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 CEI/19/0015

Date of Decision: 2 July 2020

Appellant: Mr C of Company X (the appellant)

Public authority: Central Bank of Ireland (the CBI)

Issue: Whether the CBI was justified in refusing access to information relating to motor insurance premiums and claims, the administrative costs and profits of motor insurance companies and levies payable to the government on the basis that the information is not "environmental information" within the meaning of article 3(1) of the AIE Regulations

Summary of the Commissioner's Decision: The Commissioner found that the CBI was justified in refusing access to the information requested on the basis that the information concerned is not environmental information within the meaning of the definition in article 3(1) of the AIE Regulations. Accordingly, he held that the CBI was not obliged to process the appellant's request for access to the information and that he had no further jurisdiction in relation to the matter.

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:

By way of background, part of the CBI's regulatory remit includes the supervision of insurance undertakings authorised in Ireland. The CBI used to publish annual insurance statistics containing data from the insurance industry. The data in this publication known as the "Blue Book" was extracted from the reporting forms that companies completed pursuant to First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (Solvency I). The data from the Solvency I forms was publicly available in the Companies Registration Office (CRO). Solvency I was not environmental legislation but was concerned with the taking-up and pursuit of direct insurance activity carried on by any insurance company established in a Member State in classes of general insurance set out in its annex which included motor vehicle liability.

Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) came into force on 1 January 2016 and it changed the regulatory regime for the reporting of data. Solvency II introduced increased reporting requirements and public disclosure requirements for authorised undertakings in the European Union. The data, which insurance undertakings must publish under Solvency II, is in the Solvency and Financial Conditions Reports (SFCRs). According to the CBI, the reporting requirements under Solvency II are not comparable to the data published in the Blue Book. The CBI announced the "retirement" of the Blue Book in 2018. Solvency II is not environmental legislation. Similar to Solvency I, Solvency II lays down rules concerning the taking-up and pursuit, within the European Union, of the activities of direct insurance and reinsurance. It also lays down rules regarding the supervision of insurance and reinsurance groups and the reorganisation and winding-up of direct insurance undertaking.

On 5 November 2018, the appellant made a request under the Freedom of Information Act 2014 (FOI Act) for the following information:

"For each of the five calendar years, 2013/2014/2015/2016/2017; Please provide the data under the following 5 headings:

1 Total value of Motor Insurance Premiums paid to all motor insurance companies operating in Ireland, collectively, for which the Central Banks performs some regulatory function.

2 Total payments made towards resolving motor insurance claims by all motor insurance companies operating in Ireland, collectively, for which the Central Banks performs some regulatory function.

3 Total administrative costs of all motor insurance companies operating in Ireland, collectively, for which the Central Banks performs some regulatory function.

4 Total (exceptional) levies payable to the Irish government (including any statutory bodies) in regard to any bankrupted motor insurance companies, or any fund to hedge against future bankruptcies, by all motor insurance companies operating in Ireland, collectively, for which the Central Banks performs some regulatory function.

5 If available, total profit, as a percentage of total premiums, made by all motor insurance companies operating in Ireland, collectively, for which the Central Banks performs some regulatory function."

The request stated that in the event that the information was not disclosable under the FOI Act, the request was to be processed under the AIE Regulations.

In response to the FOI request, the CBI notified the appellant on 26 November 2018 that some of the information he sought was publicly available and provided him with links to where that information was available. The CBI notified the appellant that the information requested at parts 1, 2, 3 and 5 for 2012, 2013, 2014 and 2015 was publicly available in the relevant Blue Book for each of those years. It explained that it did not hold the information requested at parts 1, 2, 3 for 2016 and 2017, but that this information for 2016 could be extrapolated from the SFCRs, which were publicly available on its website. The CBI said that it did not hold the information requested at part 4.

On 20 December 2018, the CBI made a decision refusing access to the information under the AIE Regulations on the basis that it was not environmental information. The AIE decision stated that the records relate to statistics of motor insurance companies in Ireland. It noted that certain information had been released to the appellant in response to his FOI request and that the remaining information did not exist.

