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EXECUTIVE SUMMARY

Information is knowledge and knowledge is power.

Incoming European Commission President Ursula von der Leyen hopes to answer the demands of young people and voters for climate and environmental action with the promises contained in her EU Green Deal. The Green Deal is likely to become a defining policy for the EU in the coming years, but its success will depend on public support and engagement – which can only be won from empowered citizens in an evidence-based democracy. Ensuring adequate access to information is therefore essential.

Access to environmental information constitutes one of the three pillars of the Aarhus Convention, an international agreement guaranteeing fundamental rights on environmental matters. Access to information is the foundation on which the Convention's other two pillars – of public participation and access to justice – are built.

Without adequate information about the state of the environment, without the ability to obtain information about planned projects and policies, it becomes very difficult if not impossible to participate in environmental matters or to successfully make a case in court.

Improving the quality and quantity of information available to citizens also helps to ensure public support for decisions that affect their environment. It is therefore helpful for authorities to take a proactive approach to publishing environmental information as well as to adopt a positive attitude towards granting requests for information.

The more open access information is provided to people free of charge, the more the democratic right to engage in public life is guaranteed. With the rapid development of new technologies and increasing amounts of app data gathered by mobile phones, members of the public are also often the holders of valuable information and are able to share it with authorities and other citizens in innovative ways. This provides an opportunity to improve the distribution of information, reducing the time and resources authorities require to process requests and demands from the public.

This report examines the current state of play with regards to access to environmental information in the EU, with a special focus on current access to information at Member State level. The report also gives policy recommendations and gives examples on how civil society and the public can exercise their right to information for a strengthened democracy.

INTRODUCTION

Data on the air we breathe, the lakes we swim in, the food we eat, the water we drink, and the chemicals in our products and children's toys concerns all of us in a very real and tangible way. Legislation recognises the special status of environmental information and provides for avenues to make this information publicly available or to request it where it is not.

The [Aarhus Convention](#) gives the public the right to access environmental information. Access can be granted in two ways: one is by publication of environmentally relevant information and the other is by granting the public the right to make a request to authorities to provide them with information. The EU and the EU Member States have implemented these provisions of the Convention, both through [Directives that apply to Member States](#), including through sectoral legislation on [water](#), [waste](#), [air](#) and [emissions](#), for instance, as well as through [Regulations that bind the EU institutions and bodies directly](#).

But obtaining environmental information is not an end in itself: it is the first stepping-stone for public participation. Community engagement can take the form of policy work, citizens science, public consultations and awareness, and can enhance engagement to protect the environment and a shift towards more environmentally responsible behaviour.

Ensuring that environmental data is useful, can be reused or transmitted creates opportunities for the public to engage in innovative ways and to thereby further contribute to the available information, knowledge and new solutions. Providing open data also allows NGOs and civil society more broadly to translate the information into more accessible formats by creating visuals, applications,

communication work or through awareness-raising. While it is not for NGOs to replace the official role of public authorities, the publication of some data by authorities, even in its most technical and rawest form, can be complemented with environmental knowledge held by citizens and experts and bridge information gaps. This also contributes to helping get the information to the final citizens and communities effectively and hence ensure an informed public.

Ideally, the availability of complete environmental information through online platforms should lead to a decrease of formal requests by people for environmental information. By progressively making more information available freely online, time spent handling environmental information requests in administrations should be reduced, thus creating a win-win situation for citizens and authorities. As it is often the case that several parties are interested in certain documents, it should also become common practice to make requested documents publicly available after a successful information request. This would avoid having to deal with the same request twice and means a broader audience can benefit from the information and thus also increase the efficiency of the administration.

This report selects some proactive ways that environmental information is and can be provided to the public, indicating the areas where there is great potential for development through already existing technologies and schemes. Explanations and examples on how environmental information is requested also illustrates some of the difficulties that people face both at national and EU level.

1. INFORMING THE PUBLIC

Public authorities in the Member States and EU bodies and institutions are required to provide the public with environmental information and to proactively publish such information in accessible formats under Article 5 of the Aarhus Convention.

At both EU and Member State level, there are Regulations and Directives implementing the Convention that require the active and systemic dissemination of environmental information to the public. EU institutions and public authorities

must ensure that environmental information progressively becomes available through electronic databases that are easily accessible to the public. The law requires that both should aim for the widest possible systematic availability and dissemination of information to the public.



Providing environmental information online

In line with the requirement to progressively make environmental information available to the public, including through the internet, well-connected and up to date environmental information systems are necessary for the effective and efficient dissemination of environmental information. 'Environmental Information Systems' (EIS) refers to websites or portals that make information accessible to the public.

A research project commissioned by the European Commission collected good practices and developed a guidance on national environmental information systems. This research includes a list of national websites with environmental information for each [Member State](#).

In principle, environmental information and data should be accessible through [one portal](#) that covers all domains in a user-friendly way and is properly maintained, making it a one-stop shop for searching all environmental data. Unfortunately, in

many Member States the more common scenario is an array of different websites and portals for different environmental domains and processes. For instance, Environmental Impact Assessment (EIA) studies are often difficult to find, as in some Member States there is no central platform for all EIA and Strategic Environmental Assessment (SEA) procedures. According to another study, in [12 Member States there are significant shortcomings in the EIA information presented online](#), even where there is some centralised information platform, such as incomplete, unreliable or out of date information that is scattered in different locations or not accompanied by full documentation.

In addition, even where an EIA study is directly linked to e.g. biodiversity impacts, they are often separate from general environmental information relating to the biodiversity domain, rendering it [difficult to find and connect environmental issues, causes and impacts](#).

Public participation information on a Greek island

A recent ruling by the ECJ on a [Greek case](#) illustrates the [importance of functioning information systems for public participation](#). A notice about the creation of a tourist resort on the small Greek island was only posted on another island, Syros, which is 55 nautical miles away and expensive and time-consuming to reach. The EIA consultation also took place on Syros. Citizens affected by the project challenged the decision approving the environmental conditions, arguing that they only found out about the project on the day the construction work started. They had consequently not been able to participate at all in the decision-making leading to the permit.

