



Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

**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-127779-J9Y4Q0

Date of decision: 11 September 2025

Appellant: Right to Know CLG

Public Authority: Department of Housing, Local Government and Heritage (the Department)

Issue: Whether the information sought was environmental information and, if so, if it was exempt from disclosure by virtue of articles 8(a)(iii) and 9(1)(c) of the AIE Regulations

Summary of Commissioner's Decision: The Commissioner found that the information sought was environmental information under article 3(1) of the AIE Regulations. He varied the decision of the Department. He affirmed the decision to withhold the financial model and two locations named in the risk register under article 9(1)(c). He annulled the decision to withhold the balance of the redacted fields of the risk register and the constraints maps and directed release of that information.

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. This review concerns a request for information made to the Department of Housing, Local Government and Heritage (the Department) on 24 May 2022. The request was for information in relation to the Enhanced Decommissioning Restoration and Rehabilitation Scheme (EDRRS) as follows:
 - “1) risk register

“EDRRS monitoring reports reference a register that is reviewed with NPWS [National Parks and Wildlife Service] and DECC [Department of Environment, Climate and Communications] on a monthly basis. Please provide most recent version of the register
 - “2) Monitoring and Verification reports

“Likely contain the actual environmental data that underpin the short quarterly reports, e.g. water quality measures. Please provide the latest monthly copy, as provided to Dept by Bord na Móna [Bord na Móna]
 - “3) Any maps related to EDRRS submitted by Bord na Móna to Dept under the monitoring of the scheme

“Please provide any maps in shp file format
 - “4) EDRRS financial model”
2. According to the website of [Bord na Móna](#), which is “an Irish, semi-state climate solutions company helping lead Ireland towards a climate neutral future”, the EDRRS, also known as [Peatlands Climate Action Scheme](#), relates to the decommissioning, rehabilitation and restoration of Bord na Móna bog sites following the cessation of peat production from all of Bord na Móna’s bogs. The stated aim of these measures is to accelerate the body’s decarbonisation strategy with a view to optimising carbon storage and reducing carbon emissions, which will have consequential benefits for biodiversity and water quality and catchment.
3. According to submissions to this Office from the Department and information on the EDRRS from the Government website, www.gov.ie, Bord na Móna is the operator of the EDRRS, while the Department, in its manifestation as the National Parks and Wildlife Service, is the regulator and the Department of the Environment, Climate and Communications is the administrator of the scheme. By way of clarification, the generic nomenclature “Bord na Móna” encompasses Bord na Móna plc and its subsidiary companies, including Bord na Móna Energy Limited, which is the actual company charged with operating the EDRRS Scheme within the suite of Bord na Móna companies, as clarified to this Office in submissions made by Bord na Móna plc.



4. By letter dated 20 June 2022, the Department notified the appellant that it was extending the time within which to issue a response to the request by up to one month, in accordance with article 7(2)(b) of the Regulations.
5. On 19 July 2022, the Department issued its decision letter (dated 15 July) to the appellant, indicating that it had found 62 records that related to the request. Of the 62 records, it refused access entirely to two under article 9(1)(c) of the Regulations. The first of these, record 1 on the schedule of records, was the EDRRS financial model (the financial model), namely item 4 on the request for information. The second, record 2 on the schedule of records, was the risk register, which was item 1 on the request for information. In respect of the remaining 60, it “granted part access” to them with some information redacted by reason of articles 8(a)(iii) and 9(1)(c) of the Regulations, as follows:
 - a) Records 3-41 on the schedule of records consisted of monitoring and verification plans in respect of individual bogs and were all redacted by reason of article 8(a)(iii); these plans respond to item 2 on the request for information;
 - b) The remaining 21 records consisted of map books, each containing a collection of maps. Each of these map books (records 42 to 62, inclusive, on the schedule of records), had one map in each marked “constraints map”. Each of these maps was redacted in full, by virtue of article 9(1)(c) of the AIE Regulations. Of these 21 records, 19 were also redacted by reason of article 8(a)(iii), namely records nos. 44-62, inclusive; each of these 19 map books, in addition to containing a constraints map, contained also a “map which identifies the piezometers that have loggers installed” (the piezometer maps). It was these latter maps that were redacted under article 8(a)(iii). All 21 records respond to item 3 on the request for information.
6. The Department attached a detailed schedule of records to the decision letter. The decision letter also noted that, in accordance with article 7(3) of the AIE Regulations, the 60 records being part-granted were in pdf format, rather than in the requested shp file format, as it was in pdf format that the Department had received them and held them. I note that the appellant raised no objection to the provision of maps in pdf format at that time, despite its original request that they be supplied in shp format. I therefore find it surprising that in its observations on the draft decision that issued to the parties (see paragraph 12 below), it suggests that “*BnM is supplying the data in pdf format which is not an open data format. [We] do not believe that BNM hold their mapping data in pdf format.*” This ignores the fact, as stated by the Department, that it, the Department to which the original request had been addressed, had received records in pdf format from Bord na Móna.
7. The letter described the way in which the Department had given consideration to articles 10(3) and 10(4) of the Regulations and weighed up the public interest served by disclosure of the information against the interest served by disclosing it, concluding that the public interest in



preserving the confidentiality of the records it had refused under article 9(1)(c) outweighed the public interest served by releasing them.

