



IMPLEMENT FOR LIFE

SUMMARY OF
COMPLIANCE
REPORTS



EEB
European
Environmental
Bureau



EUROPE'S LARGEST NETWORK
OF ENVIRONMENTAL CITIZENS'
ORGANISATIONS



Working for a better future where
people and nature thrive together

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The image shows a vertical strip of the European Union flag on the left side of the page. It features a blue background with twelve yellow stars arranged in a circle. The rest of the page has a solid dark blue background.

EXECUTIVE SUMMARY

The European Union is a global leader when it comes to protecting the environment. But despite the high number of laws, their environmental benefits often remain unseen given poor levels of implementation across Member States. The cost of poor implementation of environmental laws in the EU is estimated to be € 55 billion, not to mention other costs that cannot be measured financially.

The Environmental Implementation Review (EIR) set up by the Commission aims to screen how Member States have implemented EU environmental laws and whether there are any gaps in the national laws and in the level of environmental protection. This process is intended to inform Member States where they have succeeded in implementing EU environmental laws and in which area they are falling behind, so that they can address the issues that have been identified by the Commission. The EIR therefore also functions as an alert mechanism to Member States before the Commission can decide to initiate an infringement procedure against them.

NGOs on the ground are in a unique position to observe how EU laws work in the Member States and to assess whether these laws result in better environmental protection. They often have special knowledge of environmental conditions and of how authorities implement EU environmental laws. The EEB's 'Implement for LIFE' project aims to empower NGOs by sharing their stories and experiences in this collection of reports. In so doing, the project also aims to raise the alarm on poor implementation practices and recommends ways for improvement.

THE COMPLIANCE REPORTS

Under the *Implement for LIFE* project, the EEB has published a series of four compliance reports. The environmental topics that are covered in all the reports relate to air, waste and circular economy, biodiversity, water, chemicals, industrial emissions and climate. The project explored the underlying reasons behind good and bad local practices in the Member States and the involvement of NGOs in improving the implementation of EU laws on the ground. Given the variety of topics and the common governance characteristics necessary for putting all environmental laws into practice, the reports were divided into 4 broad horizontal issues that reflected these underlying governance themes. Each report is dedicated to one of these issues that contributes to good implementation of EU environmental laws in the Member States. The first three reports therefore explored the fundamental importance of the so-called 'three pillars' of the Aarhus Convention ([Access to Information](#), [Public Participation](#) and [Access to Justice](#))



for implementation, and the fourth report was dedicated to compliance and enforcement. All reports include a set of recommendations, of which some are resumed and highlighted in the conclusion of this summary report.

While Access to Information is known as the first pillar of the Aarhus Convention, the first issue of the *Implement for LIFE* series addressed Access to Justice, which is otherwise known as the third pillar, due to particular political momentum at the time and interest from NGOs to address this first.

As well as this series of reports, the *Implement for LIFE* project has also researched and analysed wider EU policies that impact on the implementation of EU environmental laws, looking at the [European Green Deal and a future 8th Environmental Action Programme](#), and the effects of the [Better Regulation](#) agenda on implementation efforts.





1 CHALLENGE ACCEPTED? How to Improve Access to Justice for EU Environmental Laws

In December 2018, the first published report looked at barriers to access justice in environmental matters. Access to justice safeguards the right for NGOs and individuals to challenge decisions which harm the environment in a tribunal or court. Putting such decisions to the test before competent administrations and courts allows for a review of decisions by authorities to assess that they are properly applying EU laws and policies that Member States are bound to follow. NGOs play an important role as watchdogs, monitoring that rules intended to protect the environment and society are followed properly. In this sense, the ability for NGOs to access courts is a key element for them to exercise their public interest function.

This report focused on five specific barriers that NGOs identify as particularly obstructing to the review of environmental decisions, some of which also dissuade NGOs and citizens from seeking justice to begin with. These are 1) the procedural rules that limit the opportunity for NGOs to have standing before a court to even initiate a legal challenge, 2) the duration of some legal procedures that put at risk the environment when a court decision needs to be taken quickly, 3) the lack of technical and legal knowledge of environmental rules by the judiciary which can compromise the quality and outcome of a court decision, 4) the amount of legal fees that can be debilitating, including the limited availability of legal aid for NGOs and people when they bring a claim in the public interest, 5) the risk that NGOs can be subject to retaliatory measures and intimidation tactics when they challenge environmental decisions for certain projects.