The Court therefore held that the public authority must ensure that the communication channels regarding participation procedures are appropriate to reach those concerned, enabling them to participate in the consultation. Only posting information at the regional administrative headquarters on another island does not appear to be sufficient in informing the public concerned. The Court left the question whether the publication in the local newspaper was adequate to the referring court, taking the circulation and readership of the newspaper into account. Thus, information has to be accessible in practice and information provision effective in reaching those concerned.

Further separation may result from distinct responsibilities for environmental information and geodata with sometimes yet [another entity in charge of the implementation of information](#) under the [INSPIRE Directive \(Infrastructure for Spatial Information in the European Community\)](#).

In Member States where several different portals and websites for environmental information and data exist, these should be linked together in a manner that allows users to easily interact with the different portals without having to start completely anew with each search. Connecting search engines and linking directly to the relevant datasets can facilitate this bridging between multiple portals. A central requirement for this is that links are maintained to ensure that these bridges actually work in practice and continue to do so in the future as [information is regularly updated](#).

Data reuse can also be facilitated through clear licenses that are easily accessible. In general, environmental information should be open data that is freely reusable by the public. The EU COPERNICUS is an Earth observation programme that provides free public access to open source data on the environment. The use of the COPERNICUS

services by Member States is not uniform, however, with some countries still needing to more systematically rely on this vast dataset for its monitoring activities and to integrate it fully to their national Environmental Information Systems [link to IEEP country reports].

While it is very important to make information understandable and accessible to all parts of society, the public should also not be underestimated in its ability to understand environmental information. The public is made up of scientists, lawyers, NGO experts and geographers who are capable of understanding and processing raw data. Hence, although information provided by authorities should in principle always be user-friendly, the fact that the only information authorities have is in a very technical format should never be used as an excuse not to publish information at all.

Even where environmental information is technically available online, barriers that limit the access and use of documents remain, as the case of a position paper on the carcinogenic risks of the pesticide Glyphosate illustrates.



Political hurdles to accessing Glyphosate document

The German Institute for Risk Assessment (Bundesinstitut für Risikobewertung – BfR) seems to be using copyright as an excuse to limit access to a position paper on the pesticide Glyphosate. The concerned document is the summarising position paper of BfR on the IRAC glyphosate monography from 4 September 2015.

The Open Knowledge Foundation obtained the position paper through a request under § 1 Gesetzes zur Regelung des Zugangs zu Informationen des Bundes (IFG) and § 3 Umweltinformationsgesetz (UIG), and [subsequently published](#) it on the website [fragdenstaat.de](#). The regional court of Cologne (Landesgericht Köln) ordered the foundation to take down the document, referring to copyright law as a basis for its [decision](#). However, due to a formal mistake, this order was [not adequately delivered to the foundation by BfR's lawyer](#). Hence, the relevant document [continues to be available](#) on the website [fragdenstaat.de](#). The proceedings relating to the substance of the dispute are ongoing.

In addition, due to [the numerous requests for access to the document](#) (a total of 43,000 up to June 2019), BfR created a [portal](#) where the position paper can be viewed for just seven days after requesting access. Individual access information is then sent out in PDF format and interested

individuals can obtain access to the document via the password-protected site for one week. [BfR considers this to be the avenue to comply with its access to information duties](#) while also protecting its copyright as it sees its summarising position paper to be an “intellectual creative act of a scientific institution”. It further stresses the fundamental importance of the question of who holds the right to first publish its work.

Putting aside the question whether BfR in fact holds [copyright over the document in question](#) and whether copyright is merely used as a political pretext in this context, this example illustrates that while the document is now technically accessible through a simple request to obtain access, politically, hurdles are created to limit this access and particularly the reuse of the document. In addition, the whole procedure seems unnecessarily cumbersome and inefficient given the broad societal interest in this document. BfR estimates that it spent below 15,000 EUR on the creation of this portal.

Overall, the use of a password-protected platform that is only accessible upon individual request constitutes a barrier to effective access to information, particularly coupled with the restrictions on the use of the document even once access is obtained.





RECOMMENDATIONS

- Authorities managing Environmental Information Systems should design them so that as many other portals and sources can be linked, to simplify searches and to ensure that the environmental information provided is as complete, varied and accurate as possible. It is essential that the information is kept up to date.
- Authorities managing information need to cooperate and collaborate so that different tools are compatible and linked, using the same methodology to measure environmental conditions, ultimately creating one centralised system.
- All information provided should be open source and free so that people are able to digest and reuse the environmental information in a way that can be beneficial to everyone.

Information on the Pollution Release and Transfer Register and Industrial Emissions

In 2003, a Protocol to the Aarhus Convention was adopted with the aim of giving public access to information through pollutant release and transfer national registers (PRTR). [This Protocol on Pollutant Release and Transfer](#) is implemented by the EU through [Regulation 166/2006](#), establishing the [European Pollutant Release and Transfer Register \(E-PRTR\)](#), managed by the European Environmental Agency.

The European Pollutant Release and Transfer Register (E-PRTR) provides information regarding the annual total emissions and pollutant release for each industrial facility. Emission reports cover the load of emissions of [91 key pollutants](#) released to air, water and land as well as off-site transfers of wastewater and waste for each facility. The information contained in the E-PRTR is gathered by the Member States and provided to the EEA, therefore it remains the Member States' responsibility to report the information into the system.

Informing the public about emissions and pollution is essential as it is information that can affect their health, wellbeing and is part of their "right to know". However, the E-PRTR in its current form is not reaching its objective. The lack of contextual information, explaining for instance which pollutants are hazardous or what the safe levels of emission limits are, makes it very difficult to draw any conclusions from the data available on the E-PRTR.

