental information” means any information on 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, is the most relevant to this review.

Identification of a measure or activity

28. Paragraph (c) requires the identification of a relevant measure or activity, which the information sought is “on”. Information may be “on” more than one measure or activity (*Henney* at paragraph 42). In identifying the relevant measure or activity, one may consider the wider context and is not strictly limited to the precise issue with which the information is concerned (*ESB* at paragraph 43). The list of examples of measures and activities given at paragraph (c) is not exhaustive, but it contains illustrative examples (*Redmond* at paragraph 55). The CJEU stated in *Mecklenburg* that the term ‘measure’ serves “merely to make it clear that the acts governed by the directive included all forms of administrative activity” (*Mecklenburg* at paragraph 20, emphasis added), and a similarly expansive approach should be taken to the term ‘activity’ (*RTÉ*, at paragraph 19).

29. I consider it useful to set out some context on the legislative background underpinning the operations of Bord na Móna. Bord na Móna was originally established as a statutory corporation under the [Turf Development Act 1946](#), which also set out its functions, meaning its duties and powers. This included section 17(1) of the Turf Development Act 1946 which, as amended by the [Turf Development Act 1990](#), provides it shall be the duty of Bord na Móna within the State:

- (a) “to produce and market turf and turf products, and
- (b) to foster the production and use of turf and turf products, and
- (c) to acquire bogs and other lands, and
- (d) to manage, develop and work bogs and other lands vested in the Board, and
- (e) generally to do all such other things as arise out of, or are consequential upon, the duties mentioned in the preceding paragraphs of this section.”

30. Section 4(1) of the Turf Development Act 1990, states that Bord na Móna may engage outside the State in:

- (a) “the marketing of turf and turf products,
- (b) the production of turf and turf products,
- (c) fostering the production and use of turf and turf products,
- (d) the acquisition of bogs and other lands,
- (e) the management, development and working of bogs and other lands, and
- (f) generally doing all such other things as arise out of, or are consequential upon, the powers mentioned in the preceding paragraphs of this section.”

31. Section 5 of the Turf Development Act 1990, states that Bord na Móna may, inside or outside the State, engage in all such commercial activities, whether in relation to the production or marketing of turf or otherwise, as in the opinion of Bord na Móna arise out of and can advantageously be conducted in conjunction with any function of Bord na Móna.



32. In light of the changes in the activities of that corporation and in the commercial environment over the following decades, Part 2 of the [Turf Development Act 1998](#) (the 1998 Act) provided for the formation of a new company, 'Bord na Móna plc', and for the transfer to it of the functions of the existing Bord na Móna statutory corporation. As a result, BnM plc is subject both to the general powers and duties outlined in the Turf Development Acts 1946-1998 and to all of the legal obligations and responsibilities which apply under general company law. Part 3 of the 1998 Act provided for the formation and registration by BnM plc of subsidiaries for the purpose of enabling its principal activities to be carried on by the subsidiaries. I think it is useful here to set out the comments of Hyland J at paragraphs 50 to 55 in *Bord na Móna PLC v Commissioner for Environmental Information and Right to Know CLG [2023]* IEHC 57 where she discussed provisions of the Turf Acts:

"55. ...The 1946 Act established Bord na Móna. The duties of Bord na Móna are identified in the Act, including the production and marketing of turf and turf products. The 1998 Act established Bord na Móna as a public limited company (the "Company"). Section 9(2) provides that the principal objects of the Company shall be those comprised in the functions conferred on Bord na Móna by the Turf Development Acts 1946 to 1995. Section 32 provides that a person shall not disclose confidential information obtained in the context of their relationship with the Company or a subsidiary unless they are duly authorised by law to do so.

51. Part 3 of the Act establishes subsidiaries. Section 34 provides that, for the purpose of enabling its principal activities to be carried on by subsidiaries of the Company, the Company shall cause companies to be formed and registered under the Companies Acts. Section 36 is important. It provides that the objects of the subsidiaries, as stated in their memoranda of association, shall be that the principal activities, at least, of the Company are carried on by the subsidiaries. Section 37 permits there to be included among the objects of each of the subsidiaries such other functions of the Company as may be approved by the Company with the consent of the Minister for Public Enterprise and the Minister for Finance.

