

EUROPEAN EXTERNAL ACTION SERVICE



EU response to call for input on

Access to information on climate change and human rights

By the Special Rapporteur on the promotion and protection of human rights in the context of climate change

Transparency is one of the key principles of the European Commission. An essential element is the right of citizens to obtain access to documents held by European institutions.

This right stems from the democratic, open and independent nature of the European administration. Its principles are enshrined in Article 42 of the Charter of Fundamental Rights¹ of the European Union and Article 15(3) of the Treaty on the Functioning of the European Union. Article 10 of the Treaty on European Union stipulates that open decision-making is carried out ‘as closely as possible to the citizen’².

These principles have guided several pieces of EU legislation defining rights, obligations and processes regarding access to information. Some of the relevant EU legislation have a general scope; others are specifically addressing environmental issues.

The European Green Deal reiterates the commitment to the green transition to be just and inclusive, putting people first and requiring active public participation and confidence in the transition.

Access to EU documents and information - “Transparency Regulation” 1049/2001

The Transparency Regulation allows citizens of the Union, but also from all over the world no matter their nationality or country of residence, and legal persons to obtain documents of the EU institutions. The general principle is transparency, except if the documents are covered by an exemption from disclosure. The exemptions that can be invoked are specifically enumerated in the Transparency Regulation – they comprise personal data, public security, defence and military matters, international relations and the financial, monetary or economic policy of the EU or a Member State.

If commercial interests of a natural or legal person, court proceedings or legal advice, investigations and audits or the institution’s decision-making process are concerned, the interest in protecting the document is weighed against an eventual public interest in disclosure. The institution also checks if partial access can be granted, if only parts of a document are protected.

¹ “Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.”

² <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A02016M%2FTXT-20200301>

Negative or partial disclosure decisions or decisions where the institution informs the citizen that it does not hold the requested document(s) can be administratively appealed and then be brought before the EU courts. If the citizen believes that the document request was not correctly handled, for instance when the reply was late (that is, issued after 15 working days, or at maximum 30 working days in exceptionally complex cases), they can address the European Ombudsman on alleged maladministration.

Access to EU environmental information - “Aarhus Regulation” 1367/2006

The EU and its Member States are parties to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The EU is implementing the provisions of the Aarhus Convention through various directives, namely 2003/4/EC and 2003/35/EC that have been transposed into national law by Member States.³ The EU's institutions ensure the implementation of the Aarhus Convention in their decision-making processes through Regulation No 1367/2006 (“Aarhus Regulation”).⁴

In environmental matters, the process for granting access to EU documents and information is the same as defined in the Transparency Regulation 1049/2001. However, the “**Aarhus Regulation**” 1367/2001 adds specific rules that generally foresee further transparency where environmental information is concerned. The Aarhus Regulation contains a very broad definition of environmental information, comprising any information in written, visual, aural, electronic or any other material form on the state of the elements of the environment, factors, measures, reports, analyses, but also the state of human health and safety.

Exemptions from disclosure need to be interpreted in a restrictive way when environmental information is requested.

The Aarhus Regulation provides that an overriding public interest in disclosure is deemed to exist where the requested information relates to emissions into the environment. The European Courts have interpreted this term broadly, to encompass information which concerns or relates to foreseeable (but not hypothetical) releases, which affect or are likely to affect the elements of the environment.

³ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0004&qid=1615481237607>; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0035>.

⁴ Regulation (EC) No. 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1367>.

Other relevant legislation

In addition, recent European data sharing legislation help to ensure that environmental data is accessible, interoperable and shared across member states to support policy-making and public access: the INSPIRE Directive and the Implementing Regulation on High-Value Datasets.

The **INSPIRE Directive**⁵ (2007/2/EC) creates a framework for a European spatial data infrastructure. This framework facilitates the sharing of environmental spatial information among public sector organizations and improves public access to spatial information across Europe. INSPIRE requires Member States to make various datasets available in a standardized format, covering themes like land use, biodiversity, water, and soil.

The **Implementing Regulation on High-Value Datasets**, adopted under the Open Data Directive (Directive (EU) 2019/1024), focuses on ensuring the availability of key datasets considered highly valuable for the economy and society. High-value datasets, including environmental data, must be freely available, machine-readable, and provided via APIs. The regulation enhances the reuse of public sector information, facilitating innovation, transparency, and the development of new services and applications. Together, these legislative measures aim to enhance the quality, availability, and interoperability of environmental data across Europe, promoting better environmental governance and public participation.

Other relevant actors

The EU's European Ombudsman also plays an important role in the protection of the environment by focusing on ensuring transparency, accountability, and good governance within the institutions and bodies of the EU.⁶ Article 43 of the Charter of Fundamental Rights of the EU guarantees the right to complain to the European Ombudsman. It is important to note that public interest complaints are also admissible before the European Ombudsman.

