Public access to environmental information: A comprehensive analysis of its effectiveness in the EU and Italian legal frameworks[1]

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Introduction

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Protecting the environment represents one of humanity's most significant challenges in the current century. The complexity of environmental issues, coupled with the inevitable trade-offs between environmental protection and economic development, makes the selection of the optimal strategic and political approaches—and the subsequent decision-making processes—extremely challenging. In this context, the idea that including citizens in all phases of the decision-making process can lead to better outcomes has gained considerable traction. As a result, the discussion on various rights regarding public participation has been introduced in the political and legal contexts. This research explores the salient issue regarding the right to access environmental information. Participation rights have undergone a unique development in the environmental field for two primary reasons. First, due to the multidimensional nature of environmental concerns, it is necessary to mediate among various spheres of interest, including private, economic, scientific, and administrative domains. Second, the environmental issues at stake involve interests perceived as fundamental and directly linked to public health and quality of life, thereby intensifying citizens' demand for major involvement in these matters.

What is the role of access to information in today's complex environmental protection system? Is it an instrument capable of realising the European objectives of preventive and proactive protection of environmental interests? This guiding research question will be addressed through a comprehensive analysis of the multilevel normative framework.

The study starts by analysing the Aarhus Convention of 1998 on access to information, public participation in decision-making, and access to justice in environmental matters. Not only has this convention contributed to the codification of environmental law at the international level but it has also unequivocally established that environmental protection and citizen participation are strictly interconnected. Symbolically, in the same year, that the European Court of Human Rights, in the cornerstone decision *Guerra and others v Italy*[3], confirmed the existence of a human right to access environmental information thanks to an evolutive interpretation of some rights contained in the 1949 European Convention on Human Rights (ECHR), helping to define the scope of access to environmental information access as a human right.

[3] See paragraph 1.6.

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However, as the second Chapter shows, a significant part of this research will examine the EU legal framework. Despite the EU's relatively "modest" environmental policy in the post-Maastricht era, the Union has been assertive in matters concerning democratic legitimacy. Furthermore, the fact of being the only non-State member of the Aarhus Convention has undoubtedly bolstered the position of the Union in subsequent international environmental conferences and enhanced its credibility within civil society.

Nevertheless, assuring the effectiveness of access rights has often proved more challenging than anticipated. In general, implementing an international agreement within the EU legal system has posed great challenges, revealing how theoretical concepts in EU law remain ambiguous and continuously evolving.

For what concerns this specific case, despite the willingness, the EU has struggled to fully comply with the Aarhus Convention, mainly due to shortcomings related to individual access to justice in environmental matters. These difficulties are primarily attributed to the rigid criteria historically defined by the Court of Justice's case law. To address this issue, EU legislators have amended the Aarhus Regulation, leveraging the Green Deal strategy introduced by the Commission in 2019, which is expected to enhance environmental transparency in the coming years.

The Court of Justice is crucial in delineating the boundaries between various public and private interests at stake. This task has become more manageable compared to few years ago as the private sector is also subject to similar obligations. The EU has introduced substantial regulations mandating private companies and industries to disclose information about their environmental and social performance, emissions, and supply chain sustainability.

Furthermore, the bold case law from various jurisdictions at different levels will be instrumental in defining several concepts prone to ambiguities. Thanks to this, chapter 3 highlights many interesting profiles of European administrative law.

Regardless of the field, freedom of information has undergone significant evolution as worldwide administrations have increasingly embraced strategies of openness toward the public, often through the introduction of Freedom of Information Acts. In Italy, for instance, D. Lgs. 33/2013 introduced the concept of civic access, which allows anyone to request data,

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documents, and information from public administrations without the need to demonstrate a qualifying interest.

