

“Legal tools for environmental advocacy: litigation, complaints and access to documents”

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When and how to challenge access to information refusals

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Requesting access to environmental information

We will cover:

- What does the right to access env info consist of?
- Why request access to information?
- What is environmental information?
- How to submit a request?
- How to challenge refusals and on what grounds?



Legal provisions

- Article 10(3) TEU, Article 15(1) and (3) TFEU
- Aarhus Convention on access to information, public participation and access to justice in environmental matters
 - Signed and ratified by all EU Member States plus EU
- EU institutions and bodies: Regulation 1049/2001 on access to documents (the “Transparency Regulation”), in conjunction with Regulation 1367/2006 (the “Aarhus Regulation”)
- Member States: Directive 2003/4 on access to environmental information



The right to access environmental information

- The objective of access to env info rights:
 - Enhance quality of decisions;
 - Ensure better implementation of environmental laws;
 - Contribute to public awareness of environmental issues;
 - Give public opportunity to contribute to decision-making
 - Ensure accountability and legitimacy of decision-makers
 - Enable enforcement of environmental laws by public and NGOs



Access how?

1. Access upon request (without having to state an interest)
2. Access through active dissemination (obligation to “progressively” make environmental information directly available to the public)

Today we focus on 1.



Why request access to env info?

- Practical reasons:
 - To access information that is not publicly available;
 - To maximise participation in decision-making processes;
 - To know if a specific piece of information exists (and official confirmation if it does not exist);
 - To demonstrate that public authorities/officials are not carrying out their duties correctly;
 - To understand what is delaying public action/decisions;
 - To put pressure on public authority/officials to take specific action.



Why request access to env info?

- Principled reasons: use your rights or lose them!
 - To gradually change the attitude of public authorities/officials to transparency, i.e. to make it “normal”;
 - To create good precedent that whole environmental movement can rely on;
 - To achieve behavioural change in the way public officials deal with access to information requests;
 - To push for more active dissemination of environmental information saving time and resources of the public and public authorities alike.



Negative consequences of making a request?

- Misuse of public resources:
 - Importance of targeted requests for information; no fishing expeditions!
- Compromise relationship with public officials
 - Explain motives with contacts;
 - Possible to have multifaceted working relationships.



What is environmental information?

- **Wide definition!**

Article 2:

‘environmental information’ means any information in written, visual, aural, electronic or any other material form on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (c);

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (a) or, through those elements, by any of the matters referred to in points (b) and (c)



Information on emissions into the environment

- **Wide definitions – covers emissions in more traditional sense, plus:**
- **CJEU: The concept covers information concerning the nature, composition, quantity, date and place of the emissions into the environment...and data concerning the medium to long-term consequences of those emissions on the environment (and human health). C-422/12 Bayer Crop Science**
- **Beware: Widespread misunderstanding among EU officials that ONLY information on emissions environmental information!**



Who can request access to environmental information?

- **Any natural or legal person** without discrimination as to citizenship, nationality or domicile or the place where a legal person has its registered seat or effective centre of its activities



From whom can we request env info?

- EU level: All EU institutions and bodies
- National level: “public authorities”, defined broadly according to the function they perform (environmental services) or who they are controlled by
 - E.g. private entities performing environmental services under contract with government.
- Information HELD by them; authorship unnecessary



Making a request for environmental information: the initial request

- National level – Directive 2003/4:
- An official request referring to relevant provisions of Directive 2003/4 (Articles 3 and 4)
- Sufficiently precise (public authority duty to ask for clarification)
- No need to give a reason to justify a request for documents
- May ask for information to be made available in specific format
- Must be made available as soon as possible and within one month
- Possibility to extend the deadline by a further month in exceptional cases (very complex documents or large number of documents)
- Possibility to charge “a reasonable amount” for supplying information.