52. Section 37(4) provides that where any function of the Company is a function of a subsidiary, enactments relating or applied by the Act to the Company shall in respect of that function apply to the subsidiary as it applies to the Company, with any necessary modifications. Section 37(5)...provides as follows: "A subsidiary shall perform its functions in compliance with such directions as the Company may give to it in writing from time to time".

53. The combined effect of those provisions appears to be as follows. Subsidiaries are created to enable Bord na Móna's principal activities to be carried those subsidiaries. Those activities are the functions of Bord na Móna as identified in the Turf Acts. Functions include the powers and duties of Bord na Móna. Where a function of Bord na Móna is a function of a subsidiary, enactments applying to Bord na Móna apply to the subsidiary in respect of the function. Bord na Móna is entitled to direct the performance of the function of the subsidiary and the subsidiary is obliged to comply with such directions.

54. Sections 38 to 50 deal with the structure of the subsidiary and its relationship with the Bord na Móna. It is clear from those provisions that Bord na Móna exercises enormous control over the subsidiary. Sections 38 and 39 provide that the Memorandum of Association and the Articles of Association of each of the subsidiaries must be approved of by the Company with the consent of the Minister and the Minister for Finance. Section 41 provides that the whole of the issued share capital of each subsidiary shall be held by the Company or nominees of the Company. Shares in a



subsidiary may not be issued or transferred to a person other than the Company or person holding them in trust for the Company without the consent of the Minister and the Minister for Finance. The chairperson of the subsidiary shall be appointed by the Company with the consent of the Minister under s.42. Section 43 provides that the directors of a subsidiary shall be appointed and may be removed by the Company with the consent of the Minister. The remuneration of the chair and directors of a subsidiary and the other terms and conditions upon which they hold their office shall be determined by the Company with the consent of the Minister. Equally, the remuneration and terms and conditions of employment of the staff of each subsidiary shall be such as the Company may determine.

55. What is striking about the statutory regime is the extent of integration of Bord na Móna and its subsidiaries. The subsidiaries are carrying out the functions of Bord na Móna under the Turf Acts and must do so in accordance with the direction of Bord na Móna if it chooses to so direct them. In my view, the statutory provisions disclose an unusually close relationship between the two companies, with features additional to those that might normally exist between a parent and a subsidiary.

33. Section 56 of the Turf Development Act 1998 states that BnM and each subsidiary “shall ensure that its activities are so conducted as to afford appropriate protection for the environment and the archaeological heritage.”

34. According to its [website](#) BnM describes itself as an “Irish, semi-state climate solutions company helping lead Ireland towards a climate neutral future”. It states that its climate solutions “cover renewable energy, recycling, waste management, carbon sequestration and biodiversity conservation.” It further notes “[a]ll Bord na Móna’s activities are focused on helping Ireland to achieve its climate goals.” It also provides links to its other [websites](#) which offer information on its products, services, amenities, and renewables infrastructure.

35. BnM sets out its [vision](#) on its website, which “is for a climate neutral Ireland by 2050”. It states that BnM wants “to help create a brighter future where Ireland has reached net zero.” BnM then outlines that it develops climate solutions for Ireland’s greener future and provides detail under the headings “Rethink, “Renew”, and “Restore”:

- Rethink – “Climate action starts with changing mindsets. We’ve redefined our role in tackling the challenges posed by the climate crisis. We take tangible action at scale, helping to inspire change and meet Ireland’s climate goals.”
- Renew – “Climate action means working with, and for, nature. We’ve changed how we manage our natural assets, and created climate solutions that seek to renew our energy, recycle our waste, and neutralise our carbon emissions.”
- Restore – “Climate action means restoring balance. We’re rehabilitating lands for biodiversity, and we’re returning raised bogs to peat-forming conditions so they can store carbon. We’re restoring hope for nature, for the climate and for the future.”