The Court of Justice of the EU (CJEU) has also addressed access to justice in environmental matters even before the EU's ratification of the Aarhus Convention. The CJEU has clarified, among others, that national procedures should enable NGO standing in environmental cases and that NGOs can represent the environmental interest based on both national legislation and EU environmental law with direct effect. These judgments align with the European Green Deal's goal of strengthening access to justice for the public.⁷

The “Europa” website, https://european-union.europa.eu/index_en, an official website of the EU, contains all kinds of information about the EU institutions and their work, including the environment. The database “EUR-lex”, [EU law \(EUR-Lex\)](#), gives access to EU law in all areas.

⁵ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), OJ L 108 of 25 April 2007, p.1.

⁶See https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/europeanombudsman_en#:~:text=The%20European%20Ombudsman%20investigates%20complaints,EU%2Dbased%20associations%20or%20businesses

⁷ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal. Brussels 11.12.2019. COM/2019/640 final, available at: https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF

For the European Commission, there is a [Register of Commission documents](#) (RegDoc). If a document cannot be found there already, it can be requested via the public portal EASE (Electronic Access to European Commission documents).

Annex

Regulation (EC) No 1049/2001 of the European Parliament and of the Council on public access to EU institution documents (“Transparency Regulation”)

<https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32001R1049>

AIM OF THE REGULATION

- Article 15(3) of the TFEU gives EU citizens, residents and businesses the right of access to documents of the EU institutions, bodies, offices and agencies subject to certain principles and conditions.
- The regulation lays down the general principles and limits on access. It aims to ensure that citizens can exercise their right of access in the easiest possible way. Access can be requested to all documents drawn up or received by an institution, in all areas of EU activities.

KEY POINTS

Exceptions and rights of third parties

The institutions can refuse access to a document where disclosure:

- would undermine the protection of:
 - the public interest as regards public security, defence, international relations and the financial, monetary or economic policy of the EU or of an EU country, or
 - the privacy and integrity of an individual, in particular in accordance with EU legislation regarding the protection of personal data;
- would undermine a person’s:
 - commercial interests, court proceedings, and legal advice, or
 - the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure;
- would seriously undermine the protection of the institution’s decision-making process, unless there is an overriding public interest in disclosure.

For documents drawn up by third parties, the EU institution must, in case of doubt, consult the third party in order to assess whether an exception applies. EU countries have a stronger right of opposition (though no veto).

Documents in EU countries

Where an EU country receives a request for a document in its possession, originating from an EU institution, it must, in principle, consult that institution to ensure that the disclosure is in line with the objectives of this regulation. The country may instead refer the request to the EU institution in question.

Applications, processing of applications and access to documents

- The public must apply for access to a document in writing (including by electronic means) in one of the official EU languages. The applicant does not have to state reasons for the application, but has to be precise in their request.
- Institutions must promptly handle applications for access to a document. They must acknowledge receipt of the application and, within 15 working days of registering it, either grant or refuse access to the document requested. This deadline may be extended once by another 15 working days.
- In the event of total or partial refusal, the applicant may, within 15 working days of receiving the institution’s reply, make a confirmatory application asking the institution to reconsider its position.
- The applicant may access documents either by consulting them on the spot or receiving a copy of them, or by receiving information on how to easily obtain them.

Sensitive documents

- Sensitive documents are certain documents originating from the institutions or the agencies established by them, from EU countries, from non-EU countries or from international organisations, and which are classified as TRÈS SECRET UE/EU TOP SECRET, SECRET UE/EU SECRET or CONFIDENTIEL UE/EU CONFIDENTIAL.
- Applications for access to sensitive documents may only be handled by persons who have a right to know their content. Sensitive documents may be recorded in the register or released only with the consent of the originator.

Registers and administrative practice

- Each institution must keep a register of documents. Access to this register should be provided in electronic form.
- EU countries must cooperate with the institutions in providing information to citizens.
- Institutions must develop good administrative practice to ensure the right of access guaranteed by this regulation can be exercised.

Publication in the Official Journal

Many EU documents are published in the Official Journal. These include:

- legislative acts adopted under Article 297 of the TFEU (ordinary legislative procedure);
- Council positions adopted under Article 294 of the TFEU;
- international agreements concluded by the EU or in accordance with Article 37 of the Treaty on European Union.

Reports and application measures

Each institution publishes an annual report covering the preceding year citing the number of cases in which the institution refused to grant access to documents, the reasons for these refusals and the number of sensitive documents not recorded in its register.

Directive 2003/4/EC on public access to environmental information

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0004>

AIM OF THE DIRECTIVE

- It fully adapts European Union (EU) countries' national laws to the 1998 Aarhus Convention on access to information, public participation and access to justice in environmental matters.
- It guarantees the public access to environmental information* held by, or for, public authorities*, both upon request and through active dissemination.
- It sets out the basic terms, conditions and practical arrangements that a member of the public must respect when granted access to the requested environmental information.

KEY POINTS

Access upon request

- Public authorities must make available any environmental information they possess to an applicant without the person having to state a reason.
- The information should be provided at the latest 1 month after the request is received. This may be extended to 2 months for voluminous and complex requests.
- Public authorities must make every reasonable effort to ensure the information they have can be readily reproduced and accessed electronically.
- The information should be supplied in the form or format the applicant specifies unless it is already publicly available in another format.

