To the President and Members of the Court of Justice of the European Union

Case C-619/19

D.R.

Appellant

-and-

LAND BADEN WÜRTTEMBURG

Respondent

WRITTEN OBSERVATIONS OF THE GOVERNMENT OF IRELAND

Ireland represented by Ms. Maria Browne, Chief State Solicitor, [redacted] acting as Agent, accepting service via e-Curia with an address for service at [redacted], assisted by Patrick McCann SC and Niall Handy BL of the Bar of Ireland, have the honour of submitting the following written observations to the Court of Justice of the European Union on the questions referred for preliminary ruling pursuant to Article 267 TFEU by the Bundesverwaltungsgericht (Federal Administrative Court), Germany.

Dated this 3rd day of December 2019.

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<u>Abbreviations used</u>

"The Court"	The Court of Justice of the European Union
"The High Court"	The High Court of Ireland

I. Overarching concerns

1. The Government of Ireland is concerned that the questions referred and/or guidance that may be offered by the Court in its answers have the potential to result in unforeseen negative consequences on requests for access to environmental information. The government's executive and administrative functions and decisions are informed, *inter alia*, by internal communications submitted both from and between various sources, and by discussions, debate and decisions made, *inter alia*, by meetings of members of the government. The confidentiality of these discussions of meetings of the government enjoys significant Constitutional protection under the Irish Constitution. Disclosure can only arise in exceptional and specific circumstances set out in Article 28.4 of the Irish Constitution.

2. The Government of Ireland submits that a proper interpretation of the term "internal communications" in Article 4(1)(e) should allow public authorities scope to determine how it should be applied in relation to each particular request, taking into account the public interest in disclosure. The Government of Ireland submits there is no temporal limit imposed on the protection of "internal communications". If the Court disagrees and finds there is a temporal limit, and thus engaging with Question 3, the Irish Government submits that no such limit should apply to meetings of the members of government.

II. Relevant law

Aarhus Convention and Directive 2003/4

3. Council Directive 2003/4/EC (the 'Environmental Information Directive', hereinafter "**the Directive**") was enacted to implement the provisions of the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[1] ("**the Aarhus Convention**").

4. The Aarhus Convention provides for, *inter alia*, the right of everyone to receive environmental information that is held by public authorities ("**access to environmental information**"). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession.

5. The Government of Ireland acknowledges and supports the principle underlying the Directive as recorded by its first recital, which provides that: -

> "[I]ncreased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free

[1] The Aarhus Convention was signed on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment".

6. The fifth recital to the Directive underscores its reliance upon the Aarhus Convention.

7. The Court has acknowledged that the Directive is firmly rooted in the Aarhus Convention, which the Directive implements (Case C-524/09, *Ville de Lyons*[2]*;* Case C-279/12 *Fish Legal*[3]*).* Accordingly, when interpreting the Directive, it will be necessary for the Court to have regard to the underlying principles and provisions of the Aarhus Convention, so as to achieve an interpretation that is consistent with the objectives and wording of the Convention.

8. The Court may also take into consideration the decisions and commentaries of the compliance committee established under the Aarhus Convention ("**the ACCC**") as an aid – albeit not a binding one – to interpretation. This was the approach adopted by the Irish Supreme Court in *Conway -v- The Government of Ireland, the Attorney General & Ors*. [2017] IESC 13[4].