36. BnM explains that it delivers clean energy carbon storage and resource recovery solutions. It states that its mission has four core elements:

- Provide Ireland with sustainable energy from renewable sources at scale
- Effectively rehabilitate our peatlands
- Deliver world-class waste and resource recovery solutions
- Help Ireland reimagine how it engages with climate action



37. The [climate solutions](#) section of the website provides and links to further detail relating to BnM's involvement in [clean energy](#), [recycling](#), [waste](#), and [peatlands](#), as well as its [partnerships](#) and [infrastructure](#), which I have summarised below:

- Clean Energy – BnM states that its growing renewable energy infrastructure will power a net zero future. BnM outlines that it works across wind, solar, biomass and biogas to power the national grid with clean energy and that it is expanding Ireland's renewable energy infrastructure to protect our climate.
- Recycling – BnM states that it is recycling waste and repurposing waste into commodities, reducing what is exported overseas, and minimising what goes to landfill. It also states that it is helping Ireland to move to a "circular economy" where goods are made, used, reused, and remade. It outlines that it turns plastics, construction waste, and more into new materials. It notes that organic waste is transformed into high quality compost, and tyres are converted into the rubber granules used in football pitches, playground surfaces and horticultural bark. It explains that residual waste, which cannot be composted, recycled, or recovered, is shredded, dried into fuel, called residual derived fuel. It states that this is then sent to specialist incinerator facilities that burn it to create energy.
- Waste – BnM states that it is helping Ireland become more waste conscious by developing innovative waste management solutions for a cleaner future. BnM states that it works at every stage of the waste management chain – from collection and treatment to disposal and recycling – to help Ireland lower its carbon footprint and support national waste policy.
- Peatlands – BnM states that it is working with nature to protect peatlands. It outlines that it is restoring and rehabilitating Ireland's bogs to help meet climate and biodiversity goals. It states that where possible it is restoring raised bogs to their natural state and bogs that are unsuitable for restoration are rehabilitated into diverse new habitats. It goes on to refer to further information relating to [peatlands restoration](#), [peatlands rehabilitation](#), and [biodiversity](#) (noting that over 900 species and over 25 plant communities have been recorded on its boglands). Further detail is also available relating to [public amenities](#) which BnM states it is building on its peatlands to open up these spaces for everyone's enjoyment.
- Partnerships – BnM states that it engages in partnerships with leading companies and organisations worldwide to develop new approaches to climate action. BnM states that it is driven by a singular purpose: to help Ireland reach net zero by 2050. It states that it seeks out partnerships with global leaders in climate action sharing its experience in renewable energy and resource recovery, and working together to develop new large scale solutions.
- Infrastructure – BnM states that it constructs and maintains large-scale infrastructure to help meet strategic national targets for renewables. It notes that from windfarms to recycling plants, it has a wide range of sites at various [locations](#). It also outlines that it has large-scale projects (in renewable energy and resource recovery) in development.

38. I understand that BnM carries out the operations described on its website through a number of different business units and subsidiary/associated companies (see [2023 Annual Report](#) for BnM Group).



39. BnM identified the spreadsheet at issue as containing the information sought by the appellant relating to purchase orders over €20,000 in 2019, 2020, 2021, and 2022. While, I note BnM's consideration of whether the payment of suppliers is a measure or activity within the meaning of paragraph (c), I do not consider that to be the correct measure or activity for the purposes of this review, noting that in identifying the relevant measure or activity, one may consider the wider context and is not strictly limited to the precise issue with which the information is concerned (*ESB* at paragraph 43). I am also cognisant that, in identifying the relevant measure or activity, information may be "on" more than one measure or activity (*Henney* at paragraph 42). It is clear from the detailed information set out above that BnM and its subsidiary/ associated companies are involved in a wide range of operations, including, for example: energy generation, recycling, waste management, peatlands restoration and rehabilitation, partnerships to develop new approaches to climate action, and infrastructure development. These are seemingly the current main operations of BnM and its subsidiary/associated companies and I am satisfied that, many, if not all, of these operations are measures or activities within the meaning of paragraph (c).