Making a request for environmental information: the initial request

- EU level – Regulation 1049/2001:
- In any written form
- Sufficiently precise
- No obligation to state reasons
- Obligation to clarify the request if it is unclear (cannot refuse on this basis)
- For very long document or a very large number of documents: possibility to confer informally to reach a fair solution (does not allow for postponement of deadlines)
- Deadline for initial reply: 15 working days, can be extended further fifteen working days in “exceptional cases”



Examples of information we have a right to access

- Legislative impact assessments
- Lobbying communications
- Meeting minutes
- CJEU case files once case is closed
- Basic information on ongoing EU pilots and infringement procedures (MS, relevant dates, nature of infringement)
- Infringement files once case is closed
- Certain conformity checking studies
- Evidence underlying decisions



When/how to challenge on access to environmental information refusals

- I. When information may be withheld
- II. When to challenge refusals
- III. How/where to challenge refusals



I. Always applicable obligations

1. Exceptions are to be interpreted narrowly
2. Partially disclose information, where only part is exempted
3. Comply with the timelines
 - On EU level: 15 working days + 15 working days for complex requests
4. Provide reasons for a refusal
5. Consider public interest in disclosure
6. Greater need for transparency in legislative procedures



I. Always applicable obligations

1. Exceptions are to be interpreted narrowly (Art 6(1) Reg 1367/2006; Art 4(2), second ind, Dir 2003/4)
2. Partially disclose information, where only part is exempted (Art 4(6)) Reg 1049/2001; Art 4(4) Dir 2003/4)
3. Comply with the timelines
 - On EU level: 15 working days + 15 working days for complex requests (Art 7(1) and (3) Reg 1049/2001; Art 8(1) and (2) for Confirmatory Applications, see below)
4. Provide reasons for a refusal (Art 6(1) Reg 1367/2006; Art 4(2), second ind, Dir 2003/4)
5. Consider public interest in disclosure (Art 6(1) Reg 1367/2006; Art 4(2), second ind, Dir 2003/4)
6. Greater need for transparency in legislative procedures
 - Article 10(3) TEU, C-57/16 P *ClientEarth*, paras 84-87



(4) Obligation to provide reasons

- "in order to justify refusal of access to a document, it is not sufficient, in principle, for that document to fall within an activity or an interest, mentioned in Article 4 of Regulation No 1049/2001. The institution concerned must also supply explanations as to how access to that document could specifically and actually undermine the interest protected by an exception laid down in that article."



Case T-189/14, *Deza v ECHA*, para. 54 and case law cited



(4) Obligation to provide reasons

- It is "for the institution which has refused access to a document to provide a statement of reasons from which it is possible to understand and ascertain, first, whether the requested document does in fact fall within the sphere covered by the exception relied on and, second, whether the need of protection relating to that exception is genuine."

Case T-796/14, *Philip Morris Ltd v Commission*, para. 31



(5) Public interest in disclosure

- Public interest to be weighed against exemptions + consider whether info relates to emissions (+ special emissions rules below)

(Art 6(1) Reg 1367/2006; Art 4(2), second ind, Dir 2003/4)

- Added complexity at EU level (Article 4(1) vs 4(2) Reg 1049/2001):
 - “Overriding public interest” for: Court proceedings & legal advice; Commercial & Industrial information; Purpose of inspections, investigations, audits; Internal decision-making
 - Only take public interest into account for: public security, defence, international relations, financial & monetary policy, privacy



(6) Transparency in legislative procedures

“The possibility for citizens to scrutinise and be made aware of all the information forming the basis for EU legislative action is a precondition for the effective exercise of their democratic rights as recognised, in particular, in Article 10(3) TEU.”

