



Questionnaire

The Special Rapporteur seeks to explore the importance of the right of access to information in the field of hazardous substances and wastes. He is interested in examining the legal framework, identifying information gaps, and analysing how this right is implemented at various levels (e.g., at the national, local and municipal levels) and by different government bodies (e.g., Ministries of environment, health, labour, etc.) in practice. He also intends to identify barriers to realizing the right of access to information, with the aim of mitigating the adverse impacts of hazardous substances and wastes on human rights.

What obligations does your Government have to ensure the right of access to information under international, regional and national laws? Please provide, in detail, the relevant legislation that guarantees the right of access to information on hazardous substances and wastes, as well as the mechanisms, including grievance mechanisms, which may be used by individuals and groups.

The Portuguese Constitution (1976) protects the right of access to official information. According to the Portuguese Constitution, citizens have the right to be informed by the Administration, whenever they so request, as to the progress of the procedures and cases in which they are directly interested, together with the right to be made aware of the definitive decisions that are taken in relation to them. Citizens also have the right of access to administrative files and records (Article 268).

The Administrative Procedure Code (in force since 1992) provides for the right of individuals to information, in a quite broad sense (Articles 61 to 65).

Everyone has the right of access to administrative documents without the need to state any interest, including the rights of consultation, reproduction, and information on the existence of documents and their content, according to Law 46/2007, of 24 August, which regulates access to and the re-use of administrative documents (Article 5).

Most environmental legislation adopted in Portugal results from the transposition of directives of the European Union.

Environmental Framework Law 19/2014, of 14 April, establishes the right of citizens to access information (Article 4). This law establishes measures that have to be adopted by public authorities to ensure access to information and measures for the dissemination of information and requires that costs related to reproduction of documents correspond to the costs of materials and are not excessive.

Law 19/2006, of 12 June, regulates access to environmental information that is in the possession of public authorities or is held on their behalf, and lays down the terms and



conditions governing its use. The objectives of this law are to guarantee the right to access environmental information held by or on behalf of public authorities; to ensure that such environmental information is disclosed and made available to the public; and to promote access to such information by the use of telematics or electronic technologies.

The information shall at least include: i) Texts of international treaties, conventions and agreements and national and Community legislation on or related to the environment; Policies, plans and programs concerning the environment; ii) Reports on the execution of the said instruments; iii) A national report on the state of the environment; iv) Data or summaries of the data resulting from the control of activities which affect or can affect the environment; v) Licenses and authorizations with a significant impact on the environment, agreements on the environment impact, or references to the place where such information can be requested or obtained; vi) Environmental impact studies and risk assessments concerning environmental, or references to the place where such information can be requested or obtained (Article 5).

Public authorities shall ensure that the information referred to in the previous paragraph progressively becomes available in electronic databases which are easily accessible to the public, via public telecommunications networks, particularly by means of the creation of links to websites.

The purpose of Law 19/2006, of 12 June, is to ensure that all citizens are given access to information without having to invoke a personal and direct interest, except when documents contain confidential information.

The public authority to whom the request is directed must provide the requested information within 10 business days, whenever, within its respective responsibilities and according to legislation, it should have collected and processed this information. In all other cases, the time limit is one month. In exceptional circumstances, the time limit for making the information available may be extended up to two months (Article 9).

In Portugal the right of access to information is also granted in specific environmental legislation, such as:

- The Water Law approved by Law 58/2005, of 29 December (Article 88).
- The system of prevention of major accidents involving hazardous substances, established under Decree-Law 254/2007, of 12 July. According to this law, the Portuguese Environment Agency (APA) and other competent authorities shall ensure transparency and public access to information (Article 24).
- The rules on air quality assessment and management (Article 34 of Decree-Law 102/2010, of 23 September);
- The General Rules on the Management of Wastes, approved by Decree-Law 73/2011, of 17 June: Hazardous wastes are registered in the Integrated Electronic Waste Registration System – “SIRER” - which is subject to the rules on access to administrative documents (Article 45).



- Integrated Prevention and Pollution Control of Industrial Emissions legislation provides that the public concerned is informed in an effective, timely and appropriate manner from the beginning of the decision-making process (Article 18, Decree-Law 127/2013, of 30 August);
- The Planning Environmental Impact Assessment Regulations stipulate that these procedures are public (Article 28, of Decree-Law 151-B/ 2013, amended by Decree-Law 47/2014, of 24 March).