8. On 19 July 2022 the appellant requested an internal review of the Department's decision to refuse access to records 1 and 2 on the schedule of records (items 1 and 4 of the request, namely the risk register and the financial model, respectively) and to redact the "constraints maps" (corresponding to item 3 of the request). To note that the request for internal review did not encompass the release of records 3-41 on the schedule of records consisting of monitoring and verification plans, which relate to item 2 on the request for information, nor the release of the piezometer maps redacted under article 8(a)(iii) of the AIE Regulations in records 44-62, inclusive. Neither did it dispute the release of information in pdf format.
9. On 19 August 2022, the Department responded to the internal review request by varying its original decision. Whilst it affirmed the original decision not to release record 1 on the schedule of records (the financial model) under article 9(1)(c) of the Regulations, and to part-grant records 42-62 (map books) by virtue of articles 8(a)(iii) and 9(1)(c), it granted partial release of record no. 2, the risk register, with redactions made under article 9(1)(c) of the Regulations. I note, as indicated in the previous paragraph, that the maps part-granted by virtue of article 8(a)(iii) did not form part of the internal review request, as the only maps confirmed to be the subject of the request by the appellant in correspondence with the Department following submission of the internal review request were the constraints maps.
10. On 31 August 2022, the appellant submitted an appeal to this Office relating to the Department's refusal to release the financial model, the redactions made to the risk register and the refusal to release "records (mapping) showing constrained areas" (the constraints maps). The appellant clarified that the appeal did not encompass the refusal of the Department to release "records on mapping of piezometer locations", namely the maps in the map books redacted under article 8(a)(iii) of the AIE Regulations in records nos. 44-62 on the schedule of records (the piezometer maps). Accordingly, the element of the appeal relating to maps encompasses only the redaction of constraints maps in records 42-62, inclusive.
11. Given that the information sought was provided by Bord na Móna to the Department, I considered that it was appropriate to seek submissions from Bord na Móna during the course of this appeal.
12. Following correspondence between Bord na Móna and this Office during the review of this appeal, this public authority indicated that it was of the view that five of the 21 constraints maps could be released, namely records 42, 43, 45, 52 and 56. Accordingly, this part of the appeal refers only to the 16 constraints maps that remain redacted in full.
13. A draft version of this decision issued to the parties (and to Bord na Móna) for observations on 26 August 2025. Whilst the Department indicated to this Office that it had none to make and would act as directed by the Commissioner, the appellant and Bord na Móna submitted observations.



Where relevant, those observations have been incorporated into the pertinent sections of this decision.

14. I have now completed my review under article 12(5) of the Regulations. In so doing, I have had regard to the submissions made by the appellant and the correspondence provided to my Office by the Department and by Bord na Móna at my Office's request. I have also examined the contents of the records at issue. In addition, I have had regard to:
- a) 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);
 - b) Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based;
 - c) 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);
 - d) The Aarhus Convention—An Implementation Guide (Second edition, June 2014) ('the Aarhus Guide');
 - e) the judgments of the Superior Courts in *Hanrahan v. Merck Sharp & Dohme (Ireland) Ltd* [1988] I.L.R.M. 629 (*Hanrahan*); *Digital Rights Ireland Ltd. v. Minister for Communications* [2010] 3 I.R. 251 (*Digital Rights Ireland*); *CRH Plc. V. CCPC* [2018] 1 I.R. 521 (*CRH Plc*); *Redmond & Anor v Commissioner for Environmental Information & Anor* [2020] IECA 83 (*Redmond*), *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [2020] IEHC 190 (*ESB*) and *Right to Know v Commissioner for Environmental Information & RTÉ* [2021] IEHC 353 (*RTÉ*);
 - f) the judgment of the Court of Appeal of England and Wales in *Department for Business, Energy and Industrial Strategy v Information Commissioner and Henney* [2017] EWCA Civ 844 (*Henney*) which is referenced in the decisions in *Redmond*, *ESB* and *RTÉ*; and
 - g) the decisions of the Court of Justice of the European Union (CJEU) in C-321/96 *Wilhelm Mecklenburg v Kreis Pinneberg - Der Landrat (Mecklenburg)*, C-316/01 *Eva Glawischnig v Bundesminister für soziale Sicherheit und Generationen (Glawischnig)*, [C-619-19 Land Baden-Württemberg v D.R.](#) and [C-204/09 \(Land Baden\)](#), *Flachglas Torgau GmbH v Federal Republic of Germany (Flachglas)*; Case C-450/06 *Varec*; Case C-1/11, *Interseroh*; and [Hoechst v. Commission and AKZO Chemie v. Commission](#);
 - h) the decision of the European Court of Human Rights (ECHR) in [Niemitz v. Germany and Colas Est SA v. France](#)
15. In carrying out this investigation, I had considerable evidence before me. The submissions of the parties contain evidence, both factual and opinion, as well as arguments on that evidence and the



various legal provisions at play. In addition, I examined the subject matter records relevant to the appeal.

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

Scope of Review

17. In summary the information that remains the subject of this appeal is as follows:

- a) The financial model;
- b) The risk register in redacted form; and
- c) The 16 redacted constraints maps that remain the subject of this element of the appeal.

18. Having considered the contents of the appeal and the submissions made by the Department and Bord na Móna, considered in the paragraph above, I consider that the scope of my review in this appeal concerns:

- a) whether the information encompassed within the financial model and the risk register is environmental information; and, if so,
- b) whether that information, and also the redacted constraints maps, are exempt from release under article 9(1)(c); and whether certain of the maps are also exempt from release under article 8(a)(iii) of the AIE Regulations.

Preliminary Matters

19. Before I consider the substantive issues arising, I wish to make a number of preliminary comments.
20. First, a review by this Office is considered to be *de novo*, such that this Office is required to come to its own conclusions based on the evidence and materials properly before it, based on the circumstances and the law as they pertain at the time of the decision.
21. Second, 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 by the parties to the appeal.
22. Third, in submissions made to this Office in the course of this review, the Department, whilst relying principally on article 9(1)(c) to support its refusal to release the information at issue, stated in respect of the financial model and the redacted risk register, the Department also sought to argue that that the information in these records was not environmental information. It went on to state, in each case, that the release of the information “*is not necessary to understand the environmental information provided*” in the other information that was released to the appellant. For its part, the appellant made the observation following receipt of the draft decision, that the



“Financial model cannot be separated from the other environmental data, as it is core to how BnM manages these projects (eg deciding on areas to be restored vs drained)”.