Hence, assessing whether a special *status* for environmental information access remains justified seems interesting. This is a secondary question which will be answered by looking at the administrative law, and addressed in this research at the end of Chapters 2 and 4 (with regards to the European and national legal orders). A comprehensive analysis comparing civic access and access to environmental information is presented in Chapter 4 with a focus on the domestic domain. At first glance, one might assume that duplicating access regimes could pose challenges for administrative law and for those responsible for its implementation. Nevertheless, a broad and multidisciplinary perspective is essential to uncover the right to environmental information's underlying purposes and its distinctive character. Indeed, with the ecological transition currently underway in the EU, gaining the necessary support is crucial for achieving climate goals, and therefore, gaining the necessary support from citizens requires ensuring access to environmental information. Indeed, the more citizens can access information on the conditions of their livelihoods and urban plans that impact nature, the better equipped they will be in responding to the call for solutions. Access to information thus plays a crucial role in fostering public engagement and facilitating the ecological transition.

Finally, the last chapter introduces additional elements to underscore the importance of broad access to environmental information and its relevance to the current political climate. With a multidisciplinary approach, the final Chapter also integrates the legal analysis with a more discursive and analytical examination of policies, enriched by a political science perspective. Not only will this examine the current status of the right to information within the policy priorities of both the Commission and Italian administration, but it will also highlight future opportunities and challenges in environmental governance and democracy—concepts that will be broadly repeated and discussed throughout the research.

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1. THE RIGHT TO ACCESS ENVIRONMENTAL INFORMATION IN INTERNATIONAL LAW: FOCUS ON THE AARHUS CONVENTION

1.1. The "core" foundation

A historical approach, together with the legal analysis, is essential to understand the development of the right to access environmental information, along with its limits and potentials. As will be highlighted throughout the study, access to environmental information has grown in importance quite recently and consolidated in the international and European arena just three decades ago. Nevertheless, despite international environmental law having a centenary basis, access to environmental information was only considered essential to pursuing sustainable development goals after the nineties. Indeed, the scope of the Rio Declaration, adopted on June 14, 1992, attempted to emphasise the involvement of the citizens in the (environmental) decision-making. It was conceived at one of the productive UN conferences of the nineties, since common problems such as climate change and biodiversity loss were emerging.

Previous to the Declaration, accessibility of environmental information was considered a niche matter, in the hands of "experts"[4]. Hence, The Declaration contributed to shifting the perspective on environmental issues, which no longer represented a matter reserved to a few; on the contrary, their accessibility was granted to everyone. This passage is remarkable as it meant challenging the classical state's structures (with regards to the administrative branch). These conferences conveyed the idea that environmental responsibility should be extended beyond relying solely on the international community and national governments. It should in fact encompass individuals, local governments, communities, trade unions, and business

[4] S. Whittaker et al., *Freedom of Environmental Information: Aspirations and Practice*, 2023, p. 34.

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companies, representing the entire spectrum of individual and collective entities within societies[5].

It is essential to frame the actual scope of the Rio Declaration, as it constituted a mere declaratory international instrument focused on objectives Far from imposing actions on member States. As the name of the conference suggests, the United Nations Conference on Environment and Development, at the base of the Declaration and mainly aimed to align the environmental dimension with the economic one, pursued the trending paradigm of sustainable economic growth[6]. As a reminder, the World Commission on Environment and Development, also known as the Brundtland Commission, coined the concept of sustainable development. As the final report issued by this commission, it was defined as a development that «*meets the needs of the present without compromising the ability of future generations to meet their own*». To achieve it, the commission deemed a systemic change necessary, and the States must accept

> « the right of individuals to know and have access to current information on the state of the environment and natural resources, the right to be consulted and to participate in decision-making on activities likely to have a significant effect on the environment and the right to legal remedies and redress for those whose health or environment has been or may be seriously affected. » [7]

The systemic change would require a focus on local governance, a «*bottom-up process of societal dialogue founded on the exercise of access rights»*[8].

