



Overview of Best Practices on Access to Environmental Information on the European Level

**Daniele FRANZONE, Senior Expert, European Commission ,
DG Environment**

**Symposium `Best Practices on Access to Environmental
Information`**

Berlin, 3 December 2018



Outline of presentation

I.	How did the first pillar of the Aarhus Convention receive full effect in the EU? Scope of obligations, CJ interpretation
II.	Best Practices in the EU Institutions: Access upon request a) Effective compliance with deadlines for replying b) No fees or charges
III.	Best Practices in the EU Institutions: Active dissemination a) Broad scope and updated information; b) Better Regulation i.e. enlargement of information disseminated in view of public participation; c) Possible models: EU Court of Justice website; d) EEA: Dissemination of data for all EU Member States



I. How did the first pillar of the Aarhus Convention receive full effect within the EU?

Full effect **within EU Member States**: through the harmonisation achieved by Directive (EC) 2003/4/EC

Full effect **for the EU Institutions and bodies**: through the existing legislation dealing with access to documents, i.e. Regulation (EC) n. 1049/2001 (valid for EU Commission, Council and European Parliament) as complemented and amended by Regulation (EC) n. 1367/2006.

For EU institutions and bodies: Difference between access to documents containing information other than environmental information, which are only regulated by Regulation (EC) n. 1049/2001 and access to environmental information which is subject to this Regulation as complemented and amended by Regulation (EC) n. 1367/2006.





I.2 - Scope of the obligations within the EU Institutions and EU Member States

Even if **not completely identical in wordings** (due to the fact that Regulation (EC) n. 1049/2001 deals with access to documents and predates Directive 2003/4), **the substantive obligations** are considered **identical, so far as access to environmental information is concerned;**

Logical conclusion because EU Regulations and Directive 2003/4 have the same objective, i.e. to give full effect to the first pillar of the Aarhus Convention (AC).





I.3 - Interpretation of the first pillar by the Court of Justice of the EU (CJEU)

Several judgments of the CJEU on the interpretation of Directive (EC) 2003/4, in particular via preliminary rulings. However, there is **wider CJEU case-law on Regulation (EC) 1049/2001** as complemented by Regulation (EC) 1367/2006.

Why?

Applicants brought cases directly before EU courts to appeal against negative decisions on access to documents or on environmental information taken by the EU institutions – in particular the Commission. In the first instance, these cases went to the General Court and on appeal, on points of law, to the CJEU.





Interpretation of the first pillar by the CJEU: examples

In this way, the **CJEU has been able to clarify some concepts included in the Aarhus Convention** and in the EU instruments, for which the Convention itself does not provide interpretation and no indication has come from practice or decisions by the bodies of the Convention.

Example: Emissions in the environment (judgements of 23.11.16, cases C-673/13P and C-442/15); confidentiality of the proceedings of public authorities (judgements of 14.02.12 case C-204/09 and 13.07.17 case C-60/15P).





I.5- Interpretation of the first pillar by the CJEU: Authoritative effect in the framework of the Convention

The CJEU interpretation is **binding on the EU Institutions and Member States.**

Authoritative effect in the framework of the Aarhus Convention: interpretation could be taken into account by the bodies of the Convention itself.





II – Best practices in the EU Institutions

Distinction between **access upon request** and **active dissemination**

Art. 2(2) AC gives the Parties the possibility to exclude from the notion of public authority bodies acting in judicial or legislative capacity. However, **for the EU Institutions**, access to environmental information includes:

- Information from public authorities **acting in legislative capacity;**
- Access to the **written pleadings of EU institutions before the EU courts is ensured after the judgment is adopted** and published.





II.2 – Best practices in the EU Institutions: Access upon request

a) Effective compliance with deadline for replying:

- Provide the initial reply within 15 working days** from the registration of the request;
- In case of complex information or a large search,** the deadline can be **extended by up to another 15 working days,** provided there is prior notification in writing to the applicant.

Most of the requests are handled within these deadlines.





II.3 - a) Effective compliance with deadline for replying:

Current challenge: More and more large-scale applications drafted in the following way or similarly:

All communication (letters, emails, Whatsapp messages, text messages, etc), minutes of meetings or any other reports of such meetings, where (the topic of the request) was discussed between (dates envisaged in the request).

This implies more extensive work on search and, in several cases, the competent service of the Commission needs to clarify the scope and, sometimes, limit it to ensure a reply within the deadlines and in a way consistent with the workload of the service.





II.4 – Best practices in the EU Institutions: Access upon request

b) No fees or charges

- Environmental information from the EU institutions and bodies is free of charge.
- Even the administrative review (envisaged in Article 9,1, 2nd subparagraph AC) is ensured without charging the applicant. The administrative review conducts a fresh review of the initial reply.
- Against the decision on administrative review, a complaint to the European Ombudsman may be submitted; it concerns an instance of alleged maladministration in the activities of the EU institutions (or bodies). The procedure is expeditious (new fast-track procedure to deal with complaints on access to information was introduced in February 2018) and free of charge.





II.5- b) No fees or charges

The other remedy against a decision on administrative review consists of an action to the General Court (**judicial review**), subject to the mandatory representation by a lawyer, to be brought within a specific deadline and with the application of 'the loser pays' principle.

The General Court does not require plaintiffs to pay 'court fees' to bring a judicial review. The most important costs to be borne by the applicant are lawyer's fees (notably for drafting written pleadings and, if held, for providing representation at the hearing). These costs vary depending on the number, experience and expertise of the lawyers engaged.





III – Best practices in the EU Institutions: Active dissemination

In line with Article 5 AC, the EU institutions - in particular the Commission - ensure an active dissemination of information through their websites.

a) Broad scope and updated information

- **The information provided goes largely beyond the minimum requirements envisaged in the AC** (see also Article 4 Regulation 1367/2006);
- Specific effort to ensure that **information is up-to-date, accurate and comparable.**





III.2 - Best practices in the EU Institutions: Active dissemination

b) Better Regulation: Enlargement of information disseminated in view of public participation

Better Regulation Communication (COM(2015)215 of 19.05.2015) amongst other things aims at defining new rules for consulting stakeholders more often, listening to them better and explaining better what the Commission envisages to do in its legislative and regulatory procedures.

Therefore, it has **considerably enlarged** not only the **documents available over the entire life-cycle of a policy** but has also involved **more often the stakeholders in public consultations.**





III.3 – Best practices in the EU Institutions: Active dissemination) - c) Possible models: EU Court of Justice website:

Court of Justice website:

Structured, free of charge and containing inter alia:

- all judgment and conclusions of the Advocate General, generally in all official EU languages;
- digest of the case-law;
- annotation of judgments

See: <http://www.curia.europa.eu>





III.4– Best Practices in the EU Institutions: Active dissemination

d) EEA: Dissemination of data for all EU Member States

European Environment Agency (EEA) in Copenhagen collects and disseminates a very large amount of environmental information in different fields, for all Member States.

Moreover, based on MS sectoral reports, every five years EEA presents **the state of the environment report (SOER) for the EU.**





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Thank you!