23. However, I note the Department has made no arguments in support of the position that the information sought was not environmental information and has made no reference to the relevant article in the AIE Regulations in respect of this matter, namely article 3(1). The Department is reminded that whether information is “environmental information” is a threshold issue to be considered when processing an AIE request. That being so, in cases where information has been released and exemption provisions have been relied upon, it is unhelpful for a public authority to raise such an argument for the first time before my Office.
24. I also wish to address the Department’s initial refusal to provide this Office with a copy of the financial model. In normal course, public authorities furnish to this Office copies of information that they have both released and not released to requesters, once an appeal has been submitted. It is necessary in the majority of appeals for me to review information that has been refused in order to determine, first, whether in appropriate cases it can be considered information on the environment and, second, if in such case it, or any part of it rightly falls within the exemption(s) relied upon by the public authority to refuse access to it. In the present case, that article is 9(1)(c) of the AIE Regulations. I acknowledge the Department’s cautious approach in not wishing the model’s confidentiality to be compromised by release to this Office. However, as conveyed to the Department in correspondence during the course of the appeal, the model was to be maintained securely by this Office and retained solely for the above-described purposes prior to its return to the Department or the destruction of the copy delivered to this Office.

Analysis and Findings

Whether the EDRRS financial model and the redacted parts of the risk register contain environmental information

25. Article 3(1) of the AIE Regulations is the relevant provision to consider the issue of whether information is “environmental information”. In line with article 2(1) of the 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) ".
26. 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 above 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 (*Glawischnig* 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. Under Article 3(1)(c) the connection between the information and the environment is found in the measure in question and not necessarily in the information itself.
27. In my view, paragraph (c) of the definition is the most relevant to this review.
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” (at paragraph 20, emphasis added). The Irish High Court adopted a similarly expansive approach to the term ‘activity’ (*RTÉ* at paragraph 19).

Whether the withheld parts of the risk register are environmental information

29. In firstly considering the redacted parts of the risk register that are the subject of this appeal, it is necessary, as a next step, to identify the relevant “measure(s)” that will affect or will likely affect the environment which bring those parts and, indeed the risk register in its entirety, within the definition of environmental information.



30. According to the Department, the requested information consists of operational procedures and security measures, to be implemented by Bord na Móna, designed to mitigate certain risks associated with the activities of Bord na Móna. It is clear from my review of the risk register that it relates to the operation and carrying out of the Peatlands Climate Action Scheme, also referred to as the EDRSS. This scheme involves peatlands decommissioning, rehabilitation and restoration measures. The primary aim of the scheme, according to [to the scheme's section](#) on the Bord na Móna website “is to optimise *climate action* benefits of rewetting the former industrial peat production areas by creating soggy peatland conditions that will allow compatible peatland habitats to redevelop” [emphasis added]. According to the same webpage, the scheme “will deliver benefits for *climate action* by optimising carbon storage of residual peat, *reducing greenhouse gas emissions* from cutaway bog and accelerating the development of carbon sequestration” [emphasis added]. I find that the EDRSS is clearly a measure or activity within the meaning of paragraph 3(1)(c).
31. I would caution against an excessively legalistic approach to the identification of the “*correct*” measure. In my view, the Irish and European courts have not indicated that there is one clear and precise answer to the identification of a measure. Rather, the courts have indicated that the focus should be on whether the measure affects or is likely to affect the environment. 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. Collins J, delivering judgment on behalf of the Court of Appeal in Redmond, noted that “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)” (paragraph 63).
32. I consider that based on the information set out above from the Bord na Móna website, the EDRSS will self-evidently affect the environment and therefore is a measure affecting or likely to affect the elements of the environment contained in article 3(1)(a) and (b) of the AIE Regulations.
33. I must then consider whether the risk register is information “on” the scheme within the meaning of paragraph 3(c). In Henney (paragraph 43), the Court suggests that, in determining whether information is “on” the relevant measure or activity, it may be relevant to consider the purpose of the information such as why it was produced, how important it is to that purpose, how it is to be used, and whether access to it advances the purposes of the Aarhus Convention and the AIE Directive. Information is on a measure if it is about, relates to or concerns the measure.
34. The risk register sets out the key risks that Bord na Móna has forecast in relation to its activities in carrying out the scheme. The risks are essentially challenges that Bord na Móna expects to face in achieving the objectives of the scheme, and how it intends to mitigate those challenges. Effectively dealing with the risks set out in this document will affect whether or not Bord na Móna will



achieve the objectives set out in the scheme in a timely, efficient and cost-effective manner. The information in the risk register is inextricably linked to the scheme.

35. Accordingly, I consider the risk register in its entirety, including the parts which have not been released by the Department, to be information “on” the measure within that definition.

Whether the financial model is environmental information

36. The financial model is also associated with the EDDRS or Peatlands Climate Action Scheme. As I have established above, this scheme is a “measure” within the definition set out in article 3(1)(c) of the AIE Regulations and this measure affects the environment. The financial model sets out financial and economic information that is intimately associated with this scheme. A financial model derives from the term ‘financial modelling’. According to the Oxford English Dictionary (OED), financial modelling is the “construction and application of mathematical models for financial calculations, projections, etc.” The financial model in this case is therefore a tool that is used in the financial modelling of the Peatlands Climate Action Scheme or EDRRS, that is, in the construction and application of mathematical models for financial calculations, projections, etc., related to the scheme, according to the OED definition. There is no doubt from a review of the information contained in the financial model that it contains detailed information on this type. I am therefore satisfied that the financial model is information “on” the scheme within the meaning of paragraph 3(c) of the definition of environmental information).

37. It is important to state that, though environmental information can include information that may affect commercial or industrial confidentiality, such information may be exempt from release under article 9(1)(c) of the AIE Regulations. I shall now consider the Department’s reliance on this article to refuse to release information.

Whether the information is exempt from release under article 9(1)(c) of the AIE Regulations

38. Article 9(1)(c) states:

“A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect . . . commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest,”

39. This provision is based on Article 4(2)(d) of the Directive which states that Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect “*the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy*”.