Undoubtedly, Brundtland's report, since it was a preparatory body for the Conference, inspired the principles then defined in the Rio Declaration. Indeed, the above statement concerning individuals' right to access information has been reframed in the Declaration with a similar expression, in Principle 10. It is now worth reporting the Principle in its entirety:

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[5] I. Elander et al., *The Rio Declaration and Subsequent Global Initiatives*, in I. Elander et al. (ed.), *Consuming Cities : The Urban Environment in the Global Economy After Rio*, London, 1999, p. 41.

[6] J. E. Viñuales (ed.), *The Rio Declaration on Environment and Development: A Commentary*, in *The Cambridge Law Journal*, Cambridge, 2016, p. 169.

[7] Report of the World Commission on Environment and Development (UN Doc. A/42/427, 4 August 1987), Annex, at paragraph 27.

[8] M. Orellana, *Governance and the Sustainable Development Goals: The Increasing Relevance of Access Rights in Principle 10 of the Rio Declaration'*, in *Review of European, Comparative & International Environmental Law*, 2016, p. 51.

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> « Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information held by public authorities concerning the environment, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided. »

The need to allow citizens to enter the political and civil life is made explicit, and two pillar elements, which are to some extent incorporated later by the European and internal legal systems, concern the right to access environmental information and the "responsibility" of the concerned actors to disclose that information proactively[9].

Nevertheless, once again, the Declaration contains 27 international law principles that only represent a source of inspiration for national laws. Hence, this part is intended as an introduction to the following sections, which will dissect the right of access to environmental information in its three "levels". The first part will be dedicated to the Aarhus Convention, which is the main international obligation that State Parties should compel to on this matter. The second one will broadly dissect the legal framework in the context of the European Union, followed by an analysis of the Italian legislative and administrative approach concerning access to environmental – and non -environmental – information.

The first chapters aim to provide a comprehensive overview of the right to access environmental information, tracing its historical development and its embedding in international, European, and Italian legal frameworks. They also explore the transformative impact of the Rio Declaration and the Aarhus Convention on shaping global and regional norms that promote transparency and public participation in environmental governance.

[9] S. Whittaker et al., *Freedom of Environmental Information: Aspirations and Practice*, op. cit., p. 35.

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A question worth answering is whether the right of access to environmental information constitutes a human right *per se* or an ancillary right (for example, completing the right to a healthy environment or the right to transparency); which is the relationship between human rights and access rights ? This will be answered by examining and referring to the rich case law at all levels.

1.2. Historical context and purpose of the Aarhus Convention

Recalling the considerable development of environmental law tools in the last decades, it may be mandatory to refer to the Convention on Access to Information, Public Participation in Decision-making and Justice in Environmental Matters signed at Aarhus, a little city near Copenhagen, Denmark, on 25 June 1998. It is an essential binding agreement that established international legal standards to ensure individual environmental rights; thus assuring management and control of environmental decision-making and advancing environmental citizenship. It marked a ground-breaking initiative focused on Parties' responsibilities toward the public, diverging from the conventional pattern seen in other multilateral environmental agreements that predominantly address obligations solely between Parties[10].
The agreement was signed after a long process that took various years to complete. As the result of the Fourth Ministerial Conference of the "Environment for Europe" process under the umbrella of the United Nations Economic Commission for Europe (UNECE), and until today, ratified by 47 countries.

The Convention of Aarhus represented the result of multiple factors. Firstly, the considerable involvement of non-governmental organisations significantly impacted the negotiations. As Delreux reported, *« an EU Member State official described the role of the NGOs like this: "They negotiated as if they were another country, quite a big country"»*[11]. The same author pointed out that they had the most maximalist position in the negotiations, the same as Poland and Norway. That might also have contributed to the "revolutionary" outcome. Arguably,

[10] E. Barritt, *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship*, London, 2020, p. 5.
[11] T. Delreux, *The EU in Environmental Negotiations in UNECE: An Analysis of Its Role in the Aarhus Convention and the SEA Protocol Negotiations*, in *Review of European Community & International Environmental Law*, 2009, p. 330.

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participating states were less "assertive", and their experts were less supportive than the NGOs[12].