Case C-57/16 P *ClientEarth*, para. 84



II. When information may be withheld

- Article 4 of Regulation 1049/2001 + Article 6 Regulation 1367/2006 list valid exemptions from disclosure for EU institutions = closed list
- Largely the same for MS under Article 4 Directive 2003/04
- CJEU has established that the same case law applies for request to MS and to EU authorities



(1) Exception: International relations etc

- Protects: Public security, defence and military matters, international relations, (on EU lvl: financial, monetary, or economic policy of the EU or a MS)
- No overriding public interest for emissions

Contained in: Art 4(1)(a) Reg 1049/2001 & Art 4(2)(b) Dir 2003/4



(2) Exception: Personal data

- Protects: Confidentiality of personal data / file of person that did not consent to disclosure
- EU: No overriding public interest for emissions
- MS: Overriding public interest for emissions

Contained in: Art 4(1)(b) Reg 1049/2001 & Art 4(2)(f) Dir 2003/4



(3) Exception: Court proceedings

- Protects:
 - EU: court proceedings / legal advice
 - MS: course of justice & fair trial guarantee + criminal/disciplinary enquiries
- No overriding public interest for emissions

Contained in: Art 4(2), 2nd ind Reg 1049/2001 & Art 4(2)(c) Dir 2003/4



(3) Exception: Court proceedings

CJEU test:

1. determine whether the document constitutes legal advice (document title not decisive)
2. "examine whether disclosure of the parts of the documents that have been identified as relating to legal advice 'would undermine the protection' of that advice"
3. consider whether an overriding public interest in disclosure exists

C-39/05 P and C-52/05 P, *Sweden and Turco v Council*, paras. 38-40, 44



(4) Exception: Commercial/industrial info + IP

- Protects:
 - Commercial/industrial info if provided by law + necessary to protect legitimate economic interest
 - Intellectual property
- Overriding public interest for emissions
 - Except for IP under MS law

Contained in: Art 4(2), ind 1 Reg 1049/2001 & Art 4(2)(d) Dir 2003/4



(4) Exception: Commercial/industrial info + IP

- It "is not possible to regard all information concerning a company and its business relations as requiring the protection which must be guaranteed to commercial interests"
- "it must be shown that the documents at issue contain elements which may, if disclosed, seriously undermine the commercial interests of a legal person."

- Case T-437/08 *CDC Hydrogene Peroxide*, para. 44
- Case T-189/14, *Deza v ECHA*, para. 56.



(5) Exception: Internal use

- Protects: drawn up for / containing opinions for internal use, if disclosure would seriously undermine decision-making
- No overriding public interest for emissions

Contained in: Art 4(3) Reg 1049/2001 & Art 4(1)(e) Dir 2003/4



(5) Exception: Internal use

- "the mere reference to a risk of negative repercussions linked to access to internal documents and the possibility that interested parties may influence the procedure do not suffice to prove that disclosure of those documents would seriously undermine the decision-making process of the institution concerned."

C-60/15 P *Saint-Gobain Glass v Commission*, para. 83 & C *ClientEarth*



(5) Exception: Internal use

- Commission: “importance of the Commission’s being in a position to adopt its decisions without any disruption and free from external pressure and of its departments being able to express their points of view freely, so that they can guide the Commission in taking decisions”
- Court: “those justifications are made in a general and abstract fashion, without being supported by any detailed argument based on the content of the documents in question. The same considerations could apply with respect to any document of a similar nature. They are therefore insufficient to justify the refusal of access [...]”

Case T-237/05 *Éditions Odile Jacob SAS v European Commission*, paras 142-143 – overruled on appeal but not on this point.



(6) Only EU: Investigations

- Protects: Purpose of inspections, investigations, audits
- Investigations: No overriding public interest for emissions
- Inspections & audits: Overriding public interest for emissions

Contained in: Art 4(2), 3rd ind Reg 1049/2001



(7) Only MS: Confidentiality of proceedings + unfinished documents

- Protects:
 - Material in the course of completion + unfinished documents/data
 - Confidentiality of proceedings, if provided by law
- Unfinished documents: No overriding public interest for emissions
- Confidentiality of proceedings: Overriding public interest for emissions



Contained in: Art 4(1)(d) & 4(2)(a) Dir 2003/4

Presumption of confidentiality

Extra invention by the Commission, confirmed by the Court for:

1. State aid file;
2. Court submissions as long as proceedings are pending;
3. Documents exchanged in merger proceedings;
4. Documents relating to an infringement procedure, including during PILOT phase;
5. Files related to a competition investigation.