On 18 January 2019, the appellant requested an internal review of the CBI's AIE decision. The request stated that the information would likely assist potential competing European car insurance companies in deciding to enter the Irish market. He stated that "cost is a key parameter which influences alternative transport systems for consumers, this information is likely to affect CO2 emissions if it influences the market for insurance." The request contended that the provision of car insurance is an "activity" likely to affect emissions. It further stated that the profit of car insurance companies constitutes environmental information pursuant to article 3(1)(e).

The CBI's internal review decision dated 18 February 2019 affirmed its original decision that the information was not environmental information. It stated that the information was commercial information relating to the motor insurance industry in Ireland. It queried whether the information advanced the purposes of the Aarhus Convention. It also relied on article 7(5) on the basis that the information was not held by or for it, together with the exception at article 9(2)(c) concerning material in the course of completion or unfinished documents or data. My Office received the appellant's appeal of the CBI's internal review decision under article 12(3)(a) on 19 March 2019.

I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by the appellant and the CBI. I have also examined the contents of the Blue Book and a sample of the SFCRs referred to above. In addition, I have had regard to the Guidance document provided by the Minister for the Environment, Community and Local Government on the implementation of the AIE Regulations (the Minister's Guidance), Directive 2003/4/EC (the AIE Directive), upon which the AIE Regulations are based, the 1998 United Nations Economic Commission for Europe Convention

on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), and the Aarhus Convention—An Implementation Guide (Second edition, June 2014) (the Aarhus Guide).

Scope of review:

In accordance with article 12(5) of the AIE Regulations, my role is to review the public authority's internal review decision and to affirm, annul or vary it. The CBI refused the appellant's request for information on the basis that the information was not environmental information. My powers as Commissioner for Environmental Information apply only in respect of environmental information held by or for a public authority. Accordingly, the question before me is whether the information requested by the appellant falls within the definition of "environmental information" article 3(1) of the AIE Regulations.

Preliminary matters:

Before setting out my findings, there is a preliminary matter I would like to address. As a first step, my Office attempted to determine whether the CBI held any information that had not already been disclosed to the appellant. As part of this process the CBI provided my Office with a table detailing the information it held and what information it did not hold. The CBI's position was that all of the information it held was publicly available.

My investigator gave the appellant a copy of that table and enquired if he was satisfied that the CBI was not withholding information. The appellant stated that the publicly available information did not answer the questions posed in his request. He also stated that he was unable to engage with the information due to its complexity.

Given the dispute as to whether the information requested is held by or for the CBI, I have considered publicly available materials within the remit of the CBI in relation to the motor insurance industry in order to get an overview of the type of information within the scope of the request. This included the Blue Book referred to above for the years 2013, 2014 and 2015, available at www.centralbank.ie/statistics/statistical-publications/insurance-statistics and a sample of SFCRs, available at hwww.centralbank.ie/regulation/industry-market-sectors/insurance-reinsurance/solvency-ii/solvency-and-financial-condition-report-repository. Based on the information available to me, it does not appear to be necessary or feasible for me to attempt to resolve the question of whether any remaining information falling within the items requested by the appellant was held by or for the CBI at the time of the request.

Article 3(1) definition of 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)".

The AIE Directive was adopted to give effect to the first pillar of the Aarhus Convention in order to increase public access to environmental information so that an informed public can participate more effectively in environmental decision-making. It replaced Council Directive 90/313/EEC, the previous AIE Directive.

Analysis and Findings:

The appellant's position

The appellant submits that the information is environmental information within the meaning of article 3(1)(c) as it is "on": compulsory car insurance pursuant to the Road Traffic Act 1961, which is a government policy and legislative measure; the regulation of car insurance by the CBI, and as per his internal review request, the provision of car insurance. The appellant contends that each of those alleged measures and activities are likely to affect the environment.