Currently, the E-PRTR does not inform the public on whether industrial installations in fact comply with their permits. There is [no link between the E-PRTR and the information contained in a permit](#) issued in accordance with the Industrial Emissions Directive (IED). The permits should be made available online, but very often they are not. Even when they are available, there might still be a problem in identifying an installation in the E-PRTR

as it may be registered under a different name.

Also, while the IED assesses 'installations' the E-PRTR looks at 'facilities' which can encompass several installations under the IED. This problem of non-comparability also exists in relation to the emissions data provided: while the E-PRTR reports on the tons of pollutants emitted, the IED permit refers to pollutant concentrations. Therefore, without additional technical information and expertise, the two sets of information, even when available, are not comparable and therefore difficult to integrate.

With additional context and interlinkages to IED permits and other environmental information, the E-PRTR could be a great tool for informing citizens about emissions and could also support compliance and enforcement of environmental law. In [a survey conducted by IMPEL](#) on implementation challenges with EU environmental law faced by public authorities, many respondents considered that providing inspections and compliance assessment information to the public is an 'important complementary measure in promoting better compliance.'

[The Norwegian PRTR system](#) can serve as a good practice example for the integration of information as it [combines permit and inspection information with detailed emissions monitoring data](#). It also provides plant-specific information displayed next to the permit limit in a graph and enables users to convert data easily to carry out benchmarking of environmental performance. Consolidated up-to-date permits, annual compliance reports and the full inspection report(s) are also available on plant-specific pages.



RECOMMENDATIONS

- Permits have to be published online under the Industrial Emissions Directive (IED), and there should be a link between the E-PRTR and the IED permit information.
- The Commission and the Member States should develop Electronic Permits under the IED. These can then be collected in a centralized and powerful database that allows better benchmarking of real-time environmental performance and better use of information.
- Reporting formats for key IED documents should be harmonised to allow for uniform reporting on relevant permit conditions.
- E-PRTR has to be fit for the purpose of providing meaningful access to information for its main dual audience: the wider public and the public representatives i.e. environmental citizens organisations. The data should be accompanied by contextual information so that the environment can be assessed holistically.
- Integration of the IED to the E-PRTR should be used by both authorities and industry to promote compliance.



Citizen science

So far, the provision of environmental data has mostly been perceived as a one-way process where public authorities make information and data available to the public. Given the rapid increase of citizens science initiatives, such as monitoring [air quality](#), [biodiversity](#) and [marine litter](#), such information should also be evaluated seriously to influence policymaking.

Advances in technology as well as an increased awareness of and interest in environmental and health-related issues are some of the drivers behind the [increase of citizens science initiatives](#).

It is important that the data generated by communities enables their participation in practice and can have a real impact on decisions with a view to encouraging the further engagement of citizens. Citizens' data of adequate scientific quality – which can be checked by authorities and supported also through the mass of information generated – should be taken into account and can serve as an additional source of information for policymaking. Local, community-held knowledge can often be particularly valuable and difficult to obtain other than [through citizens and can provide insights to the local conditions](#) which can be essential for developing plans.

Citizens Monitoring Air Pollution in Flanders

20,000 citizens participated in the project '[Curieuzen Neuzen](#)' and stuck air pollution testing stations in front of their homes, schools and offices across Flanders, Belgium. The results of the Nitrogen dioxide test tubes showed that the intensity and threats of air pollution depends very much on the city and its traffic management plans establishing significant differences between Antwerp and Ghent, which have taken different approaches in dealing with traffic in the city.

But even traffic lights, roundabouts and other local conditions led to strong variations. In addition to [raising awareness about the issue and showcasing the importance of air quality](#) to the public, the information collected by citizens can form a strong basis to improve traffic management plans and air quality policies.

Facilitating an exchange of information between people, instead of only having a top-down dissemination, can encourage innovation and the development of new systems, making use of expertise in the population and fostering the exchange between scientists and volunteers. An enhanced role for citizen science is cost-effective for public authorities and can provide a broad spatial and temporal data coverage which might otherwise be difficult to obtain. In addition, citizen science [builds knowledge and capacity of individuals and communities](#), enhances environmental awareness and promotes environmental stewardship.

Public authorities can support and encourage citizens science initiatives and improve the quality of their output by sharing their knowledge through e.g. sharing the characteristics of sensors and methodologies used for 'official reporting'.

Citizen-generated environmental data should be open data to encourage its reuse and recombination and to ensure that the ownership of the data remains with the public. There should also be transparency about how the data is used to avoid the impression that data merely 'goes into a black hole' and its effect is unclear.

Citizen Science can never replace the role and responsibility that public authorities have in providing environmental information. But by facilitating and promoting the development of citizen initiatives, and by ensuring that adequate quality checks of the information are carried out, public authorities can be greatly facilitated in their task by involving the public to gather environmental data.





RECOMMENDATIONS

- Citizen Science allows greater involvement of people in environmental governance: they are not merely the end users, but also the producers of information, thereby increasing their engagement and environmental stewardship.
- All environmental information, including that gathered through citizen science, needs to be open data to encourage reuse, innovation and development of new systems.
- Public authorities can reduce their costs and increase their efficiency for gathering specialized information by promoting citizen science. They need to maintain oversight on how information from citizen science is managed and be transparent on how the information is used.



Product information, Environmental Product Declarations and the Product Environmental Footprint project

Environmental information does not only concern emissions of industrial installations and air pollution by traffic but also covers the [environmental impact of the products which are produced, bought, used and disposed of in Europe](#).

Due to an increased environmental awareness among citizens, there has been a proliferation of both the methodologies for assessing the environmental performance of products, and communication tools conveying this information. This is reflected in the growing number of labels, certifications and other green standards. In the EU it is estimated that there are more than [100 environmental labels currently in use](#) and [3 out of 4 products display an environmental claim in the EU](#).