III. Summary: Main grounds to challenge refusals

- Failure to reply (in time);
- Mischaracterization of the scope of the request;
- Failure to identify environmental information;
- Failure to rely on an exception / give reasons;
- Errors in law in relying on specific exceptions (see above)
- Failure to recognize an overriding public interest in disclosure.
- Failure to characterize information as relating to emissions into the environment.



III. Where to turn with your complaint?

On EU level:

1. Mandatory: Confirmatory application to authority that refused the request
2. Options:
 - a) Complaint to the EU Ombudsman OR
 - b) Judicial challenge to the EU General Court



(1) Confirmatory Application

- Usually recommendable
- Free of charge, 15 working days to file
- Deadlines: 15 working days + 15 working days if complex
- Decided by Sec Gen



(2)(a) Complaint to the EU Ombudsman

- Advantages:
 - Free of charge, 2 years to file
 - Considers wider maladministration issues as part of the complaint
 - No need for a lawyer
 - Political priorities currently include Council transparency
- Disadvantages
 - Slow
 - Non-binding decisions
 - More hesitant to interpret law



(2)(b) Appeal to the EU General Court

- Advantages:
 - Binding decisions;
 - Possibility to appeal;
 - Develops case law, binding interpretations of the law
- Disadvantages:
 - Deadline to file: 2 months + 10 days (distance)
 - Slow (1.5-2 years, same on appeal);
 - Potentially costly because requires lawyer;
 - Strict procedural rules and scope of review



III. Where to turn with your complaint?

- On MS level: differs but need to have administrative appeal + (quasi-)judicial avenue
- Examples:
 - GER: *Widespruch* to higher instance authority -> possible submission to Administrative Court
 - BE: Appeal to Federal Appeal Committee for Environmental Information -> possible submission to *Conseil d'Etat*



Access to information case study

- According to the governance of the energy union and climate action rules, Member States were obliged to submit draft National Energy and Climate Plans to the Commission by 31 December 2018. There is no publicly available information on the status of the plans, but national contacts have informed you that they suspect their governments are stalling and have not submitted by the deadline.
- What do you do?



Access to information case study

- Commission replies after 36 days stating in a one liner:
- “The documents you request cannot be disclosed because disclosure would violate our internal decision-making procedure, commercial information and private data. And in any event, the MS did not agree to disclosure.”
- What do you do now?



Access to information case study

- You receive the Commission's confirmatory decision after a further 42 days. It states which NECPs it has in its possession and discloses those submitted by the Netherlands, Sweden and Estonia because their governments have consented. For the rest, the Commission confirms its decision not to provide access on the basis of the three exceptions mentioned previously.
- What do you do?



Complaints to the European Ombudsman

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27 June 2019



We'll cover:

- What does the EU Ombudsman do?
- Why complaint to the EU Ombudsman?
- What can you complaint about?
- Making a complaint
- What can the EU Ombudsman do to help?



Who is the EU Ombudsman?

- Emily O'Reilly, former Irish Ombudsman and information commissioner (and ex-journalist)



What is the EU Ombudsman?

- Article 288 TFEU: Individual elected by the European Parliament
- Conducts inquiries into maladministration in EU institutions, bodies, offices and bodies on the basis of:
 - Complaints from a citizen of the European Union, a resident of a Member State of the Union, a legal person having registered office in a Members State of the EU.
 - On her own initiative (strategic inquiries)
- Independent in the performance of his/her duties



What is maladministration?

“Maladministration can include administrative irregularities, unfairness, discrimination or the abuse of power, for example in the managing of EU funds, procurement or recruitment policies. It also includes the failure to reply, or the refusal or unnecessary delay in granting access to information in the public interest.”

E.g.