40. Article 4(2) goes on to make clear that this ground of refusal “*shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure*” and in every particular case “*the public interest served by disclosure shall be weighed against the interest served by the refusal*”. Article 4(2)(d) does not provide a ground for refusal “*where the request relates to information on emissions into the environment*”. These requirements are reflected in Article 10 of the AIE Regulations.
41. While Article 4(2)(d) has been referenced by the Court of Justice of the European Union (“CJEU”) in a number of cases, the CJEU has not provided detailed guidance on this exemption. The CJEU has, however, provided useful guidance on the interpretation and application of Article 4(2) more generally: see in particular the judgment of the Grand Chamber of 14 February 2012 in C-204/09 *Flachglas*. As appears from that judgment (paragraphs 61-63):
- a) By specifying in Article 4(2) of Directive 2003/4 that the protection of the confidentiality must be ‘provided for by law’, the European Union legislature clearly wanted “*an express provision to exist in national law with a precisely defined scope, and not merely a general legal context*”.
 - b) However, this specification “*cannot be interpreted as requiring all the conditions for application of that ground for refusing access to environmental information to be determined in detail since, by their very nature, decisions taken in that domain are heavily dependent on the actual context in which they are adopted and necessitate an assessment of the nature of the documents in question and the stage of the administrative procedure at which the request for information is made*”.
 - c) Public authorities should not be able “*to determine unilaterally the circumstances in which the confidentiality referred to in Article 4(2) of Directive 2003/4 can be invoked*”.
42. In addition to the findings in *Flachglas*, the CJEU also considered the obligations on public authorities relying on exemptions in [C-619-19](#) *Land Baden-Württemberg v D.R.* In that case the Court relied on Article 4(5) of the Directive, the last sentence of which puts an obligation on a public authority to state reasons for refusal of access to environmental information in writing to the requestor. At paragraph 69 of *Land Baden* the Court stated:
- “On the contrary, a public authority which adopts a decision refusing access to environmental information must set out the reasons why it considers that the disclosure of that information could specifically and actually undermine the interest protected by the exceptions relied upon. The risk of that interest being undermined must be reasonably foreseeable and not purely hypothetical.”*
43. Taking the above into account, I consider that Article 9(1)(c) requires me to address the following questions:



- a) Is the confidentiality of the information protected by a national or EU law?
- b) Is that law in place to protect commercial or industrial confidentiality?
- c) Does that law have a precisely defined scope?
- d) Is that law objective, such that it does not permit public authorities to determine unilaterally the circumstances in which confidentiality can be invoked?
- e) Would disclosure of the information will have an adverse on a legitimate economic interest?

As per *Land Baden*, the public authority, or any party objecting to release, must show how release of the information would specifically and actually undermine this legitimate economic interest.

44. Bord na Móna has sought to rely on the following legal protections of confidentiality:
- a) The equitable duty of confidence;
 - b) S. 32 of the Turf Development Act 1998;
 - c) Bord na Móna's Constitution.
 - d) The Trade Secrets Directive, as implemented by the EU (Protection of Trade Secrets) Regulations 2018 (SI 188/2018);
 - e) The protection of confidentiality as an aspect of fundamental rights guaranteed under the Constitution, the ECHR or the EU Charter of Fundamental Rights; and
 - f) Contractual duties of confidentiality.
45. As I consider the equitable duty of confidence to be the most important of these, I will deal with it first. Before doing so, it is necessary to set out the role that the fundamental right to confidentiality plays in this process.
46. While the fundamental right to privacy – as guaranteed as an unenumerated right under Article 40.3 of the Constitution, and expressly in Article 8 ECHR and Article 7 of the Charter – applies primarily to natural persons, it has also been recognised as applicable to legal persons in appropriate contexts, including in the context of commercial/industrial confidentiality. In its recent submission, Bord na Móna has referred to the cases of *Digital Rights Ireland v. Minister for Communications* [2010] 3 IR 251 and *CRH plc v. Competition and Consumer Protection Commission* [2018] 1 IR 531 as a matter of Irish law, to cases such as *Niemitz v. Germany* and *Colas Est SA v. France* under the ECHR, and to cases such as *Hoechst v. Commission* and *AKZO Chemie v. Commission* as a matter of EU law. The CJEU has long recognised that the protection of business secrets is a general principle of Union law: see in particular Case C-450/06 *Varec*, paragraph 49; C-1/11, *Interseroh*, paragraph 43.
47. While the precise scope of protection for commercial confidentiality under the Constitution, the ECHR and the Charter of Fundamental Rights is not entirely clear cut, it is nonetheless well-established that these instruments provide protection for privacy and confidentiality in a



commercial context. Indeed, these fundamental rights guarantees could well come into play where the existing laws governing confidentiality are not fully effective to protect and vindicate the fundamental right to privacy of legal persons (for example, if there was no statutory, common law or equitable protection of confidentiality). In this regard, it is instructive to note the approach of the Supreme Court to the relationship between existing causes of action and actions for breach of constitutional rights, as encapsulated in the dictum of Henchy J. in *Hanrahan v. Merck Sharp & Dohme (Ireland) Ltd* [1988] I.L.R.M. 629:

“A person may of course in the absence of a common law or statutory cause of action, sue directly for breach of a constitutional right (see Meskell v. C.I.É. [1973] I.R. 121); but when he founds his action on an existing tort he is normally confined to the limitations of that tort. It might be different if it could be shown that the tort in question is basically ineffective to protect his constitutional right.”

48. Therefore, if it was established that an existing cause of action in tort (in that case, nuisance) was ineffective to protect the constitutional right in question, a person would be entitled to sue directly for breach of the constitutional right. While the principle in *Hanrahan* was expressed specifically in the context of the law of tort, there is no reason in principle why it would not also apply in the context of other areas of law which serve to vindicate constitutional rights (such as statute, also expressly referenced in the paragraph, or the common law of contract or equity as appropriate). In short, a fundamental right to privacy would provide a backstop of protection in the event that, or to the extent that, the existing law is inadequate or ineffective. As will be discussed in the next section, I consider that the equitable duty of confidence provides an adequate protection of the confidentiality rights of the public authorities in this case and do not consider it necessary to rely directly on the above fundamental rights. In setting out and applying the equitable duty of confidence below, I do so in light of these fundamental rights.