Whether the measure or activity is affecting, likely to affect or designed to protect the environment

40. To meet the definition, the measure or activity must affect or be likely to affect the elements and factors referred to in paragraphs (a) and (b) (i.e. the environment) or designed to protect the environment (*Redmond* at paragraph 57). A measure or activity is "likely to affect" the elements and factors of the environment if there is a real and substantial possibility that it will affect the environment, whether directly or indirectly. While it is not necessary to establish the probability of a relevant environmental impact, something more than a remote or theoretical possibility is required (*Redmond* at paragraph 63). It is also important to note that the actual outcome of a measure or activity is irrelevant. In this respect, I note the analysis of Hogan J in *Minch* at paragraph 40 of his judgment.

41. In my view, it is evident that there is a real and substantial possibility that many of the operations of BnM and its subsidiary/associated companies (including: energy generation, recycling, waste management, peatlands restoration and rehabilitation, partnerships to develop new approaches to climate action, and infrastructure development) will affect the environment in significant manner. Such operations will impact the environment, for example, due to their nature as components of the energy and waste sectors; the work, materials, emissions, pollution, waste, water, transport, fuel, and land-use changes involved in undertaking them, their interaction with nature and biodiversity; and/or their role in the low carbon transition.

42. BnM's [Sustainability Update 2023](#) "Delivering Climate Solutions" (the Update), highlights that BnM's strategy "is to become Ireland's leading Climate Solutions company and play our part in helping Ireland to transition to a climate neutral economy by 2050." In providing examples of some of BnM's environmental, social, and governance (ESG) initiatives, it highlights:

- The company's Carbon Dioxide (CO₂) and Greenhouse Gas (GHG) emissions have fallen by over 82% since 2018 and are on target to reduce further next year
- This year saw a milestone as BnM surpassed, for the first time, the generation of over 1 TeraWatt hour (1 million MegaWatt hours) of renewable electricity.
- During this financial year, rehabilitation of over 15,600 acres was completed across the Peatland Climate Action Scheme and on 3rd party lands, similar levels of peatland rehabilitation is also expected to be delivered in the coming year.



- BnM's Accelerate Green initiative has supported 25 companies to grow and become leaders in the provision of sustainable goods and services.

43. The Sustainability Update 2023 examines a number of metrics, including environmental metrics, for example:

- Metric 1: Greenhouse Gas (GHG) Emissions – The Update states that the move away from fossil fuels in BnM's energy business and the end of peat harvesting has contributed to a dramatic reduction in its GHG emissions. It notes that BnM's GHG emissions are a key ESG concern and it aligns the calculation of its Scope 1 (direct emissions from sources owned or controlled by BnM), Scope 2 (indirect emissions caused by sources not owned or controlled by BnM) and material Scope 3 emissions (indirect emissions which include "use of products sold") with the Greenhouse Gas Protocol. The Update outlines that over the past six years, BnM GHG emissions measured as tonnes of carbon dioxide equivalent (tonnes CO₂eq) dropped from over 3.4 million tonnes during 2018, to under 0.6 million tonnes in 2023. The Update notes that BnM expects a further reduction in GHG emissions during 2024 and is developing transition plans for the business to achieve net zero emissions in line or likely ahead of Government policy and targets.
- Metric 2: Energy Efficiency – The Update states that BnM is on its way to achieving, and even exceeding, its target for energy efficiency across the business by 2030. It notes that, as a commercial semi-state company, BnM is expected to play a leading role in delivering climate action. It outlines that these actions not only include decarbonisation and reducing GHG emissions, but also improving energy efficiency. The Update outlines that BnM continues to both invest in more energy efficient processes and assess its operations to minimise energy consumption. It comments that improvements in building management systems (smart heating and light controls), installation of rooftop solar PV and dynamic route management (BnM Recycling) have all contributed to a net increase in energy efficiency.
- Metric 3: Clean Energy Generation – The Update states that the rapid growth in BnM's renewable assets means that it is now one of Ireland's leading producers of clean energy. It outlines that clean energy is being produced on a large scale from wind, solar, biomass, and biogas. It notes that land previously used for peat harvesting has been transformed into wind and solar farms with the capacity to power thousands of homes and businesses around Ireland with green electricity, while at the same time ensuring optimum outcomes for peatlands rehabilitation and biodiversity are also achieved. It explains that BnM's ongoing €2.7bn investment programme, which includes infrastructure development to increase its renewable energy assets, has already helped it to achieve a milestone – in financial year 2023, for the first time, BnM's renewable electricity assets, including its joint venture projects, surpassed over 1,000,000 MWh of clean electricity generated.
- Metric 4: Biodiversity – The Update states that BnM continues to nurture biodiversity across its lands, many of which are of high ecological importance. The Update notes that a third biodiversity action plan is to be produced in 2024. It comments that the BnM estate contains Annex I habitats under the EU Habitats Directive (Directive 92/43/EEC) and that rehabilitated or restored bogs host species of conservation value or conservation concern that are rare and under pressure in the wider landscape. It highlights that most recently the re-colonisation of Ireland by Eurasian Crane, listed on Annex I of the EU Birds Directive, has occurred on a BnM owned naturally re-wetting cutaway bog. The Update indicates that it is expected that present and future cutaway bog rehabilitation may assist in the breeding expansion of this species by both improving the quality of