- Late payments
- Contractual disputes
- Problems with calls for tender
- Lack of transparency/refusal of access to documents
- Unnecessary delays
- Violations of fundamental rights
- Violation of procedural rights, e.g. public consultations, duty to state reasons



What the EU Ombudsman does not investigate

1. Maladministration in national, regional, or local authorities, even when the complaints are about EU matters
2. Where the facts are or have been the subject of legal proceedings
3. Matters falling within discretion of institutions, i.e. content of legislation, decisions not to start infringement proceedings, etc.



Advantages of EU Ombudsman complaint

1. Free!
2. No need for legal representation – complaint shouldn't be too “legal” in nature
3. Deadline for making a complaint is 2 years from when the maladministration took place!
4. Can help give a specific matter public/media/political attention



Disadvantages of EU Ombudsman complaint

1. Findings and recommendations are not legally binding
2. She has to choose her fights very carefully
3. Where there is legal ambiguity on a specific matter (e.g. where it hasn't yet been settled by the CJEU) her decisions can be weak
4. The institutions sometimes ignore her findings and recommendations
5. Findings and recommendations hold no sway with the CJEU
6. Procedure can be very lengthy



Making a complaint - checklist

1. What is the maladministration you are complaining of? What is the rule that has been broken?
2. Did it take place within the last 2 years?
3. Do you have evidence?
4. Have you tried to resolve the problem with the institution first?
THIS IS OBLIGATORY
5. Think about asking for a meeting with EO office to test the water
6. Draft complaint in clear terms, indicating clearly the solution you want.



EU Ombudsman procedure

1. Admissible?
2. Are there grounds to open an inquiry?
3. Identify allegations that come within scope of inquiry
4. Asks the institution to provide a reply (usually 3 months)
5. May gather additional information:
 - ask institution/other parties to provide further documents/inspection meeting
 - ask officials to testify
 - commission studies or expert reports
6. Possibility for complainant to submit observations on meeting reports, etc.



Outcome of inquiry (1)

- Proposals for solution with the institution:
 - Send proposal to the institution with deadline for reply (3 months usually)
 - Complainant can submit comments within one month
 - If successful, closes inquiry with no finding of maladministration



Outcome of inquiry (2)

- Adopt findings:
 1. Finding of no maladministration: the Ombudsman may still make a “suggestion” to the institution
 2. Finding of maladministration:
 - the Ombudsman will issue “recommendations” to the institution
 - The institution has 3 months to provide its opinion and how it has implemented the recommendations
 - Closes inquiry with “definitive findings”
 - Possibility to make special report to EP where inquiry of particular public interest



Requests for review

- Where finding of no maladministration, Complainant can submit request for review
- Within two months of notification of finding
- Review conducted by another unit in the Ombudsman's office
- Takes roughly 4 months for review decision to be issued



Case study

According to the Cosmetics Regulation, the Commission was supposed to publish a catalogue of products containing nanomaterials by 30 September 2014. In September 2016 you submitted an access to documents request asking for access to the catalogue. The Commission replied stating that it would be published in the coming weeks and asking for patience. It is now September 2017 and there is no sign of the catalogue being published.

What do you do?



Complaints to the European Commission

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Complaints to the European Commission – the idea

- Commission is informed of a (potential) violation of EU law
- Commission is completely free to initiate an investigation or not
- Complainant is not part of the procedure
- Steps: Complaint -> Letter of Formal Notice -> Reasoned Opinion -> *Saisine* to Court of Justice (Art 258 TFEU)



Complaints to the European Commission – in practice

- I. When to make a complaint
- II. Information to be included in the complaint
- III. Further do's and don'ts



I. When to make a complaint

A. Assess chances of success:

1. Failure to implement EU law in the law (“on paper”) – altogether or incorrectly
2. Systemic issues:
 - Issue preventing national resolution (access to justice)
 - Consistent administrative practice (can be linked to law?)
3. Major case of wider significance, unusually great damage
 - Example: Białowieża forest case (C-441/17)