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[2] Case C-524/09, *Ville de Lyons*, at §§35, 36:
35 It should be noted as a preliminary point that, in adhering to the Aarhus Convention, the European Union undertook to ensure, within the scope of EU law, a general principle of access to environmental information held by the public authorities.
36 In adopting Directive 2003/4, the European Union intended to implement the Aarhus Convention by providing for a general scheme to ensure that any natural or legal person in a Member State of the European Union has a right of access to environmental information held by or on behalf of the public authorities, without that person having to show an interest.
[3] C-279/12 *Fish Legal at* §§36, 37:
36. As recital 5 in the preamble to Directive 2003/4 confirms, in adopting that directive the European Union legislature intended to ensure the consistency of European Union law with the Aarhus Convention with a view to its conclusion by the Community, by providing for a general scheme to ensure that any natural or legal person in a Member State has a right of access to environmental information held by or on behalf of public authorities, without that person having to state an interest (*Flachglas Torgau*[3], paragraph 31).
37. It follows that, for the purposes of interpreting Directive 2003/4, account is to be taken of the wording and aim of the Aarhus Convention, which that directive is designed to implement in European Union law (see, to this effect, *Flachglas Torgau,* paragraph 40).
[4] Clarke J. (as he then was) held at §4.13: "While not providing a definitive legal interpretation of the scope of the Aarhus Convention it is, in my view, appropriate to have regard to decisions and commentaries of the compliance committee established under the Aarhus Convention for the purposes of facilitating the compliance by subscribing states with the terms of the Convention itself. That committee has taken the view that "national law" relating to the environment includes EU law applicable within EU member states."

9. The Government of Ireland notes that the Court has recently suggested that the decisions of the ACCC are of somewhat limited assistance as an aid to the interpretation of the Directive (T-12/17 *Mellifera Ev*, §85).

10. Finally, in this regard, The Government of Ireland notes that the Court has also considered the application of "The Aarhus Convention: An Implementation Guide (2nd Ed.) 2014" which the Court described as an explanatory document that can be taken into account for the purposes of interpreting the Convention. The Government of Ireland notes, however, that the Court has held that the Implementation Guide is not a legally binding interpretation or normative instrument (C-279/12 *Fish Legal*[5]*, §38*; *R.(Edwards) v Environment Agency* (C-260/11)).

Refusal of requests to access environmental information

11. Whereas Article 3 of the Directive requires public authorities to make available environmental information held by or for the public authority to any applicant at his/her/its request, and without having to state an interest, such access rights are subject to a number of exceptions, all of which are expressed in discretionary terms. There are two main categories of exception. The first, specified in Article 4(1), can be referred to as administrative grounds for refusing access. The questions referred in these proceedings concern the Article 4(1)(e) administrative ground for refusal. The second category of exception, under Article 4(2), consists of substantive grounds for refusal. The latter substantive exceptions all include a *harm* test, whereas Article 4(1) exceptions do not.

12. The Directive (as with the Aarhus Convention on which it relies) explicitly requires that both categories of exception be interpreted in a restrictive way, "*taking into account the public interest served by disclosure*". Further, and crucially, the Directive requires that in every case, the public interest served by disclosure must be weighed against the interest served by the refusal of access.

[5] (C-279/12) [2013] E.C.R. 1-0000 at 68.

13. The Government of Ireland relies on the discretion afforded to Member States to achieve equivalence and effectiveness. Ireland has acted through implementing domestic Regulations (“**the AIE Regulations”**, discussed further below). Thus, the Government of Ireland submits that the Court ought not be excessively restrictive in its interpretation of Article 4(1)(e) so as to eliminate the exceptions expressly provided by Article 4(1) generally, and 4(1)(e) in particular.

Transposition of Article 4

14. In the case of Ireland, Article 4 (1)(e) of the Directive is fully and accurately transposed into Irish law by Article 9 (2) (d) of the European Communities (Access to Information on the Environment) Regulations 2007 – 2018 (“**the AIE Regulations**”) which provides: -

> “9 (2) A public authority may refuse to make available environmental information available where the request:
>
> …
>
> (d) Concerns internal communications of public authorities, taking into account the public interest served by the disclosure.

15. As will be seen, Article 9(2) of the AIE Regulations is in *identical* terms to Article 4(1)(e) of the Directive. Relevantly for the purposes of the first question in this referral, Article 9(2) of the AIE Regulations has been the subject of judicial consideration in Ireland.

III. Observations on the questions referred

Question 1

> *Is point (e) of the first subparagraph of Article 4(1) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (the Environmental Information Directive) to be interpreted as meaning that the term ‘internal communications’ covers all*

> *communications which do not leave the internal sphere of an authority which is required to provide information?*

16. Article 4(3) of the Aarhus Convention provides for circumstances where a request may be refused, including:

> (c) the request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.
> (emphasis added)

17. In turn, Article 4(1)(e) of the Directive provides for an *identical* exemption in respect of "internal communications", as follows: -

> 4 (1). Member States may provide for a request for environmental information to be refused if: …
> (e) the request concerns internal communications, taking into account the public interest served by disclosure.