the existing habitat used by the current breeding pair, and by creating more suitable habitat in the region. It states that during the reporting period, the single breeding pair produced the first Eurasian Crane chicks to fledge in Ireland in over 300 years.

- Metric 5: Peatland Rehabilitation – The Update states that BnM’s peatland rehabilitation is creating diverse, new habitats and maximising the value of the land as carbon store. It explains that BnM has been actively engaging in peatland rehabilitation on its lands since the 1990s and prior to 2020, it had rehabilitation initiatives across approximately 20,000 hectares of peatlands in total. It outlines that BnM has also been carrying out rehabilitation improvements of cutaway bogs to promote biodiversity, resulting in an extensive network of cutaway bog with a range of established habitats. It states that these cutaway bog areas illustrate how former peat production areas can be rehabilitated with a combination of natural regeneration and targeted rehabilitation to return relatively quickly to species diverse areas. The Update notes that the Enhanced Decommissioning Rehabilitation and Restoration Scheme (EDRRS) was approved by the Irish Government in November 2020 and outlines planned improvements on up to 33,000 hectares of BnM peatlands over the coming years, spanning bogs previously used for industrial peat extraction. It states funding for the EDRRS was secured through the EU Recovery and Resilience Facility and this funding is administered through Ireland’s National Recovery Resilience Plan. It outlines that the objectives of EDRRS is to rehabilitate these peatlands so that the improvements optimise climate, environmental, ecological and hydrological impacts. It notes that in undertaking this work, BnM has reassigned employees from peat harvesting activities into rehabilitation operations. It details that the EDRRS is administered by the Department of the Environment, Climate and Communications, with the National Parks and Wildlife Service (NPWS) of the Department of Housing, Local Government and Heritage as the Regulator, and BnM as the operator. It notes that there is also engagement with other stakeholders including relevant NGOs, the Environmental Protection Agency, local communities, and neighbouring landowners. It notes that work under EDRRS began in early 2021 and the scheme will be completed by mid-2026.
- Metric 6: Recycling – The Update states that BnM’s innovative waste management solutions are contributing to a reduction in what goes to landfill. It outlines that BnM’s recycling business serves the needs of over 140,000 customers across Ireland. It states that at its core, it aims to align itself with the Government’s Climate Action Plan by supporting a transition to a circular economy where resources are kept in use for as long as possible until they are regenerated into new products at the end of their life cycle. It explains that the most recent figures from the Recycling business show the company’s considerable contribution to resource recovery and sustainable waste management in Ireland. It indicates that 90% of all waste material collected by BnM is recycled or recovered, with only 10% destined for landfill. It comments that BnM continues to invest in innovative and resource efficient technologies, including the deployment last year of Ireland’s first fully electric Refuse Collection Vehicle (RCV). It states that it is also planning an anaerobic digestion plant, which will transform biodegradable waste into green biogas for use in the national gas network. It outlines that this investment will complement the company’s existing landfill gas unit, which is currently part of BnM’s electricity generation fleet and produces about 30,000 MWh of renewable electricity each year.