CURRENT BARRIERS TO ACCESS TO JUSTICE



Standing

'Standing' is the ability for environmental groups or citizens to challenge decisions in courts.



Time

Time is crucial for environmental protection. The longer it takes for a court to make a decision, the more harm is done to the environment.



Knowledge

*Judges need capacity to handle **environmental matters**.*



Money

***Lawsuits** can **cost** a lot of money and this can prevent NGOs to take cases.*



Repercussions

*Use of **intimidation** and **retaliation tactics** by companies or investors against NGOs, civil society or individuals.*

After illustrating how NGOs are experiencing these barriers in the Member States when they contest decisions regarding air, water, climate, biodiversity protection with practical cases, the report makes a set of specific recommendations that Member States and the EU institutions should focus on to overcome these barriers (see the conclusion for highlighted recommendations from the report series).

2 POWER FOR THE PEOPLE

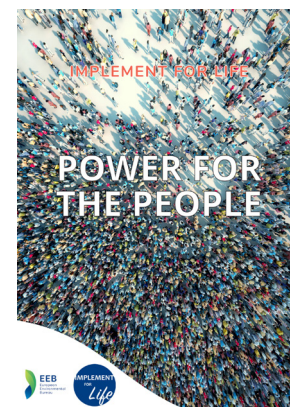
In the wake of the European Parliament elections in 2019, the EEB published the second report of this series, focusing on the second pillar of the Aarhus Convention: public participation in environmental decision making. What was later to be described as the so-called “green wave” of those election results, with the ensuing European Green Deal which the incoming Commission committed to in July of that year, showed that this second report was particularly topical and timely.

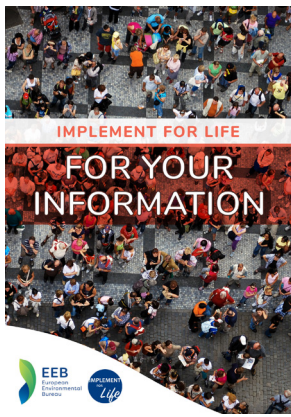
‘Power for the People’ collected practical examples of where NGOs have been able, or where they found difficulties, to voice their concerns in environmental decision-making. The report points out the need for diverse contributions of stakeholders to shape policy, to avoid economic interests dominating over environmental ones, and to preserve the public interest. The sections in the report explain how NGOs can participate in consultations, also at EU level, and highlighting the need for greater transparency on how decisions are finally taken.

When carried out correctly, environmental and strategic impact assessments (EIAs and SEAs) allow for a meaningful dialogue between civil society, public authorities and the developers and can lead to projects, plans and programmes that are sustainable and take environmental impacts into account. However, instead of being valued for their participation and expertise, NGOs are often blamed for prolonging a procedure by raising questions and contesting the plan when they are seeking to ensure compliance with EU environmental law. The report presents an NGO perspective of the issues around how EIAs and SEAs are carried out that limit their meaningful involvement in consultations.

Public participation is a core requirement in environmental legislation, from water protection, nature conservation and capping air pollution, as well as central to better regulation and the EU approach to legislation development. Decisions impacting the environment taken by governments and local authorities are generally considered to be more coherent, progressive and are more widely accepted, and hence legitimate, when there has been an inclusive and timely participation of all stakeholders to inform the decision-makers.

The freedom for NGOs to operate is essential for a pluralistic and democratic society. The worrying phenomenon of ‘squeezing civil society space’ at both Member State and EU level, and the numerous accounts this manifests itself in, is explained in the report. This may take the form of changes to legal requirements for how NGOs can be formed and operate, including cutting their sources of funding, which have the direct effect of limiting their ability to participate in decision-making. Squeezing of civil society space may also result from smear campaigns and certain political rhetoric which is intended to create a hostile environment towards NGOs, aimed to silence, discredit and weaken their role. The report asserts that to limit their engagement is an attack on freedoms and democratic principles upon which our societies are based.





3 FOR YOUR INFORMATION

The third report was published in December 2019 exploring how the Aarhus Convention requirement to allow for access to information on environmental matters is implemented in a variety of environmental legislation and processes in the EU. 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 available upon request.