He contends that the requirement for something to be likely to affect the environment is whether something is capable of effecting the environment and falls somewhere between being more than a mere possibility and a balance of probabilities. In support of his position, he cites the Court of Appeal judgment in *Minch v Commissioner for Environmental Information* [2017] IECA 223 (*Minch*), available at www.courts.ie, and the UK Court of Appeal judgment in *The Department for Business Energy and Industrial Strategy v Information Commission and Alex Henney* [2017] EWCA Civ 844 (*Henney*), available at www.bailii.org. The appellant also cites the Court of Appeal judgment in *Jim Redmond & Mary Redmond -v- Commissioner for Environmental Information & Coillte Teoranta* IECA [2020] 83 (*Redmond*), available at www.courts.ie, to which my Investigator referred the appellant when inviting him to make a submission, in support of his position. He states that *Redmond* clarifies that "likely to affect the environment" "should not be set onerously and falls far short of meeting a 'balance of probability' standard". He also states that *Redmond* clarifies that it is the measure which is

subject to the environmental effect threshold in article 3(1)(c) and that information "on" the measure does not have to be intrinsically environmental information.

The appellant asserts that the obligation to be insured and the regulation of car insurance affects the price of car insurance. He contends that the price of insurance can influence consumers' choices as to whether or not to use their cars, use alternative modes of transport and whether to scrap or sell their old cars or upgrade their cars to a more economical or newer car thus impacting the number of cars of on the roads. He says that those effects on consumers' choices in turn affect emissions into the environment which affect air.

The appellant contends that the policy of compulsory car insurance and the regulation of car insurance has "more than a tenuous connection to emissions". He states that the price of car insurance premiums is directly affected by both measures and the price informs consumers' choices to drive or not to drive cars, which in turn affects emissions. He also states that there is a "close nexus" between the requested information and the potential effect of emissions from cars, which is related to consumers' choices on whether to scrap, exchange, buy or sell cars. He further states that the information "is not remote but rather connects directly with and is relevant to the environmental emissions of motor cars, and thus has the 'requisite environmental effect'". He cites my decision in Case CEI/16/0014 (New Morning Intellectual Property Limited and Transport Infrastructure Ireland), available at www.ocei.ie, in support of his position.

In addition, the appellant submits that the information is environmental information within the meaning of article 3(1)(e) as "the profit level of car insurance firms clearly constitutes 'economic analyses' of a government policy, which is compulsory car insurance and its associated regulation, which is likely to affect the level of car emissions, as the compulsory aspect of car insurance otherwise alters economic choices."

The CBI's position

The CBI submits that the information sought at all five parts of the request relates to statistical and commercial information regarding the motor insurance industry in Ireland. In addition, it submits that the information sought at parts 1, 2, 3 and 5 of the request relates to the general business functions of the insurance companies and is not environmental information. It cites Case CEI/11/0001 (Mr. Gavin Sheridan and Central Bank of Ireland), available at www.ocei.ie, in support of its position. The CBI also denies that the total levies payable to the Irish government (part 4 of the request) is environmental information.

The CBI submits that the information sought at parts 1, 2, 3 and 5 of the request has only a minimal connection with the environment, and, therefore, is not environmental information. In support of its position, it cites the CJEU's judgment in Case C-316/01 *Glawischnig v Bundesminster fur Sicherieit und Generationen* (*Glawischnig*), available at www.curia.europa.eu.

The CBI also submits that there is not a sufficient connection between the information sought at parts 1, 2, 3 and 5 of the request and an aspect of the activity that has an effect on the factors and elements of the environment. It cites Case CEI/09/0015 (Mr. Pat Swords and RTÉ), available at www.ocei.ie, in support of its position. It contends that the potential environmental

effects from the alleged measures and activities are too remote in order for them to have the requisite environmental affect. It cites the High Court's judgment in *Redmond & anor -v- Commissioner for Environmental Information & anor* [2017] IEHC 827 (*Redmond*), available at www.courts.ie, in support of its position.

In addition, the CBI denies that the information sought at parts 1, 2, 3 and 5 of the request are a cost-benefit or other economic analyses.

The CBI further submits that the information sought at part 4 of the request has no connection with the environment. It explains that this information relates to the Insurance Compensation Fund (ICF) levy paid by insurance companies to the Revenue from 2013 to 2017, and that the ICF is a policy introduced by legislation, namely the Insurance Act 1964 (as amended by the Insurance (Amendment) Act 2011). It states that the requirement to pay a levy to the ICF is a measure of control and that the ICF does not have any connection with the environment, is not capable of affecting the environment and is not remotely related to the environment.

The CBI cited paragraph 63 of the Court of Appeal judgment in *Redmond*. It states that the judgment clarifies that "likely to affect" is a higher standard than the mere possibility of having an effect and confirms that more than a remote or theoretical possibility is required.