44. Having regard to all of the above, I am satisfied that many of the operations of BnM and its subsidiary/associated companies are measures and/or activities likely to affect the environment.



Whether the information is on the measure or activity

45. Where the relevant measure or activity has the requisite environmental effect, one must consider whether the requested information is “on” that measure or activity within the meaning of article 3(1) of the AIE Regulations.
46. Information is “on” a measure or activity if it is about, relates to or concerns the measure or activity in question. It is not sufficient for information to be merely connected to the measure or activity, but the information need not be specifically, directly or immediately about the measure or activity. It is permissible to consider the wider context in determining whether information is “on” a measure or activity, which may not be apparent on the face of the information itself (*Henney* at paragraphs 37-44, referred to in *Redmond* at paragraph 99, *ESB* at paragraphs 36-45, and *RTÉ* at paragraph 52). Information that is integral to the relevant measure or activity is information “on” it (*ESB* at paragraphs 38, 40 and 41), while information that is too remote from the relevant measure or activity does not qualify as environmental information (*ESB* at paragraph 43).
47. The guidance provided by the Courts suggests that there is a sliding scale, with information integral to a measure at one end (in the sense that it is quite definitively information “on” a measure) and information considered too remote from the measure on the other end (in the sense that it is not). The example referred to in *Henney* noted that a report on public relations and advertising strategy might be considered information “on” the Smart Meter Programme “because having access to information about how a development is to be promoted will enable more informed participation by the public in the programme”. However, information relating to a public authority’s procurement of canteen services in the department responsible for delivering a road project would likely be considered too remote, albeit it depending on the precise circumstances of the case (see *Henney* at paragraph 46).
48. Information that is not consistent with or does not advance the purpose of the AIE Directive may not be “on” the relevant measure or activity (*ESB* at paragraph 44 and *Henney* at paragraph 47). As “any information ... on” a measure affecting or likely to affect the environment is *prima facie* environmental information, the information at issue does not, in itself, have to affect or be likely to affect the environment (*Redmond* at paragraphs 57 and 59). However, consideration of whether information is “on” the measure does require examination of the content of the information (*ESB* at paragraph 50).
49. In this case, the measures and/or activities identified are the many operations of BnM and its subsidiary/associated companies likely to affect the environment.
50. The information sought concerns the date, name of supplier(s), description of goods/services provided, and amount relating to purchase orders over €20,000 contained on the identified spreadsheet. The question at issue is whether the information sought is sufficiently connected to those many operations of BnM and its subsidiary/associated companies likely to affect the environment. Upon brief examination of the spreadsheet, I am satisfied that the details sought relate to some purchase orders over €20,000 for goods/services integral to the undertaking of operations of BnM likely to affect the environment (i.e. the operations could not be progressed without their procurement), however they also relate to some purchase orders which are more remote and are incidental to the undertaking of operations of BnM likely to affect the environment (i.e. the operations could be progressed without their procurement).



51. As noted above, information may not be “on” a relevant activity or measure if it is not consistent with or does not advance the purpose of the Aarhus Convention and the AIE Directive;

- “Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns” (paragraph 9 of the Preamble to the Aarhus Convention)”
- “Aiming thereby to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment” (paragraph 10 of the Preamble to the Aarhus Convention)
- “Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.” (Recital 1 of the AIE Directive)

52. BnM and its subsidiary/associated companies clearly have an environmental remit. Many of the operations of BnM likely to affect the environment, require interaction with the public and/or benefit from public support. In my view, public access to the date, name of supplier(s), description of goods/ services provided, and amount relating to purchase orders over €20,000 that are integral to the undertaking of those many operations of BnM likely to affect the environment would contribute to the accountability and transparency of those operations, giving the public a greater awareness of the costs involved and the goods/services required to undertake them. Accordingly, it would be in line with the purpose of the Aarhus Convention, as set out at paragraphs 9 and 10 of the Preamble, and the AIE Directive, as set out in Recital 1, in particular, contributing to greater awareness of environmental matters.