While some labels, notably Type 1 ISO Ecolabels, including the [EU Ecolabel](#) and the [Nordic Swan](#), rely on robust multicriteria methodologies using third party certification, other product declarations may be self-declared, and their basis may be less transparent.

For the most part, environmental product declarations (EPDs) rely on Life Cycle Assessment (LCA) data, although other methodologies, for example single issue approaches such as carbon footprinting, may be applied. Currently, LCA represents the most comprehensive approach for assessing the impacts of a product through its lifetime. Yet, the approach allows a significant degree of interpretation, furthermore some environmental impacts are poorly captured in LCAs (e.g. biodiversity loss, toxicity exposure, noise pollution).

Without technical expertise it is challenging for consumers (but also procurers such as public authorities) to assess the credibility or relevance of claims, and then go on to make an informed purchasing decision based on the life cycle impacts

of a given product. Similarly, market surveillance authorities cannot easily verify whether the claims made on products are accurate when diverse approaches are applied.

Harmonising approaches to assess the environmental impact of products could support the provision of environmental information by increasing the comparability and verifiability of declarations, thus:

- Supporting the flow of environmental information through supply chains
- Allowing market surveillance authorities to validate declarations
- Better informing consumers and procurers of the environmental impact of a product

The [Environmental Footprint project](#) represents an important effort by the European Commission to do exactly this and harmonise methodologies for assessing the environmental performance of products based on LCA. [The Product Environmental Footprint \(PEF\) methodology](#), which is the most important output of this project, takes into consideration 16 possible environmental impacts, and can be applied to any product or organisation to calculate their environmental profile.

In order to compare products providing the same function the development of specific methods (called Product Environmental Footprint Category Rules, PEFCRs) are required. During the project's pilot phase which ran between 2013-2018, [more than 20 PEFCRs for diverse product categories \(including t-shirts, olive oil, and batteries\) were developed](#). Now the "transition phase" of the project has started, during which [the overall methodology will be refined and further PEFCRs will be developed](#).

Now that the Environmental Footprint project is maturing, increasing attention is being given to how the methodology can have policy relevance. For example, the PEFCRs are currently being referred to in the development of product policies for [photovoltaic cells and batteries](#). From the perspective of environmental information, [one of the most promising and likely areas of development for PEF is applying the method to substantiate green claims](#). In this way, any company wishing to make a green claim about a product would have to use the PEF method to support their claim. For example, a product performing less well than the average product (based on a benchmark) could not make a green claim. Additionally, that green claim should refer to aspects that are significant in terms of the product's environmental impact during its entire life cycle.

Careful attention will need to be given to how PEF data can be conveyed to different actors. Specifically, PEF results may not be suitable to be directly communicated to consumers. However, detailed information may be valuable to other actors in the supply chain or market surveillance authorities. Digital tools such as QR codes or block chain could facilitate access to product databases containing PEF data.

The harmonisation of the method for product declarations may not overcome some of the inherent limitations of LCA in assessing some specific environmental impacts. PEF also notably does not cover social issues which may be highly relevant to some product groups (e.g. when addressing conflict minerals, or worker conditions in the textiles sector). For this reason, PEF will generally need to be complemented with other approaches in order to comprehensively capture the impacts of some products.

PEF can be used as a B2B data vehicle along the supply chain to facilitate information exchange and collaboration on identifying environmental hotspots and to encourage discussions how to best mitigate related impacts. In this regard, PEF could become one of the future building blocks for an EU harmonized and sector-wide Environmental Product Declaration (EPD) scheme. However, in general, we should not consider a PEF profile as a stand-alone communication vehicle, neither for B2B nor for B2C.

A PEF profile is in the first place an internal tool for companies. It helps them to take a picture of their environmental impacts for a given product in a given moment. It can contribute to the monitoring of environmental improvements and managing impacts associated with the products concerned. But it does not immediately translate into options how to best reduce environmental impacts. For doing so, the analysis must be accompanied by an eco-design approach and product specific criteria. If those are set at the right ambition level, the products can be awarded with an ISO Type 1 Ecolabel, such as the EU Ecolabel, that is also a simple visual marking for consumers triggering effectively purchasing decisions and taking on board other environmental, health or quality related concerns.

Overall measurable, robust, verifiable, and comparable environmental information on products are necessary to support the development of effective product policies and to provide access to relevant actors in the supply chains, including businesses, consumers and market surveillance authorities.



RECOMMENDATIONS

- There need to be methods in place which can improve the quality of products and give consumers access to reliable environmental information so that green claims can be verified.
- There needs to be clarity and transparency when communicating complex environmental information to consumers so that they are not misled.
- Companies should promote product information methodologies so that they can learn from these on how to improve the environmental performance and life cycle of their product.

Business Transparency and Self-regulation

While there is no right to obtain or request environmental information from private entities (unless subject to control by a public authority – see below Fish case), companies with more than 500 employees do have obligations to provide information under the [Non-financial Reporting Directive](#). Companies covered by this law are banks, insurance companies and other large companies designated by Member States. The Directive covers around [6,000 of companies across the EU](#). In the EU, such companies must provide information on [environmental matters and their respect for human rights](#), among other information. This non-financial information must be declared in their management reports that are publicly available.

Research carried out by the [Alliance for Corporate Transparency](#) showed that while the majority of companies provide general information on environmental and social issues, this is [insufficient to understand their impact and performance as required under EU law](#). More specific and legally binding requirements on disclosing long-term transition plans to a zero-carbon economy, as well

as specifying which information is relevant to their business model, would increase transparency and ensure the proper implementation of the Directive.

Detailed and targeted self-reporting also helps public authorities to improve the enforcement of environmental laws. The more relevant information is provided by private entities themselves, the easier it is for authorities to follow-up on their compliance. In addition, self-reporting can also aid companies to notice risks of non-compliance early on, and to take cost- and time-effective due diligence measures to avert harm in the first place.