Mechanisms which may be used by individuals and groups - grievance mechanisms

- Law 19/2006, of 12 June, refers to the means of appeal that the applicants may use when the request for information is ignored, incorrectly refused (in whole or in part), when an inadequate response is obtained or when this law has not been complied with (Article 14).
- When the request for information is ignored or incorrectly refused, applicants may complain or present a hierarchical appeal (Article 161 *et seq.* of the Administrative Procedure Code).
- The Portuguese Environment Agency (APA) receives complaints from citizens. Citizens can also address complaints to the Inspection Body of the Ministry of Environment Land Development and Energy (IGAMAOT);
- The decisions of the organs directly dependent on the central government can be challenged through administrative appeal to the Ministry of Environment, Land Development and Energy. This is the case of decisions of the Portuguese Environmental Agency.
- The Water and Waste Services Regulator (ERSAR) analyses users' complaints and conflicts with the utilities providing public water supply services, urban wastewater sewerage services and municipal waste management.
- Applicants may submit complaints to the Commission on Access to Administrative Documents (Law 46/2007, of 24 August), which is an independent public authority (www.cada.pt).
- Courts can appreciate the right of access to information through an urgent proceeding (Article 104 of the Administrative Court Code Procedure).
- Law 35/98, of 18 July, defines the by-laws of Environmental Non-Governmental Organizations and gives these organizations the right to ask questions and receive information from general government entities regarding documents or administrative decisions that affect the environment. Non-Governmental organizations have the legal right to obtain a court order to require public authorities to allow consultation of documents or proceedings, and to issue certificates.
- The Portuguese Ombudsman has the legal authority (Article 20 (e) of the Statute of Ombudsman approved by Law 9/91, 9 April) to deal with complaints regarding environmental rights (www.provedor-jus.pt).



2. Please provide, in detail, the scope and characteristics of hazardous substances and wastes-related information that is or may be accessible to the public? More specifically, please explain what type(s) of information is produced, by whom, based on what criteria, and the time frame/frequency of data production including whether data collected is disaggregated by gender, age, disability status, etc.

The Portuguese Environment Agency (APA) is the government body, within the scope of the Portuguese Ministry of the Environment, Land Development and Energy, responsible for collecting, maintaining and disseminating environmental data and carrying out an integrated analysis of implementing policies and measures.

On its website (<http://apambiente.pt>) the Portuguese Environment Agency provides information about hazardous substances, namely about their classification and labelling. Updated information on air quality and water resources is available on that database.

As the national waste authority, the Portuguese Environment Agency also provides relevant information about production, management and prevention of waste, such as: National reports on shipments of waste; National Plan for Decontamination and Disposal of Polychlorinated Biphenyls; Monitoring reports of the Strategic Plan for Municipal Solid Waste (PERSU II); Sectorial status reports of data concerning the generation and destination of the waste produced; Draft Strategic Plan for Municipal Waste (PERSU 2020); and documents to inform the general public about licensing procedures and statistics on the production and management of waste covered by specific legislation (<http://www.apambiente.pt>).

Information concerning hazardous substances and wastes is provided to the public by other websites, such as:

- The site of the Inspection Body of the Ministry of Environment, Land Development and Energy has a list of the substances of potential concern, with certain hazardous properties that can be of concern for human health and/or the environment (www.igamaot.gov.pt).
- The National Authority of Civil Protection makes available information on hazardous substances, risks and emergency plans (<http://www.prociv.pt>).
- The Water and Waste Services Regulation Authority (ERSAR) disseminates information on the sector of water supply and urban wastewater management services and municipal waste management services. For this purpose, this regulator makes the Annual Report of Water and Waste Services available on its website to all stakeholders of the sector, including consumers (www.ersar.pt).
- The General Directorate for Consumers provides information on consumer articles containing dangerous substances (www.consumidor.pt);
- Several guides are available for employers and workers on how to deal with dangerous substances (www.act.gov.pt);
- The General Directorate for Health provides information about hazardous substances, for example on hospital hazardous waste and asbestos (www.dgs.pt);
- The consumer associations and environmental NGOs also provide specific information on hazardous substances (www.deco.pt; <http://www.quercus.pt>).