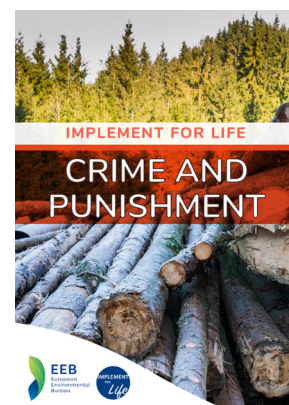
Without the basic information on environmental conditions, there is no subsequent basis for the public to express itself and take part in decision-making. In this sense, concealing information leads to a debilitated population, depriving them of any control over their environment and well-being.

For this reason, the Aarhus Convention requires public authorities to keep the public as informed as possible about environmental conditions. The report explores opportunities and systems that can improve the accuracy and relevance of information that is publicly available. Examples include efforts to enhance Environmental Information Systems in the Member States, simplifying their access and making sure that raw data on the environment is open source to foster innovation. Making data sets compatible and comparable, and integrating them would greatly increase the clarity and transparency of information. For instance, the European Pollutant Release and Transfer Register (E-PRTR) does not inform the public on whether industrial installations in fact comply with their permits under the Industrial Emissions Directive (IED).

The report also looks at how product information tools can increase transparency of the environmental footprint of products, can compel producers to reduce the environmental impact of their production activities, and can provide consumers with verifiable information about the products they buy, thereby debunking "green claims" that can confuse and mislead the environmental credentials of products. Moreover, empowering people to provide environmental information, such as promoting the use of 'citizen science' engages the local population as a primary source of very specialised and localised information. People are then engaged in environmental protection as information holders and not only recipients. Businesses are also information holders; therefore, the report also stresses the need for greater business transparency and self-reporting, in particular though more robust and more specific non-financial reporting requirements, and calls for mandatory due diligence requirements on businesses.

As not all environmental information is published, there is an obligation for public authorities to disclose environmental information when it is requested. The report draws on situations that highlight some of the problems when information is requested, including where authorities have demanded high fees in exchange of releasing documents, what the common grounds for refusing access are, and the varying interpretations for what constitutes 'environmental information' and how authorities view their obligation to proactively provide information.

4 CRIME AND PUNISHMENT



The European Green Deal that was announced by the Commission in December 2019 clearly stressed on the fundamental importance of good implementation and enforcement of environmental laws, without which, any ambition to address the environmental urgencies we find ourselves in is futile. Indeed, while implementation efforts can relate to how authorities transpose and apply EU environmental laws nationally, the last line of defence of effective implementation is the ability of authorities to enforce the laws in place.

Being the largest trading block in the world, the EU is a hub for the transit, origin and destination of illegal products and services from international environmental organised crime. Environmental crime is now the fourth most lucrative illegal business in the world, worth up to \$258 billion annually. But environmental crime does not only come in the form of organised crime. Environmental crime is generally considered to be any criminal act that is committed against the environment. In the EU's Environmental Crime Directive, an environmental crime needs to breach environmental legislation and cause significant harm or risk of harm to the environment, human health, or both. It is up to each Member State decide how to incorporate the Directive into their criminal law systems and to establish effective, proportionate and dissuasive sanctions.

This fourth report looks at how environmental crimes are dealt with in the EU, focusing on three aspects that need to be improved and addressed in any revision of the Environmental Crime Directive. The first section looks at the lack of capacity, and sometimes lack of prioritisation, of authorities, regulators and enforcement bodies to detect, investigate and prosecute environmental crimes. The second issue that the report raises is the role of corporate crimes in environmental destruction, and that corporate structures and the lack of corporate liability in some countries means that investigating complex corporate structures is extremely resource intensive for investigators and leads to effective impunity for those that make huge profits exploiting the loopholes and tricks of corporate and company laws. The third section highlights the need for clearer guidance and a uniform understanding on what should constitute an "effective, proportionate and dissuasive sanction". There is lack of information on how crimes are sanctioned in the Member States to make a proper comparative analysis on how this provision is applied. However, there are a number of cases in the report that illustrate how some sanctions are far from dissuasive, confirming that committing crimes, even when punished, can sometimes be more profitable than compliance.

A vertical photograph on the left side of the page shows a clear, turquoise lake reflecting the surrounding green forest and the rugged, rocky peaks of mountains in the distance under a blue sky.