Equitable duty of confidence

49. The equitable duty of confidence is well-established in Irish law and the three elements of a cause of action for breach of that duty are as laid down by the Supreme Court in *Mahon v Post Publications* [2007] 2 ILRM 1:
- a) the information must have the necessary quality of confidence about it;
 - b) it must be communicated in circumstances of confidence/trust; and
 - c) it must be wrongfully communicated by the person receiving it or another person who is aware of the obligation of confidence.
50. In its full form the equitable duty of confidence is a cause of action that allows the beneficiary of the confidentiality to prevent a breach of confidentiality, or sue for damages if there has been a breach. While the cause of action will only be complete if all three elements are satisfied and, in particular, there is misuse or threat of misuse of the confidential information, it is nevertheless the



case that there is an underlying duty of confidentiality which forms the basis of this cause of action. As such, the first step in the test above is the most important for the purposes of this decision.

51. According to Toulson & Phipps, the leading English textbook on confidentiality, the following points are relevant to the consideration of whether the information is confidential:
- a. The test is objective and not subjective. This means that it is not relevant that the public authority thinks that the information is confidential. The test is whether a reasonable person would regard the subject matter as confidential. Would a reasonable person in the position of the parties regard the information as confidential?
 - b. There must be some value to the party claiming confidentiality in the information being treated as confidential;
 - c. Reasonableness factors in the usage and practices in a particular sector;¹
 - d. Trivial or useless information will generally not be confidential.² In any event, release of such information would not have an adverse effect on confidentiality.
 - e. The age of the information is a relevant factor to consider when determining its confidentiality. This is done on a case by case basis. The older the information the less likely it is to be confidential.³
 - f. If the information is in the public domain then it is not confidential. By that the authors mean that it is generally accessible by the public.
52. The equitable duty of confidence is applied in a range of circumstances in Irish law, but it is clear that it can apply in respect of commercial or industrial information. I also accept that, when it so applies, such application may be for the protection of a legitimate economic interest. The equitable duty of confidence is a principle of the common law rather than a legislative provision. However, as it is a principle which is well established and understood in Irish law, I accept that the equitable duty of confidence has a precisely defined scope and is not a 'general legal context', consistent with the requirement set out in *Flachglas*. This is notwithstanding that an assessment of whether information has the 'necessary quality of confidence' is fact-specific in a given case. Similarly, I accept that the test for whether there is an equitable duty of confidence is objective, such that public authorities are not permitted to determine unilaterally the circumstances in which confidentiality can be invoked, again consistent with the requirement set out in *Flachglas*.
53. Accordingly, I must go on to consider, in relation to the information at issue: (i) whether the information is in fact protected by the equitable duty of confidence in this case, and (ii) whether

¹ At page 72

² At page 75

³ At page 80



Bord na Móna's legitimate economic interest would in fact be adversely affected by the disclosure of the information.

Application of the equitable duty of confidence to the facts

54. As set out above, this appeal concerns three categories of information:
- The financial model;
 - The redacted parts of the risk register; and
 - The 16 unreleased constraints maps.

(a) The financial model

55. According to submissions received from the Department on 6th June 2023, the financial model contains "very sensitive" financial information, such as:
- Day rates for different grades of employees
 - Day rates for use of machinery
 - Costs of fuel and materials
 - Cost of new vehicles and machinery
 - Insurance costs
 - Detailed breakdown of work programme by hour and rate
56. In addition, the Department noted that the financial model is used by Bord na Móna in other areas of work and not just peatland restoration. On 14 March 2024, Bord na Móna made a detailed submission on the financial model. It said that the model:

"was developed by Bord na Móna Energy Limited for the purpose of costing the rehabilitation and decommissioning works under the Scheme, by the use of certain methodologies designed to ascertain the additional cost of such works beyond what would be encompassed by the rehabilitation requirements associated with the relevant IPC licences."

57. I have taken into consideration the views of the appellant, made in observations on the draft decision, that the "*environmental admin[istration] records are clearly covered under 'cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to'*" in paragraph (c) of article 3(1) of the AIE Regulations, that "*[p]eatlands decommissioning, rehabilitation and restoration by BnM is environmental information*", that "*[p]art release of records undermines [the] AIE [Regulations]*", that the "*model and risk register are inextricably linked to the scheme*" and that "*by obscuring ... the [financial] model, it enables BnM to continue land drainage*" when, it states, public policy is against peatland drainage. I note also its views that none of the factors listed at paragraph 55 above "*would be considered 'very sensitive' financial information*" and that they "*are all costs that anyone involved in environmental conservation projects could estimate, simply by knowing cost of diesel, basics of staffing rates etc.*"



58. I note further that it is of the view that “BnM have no competition at all, not even a little bit”, that it “will be the only bidder on state peat restoration contracts forever” that “BnM will never face any substantive counter bids in any of their restoration or drainage operations”, that “BnM is the only operator in this field in Ireland” and that “BnM has failed to demonstrate that the market [is] anything other than a ‘one company’ market”.
59. However, I accept Bord na Móna’s submission that it operates in a competitive commercial market for peatland restoration. Having regard to this commercial environment and the nature of the information contained in the record, I am satisfied that release of this model could put Bord na Móna at a commercial disadvantage in future tendering processes by allowing its competitors to have a detailed insight into its pricing for peatland restoration projects. In addition, the model contains details of commercial relationships with third parties. I accept that release of this information to the world at large would weaken Bord na Móna’s negotiating position with these suppliers. I accept that salary information on employees is also confidential. Having reviewed the content of the information in detail, I accept Bord na Móna’s submission that the financial model does not record the expenditure by Bord na Móna on any project.
60. The model has 45 different tabs containing a significant amount of financial information on equipment costs, staffing, project details, work to be done, funding and costs of the project. I have reviewed all 45 tabs and to me it is clear that the model as a whole has the necessary quality of confidence about it. It is a substantive piece of work that is clearly of a commercial nature and contains the internal workings of Bord na Móna as to how it will cost and manage peatland restoration. Many if not all of the tabs are interlinked such that it is not possible to separate out one tab from the overall record. Accordingly, I am satisfied that the information in the financial model is in fact protected by the equitable duty of confidence.
61. Bord na Móna has clearly demonstrated that it operates for profit in a commercial context and this is a clear legitimate economic interest. The above submission meets the test for adverse effect in *Land Baden* as Bord na Móna has shown how release of the information would actually and specifically adversely affect its legitimate economic interest.