18. In both cases, the exception provides for the public authority to engage in a balancing exercise, weighing a refusal under this ground against the public interest served by disclosure. The necessity for such a balancing test, as set out in the Directive and the AIE Regulations, has been recognised by the CJEU in C-266/09 *Stichting Nature en Milieu v Netherlands (§§56, 59[6]).* Indeed, the High Court of Ireland recently came to the same conclusion upon consideration of, inter alia, Article 4(1)(e) of the Directive in *Right To Know CLG v An Taoiseach* [2018] IEHC 372 (§§80-85).

[6] 56. It is apparent from the very wording of Article 4 of Directive 2003/4 that the European Union legislature prescribed that the balancing of the interests involved was to be carried out in every particular case.
..
59. It follows from the above considerations that the answer to Question 3 is that Article 4 of Directive 2003/4 must be interpreted as meaning that the balancing exercise it prescribes between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities, even if the national legislature were by a general provision to determine criteria to facilitate that comparative assessment of the interests involved.

Whether "internal communications" covers *all* communications

19. The term "internal communications" is not defined in in the Aarhus Convention, nor in the Directive. The Government of Ireland submits that the term "internal communications" refers to all written material created within and between government bodies or agencies, not distributed outside such government bodies or agencies, and including written material reflecting individual opinions of officials. The analysis in any written material does not have to have been transferred to another person to enjoy the quality of a communication.

20. It will be a matter for the public authority, having identified that the request consists in internal communications, to balance the interest in confidentiality applying to internal communications as against the public interest served by disclosure.

21. The Government of Ireland submits as a matter of administrative necessity and logic that an "internal communication" may be shared between different government bodies or agencies without losing its quality as an internal communication. Support for this interpretation is found in Article 4(4) of the Directive which expressly qualifies Article 4(1)(e) in the following terms:

> 4 (4): Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs (1)(d) and (e) or 2 from the rest of the information requested.

22. Accordingly, the public authority maintains the discretion to weigh the public interest in the balance. A more restrictive interpretation would undermine the balancing exercise expressly accorded to the Member State. Whether or not that discretion is properly exercised is irrelevant for the purposes of this reference; oversight of decisions is a matter for the internal procedures of any transposing measures implemented by a Member State[7]. In the case of Ireland, that is regulated by the AIE Regulations, which are subject to judicial review (Court review).

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[7] See, by analogy, the statement of the court concerning the member state application of Article 2(2) of the Directive in Case C-204-09 *Flachglas Torgau* at §32: "It should also be noted that the right of access guaranteed by Directive 2003/4 only applies to the extent that the information requested satisfies the requirements for public access laid down by that directive, which requires inter alia that the information is 'environmental

23. This approach is supported by the text of the Aarhus Convention itself, where it is provided at Article (4)6 that:

> 6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3(c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.

24. The text of Article 6 of the Aarhus Convention expressly considers and separates confidential information from other environmental information which may be severed without breaching confidentiality. Recalling that paragraph 3(c) (as identified in Article 6 of the Convention immediately above) is the exception provided by the Convention and Article 4(1)(e) the Directive in identical terms, The Government of Ireland submits that, when interpreting the exception provided in Article 4(1)(e) of the Directive, the same principle of separating out confidential information in this regard applies within the context of "internal communications" for the purposes of Article 4(1)(e) of the Directive.

25. The possibility of 'separating out' environmental information from Article 6 of the Aarhus Convention is mirrored in recital 17 to the Directive:

> (17) Public authorities should make environmental information available in part where it is possible to separate out any information falling within the scope of the exceptions from the rest of the information requested.