In Ukraine, it is common practice for NGOs to be able to request environmental information directly from businesses in recognition of their large environmental impact. While falling short of such an obligation by quite a bit, the non-financial reporting requirements in the EU are at least one way of obtaining some environmental information from companies. When done comprehensively and consistently, non-financial reporting can be one contribution to partly improve transparency regarding environmentally harmful and risky business practices.

RECOMMENDATIONS

- Clear guidelines for businesses on how to carry out their non-financial reporting are necessary. These guidelines should be mandatory so that the performance of companies is comparable and to avoid that the exercise is only used for green washing.
- Legal obligations to also conduct human rights and environmental due diligence need to be introduced so that companies are obliged to internally assess and minimise their negative impacts on society and the planet.



2. REQUESTING DOCUMENTS

In addition to actively disseminating environmental information, public authorities also have an obligation to make environmental information held by them available to anyone who requests it. This obligation originates from Article 4 of the Aarhus Convention and is transposed in the EU Member States through [Directive 2003/4](#) and applies to the EU institutions through the Aarhus Regulation ([Regulation 1367/2006](#)). To access documents from the EU bodies, [Regulation 1049/2001](#) sets out the process and timeline of handling access to documents request as well as grounds for refusing access.

With growing awareness of environmental issues among citizens, access to environmental information requests are increasing. In 2018,

at the European Commission alone, there was a [9.5% increase of access to information requests](#) (relating to all sectors) compared to the previous year. With the increasing number of citizens exercising their rights, public authorities and institutions need to adapt to the demand by enhancing their resources and capacities dedicated to processing such requests. The active dissemination of all environmental information through good information systems, as well as publishing all the information that is shared following a request on such a system, is the most efficient way to deal with this heightened demand. In addition, measures must be taken to avoid delays, unreasonable costs as well as the unnecessary refusal of information.



What is environmental information and who is a public authority?

“Environmental information” that can be requested is defined broadly and can relate to many types of information, such as the state of air, water, biodiversity, waste and other discharge into the environment, policies and plans likely to affect the environment, and the state of human health and safety. A common barrier appears to be that information is wrongly classified as not being ‘environmental information’ but rather as commercially sensitive information, for instance regarding information relating to emissions. However, the ECJ actually established in the case of [Bayer CropScience](#) that emissions into the environment extend beyond industrial emissions and also cover actual and foreseeable

emissions from a product under normal or realistic conditions of use. Therefore, data on the long-term consequences of pesticide use also constituted information on emissions into the environment, despite being obtained through laboratory studies.

At Member State level a request can be made to a public authority holding the information, meaning the authority does not necessarily have to be the author of the information. In addition to government and public administration bodies at national, regional or local level, a commercial company can be a ‘public authority’ within the meaning of the Directive ([Fish Legal and Shirley](#), see case box).

Fish Legal and Shirley (C-279/12)

Fish Legal, the legal organisation of the English anglers federation which aims to combat pollution in water bodies to protect its angling members, requested information from two water companies regarding discharges and sewage dumping through sewer overflows.

As the water companies were privatised, they considered themselves to be outside the scope of the 2004 Environmental Information Regulation (EIR), the UK's national transposition of Directive 2003/4. Receiving a negative reply from the Information Commissioner, holding that the water companies were not public authorities, Fish Legal appealed against the decision in 2010. During a further appeal, the Upper Tribunal referred questions to the ECJ. In its 2013 ruling, the ECJ clarified that just because an entity is a commercial company, it is not then automatically excluded from having public duties to disclose environmental information under EU law, especially when it operates in a sector that is controlled by the state (in this case sewage management).

Where a company is subject to administrative supervision, which may include issuing of orders or the imposition of fines, it may follow that the company is not independent from the State when taking decisions, despite the fact that the entity is privatised.

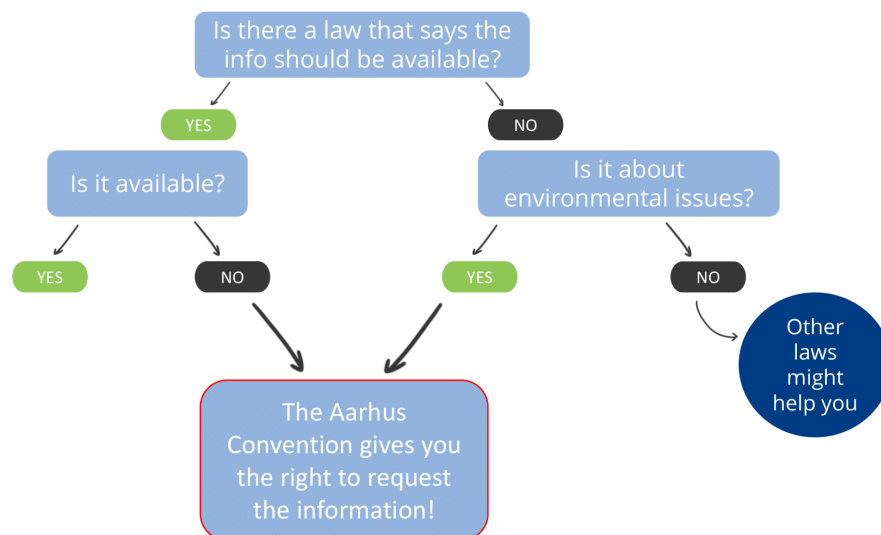
In 2015, after six years of legal battle, the Upper Tribunal ruled that water companies are ‘public authorities’ for the purpose of the Directive 2003/4 and are therefore under a duty to disclose environmental information to the public.

This landmark ruling is equally applicable to other privatised entities and improves the public's ability to request environmental information. While it still does not grant a broad right to request environmental information from fully private businesses, it broadens the scope of entities required to disclose information.