I. When to make a complaint

B. Ask the Commission whether principally interesting:

- Political procedure, must concord with priorities: topic, Member State, previously raised, ongoing procedure..
- Contact DG ENV.E: Implementation and Support to the Member States
 - ENV.E.3: Environmental Enforcement



II. Information needed to make a complaint

- Commission has a new, mandatory complaint form
- 6 main questions:
 1. National measures
 2. EU law you think has been breached
 3. Problem description
 4. Relation to EU funding
 5. Fundamental rights
 6. Previous action to solve the problem
- Our suggestion on how to answer below, not an official guideline



(1) National measures

Please list the specific national measures (national law or other regulatory or administrative measures) you think are in breach of EU law and specify how they breach the EU law.

- Bit over one page (3971 characters)
- State shortly the measures and the EU law they contradict
- Focus on how the national measures operate



(1) National measures

If you are challenging a law / regulatory act:

- List specific provision that contradicts EU law
- Explain how law operates in practice
- Mention relevant national jurisprudence BUT do not challenge jurisprudence itself

If you are challenging a practice:

- Describe the type of act, legal basis
- Focus on common, systemic aspect of the practice



(2) EU law you think has been breached

EU laws (e.g. Treaties, regulations, directives, decisions) or principles underpinning EU law.

- Bit over one page (3971 characters)
- List all provisions of EU law concerned
- Refer to CJEU case law showing why EU law is to be interpreted in a way that makes the national measures illegal



(3) Problem description

Please describe the problem

- One paragraph summary what the complaint is about
- Facts (chronological)
- Why do these facts show the legal violation described in (1)+(2)
- Why were you not able to resolve this issue nationally?
- Why is EU intervention crucial?
- Relation to EU funding?



(4) EU funding

Does the Member State concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?

- No text box: only yes / no / don't know
- “In future” appears to apply very broadly
- If important, mention under (3)



(5) Violation of fundamental rights

Does your complaint relate to a breach of the EU Charter of Fundamental Rights? Please explain how EU law is involved and which fundamental right has been breached

- Yes / no / don't know + text box of bit over one page
- Involvement of EU law will be described above, no need to repeat
- Describe provision + connected CJEU case law



(5) Violation of fundamental rights

Some Charter provisions that may be relevant:

- Article 37: Environmental protection
 - Likely always concerned but does not add much
- Article 47: Right to an effective remedy
 - Often relevant because no national remedy
 - Also covers fair trial, court delays and legal aid
 - CJEU has connected to Article 9 Aarhus Convention
 - See ClientEarth [Guide on Access to Justice](#)



(6) Previous action to solve the problem

Have you already taken any action in the Country in question to solve the problem?

- List any administrative & legal actions + their outcome
- Should be completed – if pending, show why it will not resolve the issue



(6) Previous action to solve the problem

If no administrative/legal actions taken, gives possible excuses:

- Another case on the same issue is pending before a national or EU Court
- No remedy available
- Too costly
- Time limit has expired
- No legal standing – **indicate why**
- No legal aid/no lawyer
- Don't know the available remedies
- Other – **specify**



Other parts of the form

- Contact information of body violating EU law
- Indicate if already raised “problems of this type” by way of:
 - Petition to European Parliament
 - Other Commission complaint
 - European Ombudsman complaint
 - Other EU institution/body complaint
- List any supporting documents/evidence that you can provide on request



III. Further do's and don't's

Do's:

- Submit info on any new developments proactively



III. Further do's and don't's

Don't's:

- Raise many different issues in one complaint
- Focus solely on jurisprudence of the national courts
- Unsubstantiated allegations, speculations, generalisations, attacks against decision-makers involved
- Too much background and context



Commission complaint case study

- A national WWF organisation informs you that an operator has started to build a ski resort partially cutting through a Natura 2000 zone. They say that they just heard about it and are very concerned. They ask you if there is something that you could do about it on EU level.
 1. What do you ask?
 2. What do you advice?