(b) The risk register

62. In its original decision the Department refused access to the risk register. It did not give any reason for this, merely reciting two exemptions, article 8(a)(iii) and 9(1)(c). The internal review decision released all of the risk register except for information on Control Measures in relation to three risks:
- Damage to carbon flux tower and other fixed monitoring equipment.
 - Illegal (including established) turf cutting associated with areas to be ‘rehabbed’
 - Site security - risk of damage to plant and equipment. risk of fire, trespass, etc.



63. But just like the original decision, the internal review decision does not give any reasons for refusal. This is unsatisfactory. As the CJEU made clear in Case C619/19 *Land Baden-Württemberg*, compliance with the requirement to give reasons for the application of exceptions is necessary to enable the requester to understand those reasons, but also to enable scrutiny of those reasons on review by the Commissioner and the courts. Such reasons cannot simply refer to one of the exceptions, but must set out why the public authority considers that disclosure could specifically and actually undermine the interest protected by the exception (see paragraphs 67-69).

64. According to submissions made to this Office by Bord na Móna, release of the final three cells in the risk register:

“could be utilised by bad actors with a view to gaining access to and/or possession of Bord na Móna Energy Limited’s plant, equipment and property and/or in order to inflict damage to such plant, equipment and property, to the ultimate detriment of Bord na Móna Energy Limited and the operation of the EDRRS Scheme.”

65. This information is clearly commercial in nature and on balance I think that it has the necessary element of confidentiality about it. However, apart from the last entry in cell G3 and the second last entry in cell G9, I cannot see how release of this information would give rise to the adverse effect set out by Bord na Móna above. At paragraph 69 in *Land Baden*, the CJEU stated that the risk to the public authority of the interest protected by an exemption being undermined must be reasonably foreseeable and not purely hypothetical. To me, Bord na Móna’s argument here is purely hypothetical. I am supported in this by the fact that uniquely in the case information that Bord na Móna says should not have been released was in fact released. Accordingly Bord na Móna should be able to point to some concrete adverse effect on its legitimate economic interest from release of the almost complete risk register. It has not done so.

66. I say this as the redacted information is generic and does not disclose any specific steps that will be taken by Bord na Móna, such that if a “*bad actor*” knew about the information in the redacted cells, it would assist them in getting access to Bord na Móna plant or property. As such, I do not think that article 9(1)(c) applies to all the redacted information in the risk register and Bord na Móna has not shown, actually and specifically, how release of this information would adversely affect its legitimate economic interest. I note also the view of the appellant made in observations on the draft decision in regard to the second bullet point in paragraph 62 above that “*illegal (including established) turf cutting associated with areas to be ‘rehabbed’ is clearly environmental data, and should never be redacted.*”

67. The site specific information in cells G3 and G9 is different. It is not generic in nature and refers to security issues in two precise locations. While it is a marginal call, on balance I think that this information is covered by the equitable duty of confidence and that there is a reasonably foreseeable risk of adverse effect to Bord na Móna if this information is released.



(c) The constraints maps

68. The constraints maps are part of a GIS Map Book compiled by Bord na Móna. There are about 28 different maps in each book and it is only the constraints maps that are relevant to this appeal. However, much like the redacted cells in the risk register, the Department failed both in the original decision and at internal review to give any reason for why it was relying on articles 8(a)(iii) or 9(1)(c). Again, this is unsatisfactory, for reasons explained above. During the course of this review, Bord na Móna provided submissions to this Office setting out why it considered that the maps should be considered to be exempt from release.
69. Having carefully examined the constraints maps, I am satisfied that these maps are commercial in nature, setting out issues such as ownership of the lands, use of the lands and future development of the lands.
70. Bord na Móna argue that 16 constraints maps should not be released for three different reasons. **First**, some maps show lease/licence arrangements with third parties and release of the details could be exploited by third parties seeking unauthorised access to the lands. Bord na Móna submits that this might happen as the public will know that Bord na Móna is not itself using the lands. Bord na Móna explains that unauthorised access is an ongoing problem for it. **Second**, some of the maps show information on lands over which rights are held or claimed by others. The maps do not disclose whether Bord na Móna accepts these claims. According to Bord na Móna, release of this information could potentially prejudice it in making any future application before Tailte Éireann or the courts. Bord na Móna also says that certain maps also show areas of activities by third parties, some of which may be subject to ongoing investigation and possible legal action by Bord na Móna. It argues that there is a greater risk of trespass if the public know that there is a dispute over landownership. **Third**, Bord na Móna submits that some of the constraints maps show planned areas of future development. Some of these areas are under review and subject to change. Bord na Móna states that advance knowledge of planned development can increase land values in the vicinity and this can be leveraged by persons in negotiation with Bord na Móna for their advantage.
71. Again, I think that the question as to whether this information is covered by the equitable duty of confidence is finely balanced. One of the key elements identified by Toulson, set out in paragraph 49, is that the information must have some value to the parties. Bord na Móna has met this test in its submissions, but in my view this is a marginal call. However, the test here is not just that the information is protected by the equitable duty of confidence, but that release of confidential information would have an adverse effect on the legitimate economic interests of Bord na Móna. I do not think that Bord na Móna has met this test and my reasons for this conclusion are set out below, addressing each of the points raised by Bord na Móna in turn.