The 2003 Directive also requires environmental information to be made available to the applicant as soon as possible but no later than within one month of receiving the request. Ensuring a timely response to information requests is an issue in France, with the Committee on Access to Administrative Documents (CADA), set up to facilitate access to environmental information, [taking on average 130 days to respond to requests in 2018](#), this figure rising from [94 days in 2017](#). These delays constitute serious barriers to the effective exercise of the right to environmental information and also diminish the ability to

influence ongoing policy processes. Where an application to access documents is made to EU bodies, it should be granted within 15 working days of the registration of the request. In both national and EU situations, if the request covers a very large volume of information or particularly complex information, the time limit is extended to double the time. Adequate resources and capacity must be allocated in public authorities and institutions to ensure that these time limits are complied with when citizens exercise their right to environmental information.

WHAT QUESTIONS TO ASK WHEN LOOKING FOR INFORMATION HELD BY THE PUBLIC AUTHORITIES?



RECOMMENDATIONS

- Environmental information should be provided as soon as possible after having been requested.
- Capacity and resources need to be made available to public authorities to process requests within the legal limits and the time extensions should only be used as an exception rather than the rule.
- Actively disseminating information about the environment, reduces the demands of requests to authorities, therefore reduces public costs and increases efficiency.

Costs

Environmental information should be available to all and thus not prohibitively expensive. Public authorities are entitled to charge fees for supplying environmental information, however there are clear limits to such fees.

In [a 2015 case](#), the ECJ clarified that when charging for the provision of information, only those costs that do not arise from the establishment and maintenance of registers, lists and databases can be charged to the applicant. The costs that can be passed on to the applicant are postal and photocopying costs but also the costs attributable to the time spent by public authority staff on searching and compiling the information in the requested form. Under Article 5 of the 2003 Directive, the total charges must not “exceed a reasonable amount”, which the Court has interpreted to require an assessment of the economic situation of the applicant as well as the public’s interest in the protection of the environment and may not appear objectively unreasonable.

The extent to which this condition is adequately implemented in Germany, in relation to permit information under the Industrial Emissions Directive, is problematic. Even for permit information that should be freely available online (see below), some German states, or Bundesländer, such as Niedersachsen, [charged fees of up to 180€ per request in 2017](#). More recently, the EEB requested information (most of which should already have been made publicly available online) relating to permits of 25 large combustion plants (LCPs) in Sachsen and received an initial response by the Landesdirektion Sachsen estimating the costs per LCP of up to 2000€ and thus 50,000€ in total. Such costs are unjustifiable and unreasonable. They are prohibitively high and prevent citizens and NGOs from exercising their right to access environmental information.

RECOMMENDATIONS

- Authorities should provide all environmental information free of charge whenever possible.
- Information should be provided in electronic form and then be published online, it should be freely accessible for the public to keep administrative costs at a minimum and to avoid the repetition of the same request.



Denied access

Under certain circumstances, access to document request can be refused by Member States or EU institutions. In general, all exceptions to the right to request documents must be interpreted narrowly, taking into account the public interest served by disclosure and allow for maximum transparency. The European Court of Justice has ruled that the interpretation of the exceptions that authorities can use to refuse access to documents should be uniform between the Member States and at EU level, and that therefore a restrictive approach to the exceptions is equally applicable to when request are made to EU institutions under the Aarhus Regulation 1367/2006.

Grounds to refuse documents are broadly similar at Member State and EU level and range from the public interest regarding public security or [international relations](#) to [privacy protection](#), [ongoing court proceedings](#), [commercial interests](#) including intellectual property, [internal use](#), [investigations and confidentiality of proceedings](#).

Where a request seeks environmental information relating to emissions, even stricter rules apply, preventing the refusal of environmental information on the grounds of confidentiality of proceedings, confidentiality of personal data or [commercial interests](#) under the 2003 Directive. At EU level, commercial interests – including intellectual property rights, inspections and audits – also cannot override an access to documents

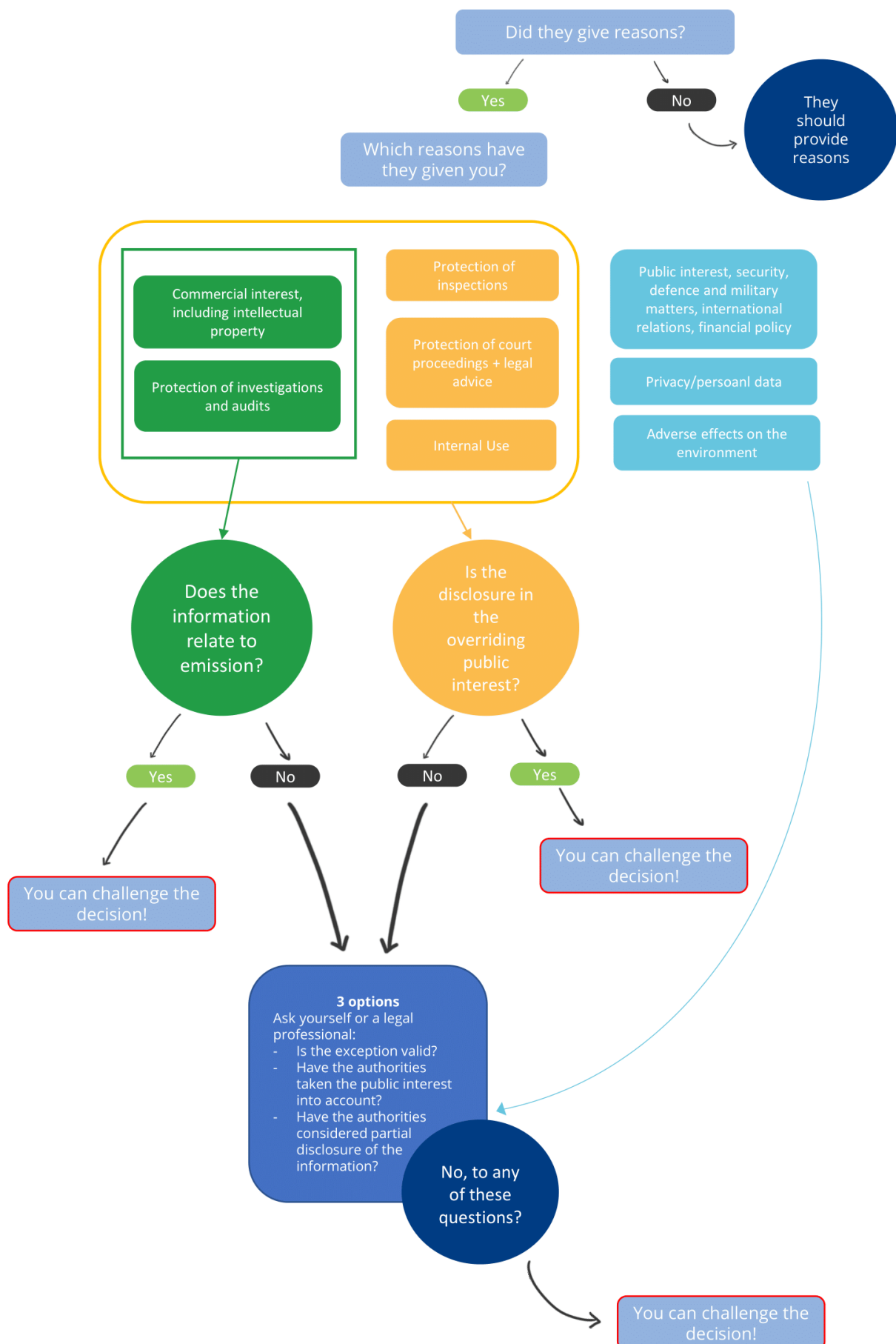
request on environmental information relating to emissions (Article 6(1) of the Aarhus Regulation 1367/2006).