Furthermore, the CBI notes that the Court of Appeal in *Minch* held that the AIE Regulations must be interpreted in light of the objectives of the AIE Directive. It states that the information sought is not consistent with and does not advance the purposes of the AIE Directive or the Aarhus Convention as access to the information would not "contribute to greater awareness or, free exchange of views about or more effective participation in environmental decision-making, or to a better environment". In further support of its position, it cites the UK Court of Appeal judgment in *Henney.*

Conclusions

In carrying out my review, I have examined the publicly available information on the CBI's website concerning the motor insurance industry that the CBI maintains relates to the appellant's request. The information at issue in this case does not refer, either directly or indirectly, to any environmental matters; neither does it contain or provide information on or about emissions or any other environmental matters. For example, Table 15 titled Motor Vehicle Irish Risk Insurance Business in the Blue Book for 2013, 2014 and 2015, which the CBI maintains is the information sought at parts 1, 2, 3 and 5 of the appellant's request for the years 2013 to 2015, contains the income for, and claims paid by, insurance undertakings with head offices in Ireland. It gives the income and claims paid in a monetary figure (€000s) for each insurance undertaking and the total combined income and total combined claims paid. Similarly, Annex I of the SFCRs submitted by the individual motor insurance undertakings (from which the CBI states the appellant can extrapolate some of the information he seeks) contains the monetary figure for premiums, claims and expenses of the relevant undertaking. In other words, the information is not in itself about nor does it relate to the environment. I accept that it is statistical and commercial information relating to the motor insurance industry, specifically, motor insurance premiums and claims, the administrative costs and profits of motor insurance companies and levies payable to the government.

The appellant submits that the information at issue is "on" compulsory car insurance, the regulation of car insurance by the CBI and the provision of car insurance which are measures and activities affecting or likely to affect the elements and factors of the environment. Accordingly, the issue in this case is whether the information, which does not in itself affect the elements and factors of the environment, is "on" "measures … and activities affecting or likely to affect the elements and factors" of the environment.

I am not persuaded that compulsory car insurance, the regulation of car insurance by the CBI and the provision of car insurance are "measures" and "activities" within the meaning of the terms used in article 3(1)(c), especially in circumstances where the provision of car insurance and the setting of car insurance premiums are not done by the CBI but by private bodies. I note that the Aarhus Guide describes the terms "activities or measures", as those terms are used in the Aarhus Convention, as referring to "decisions on specific activities, such as permits, licences, permissions that have or may have an effect on the environment". However, the Court of Appeal recently clarified in *Redmond* that the essential question is whether the measure is a "measure affecting or likely to affect" the elements and factors of the environment (paragraph 57). I will therefore consider whether the alleged measures and activities 'affect or are likely to affect' the elements and factors of the environment.

As I have set above, the appellant contends that compulsory car insurance and the regulation of car insurance affect the price of car insurance which influence consumers' transport choices which in turn impacts on the number of cars on the roads, thereby affecting emissions, which affects air. His internal review request similarly stated that the provision of car insurance and its availability and costs, influences consumer choices, which in turn effects emissions. Applying the principles in the growing body of case law on the definition of environmental information to the facts of this case, I am not satisfied that compulsory car insurance, the regulation of car insurance or the provision of car insurance have the requisite environmental effect to qualify as "measures" and "activities" under article 3(1)(c).

In the first instance, the alleged measures and activities, in themselves, do not affect or are not likely to affect the elements and factors of the environment including emissions or air. The obligation to be insured is set down in Part VI of the Road Traffic Act 1961 (as amended) which makes provision for compulsory insurance against liabilities arising from the use of mechanically propelled vehicles. While part of the CBI's regulatory remit includes the supervision of insurance undertakings authorised in Ireland, it does not set insurance premiums. The insurance undertakings take into account a range of factors when setting premiums. Those undertakings provide insurance as part of their commercial activities. I have not seen anything during my review to indicate that the alleged measures and activities contain within them any actions or proposals that are in any way concerned with the environment. Thus, I am satisfied that the alleged measures and activities are not plans, policies or programmes with proposed actions that affect or are likely to affect the elements and factors of the environment as in *Minch.*