53. In all the circumstances, I am satisfied that the information sought relating to some of the purchase orders over €20,000 contained on the identified spreadsheet is very likely to be “on” the many operations of BnM and its subsidiary/associated companies that are measures and/or activities likely to affect the environment.

Conclusion

54. In conclusion, I find that information sought relating to some of the purchase orders over €20,000 (i.e. those integral to the undertaking of operations of BnM likely to affect the environment) contained on the identified spreadsheet is very likely to be environmental information within the meaning of paragraph (c) of the definition in article 3(1) of the AIE Regulations. In this case, I do not consider it necessary for me to assess whether the information sought also falls within other paragraphs of the definition.

55. BnM identified the spreadsheet at issue as containing the information sought by the appellant related to purchase orders over €20,000 in 2019, 2020, 2021, and 2022. However, there is no evidence to suggest that BnM gave any consideration to the particular information contained on the spreadsheet. This is supported by the fact that the spreadsheet provided to this Office, in addition to containing details of purchase orders over €20,000 also contains details of purchase orders of lower amounts and



dated subsequent to the date of the request, and includes information relating to the purchase orders additional to that sought by appellant.

56. A brief examination of the spreadsheet indicates that there are over 350 purchase orders over €20,000 for the period 2019-2022. As stated, I am satisfied that the information sought relating to some of those purchase orders (i.e. those integral to the undertaking of operations of BnM likely to affect the environment), however not all of those purchase orders, is environmental information under the AIE Regulations. Accordingly, at this stage, I consider that the most appropriate course of action to take in this case is to annul BnM's decision to refuse access to the information sought relating to all purchase orders over €20,000 contained on the identified spreadsheet on the basis that it is not "environmental information" within the meaning of the definition in article 3(1) of the AIE Regulations and direct it to undertake a fresh internal review decision-making process.
57. In circumstances where the list of purchase orders has not been adequately considered and environmental information contained within the spreadsheet has not been properly identified by BnM, and it includes information relating to third parties, I do not believe that it is appropriate for me to assess the list in detail and/or direct the release of information at this point. My Office has a significant backlog of appeals and I consider that it is not the best use of our resources to carry out the task of reviewing information which has not been done by public authorities in the first instance. In re-considering the matter afresh, should BnM wish to refuse access to any of the information concerned on the basis it is not "environmental information" or wish to refuse access to any of the environmental information concerned under articles 8 or 9 of the AIE Regulations, it must fully set out its reasons for reaching its conclusions as well as, where relevant, its considerations of article 10 of the AIE Regulations, including paragraphs (3), (4), and (5).

Decision

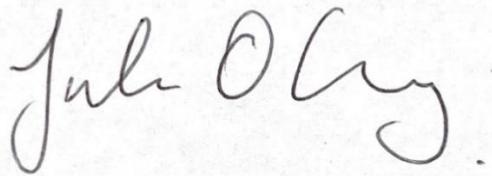
58. Having carried out a review under article 12(5) of the AIE Regulations, I hereby annul BnM's decision to refuse access to the information sought relating to all purchase orders over €20,000 in 2019, 2020, 2021, and 2022 contained on the identified spreadsheet on the basis that the information is not "environmental information" within the meaning of the definition in article 3(1) of the AIE Regulations. I direct BnM to conduct a new internal review decision-making process in respect of the information sought in accordance with the provisions of the AIE Regulations.

Appeal to the High Court

59. A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information



Julie O'Leary
On behalf of the Commissioner for Environmental Information
29 July 2024