Of all initial access to information requests (of all sectors) made to the European Commission in 2018, the protection of privacy was the most frequently invoked exception (34.5%) followed by the protection of commercial interests, relied upon in [15.4% of partial and full refusals](#).

Where access to documents is refused, the institution or authority concerned must give reasons for the refusal and explain how providing access would undermine an interest protected by the exceptions. As the grounds of refusal are exceptions from the principle that the public should have the widest possible access to environmental information, it must be shown that the risk of undermining a protected interest is reasonably foreseeable and not purely hypothetical and that [access would specifically and actually undermine this interest](#).

Unfortunately, barriers to requesting documents remain (see also infographic below). The following three case examples will illustrate barriers resulting from the scope of the public authority definition (see also [Fish Legal case above](#)), the failure to identify documents as “legislative documents” and confidentiality agreements of international organisations.

WHAT TO DO WHEN EU INSTITUTIONS OR BODIES REFUSE MY ACCESS TO INFORMATION REQUEST?



Access to court papers in Ireland

The Irish High Court recently referred a case to the ECJ relating to the public's access to litigation documents of an environmental case. [Friends of the Irish Environment \(FIE\)](#) had requested access to documents (statements of grounds/defence, written submissions, court orders etc.) of a case that was of its interest. Yet, as it is the Court Service of Ireland's general policy that only the parties and their lawyers have access to litigation documents, access was refused. This policy means that while the public can attend civil court proceedings in person, it may not access the documents that are referenced during the proceedings. This makes it unnecessarily burdensome to check arguments for consistency, or simply to obtain insights into the case without being physically present.

After several appeals, the Irish High Court has now asked the ECJ for [a preliminary ruling on the meaning of acting in a 'judicial capacity'](#) under Directive 2003/4. Member States can exclude a body acting in a judicial capacity from the definition of public authority, which results in the body not being an entity from whom environmental information can be requested.

FIE is arguing that [a parallel should be drawn to the ECJ's interpretation](#) of acting in a 'legislative capacity'. [In 2012](#) the Court established that once a legislative process was finished, the body was no longer acting in a legislative capacity. According to FIE, the same interpretation should be adopted for acting in a 'judicial capacity' so that the documents should be accessible once the case is concluded.

[The case is still pending in the ECJ.](#)

Transparency on EU fishing quotas

After [a complaint by ClientEarth](#), the European Ombudsman recently issued [a recommendation](#) urging the Council to provide enhanced access to documents on fishing quota negotiations of which the public has mostly been kept in the dark so far. [The complaint](#) followed several access to documents request and the Council withholding significant information that prevented an analysis of the total allowable catch (TAC) and its compliance with the [EU's Common Fisheries Policy Regulation](#). In her recommendations, the Ombudsman confirmed that the positions expressed during negotiations should be made public in a timely manner. She further established that the documents relating to the adoption of the annual TAC Regulation fall within [the broad definition of "legislative documents"](#) and should thus be made accessible under

[Regulation 1049/2001](#). This must be done in a timely manner, allowing the public to express its views during the process, meaning that the systematic classification of TAC documents and the publication only after the process is over constitutes maladministration by the Council.

These recommendations have been made at a key moment in time, with the upcoming TAC 2020 discussions and the clear need to end overfishing by 2020 in line with the Common Fisheries Policy. The adequate implementation of the right to access environmental information will thus play a crucial role in protecting fish stocks, providing the public with the minimum tools to influence this important process, also in light of [the strong influence of the fishing industry lobby](#).



Access to documents on Carbon Offsetting schemes

EU Member States that are also members of the International Civil Aviation Organisation (ICAO) [seem to be able to hide between confidentiality requirements of ICAO](#) when developing rules for the future aviation carbon market through a Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This scheme is the only international mechanism to address the climate impact of international aviation emissions, therefore public awareness of the process and participation in it are highly important.

However, meetings of ICAO are held behind closed doors with outcomes either not published at all or sold online for several hundred dollars. The adherence to confidentiality agreements means that there is a complete lack of transparency about the submissions and role of EU Member States to ICAO meetings. With

the aviation sector's greenhouse gas emissions significantly contributing to the climate crisis, the public should obtain information about the ICAO decision-making in order to be in a position to influence its policies and the CORSIA scheme. This is particularly so given that out of eight non-governmental observers there is only one accredited civil society observer ([International Coalition for Sustainable Aviation](#)), [the remaining seven representing the aviation industry](#).