26. Crucially, as already stated, that is mirrored in Article 4(4) of the Directive. Additionally, in both recital 17 and Article 4(4) cited above, the Directive does not restrict the separation out of any environmental information merely by reference to confidential information alone, although it is plainly implicit that that confidentiality ground is included and it can be harmoniously interpreted in that manner. Confidential in this sense, connotes sensitive information as understood by the public authority of

information' within the meaning of Article 2(1) of the directive, which is for the referring court to determine in the main proceedings."

the Member State. The difference remains that the Directive did not implement Article 6 of the Aarhus Convention such as to strictly limit the separation out of information by reference *only* to confidential information.

Government and cabinet confidentiality

27. Ireland makes specific provision in its Constitution for the protection of cabinet confidentiality: See Articles 28.4.2 and 28.4.3 of the Constitution of Ireland[8].

28. In the case of *An Taoiseach v Commissioner for Environmental Information*[9] the High Court of Ireland considered whether the (domestic) AIE Regulations correctly transposed the Directive. The central issue to be decided was whether Articles 8(b) and 10(2) of the AIE regulations, described by the Court as *''the only provisions of the regulations that govern or affect cabinet confidentiality''*[10] were inconsistent with the Directive and thus invalid.

29. The Irish High Court considered how meetings of the Government should be categorised in terms of the Directive and, in particular, whether they constituted "internal communications of public authorities" to which Article 4(2)(a) of the Directive applies. The significance of the distinction is that whilst the application of Article 4(2)(a) is subject to the exception concerning requests relating to information on emissions, the application of Article 4(1)(e) is not. Subject to the information constituting internal communications of public authorities, such information will therefore be exempt from disclosure under the Directive, even where it relates to emissions. This is significant because emission-related material must always be made public; it may only be refused on grounds of intellectual property rights, international relations, public security or national defence or course of justice.

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[8] ARTICLE 28: 2° The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.
3° The confidentiality of discussions at meetings of the Government shall be respected in all circumstances save only where the High Court determines that disclosure should be made in respect of a particular matter –
(i) in the interests of the administration of justice by a Court, or
(ii) by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Houses of the Oireachtas to inquire into a matter stated by them to be of public importance.

[9] [2010] IEHC 241

[10] *Ibid.* at §9.3

30. As can be seen[11], the basis of the decision was that meetings of the government constituted *''the constitutionally mandated means or system of communication between its members for the purposes of discharging their collective responsibility.''*[12] The Court also noted that whilst many aspects of the functions of government are essentially public and external in nature, meetings of Government *''are quintessentially private and internal to the overall functions of the government''*. This constitutionally mandated form of communication between members of the government therefore could only be regarded, in the view of the Court, as internal communications of a public authority. The decision had the effect of defusing the potential conflict between the constitutional protection afforded to cabinet discussions and EU law.

31. The Government of Ireland relies on the confidentiality accorded to communications between members of government provided for by Article 28.3 of the Constitution Ireland, and upon reasoning of the High Court of Ireland in its determination on the issues as set out in the foregoing citation, in particular §9.6, subject to a balancing exercise, prescribed by Article 4 of the Directive, between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose, which must be carried out in each individual case (C-266/09 *Stichting Natuur En Milieu*, §59).

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[11] At §9.6 of the judgment of the High Court of The Government of Ireland, the court held: "On the other hand meetings of the government are the occasions when as provided for in Article 28.4.2° of the Constitution the members of the government come together to act as a collective authority, collectively responsible for all departments of State. Meetings of the government are the constitutionally mandated means or system of communication between its members for the purpose of discharging their collective responsibility. These meetings and their records are required by the Constitution to be private and confidential unless otherwise directed by the High Court under Article 28.3 of the Constitution. Whereas many aspects of the functions of the government are essentially public and external in nature, meetings of the government are quintessentially private and internal to the overall functions of the government. Thus in my judgment, this constitutionally mandated form of communication between members of the government can only be regarded as the internal communications of a public authority. Any other conclusion would lead to absurd results as pointed out by Mr Collins, in that communications between members of the government in any other context apart from formal meetings of the government would have to be regarded as internal communications, and protected from disclosure, but the same communications at a government meeting would as "the proceedings of a public authority" attract disclosure. Manifestly such a state of affairs, apart from its obvious absurdity, would seriously undermine the discharge of collective responsibility by the government, as required by Article 28.4.2° of the Constitution. In this regard, I should further add, that I am quite satisfied that the distinction sought to be drawn between communications between the members of a public authority and between officials of that authority or between officials of the authority and the members of the authority is devoid of any rational merit and has no discernible basis either in the express provisions or by way of necessary implication, in the Directive or the Regulations.