Some things to ask:

- Were already in contact with national authorities? What public information is/was available?
- Was there an EIA / Appropriate Assessment (under EIA + Habitats Directive)?
- What is the size of the Natura 2000 site, other circumstances?
- Is this a recurring problem in the area?
- Have they previously raised this with the national authorities litigated / raised it with an EU institution?
- Are there possibilities to litigate nationally now?



Some things to advice:

- National court case and request a reference under Article 267 TFEU;
- Complaint only if can be shown that systemic issue, based on lack of implementation in the law or if a major case.



Access to the EU courts and requests for internal review

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Judicial remedies on EU level

- I. No direct access to the courts
- II. Requests for internal review
 1. Standing
 2. (Limited) applicability
 3. (Limited) scope of review
- III. What can be done to improve the situation



I. No direct access to the EU courts

- Article 263(4) TFEU requires individual & direct concern for legislative acts or direct concern for regulatory acts
 - Individual: Distinguishable from all other persons
 - Direct: Affect legal situation of the applicant, not only factual impact
- => No NGO has ever had standing under this provision



II. Requests for Internal Review

- Established in Regulation 1367/2006
- Idea:
 - Implement Aarhus Convention (even though the Court is confused about that)
 - Allow for reconsideration by same authority
 - Insufficient reply can be challenged before the courts



(1) Standing

- Only open to an ENGO which meet criteria:
 - NGO in the sense of a MS law / practice
 - primary objective is environmental protection
 - existed for 2 years and actively pursued that objective
 - subject matter of request is covered by objective/activities
- = should not be a hurdle for organisation such as WWF

See: Art 11 Reg 1367/2006



(2) (Limited) applicability

- Internal review is only available for “administrative acts”, which are defined as:
 - Of “individual scope”
 - Adopted “under environmental law”
 - With “external and legally binding effects”
 - Not an administrative review decision

See: Arts 2(1)(f)-(g), 2(2) and 10 Reg 1367/2006



(2) (Limited) applicability

- What remains?
 - So far: Decisions on individual GMOs / chemical authorisations
 - Further possibilities?
 - EIB financing decisions? T-09/19
 - ...?



(3) (Limited) scope of review

- General Court will only decide whether Commission conducted an insufficient review
- Court will
 - not: quash the actual, underlying act
 - only to some extent: consider arguments attacking the actual, underlying act – currently under litigation



See: Pending Cases C-82/17 P *Testbiotech*, C-458/19 P *ClientEarth*

III. What can be done to improve the situation

- UNECE Aarhus Convention Compliance Committee found that the EU fails to comply with Aarhus Convention on access to justice
- EU did not endorse this decision at last Meeting of the Parties but committed to consider ways to comply
- Council requested Commission to act – first time in environmental sphere!
- Commission has contracted out Study to be release in September
- Big opportunity to get an amendment – important to raise with new Commission

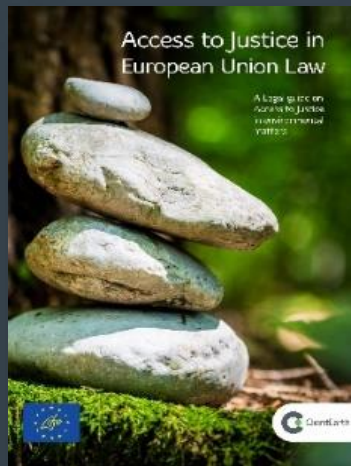


Thank you!

To know more about our LIFE project on Access to Justice EARL A2J and our next trainings, visit our website:
<https://www.clientearth.org/access-justice-greener-europe/>

Interested in our webinar on access
to *environmental information* ?
26 Sept 2019, 12:30pm GMT+1

Register [here](#)



Have a look at our legal publications :

- * Guide on access to justice in environmental matters at EU level:
<https://www.documents.clientearth.org/library/download-info/16209/>
- * Country-specific legal toolkits on access to justice at national level:
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