72. In relation to the first point, just because Bord na Móna is not active on leased/licenced lands, does not mean that no one is. It is a fair assumption that the third parties benefiting from, and presumably paying for, the lease or licence are in some way active on the lands. But even if they are not and the land remains unused, this is a fact that is likely to be known locally. In addition, Bord na Móna has not given any details of how frequent a problem unauthorised access is. All that is before me is a simple statement from Bord na Móna that unauthorised use of lands is generally an issue for Bord na Móna. In my view Bord na Móna has drawn a purely hypothetical link between releasing information on the lands leased/licenced to third parties and an increased risk of trespass. It is possible to argue the opposite, that lands leased or licenced to third parties are more likely to be in use and less likely to be trespassed upon as a result. Bord na Móna has not met the test in *Land Baden*, it has not provided reasons that show how disclosure of the information could specifically and actually undermine its commercial interests here.
73. In relation to the second point, I do not think that Bord na Móna has met the test in *Land Baden* either. It is to be expected the individuals asserting a claim over land know of the extent of that claim and/or the extent of Bord na Móna's ownership. All that release of the maps would do is allow the public to know the extent of Bord na Móna's ownership and areas where Bord na Móna notes that others make claims. It is difficult to see how publication of such facts could have an adverse effect one way or another. It is also difficult to see how prejudice to Bord na Móna could arise if it were later before *Tailte Éireann* or the courts seeking to refute such claims, where these records do not endorse the claims in any way. If there is a fear that the information on the maps could be misunderstood, this is a point that can be clarified by the Department when the information is released. All that is before me is a relatively generic statement of the adverse effects that could arise but no reasons that show specifically and actually how Bord na Móna's legitimate economic interests would be undermined.
74. In relation to the third point, Bord na Móna has listed six different bogs where the maps show plans for development. It has publicly announced plans for windfarms on two and a solar farm on two more. It has publicly committed to rehabilitating one of them. Bord na Móna has said that it might need to enter negotiations with adjoining landowners for rights over their land, such as a wayleave, and that knowledge of plans for its future development could damage its negotiating position. However, if a landowner is approached by a State entity like Bord na Móna for access rights, it would be a fair assumption on the part of the landowner that Bord na Móna wants access for a commercial reason. Bord na Móna has positioned itself as helping Ireland reach net zero carbon by 2050. According to its website it does this by working across clean energy, recycling, waste and peatland restoration. It is a fair assumption that any land rights acquisition by Bord na Móna would be to further one of these aims. As such, I do not consider that this meets the *Land Baden* test either. Bord na Móna has not set out in any specific terms the adverse effects it might face if this material were released.



75. In summary, I do not accept that Bord na Móna has met the test in *Land Baden* for showing how release of the constraints maps would adversely affect its legitimate economic interests. Bord na Móna's submissions are general in nature and do not contain sufficient reasons to show that release would specifically and actually undermine its interests.

Other legal bases for confidentiality

76. As set out at paragraph 44, Bord na Móna has relied on a number of other legal protections of confidentiality. I do not think that it is necessary for me to consider the financial model or certain specified cells in the risk register under any of these as I have already found that the equitable duty of confidence applies to them, but it is necessary to consider the other legal bases in relation to the remainder of the risk register and the constraints maps.
77. I have not separately addressed the fundamental rights provisions in the Constitution, Charter or the ECHR, as I have carried out my analysis of the equitable duty of confidence and the other legal bases outlined below having regard to those fundamental rights, as explained in more detail above.

Turf Development Act / Bord na Móna's constitution

78. Section 32(1) of the Turf Development Act 1998 provides:

“(1) A person shall not disclose confidential information obtained by him or her in his or her capacity as, or while performing duties as, a director or director of a subsidiary or member of the staff of, or an adviser or consultant to, the Company or a subsidiary unless he or she is duly authorised or required by law to do so.”

79. Non-compliance with this requirement is an offence, punishable by up to two years imprisonment or a substantial fine. Subsection (3) of that section is significant in this context, providing:

“(3) In this section—

“confidential” means that which is expressed by the Company or the subsidiary concerned, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description;

“duly authorised” means authorised by the Company or, as appropriate, by the subsidiary concerned or by a person authorised in that behalf by the Company or, as appropriate, the subsidiary concerned.”

80. In its submissions, Bord na Móna states that Regulation 49.1 of the Bord na Móna constitution provides an indication of the type of information in respect of which confidentiality can be



asserted, referring as it does to “any confidential information or any books, documents or records relating to the business, affairs and accounts of the Company and its dealings with customers, suppliers and others”. The position of Bord na Móna is that this provision clearly defines the scope of the information that can be considered to be confidential for the purposes of the above provision of the 1998 Act.

81. It can be seen that neither s. 32 of the Turf Development Act 1998 nor Bord na Móna’s constitution places any constraints on what information Bord na Móna may express to be confidential. In other words, under those provisions, confidentiality means whatever Bord na Móna says it means. There is no objective test set out in the legislation. Bord na Móna has submitted that an objective test applies by virtue of Bord na Móna’s obligation, as a public body, to act reasonably. In effect, Bord na Móna argues that it is constrained by public law requirements of reasonableness in its determination of what is capable of being ‘confidential’, such that it cannot be said that it is unilaterally determining the circumstances of confidentiality. Rather, it is confined to deciding what specific material is confidential, within the bounds of public law.
82. While I understand the submission made by Bord na Móna, and accept that Bord na Móna is generally constrained by public law requirements of reasonableness, my view is that this is insufficient to comply with the requirements of EU law. As set out above, the CJEU’s judgment in *Flachglas* stated that public authorities should not be able “to determine unilaterally the circumstances in which the confidentiality ... can be invoked”. This statement was made in the context of its examination of what kinds of ‘law’ are capable of providing the protection referred to in Article 4(2) of the Directive, where the court made clear that a ‘general legal context’ would not suffice. For that reason, I cannot accept that the constraints placed on Bord na Móna’s decision-making by the general requirements of public law are sufficient to meet the requirements set out by the court in *Flachglas*. Accordingly, I do not consider that either section 32 of the Turf Development Act 1998 or the provisions of Bord na Móna’s constitution could so qualify. In my opinion both provisions are ‘anti-leaking provisions’, which are directed specifically at Bord na Móna’s directors, employees and contractors. In any event, Bord na Móna itself could authorise such an employee to disclose such information, and no constraint applies to Bord na Móna’s ability to do so.
83. For the sake of completeness, I avail of the opportunity to note that I have taken into account the observations made by Bord na Móna, following its receipt of the draft decision, in regard to the previous paragraph, in respect of which it states that it “is Bord na Móna’s submission that there is an error of law in respect of the finding ... that neither Section 32 of the Turf Development Act 1998, nor Regulation 49.1 of the Constitution of Bord na Móna plc. qualify as provisions in which, “confidentiality is provided for in national or Community law to protect a legitimate economic interest”, within the meaning of Article 9(1)(c) of the AIE Regulations. It is further submitted that there is an error of law in concluding that neither provision complies with the requirements identified by the CJEU in *Flachglas Torgau GmbH*.” The view of Bord na Móna is noted. However, I consider that I have set out my view on the law sufficiently above.