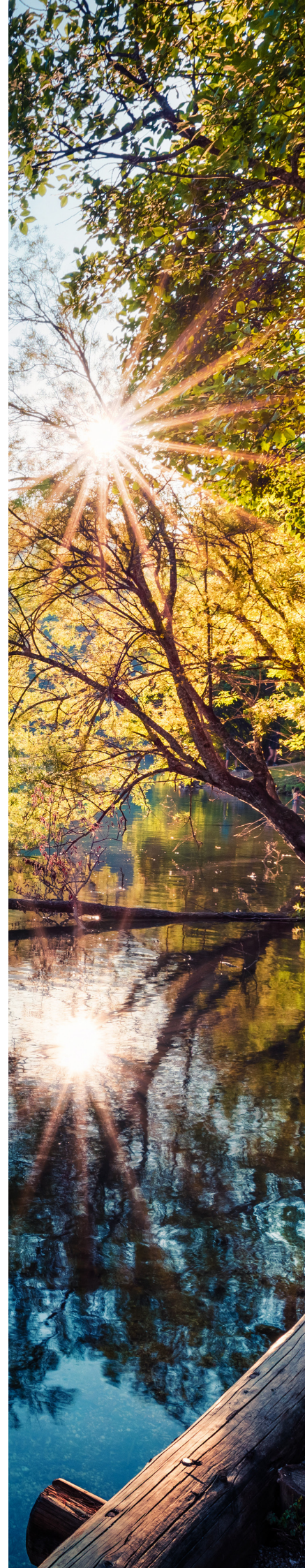
CONCLUSION

The *Implement for LIFE* project is coming to an end in July 2020. However, as is clear from the topics and themes covered in the compliance reports, and also from the Commission's commitments in European Green Deal, implementation and enforcement will continue to be at the forefront of all environmental law and policy. The hope is that laws will be strengthened and practices will improve. And while there will be more case studies and NGOs will have evolving experiences in the Member States over time, the horizontal characteristics that are necessary for proper implementation and that are analysed in these reports will always be relevant.

A selection of recommendations from the report series:

- Member States need to prioritise more training and resources to the Judiciary so that environmental cases are handled in a more efficient way, and so that courts are enabled to reach a just outcome for the environment.
- Laws and procedures in the Member States should be changed so that injunctive relief is more widely granted to on-going environmental cases.
- The EU institutions should revive legislative developments for a Directive on Access to Justice for Environmental Matters to guarantee that all of civil society and individuals have equal rights in all Member States.
- There needs to be an Anti-SLAPP Directive that considers the threats that environmental NGOs face.
- Legal aid should be provided to public interest litigation in all Member States.
- Member States must always inform and involve NGOs early in public participation processes and consultations, to ensure that their contributions are given at a time where there is still an opportunity for them to make a difference to the final decision.
- Member States' laws must be in line with the Charter of Fundamental Rights, to ensure freedom of assembly and freedom of expression.
- Member States and the EU need to ensure that there is funding available for NGOs to fully work on their causes, including to enable a more full participation in national processes and decisions.
- Member States and the EU institutions need to have clear public guidelines on how their policies are adopted and be more transparent about the reasons that lead them to take decisions, including how they consider the input from public consultations.

- Member States and EU institutions should strive for maximum transparency and provide all environmental information online as soon as it is available so that the public is fully aware of environmental conditions and can engage effectively in decision-making.
- 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 to have information that is clearer, more easily available and accessible to the public.
- All public bodies should proactively disseminate all information whenever possible to reduce the time and resources necessary to process information requests.
- Data and information that is given to the public should always be open source, so that the public can use it in innovative ways to develop systems that can be useful to a broader audience.
- Citizen science should be promoted to facilitate information gathering.
- 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.
- EU obligations on companies to carry out human rights and environmental due diligence needs to be introduced so that they are obliged to internally assess and minimise their negative impacts on society and the planet, and to promote compliance and best practices.
- The Environmental Crime Directive should be amended to include a wider scope of what is considered an “environmental crime”.
- Member States need to increase resources and capacity for regulators to detect noncompliance and illegal activity as this is necessary for early intervention.
- Member States should enhance cooperation between all its different environmental regulators, agencies, enforcement bodies and prosecutors to be able to investigate and pursue all environmental crimes more effectively.
- The EU and Member States need to work together to increase corporate transparency to detect international environmental crimes.
- The EU should increase judicial cooperation to combat environmental crime and provide clear sentencing guidance for judges in all Member States on what are effective, dissuasive and proportionate sanctions.





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