[12] *Ibid.* at Paragraph 9.6

Question 2

Is the temporal scope of the protection of 'internal communications' under point (e) of the first subparagraph of Article 4(1) of the Environmental Information Directive unlimited?

32. The Government of Ireland contends that any interpretation of the application of Article 4(1)(e) which imposes a temporal restriction not specified in the Directive (or the Aarhus Convention), would undermine the basis for the exclusions expressly provided by Article 4 of the Directive.

33. On a literal reading of the text of Article 4(1)(e), there is no temporal limit imposed on the protection of "internal communications". Similarly, there is no provision in the Directive providing for a temporal limit on any environmental information. In such circumstances, there is no literal or teleological basis upon which to impose a temporal scope. Accordingly, the EU legislature, in choosing to apply the language of the Aarhus Convention, must be taken to have chosen this formula of words for a reason. Furthermore, the imposition of any temporal scope is exclusively a matter for the implementing Member State. Ireland has not specified any period of limitation.

34. Indeed, to date, there does not appear to be any decision of the court interpreting the temporal scope of "internal communications" under the Directive. There is, however, a recent reference[13] from Ireland to this Court on a related point under this Directive, which is discussed further below, in response to the third question referred to the Court.

35. It is a high and explicit value in the Irish Constitutional system that the temporal scope for the protection of meetings of members of the government is unlimited. The Government of Ireland contends that it is essential that this position is maintained. It is submitted that any advice offered by this Court should avoid expansive language that might inadvertently jeopardise that value protected by the Irish Constitution. It is essential to good government and the maintenance of collective responsibility that Ministers are free to make honest and candid comments for, and at government meetings, without concern that their comments, or dissenting views will enter the public

[13] As at the time of writing, the Court of Justice has not yet assigned a formal case number to the reference.

domain or be subject to public scrutiny. The Government of Ireland submits, as its Environmental Information Commissioner has found[14], that it is clear that if details of Cabinet discussions are disclosed it would have a negative effect on the quality of Government decisions and would lead to undesirable outcomes.

36. The Government of Ireland submits that in the absence of a statutory limit and in the absence also of any judicially determined temporal limit, there is no lawfully mandated basis to insert such a limit. The Government of Ireland contends that the logical answer to this question is in the affirmative. This approach preserves the integrity of the process upon each individual request, which process is set out above in observations upon the first question.

37. If there was a temporal limitation, applications could be renewed with the passage of time. This would be impractical and would result in repeated, periodic identical requests.

38. The Government of Ireland submits that the procedure for determining a subsequent request for the same information is a matter for the procedural autonomy of Member States, subject only to potential review by this Court of the implementation, for compliance with the provisions of the Directive.

Question 3

> *If Question 2 is answered in the negative: Does the protection of 'internal communications' under point (e) of the first subparagraph of Article 4(1) of the Environmental Information Directive apply only until the authority required to provide information has taken a decision or completed any other administrative process?*

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[14] In decision number CEI/17/0042, the Commissioner for Environmental Information of The Government of Ireland stated that he recognised "*the very significant public interest in maintaining the confidentiality of such oral discussions at meetings of the Cabinet, due to the desirability of Cabinet Members feeling able to exchange their views in a full, free and frank manner ……. where collective decisions are to be made.*"

39. . In the event that the answer to the second question is negative, the Government of Ireland submits that the protection of “internal communications” is dependent on a time limit to be considered and determined by the relevant public authority on a case by case basis. This is within the discretionary powers accorded to Member States pursuant to Article 4(1)(e) and (2) of the Directive, as implemented in Ireland by Articles 9(2)(d) and 3(2)(e) respectively, of the AIE Regulations.