The appellant submits that something is likely to affect the environment if it is capable of effecting the environment and that the "likely to affect test" falls somewhere between being

more than a mere possibility and a balance of probabilities. However, the Court of Appeal in *Redmond* held that:

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

I do not accept that the alleged measures and activities have more than a tenuous connection to, or have a direct connection to or close nexus with, the elements and factors of the environment. In the circumstances of this case, I consider that any environmental effects from the alleged measures and activities are too indirect and too incidental for compulsory car insurance, the regulation of car insurance and the provision of car insurance to have the requisite environmental effect. In my view, the asserted connection between the alleged measures and activities and any effect on the factors of the environment such as emissions and the state of the elements of the environment is at best minimal or remote, if not purely hypothetical. Taking the appellant's submissions at their height, the asserted connection between the alleged measures and activities and any environmental effects is too theoretical for the connection to be anything more are tenuous. Accordingly, I am not satisfied that there is a real and substantial possibility that the alleged measures and activities affect or are likely to affect the elements and factors of the environment, either directly or indirectly.

In addition, I note that the High Court in the recent judgment in *Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna* [2020] IEHC 190 (*ESB*) held that determining whether information is environmental information is both fact and context specific (paragraph 44). I accept that information does not have to be intrinsically environmental in order for it to be "on" a measure or activity affecting or likely to affect to the elements and factors of the environment. However, as I have stated in previous decisions, while the concept of "environmental information" is broad, there are limits to the scope of the AIE regime (see Case CEI/19/0007 (Right to Know CLG and Raidió Teilifís Éireann) and Case CEI/11/0001 (Mr. Gavin Sheridan and Central Bank of Ireland), available at www.ocei.ie). In Case CEI/19/0007, I set out in detail why I consider that a mere connection or link to an environmental factor is not sufficient to bring information within the definition of environmental information. I also explained how I considered that my approach that a mere connection or link is not sufficient is consistent with the case law, including Case C-524/09 *Ville de Lyon*, Case C-266/09 *Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden* and Case C-442/14 *Bayer CropScience and Stiching De Bijenstichting*, available at www.curia.europa.eu. I note that Advocate General Kokott's Opinion in Case C-524/09 *Ville de Lyon* supports a finding that the asserted connection is too minimal to bring the information within the definition of environmental information, including article 3(1)(c) where it cannot be seen from the information at issue how the underlying measure or activity achieves its environmental aims, or what the effect on the environment may be (paragraphs 32 and 33).

Consideration of the type of information at issue in this case (which I have described at the start of my analysis) further supports my finding that the asserted connection between the alleged measures and activities and any environmental effect is too remote and too minimal.

Furthermore, the Court of Appeal in *Redmond* noted that the UK Court of Appeal in *Henney* suggests that regulation 2(1)(c) (the UK equivalent to article 3(1)(c)) should be "read down" by reference to the purpose of the Aarhus Convention and the AIE Directive and that information not relevant or useful to that purpose may not be required to be provided. As cited by the High Court in *ESB* at paragraph 42, the UK Court of Appeal in *Henney* stated that:

> "43. … It may be relevant to consider the purpose for which the information was produced, how important the information is to that purpose, how it is to be used, and whether access to it would enable the public to be informed about, or to participate in, decision-making in a better way. …"

The High Court in *ESB* also noted that the UK Court of Appeal in *Henney* stated that in determining whether information is or is not environmental information, one should look at whether it advances the purposes of the Aarhus Convention and AIE Directive (paragraphs 47 and 48).