- EU countries must ensure civil servants help the public seeking access to information and maintain a list of accessible public authorities.
- Practical arrangements for dealing with requests include:
 - appointment of information officers;
 - facilities for examining the information; and
 - registers or lists of the information held and details of information points.
- Requests may be refused if they are:
 - manifestly unreasonable;
 - too general;
 - relate to unfinished material; or
 - concern internal communications.
- They may also be refused, in full or in part, if the disclosure could be damaging to one of the exhaustive grounds envisaged, for instance:
 - international relations;
 - the course of justice;
 - [intellectual property rights](#); or
 - commercial or industrial confidentiality.
- Access to public registers or lists should be free of charge. Public authorities may charge for the environmental information they make available upon request, but the amount should be reasonable.
- Applicants who consider their request has been ignored or wrongfully refused may have access to remedies, including a court of law or another independent body.

Active dissemination

- Electronically accessible environmental information must contain at least:
 - texts of international treaties, conventions or agreements, policies, plans and programmes relating to the environment;
 - progress reports on implementation of the above items;
 - reports on the state of the environment;
 - monitoring data of activities that could affect the environment;
 - authorisations which could have a significant impact on the environment;
 - impact studies and risk assessments.
- For items other than those above, active dissemination may be done progressively taking account of the human, financial and technical resources required.
- EU countries must ensure any information compiled by them or on their behalf is up-to-date, accurate and comparable.

Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention (“Aarhus Regulation”)

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1367&qid=1717766879537>

AIM OF THE REGULATION?

It requires [European Union](#) (EU) [institutions](#) and bodies to implement the obligations contained in the [Aarhus Convention](#) (see [summary](#)). The convention gives the public the right to:

- access environmental information;
- participate in making decisions;
- access to justice on environmental issues.

KEY POINTS

Access to environmental information

EU institutions and bodies must:

- guarantee public access to environmental information held by them, under the conditions laid down in the regulation;
- ensure that environmental information is progressively made available and disseminated to the public;
- organise the information in databases which the public can easily access;
- update the information and ensure it is accurate and comparable;
- reply to any requests for environmental information within 15 working days.

Environmental databases or registers must contain:

- texts of international treaties, conventions or agreements, policies, plans and programmes;
- progress reports on the implementation of the above;
- steps taken in proceedings for infringements of [EU law](#);
- reports on the state of the environment;
- monitoring data of activities that could affect the environment;
- authorisations given that could affect the environment;
- environmental impact studies and risk assessments.

Requests for information may only be refused in specific circumstances, such as ongoing legal proceedings or if they might harm the environment by, for instance, revealing breeding sites of rare species.

Public participation in the environmental decision-making process

EU institutions and bodies must provide early and effective opportunities for the public to participate in making decisions regarding environmental plans or programmes. When the [European Commission](#) prepares a plan or programme to be submitted to other EU bodies for decision, it must provide for public participation at the preparatory stage.

EU institutions and bodies must identify the public likely to be affected by a plan or programme and ensure they are informed of:

- the draft proposal;
- relevant environmental information;
- practical arrangements for public participation, including:
 - where further information can be obtained,
 - to whom comments, opinions or questions can be submitted,
 - reasonable time frames to allow the public to prepare and participate effectively in the decision-making process.

A time limit of at least 8 weeks is set for receiving comments, with at least 4 weeks' notice of any meetings or hearings.

EU institutions and bodies must take due account of the outcome of the public participation and inform the public of any decisions and on what basis they were made, including information on public participation.

Internal review and access to justice

Members of the public, under certain conditions, are entitled to make a request for internal review to the EU institution or body that adopted an administrative act or, in the case of an omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law.

A non-governmental organisation (NGO) can make a request, if:

- it is an independent non-profit-making legal person in accordance with an EU [Member State](#)'s national law or practice;
- it has the primary stated objective of promoting environmental protection in the context of environmental law;

- it has existed for more than 2 years;
- the subject matter concerned is covered by its objective and activities.

A request for internal review may also be made by other members of the public, if they can:

- demonstrate that their rights are directly affected by the alleged contravention of EU environmental law compared to the public at large; or
- demonstrate sufficient public interest, supported by at least 4,000 members of the public from at least five Member States, with at least 250 members of the public coming from each Member State.

Requests must be submitted either by an environmental NGO meeting the criteria outlined above or a lawyer authorised to practise in a Member State. Such requests must be made within 8 weeks of the administrative act being adopted, notified or published, whichever is the latest.

EU institutions and bodies must publish all requests for internal review as soon as possible after receipt, as well as all final decisions on those requests as soon as possible after they are adopted.

The EU institution or body must act within 22 weeks of the expiry of the 8-week submission deadline. Where the EU institution or body fails to act on a request for an internal review, or when a request is rejected, the NGO or other members of the public may institute proceedings before the [Court of Justice of the European Union](#).