- The Economic and Food Safety Authority (www.asae.pt) provides information about dangerous substances, risks associated, and other relevant aspects.
- The official government web portal contains information about asbestos in public buildings (www.portugal.gov.pt).

3. Please explain, in detail, how the information on hazardous substances and wastes is made available to the general public. In addition, what actions do the Government take to disseminate this information and to raise awareness about the adverse impacts of hazardous substances and wastes on human rights? How is this information tailored to the different constituencies?

Information about the adverse impacts of hazardous substances and wastes is disseminated on television, radio and newspaper.

The Portuguese Environment Agency has taken part in various activities to disseminate environmental information, particularly by organizing and participating in information sessions, making information available on its website, preparing and providing information summaries and material, and sending relevant information to specific audiences. The Portuguese Environment Agency also participates in seminars about environmental education.

On its website (<http://apambiente.pt>), the Portuguese Environment Agency provides specific information about hazardous substances and wastes (characteristics, legal framework, and answers to frequently asked questions).

The website of the Portuguese Environment Agency provides some environmental education and awareness raising tools in this field for children: <http://snirh.pt/junior>.

Regional Development and Coordinating Committees (CCDR) and decentralized services of the Portuguese Environment Agency for matters on River Basins Regions (ARH) also have websites in order to provide better accessibility to citizens.

They also have procedures for answering requests received via email. These websites contain programs and projects on the environment subject to public consultation and participation.

Public services responsible for the environmental policy have centres for information and documentation with staff to provide users with help and guidance in their searches.

The National Civil Protection Authority website (www.prociv.pt) also makes available to the public information about hazardous substances (legal framework, self-protection measures and obligations of operators). The information on hazardous substances and wastes is also made available to the public also through educational campaigns and the distribution of information brochures promoted by the Local Civil Protection Services.



In terms of education and awareness the web site of the National Republican Guard provides information about hazardous substances and wastes (www.gnr.pt/SEPNA). This public security force promotes initiatives in environmental education with particular emphasis on the schools.

In the Energy sector, the General Directorate for Energy and Geology's website has a "useful section" that provides brief information about hazardous substances, for example about carbon monoxide (www.dgeg.pt).

The Working Conditions Authority promotes campaigns and disseminates practical guides about risks faced by workers, for example exposure to chemical agents or use of pesticides.

Local authorities also have documentation centres and/or libraries, websites, newsletters, etc., geared to local or specific public interests, on which the environment is usually present.

The Consumer Protection Association "DECO" informs consumers by publishing test magazines and others publications such as guides and brochures of interest to consumers. It provides information about environment and health, for example about the presence of asbestos in buildings (www.deco.proteste.pt/saude).

Environmental NGOs (www.quercus.pt) also provide specific information to the public on hazardous substances. A page on the Facebook social network, called "Citizenship and Environment", was created with the aim of disseminating the initiatives of environmental NGOs (<http://www.facebook.com/pages/Cidadania-e-Ambiente>).

4. Please provide examples of how information on hazardous substances and wastes has been used to:

- **Monitor human rights affected by hazardous substances and wastes (e.g., rights to health, safe and healthy working conditions, water and sanitation, healthy environment, etc.);** The information on hazardous substances in Lisbon's air has been used to monitor the human right to a healthy environment (www.ccdr-lvt.pt). Restrictions to the traffic of polluting cars were determined because of the serious pollution levels detected.

Protect the human rights of individuals and groups from the adverse impacts of hazardous substances and wastes; Information on the effects of asbestos exposure has been used to protect the human right of health. For instance, employers have to establish a health and safety management system that incorporates appropriate precautions when carrying out any work that could disturb asbestos (www.act.gov.pt).

Promote other human rights (e.g., rights to health, safe and healthy working conditions, water and sanitation, healthy environment, etc.); The practical guides of the Working Conditions Authority about risks faced by workers



exposed to hazardous chemicals promote healthy working conditions and human rights to environment and health (<http://www.act.gov.pt>).

- ***Prevent potential human rights violations caused by the improper management of hazardous substances and wastes; and hold perpetrators accountable and seek remedy for victims.*** Information on hazardous substances and wastes has been disseminated in order to regulate the transport of hazardous substances to prevent, as far as possible, accidents involving people or property, or damage to the environment, to the means of transport employed or to other goods transported.