40. The Government of Ireland is expressly concerned that there should be no interpretation by this Court on the questions referred which gives rise to any potentiality for interference with the Constitutionally protected status of meetings of members of its Government, where the temporal scope for the protection of meetings of members of the government is unlimited. As already stated above, The Government of Ireland contends that it is essential that this position is maintained. It is again submitted that any advice offered by this Court should avoid expansive language that might inadvertently jeopardise that value protected by the Irish Constitution. It is essential to good government and the maintenance of collective responsibility that Ministers are free to make honest and candid comments for, and at government meetings, without concern that their comments, or dissenting views will enter the public domain or be subject to public scrutiny.

41. In this regard, concerning the specific issue of regard to cabinet confidentiality, and recalling (§27 above) that Ireland makes specific provision in its Constitution for the protection of cabinet confidentiality (again, see Articles 28.4.2 and 28.4.3 of the Constitution of Ireland[15]) , the Government of Ireland submits the Court has no mandate, whether pursuant to Article 4(1)(e) of the Directive, or indeed by reference to Article 5 TFEU, to interfere with this high Constitutional bar.

42. As mentioned above, the Government of Ireland observes that its High Court has recently requested a preliminary ruling from this court pursuant to Article 267 TFEU in respect of a question which, similarly, also raises an issue concerning the extent to which there is a temporal limitation on to Article 2(2) of the Directive, as transposed by the AIE Regulations.

[15] *Ibid.*

43. In *Friends of the Irish Environment v Commissioner for Environmental Information and others [2019] IEHC 597*, the appellant sought access to the records held by the first notice party, the Courts Service of The Government of Ireland, in relation to legal proceedings entitled *Balz & Heubach v An Bord Pleanála* 2013 450 JR ([2016] IEHC 134) in which judgment had been delivered by the High Court on 25 February 2016 and which had not been appealed. It was agreed by all parties to the main proceedings that control over the court file during the pendency of proceedings involved the exercise of "judicial capacity". The only issue in dispute therefore was as to whether court records are held by the first notice party in a "judicial capacity" after the making of final orders and exhaustion of any appeals in proceedings.

44. It was held by the High Court that, as far as could be established, the question of the extent of the "judicial capacity" exemption provided for in Article 2(2) of the Directive had never been considered by this Court or by the Courts in any of the Member States. The High Court of Ireland held that it was appropriate and necessary for the consistent interpretation of EU law, and in order to determine the main proceedings, that the input of the Court of Justice be sought in order to identify the scope of the "judicial capacity" exemption.

45. The Irish High Court requested this court to consider the following question by way of preliminary ruling in accordance with Article 267 of the Treaty on the Functioning of the European Union:

    > *"Is control of access to court records relating to proceedings in which final judgment has been delivered, the period for an appeal has expired and no appeal or further application is pending, but further applications in particular circumstances are possible, an exercise of "judicial capacity" within the meaning of Article 2(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC?"*

46. In those circumstances, the Government of Ireland draws the attention of the Court to the possibility of similar issues arising upon the referral in the *Friends of the Irish Environment* matter.

47. In that reference, the issue of temporal scope of a refusal to a request will be central to the preliminary ruling of the Court in that case. In these proceedings, the third question gives rise to similar considerations. However, they are unlikely to be dispositive here, where Ireland has (a) enacted specific legislation transposing the Directive which provide for express refusal of requests (as already discussed in Ireland's observations on the first question), and (b) has a specific Constitutional bar on the disclosure of information concerning meetings of members of the Government. For the avoidance of all doubt: it is the position of Ireland that such protection extends to all communications received and given by parties to members of the Government which inform or otherwise concern specific matters for consideration by the meetings of members of the Government.

48. Finally, If the Court disagrees with the concept of no temporal limitation on "internal communications", the Court should be careful to restrict its rules to specific facts of the case at hand, and be careful to ensure that any advice it offers to the referring court does not jeopardise the high constitutional value of indefinite confidentiality of discussions at meetings of members of the government of The Government of Ireland.

Dated the 3rd December 2019

Signed: Juliana Quaney
On behalf of Maria Browne, Chief State Solicitor
Agent for Ireland

Signed: Tony Joyce
On behalf of Maria Browne, Chief State Solicitor
Agent for Ireland