Even when requesting information directly from the Dutch government, the NGO [Natuur & Milieu](#) [was refused access to an ICAO report](#) on how environmental standards for aircrafts and CO2 emission standards were drafted. Hiding behind ICAO confidentiality thus means that essential environmental information is not up for scrutiny by civil society with the public being left in the dark.



RECOMMENDATIONS

- Member State authorities, EU institutions and the courts, should interpret the exceptions for refusing access to documents as narrowly as possible, to allow for maximum access to information.
- The public interest in disclosure should be weighed adequately and partial refusal of information should always be considered as an alternative to full refusal.
- People and NGOs have rights under the Aarhus Convention that they should continue to use to demand transparency by requesting access environmental information.

‘Make available to the public’ – freely accessible or just upon request?

The [Industrial Emissions Directive](#) obliges the competent authority to “make available to the public” information relating to a decision on granting, reconsideration or updating of a permit for an installation, combustion plant, waste incineration plant or waste co-incineration plant. Information on the content of the decision, including a copy of the permit; the reasons on which the decision is based; and reasons for a derogation from the emissions levels has to be made available through the internet.

However, this distinction between proactively publishing information online and providing information upon request does not appear to be kept in practice with simple permit information not being freely available online.

Unfortunately, many Member States require requests for information with waiting times of up to two months (where an extension is sought) until the information is provided. As investigated through a [2017 EEB study](#), some Member States fail to provide adequate and complete information about IED activities online (e.g. Austria, Cyprus, Scotland) or no website with information at all (Luxembourg). Belgium, Germany, the Netherlands, Poland, Spain and the UK do not have a single national website for IED permit information and only provide information at sub-national level, making it difficult to obtain the relevant information.

In Germany, the Bundesländer are responsible for the permits of IED facilities, as a result of which each has its own website and way of providing

IED permit information with no centralised information point. In the 2017 study, all four regions investigated failed to provide the minimum required information. For most Länder, permit information is only available upon request and not directly available to the public. Coupled with the unclear responsibilities for each installation, this makes it difficult and time-consuming to obtain the relevant information. Similarly, [in Poland](#), regional authorities make information available only upon request, sometimes also including the payment of a fee. A response estimating costs per request of up to 2000 EUR (see above) are likely to intimidate members of the public, deterring them from further pursuing their right to information.

This interpretation of only making information available upon request defeats the purpose of the distinction made between the active dissemination of information and the ability to request information. Not only does the heavy reliance on access to documents requests mean that most environmental information is concealed, it also means that there is an inefficient use of public resources to process information requests instead of using those resources to work on environmental protection. As public authorities and environmental regulators are under-financed, under-resourced and work under capacity, increasing active dissemination of information would not only reduce the workload to handle request, but would also benefit authorities who would have better information systems in place to carry out their work.

RECOMMENDATIONS

- By proactively revealing as much information as possible, authorities reduce the resources and time spent on responding to information requests. More capacity and resources can then be used to work on environmental protection.
- Better information systems also benefits both citizens as well as authorities themselves, who will have more knowledge and resources at their disposal that can help them with monitoring compliance and enforcement.



CONCLUSIONS AND RECOMMENDATIONS

- ➔ Public bodies in the Member States and the EU should strive for maximum transparency and provide all environmental information online so that the public can be fully aware of the conditions of the environment.
- ➔ People are becoming more aware of their rights and demand increased transparency – public authorities and institutions should respond to this demand by processing requests in a more timely manner and only extend the time to process requests in very exceptional cases. Proactively disseminating information whenever possible will reduce the time and resources necessary to process requests.
- ➔ Information requests should never cost so much that the public is dissuaded from demanding to have access to documents that relate to the environment across the whole EU.
- ➔ The Commission should, as guardian of the Treaties, ensure the adequate implementation of the 2003 Directive and take enforcement measures where necessary to ensure equal access to environmental information.
- ➔ Public authorities at all levels of governance, including between Member States, need to coordinate on how different portals and Environmental Information Systems can be integrated in a way that information is more easily available and accessible to the public. For instance, information on EIAs and SEAs always need to be integrated with other environmental data, and permits under the IED should be electronic in a way that they can be compatible and comparable with information under the E-PRTR.
- ➔ Data and information that is given to the public should always be open data, so that the public can use it in innovative ways and themselves develop systems that can be useful to a broader audience.
- ➔ Authorities can be facilitated in their role to disseminate information by making use of citizen science and promote its development.
- ➔ Companies and regulators need to work together to increase the reliability of information on products and their environmental footprint and performance. This will help consumers make truly informed choices, authorities to tackle enforcement, and companies to identify how to improve their own products.
- ➔ Member States, together with the Commission, need to provide guidance to companies on how to undertake non-financial reporting under the Non-Financial Reporting Directive, so that such reporting is meaningful and comparable, and does not result in green washing.

CURRENT ISSUES



The Task Force on Electronic Information Tools under the Aarhus Convention adopted Recommendations on the more effective use of electronic information tools to provide public access to environmental information ([Decision II/3, 2005](#)).

The recommendations are now under review and subject to a consultation process by the parties and stakeholders. This review could be an avenue to strengthen the implementation of the recommendations as their main flaw appears to be the lack of implementation. Monitoring the implementation progress could be added as an item to the national implementation reports that parties are required to carry out under the Convention.



in October 2019 the Commission published a report based on a study conducted by consultants on the steps the EU can take to comply with the access to justice provisions of the Aarhus Convention. The EU was found in breach of international law in 2017 and the Commission will have to make legislative changes to the Aarhus Regulation to ensure that NGOs have proper access to justice at EU level.





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