5. Which businesses are required to provide information on hazardous substances and wastes (e.g., size, sector, operational context, ownership and structure)? Please explain, in detail, the obligations of these businesses, have with regard to the type of information they are obliged to provide, to whom the information is made available, and what measures may be taken if businesses fail to meet these obligations.

The system of prevention of major accidents involving hazardous substances, established under Decree-Law 254/2007, of 12 July, lays down the duties applicable to the operators and competent authorities to prevent and limit their consequences for human health and the environment.

Operators of establishments covered by this law (the Portuguese Environment Agency publicizes the list of those establishments in its website) have the duty to provide information to the Portuguese Environment Agency, namely about hazardous substances, through the coordinating body responsible for licensing proceeding (Article 7). The breach of that obligation is an administrative offence and can be subject to additional penalties (Articles 33 and 34).

6. When does the Government limit the right of access to information on hazardous substances and wastes? Are these criteria on limitation provided by law? Who has the authority to make decisions on the disclosure/non-disclosure of such information?

The Law 19/2006, of 12 June, that regulates access to environmental information, provides, in its article 11, the conditions of denial of applications for access to information.

Applications for access to information may be denied when the requested information is not, and is not required to be, in the possession, or held on behalf, of the public authority to which the application was made. In that case, when the public authority is aware that the information is in the possession of another public authority or is held on the latter's behalf; it shall immediately refer the application to the said authority and inform the applicant (Article 11 (1) and (4)).



When an application concerns ongoing procedures, incomplete documents or data, or internal communications, access shall be delayed until the decision is taken or the file is archived (Article 11 (2)). When an application concerns internal communications, it shall be granted when the public interest underlying the publicizing of the information prevails (Article 11 (3)).

If an application concerns an ongoing procedure, the public authority shall refer it to the authority which is coordinating the procedure, which shall in turn inform the applicant of the foreseeable timescale for the procedure's conclusion and of the legal provisions that the procedure is expected to contain as regards access to the information (Article 11, 5).

In accordance with article 11 (6), applications for access to information may also be denied if divulging the latter will prejudice:

- a) The confidentiality of the file in question or of information which is in the possession of public authorities or is held on their behalf, when such confidentiality is provided for by law;
- b) Foreign affairs policy, public safety or security, or national defence;
- c) The confidentiality of legal proceedings;
- d) The confidentiality of commercial or industrial information, whenever Portuguese or Community law provides for such confidentiality in order to protect a legitimate economic interest; or the public interest in maintaining the confidentiality of statistics or of fiscal matters;
- e) Intellectual property rights;
- f) The confidentiality of personal data or of files concerning a natural person, as laid down by the applicable legislation;
- g) The interests or protection of whoever has voluntarily provided the information in question without being legally obliged to do so, save only if the person in question has authorized the divulging of that information;
- h) The protection of the environment to which the information in question refers, particularly the location of protected species.

The grounds for denial referred to by subparagraphs a), d), f), g) and h) of the previous paragraph shall not be invoked when an application for information concerns emissions into the environment (Article 11, 7).

Public authorities shall interpret the grounds for denial restrictively, to which purpose they shall weigh up the public interest served by divulging the information in question against the protected interests, which provide the grounds for denial (Article 11, 8).

Procedures for Environmental Impact Assessments (EIA) are open to public, with exception of those who are covered by commercial or industrial confidentiality, including intellectual property, or which are relevant to the protection of national



security or the conservation of natural and cultural heritage (Decree-Law 151-B/2013, amended by Decree-Law 47/2014, of 24 March).

7. How does the Government ensure that the right of access to this information is fulfilled while also respecting the confidentiality of business information? If available, please indicate relevant cases and attach copies of relevant judgements.

Requests for access to information may be denied if divulging the latter will prejudice the confidentiality of the file in question or of information which is in the possession of public authorities or is held on their behalf, when such confidentiality is provided for by law (article 11, (6), (a) of Law 19/2006, of 12 June, that regulates access to environmental information).

The system of prevention of major accidents involving dangerous substances, established under Decree-Law 254/2007, of 12 July, provides that the Portuguese Environment Agency may decide not to disclose some of the information covered by industrial, commercial secrecy (Article 15, 2).