Trade secrets

84. The European Union (Protection of Trade Secrets) Regulations 2018 (SI 188/2018) provides for the protection of the confidentiality of ‘trade secrets’. Those Regulations implement, and rely on the definitions in, Directive (EU) 2016/943. The term ‘trade secrets’ is defined in Article 2(1) of that Directive as follows:

*“‘trade secret’ means information which meets all of the following requirements:
(a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
(b) it has commercial value because it is secret;
(c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;”*

85. In relation to the constraints map, I have concluded above in relation to the equitable duty of confidence that a reasonable person would not be likely to conclude that the maps are commercially sensitive, such that they are confidential. For the same reasons, I do not consider that the information ‘has commercial value because it is secret’. Accordingly, I am not satisfied that the protection for confidentiality under the trade secrets regime could apply to that information. The same applies to the parts of the risk register redacted by the Department that I do not think are commercially sensitive due to their generic nature.

Contractual duty of confidence

86. In relation to the contractual duty of confidence, on the particular facts of this case, any information which could attract a contractual duty of confidence is also covered by the equitable duty of confidence. For the same reasons as explained under the equitable duty of confidence above, I am not satisfied that the information in the risk register or the constraints maps can reasonably be considered to be commercially sensitive such that they are objectively confidential, so I do not consider that the contractual duty of confidence can apply.

Article 8(a)(iii)

87. The Department and Bord na Móna relied on article 8(a)(iii) in relation to the constraints maps. This article states:

“A public authority shall not make available environmental information in accordance with article 7 where disclosure of the information . . . would adversely affect . . . the protection of the environment to which that information relates”. The original and internal review decisions did no more than just recite the article. They did not contain reasons why release of the maps would have this effect. As explained in detail above, this is not satisfactory.



88. Bord na Móna raised this article in submissions dated 3 July 2024 and again on 10 September 2024. The sole reference to this article in the July 2024 submissions was the following:

“Additionally, any such unauthorised activities could cause damage/destruction to boglands and therefore it is Bord na Móna Energy Limited’s position that the exemption in Article 8(a)(iii) of the AIE Regulations is also applicable i.e. adverse effect on the protection of the environment to which the information relates.”

89. Bord na Móna raised similar arguments in relation to commercial confidentiality and unauthorised entry, which are addressed above. The argument in this context appears to be that release of the constraints maps would result in unauthorised access to the lands, which in turn would adversely affect the protection of the environment. I do not accept that Bord na Móna has provided enough information to show that release of certain constraints maps would have an adverse effect on the environment. Bord na Móna did not elaborate on its argument beyond the paragraph quoted above. In my view Bord na Móna has drawn a purely hypothetical link between releasing information on the lands leased/licenced to third parties and an increased risk of trespass. It is possible to argue the opposite, that lands leased or licenced to third parties are more likely to be in use and less likely to be trespassed upon as a result. I have not been provided with any concrete facts or figures on the level of unauthorised activities on Bord na Móna lands, or what Bord na Móna has to done to prevent this. This is a bald assertion by Bord na Móna and in my view this is insufficient to trigger the exemption.
90. In addition, I have examined the relevant constraints maps and I cannot see any basis for concluding that release of these maps would have an adverse effect on the protection of the environment.

Public interest balancing test

91. Having found that the financial model and two lines in cells G3 and G9 are exempt from release, I must now consider whether the public interest served by disclosure outweighs the commercial interests of Bord na Móna protected by article 9(1)(c). As I have explained above, I am satisfied that it is not possible to separate out the information in the financial model into protected and non-protected information.
92. In this context, the interest that must be examined is the legitimate economic interest protected by the equitable duty of confidence.
93. In relation to the financial model I consider that Bord na Móna has a strong interest in maintaining its confidentiality. It contains very significant confidential information on how Bord na Móna operates in a competitive environment and I accept Bord na Móna’s arguments that it would face significant adverse effects if the model were released to the public.



94. There is always a public interest in openness in environmental matters, but that public interest would not be served to any significant extent by the release of the material in the financial model. It does not contain details of what has actually been spent by Bord na Móna. I have not been able to find any environmental decision-making process where this information would be of use. As such, taking into account the strong interest in protecting Bord na Móna's economic interest in respect of this information, I do not consider that the public interest in accessing the information mandates release.
95. In respect of the redactions of two pieces of information in the risk register, I accept that there is some risk of the negative consequences set out by Bord na Móna occurring if this site-specific information were released. Other than the general public interest in openness, I cannot find precise benefit in the public knowing the exact location listed in the relevant cells. As such I do not consider that the public interest in accessing the information mandates release.

Conclusion

96. In summary, I have found that the financial model and the risk register are environmental information within the meaning of article 3(1)(c) of the AIE Regulations, I have also found that that the financial model and the named locations in fields G3 and G9 of the risk register are protected from disclosure under article 9(1)(c) of the AIE Regulations, and that the constraints maps are not protected from release either by article 8(a)(i), 8(a)(iii) or by article 9(1)(c).

Decision

97. Having carried out a review under article 12(5) of the AIE Regulations, I vary the decision of the Department. I affirm the Department's decision to withhold the financial model and the two named locations in the risk register. I annul its decision in respect of the balance of the redacted parts of the risk register and the redaction of the constraints maps and direct release of this information to the appellant.

Appeal to the High Court

98. 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.

Ger Deering
Commissioner for Environmental Information
11 September 2025