The UK Upper Tribunal in *DfT, DVSA and Porsche Cars GB Limited v Information Commissioner and John Cieslik* [2018] UKUT 127 (AAC) (*Cieslik*), available at www.bailii.org, stated that while the UK Court of Appeal in *Henney* was concerned with the necessary connection between information and the measure, the approach of the UK Court of Appeal is also applicable to interpreting the definition of environmental information more generally. *Cieslik*, which I see as having particular relevance to this case, was concerned with whether information on the safety evaluation of the Porsche Cayman throttle malfunction was environmental information. The UK Upper Tribunal rejected the First Tier Tribunal's (FTT) finding that a car safety test was a measure that was likely to affect the elements of the environment because the test involved the running of a car engine that caused emissions, which effected air. The UK Tribunal held that the FTT's finding failed to reflect the principle in *Glawischnig* that a minimal connection is not sufficient to render information environmental information. It stated that the principle established in *Glawischnig* also applies to deciding whether a measure or activity has the requisite environmental effect (paragraph 33). The UK Upper Tribunal also rejected the FTT's finding that as the safety test related to the safety of a vehicle while being driven, and driving is an activity that affects air quality, the safety test was a measure likely to affect the elements of the environment through factor such as noise and emissions. It stated that the FTT's approach would mean that "there is no logical reason to limit it to information about vehicles while they are driven as long as it has some connection with the driving of cars". It continued that the FTT's approach would "also mean that economic forecasts or policies for future car manufacturing or sales in the UK are environmental information, as those activities impact on the numbers of cars that are made and driven" (paragraph 34). In holding that the asserted connection between the safety test and the environment was too remote to bring it within regulation 2 (the UK equivalent to article 3), the UK Upper Tribunal stated that the FTT did not address if, and how, the information at issue contributed to the purpose of the AIE Directive or address any of the considerations listed in paragraph 43 of the UK Court of Appeal's judgment

in *Henney* (paragraph 35). In assessing the safety test, in light of the considerations listed in paragraph 43 of *Henney*, it held that access to the information sought would not enable the public to participate in environmental decision-making (paragraph 53).

The purpose of the Aarhus Convention and AIE Directive is to enable people to have access to environmental information thereby contributing to a greater awareness of environmental matters, assisting the public to participate in environmental decision-making by public authorities and provide access to justice in environmental matters with the aim of eventually leading to a better environment. As I note above, none of the alleged measures and activities relate to the environment, either directly or indirectly. Compulsory insurance is concerned with liabilities arising from the use of vehicles and the setting of insurance premiums and the provision of car insurance are commercial in nature. The CBI's insurance mandate is twofold: the prudential supervision of insurance undertakings authorised in Ireland and the supervision of conduct of business in Ireland. Neither the CBI nor the insurance companies have an environmental remit. The information at issue relates to the CBI's role in supervising insurance undertakings authorised in Ireland. The information was not produced for or intended to be used for environmental purposes. It is commercial information that was produced by insurance companies as part of their reporting obligations under Solvency I and Solvency II; neither of which are concerned with or relate to environmental matters. I do not see how access to information about motor insurance premiums and claims, the administrative costs and profits of motor insurance companies and levies payable to the government would contribute to a greater awareness of environmental matters, enable members of the public to participate in environmental decision-making, to access to justice in environmental related matters or to a better environment. I note that the only participation in decision-making identified during my review is the role of the information in assisting potential competing European car insurance companies to enter the Irish insurance market.

A finding that the information at issue is environmental information would, similar to the FTT's finding *Cieslik*, result in any information that is, however, distantly connected with the activity of running a car engine or the driving of cars as being environmental information. Such a finding would largely deprive the concept of environmental information of any meaning in an impermissible manner, as it would be contrary to the purpose of the AIE Directive and the guidance of the courts, in particular the CJEU in *Glawischnig* and the Court of Appeal in *Minch* and *Redmond.* This would also have the effect of effectively collapsing the distinction between access to environmental information under the AIE Regulations and access to information more generally.

For the reasons above, I do not accept that the information requested is environmental information within the meaning of meaning of article 3(1)(c).

As I have found that compulsory car insurance, the regulation of car insurance by the CBI and the provision of car insurance are not measures or activities for the purposes of article 3(1)(c), it is not necessary for me to consider whether the information at issue is cost-benefit and other economic analyses and assumptions or whether it was used within the framework of compulsory car insurance, the regulation of car insurance by the CBI and the provision of car

insurance. Accordingly, the issue of whether the information is environmental information within the meaning of article 3(1)(e) does not arise in this case.

Decision:

Having completed my review, I find that the information at issue is not environmental information within the meaning of article 3(1) of the AIE Regulations. Accordingly, the CBI was not obliged to process the appellant's request for access to information and I have no further jurisdiction in relation to this matter.

Appeal to the High Court:

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.

Peter Tyndall

Commissioner for Environmental Information

2 July 2020