Moreover, the historical and geopolitical context also played an essential role in shaping the convention. Weaver related the sudden environmentalist awakening to the reform happening in the ex-Soviet Union countries and in the context of the (post-)socialist democratisation. As a matter of fact, the ecological demand was most needed in the countries which suffered high environmental issues (pollution and biodiversity erosion) due to technological obsolescence and harmful industrial plants.

In fact, environmental transparency and public participation were part of the demand of the socialist civil society even before the implosion of the Soviet Union bloc and the end of the Cold War[13]. At the same time, it was a florid momentum for the EU, as it was ready to welcome new eastern European countries and to gradually implement the provisions introduced by the Maastricht Treaty adopted in 1992. The goal to increase cooperation by establishing common European citizenship to allow residents to move, live, and work freely between member States would have been possible, among others, only if those people could be effectively involved in the decision-making process and included in environmental matters.

Meanwhile, another critical evolution happened contemporaneously to the conclusion of this regional treaty: the identification of access rights as a human right. Thus, in the following section, the right to access environmental information will be analysed as a new surfacing human right built on the intersection of existing ones.

1.3. Convergence with human rights

As previously mentioned, at the global level, the rights of information and the environment were merging into an extended human right to information concerning the environment. Of course, the government's adherence to this potentially fundamental right could enhance

[12] J. Waters, *The Aarhus Convention: a Driving Force for Environmental Democracy, in Journal for European Environmental & Planning Law,* 2005, p. 9.
[13] D. Weaver, *The Aarhus Convention: Towards Environmental Solidarisation*, *Environmental Politics and Theory*, Cham, 2023, p. 75.

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environmental protection and the public's ability to obtain information held by institutions and private companies.

Concerning access to government information, Europe has known a movement demanding constitutional and human rights to that information during that decade. The most significant attempt to recognise freedom of information as a human right can be found on the proposed European Union constitution, although not adopted due to its rejection by Belgium and France. Nevertheless, several member States within the European Union have individually incorporated access rights to government information into their national constitutions[14].

On the other hand, the conception of environmental protection as a human right has a shorter history. Furthermore, it is worth mentioning that, at the global level, a UN Draft Declaration of Principles on Human Rights and the Environment invited States to conclude a binding resolution[15]. It also presented the right to access environmental information in a more robust way and with a more detailed language than Principle 10 of the Rio Declaration did[16].

Hereby, the purpose of the Aarhus Convention was to effectively fulfil these suggestions of the UN declaration and codify them by connecting different human rights. Nevertheless, the link was only appreciated by some of the parties of the preparatory conference. Indeed, during the conclusion of the convention, the UK declared that the "right to live in an environment that is adequate to their health and well-being" merely reflected an "aspiration" of some and not a legal object[17]. The substantive right to a healthy environment was debated, yet, the need for more consensus on its recognition was nonetheless one of the reasons that impeded the

[14] B. W. Cramer, *The Human Right to Information, The Environment And Information About The Environment: From The Universal Declaration To The Aarhus Convention*, in *Communication Law and Policy*, 2009, p. 80.
[15] Ibid., p. 84.
[16] This Draft Declaration, in Part III(15), states, "All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant."
[17] E. Morgera, *An Update on the Aarhus Convention and Its Continued Global Relevance*, *Review of European Community & International Environmental Law*, 2005, 139.

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adoption of a charter of environmental rights and obligations drafted back in 1990 by the UNECE[18].

Hence, the legally binding rights, as outlined in Article 1, are confined to the three pillars of the Convention (see as follows).

One of the reasons that determined the fallback is the fact that citizens, the final beneficiaries, haven't been considered subjects with a final say on environmental decisions. In fact, they were conceptualised as mere contributors who could influence the decision-making process, *potentially* impacting the final decision[19]. It would be therefore impossible to invoke the right « *to live in an environment adequate to his or her health and well-being»* to intervene in the decision-making process directly.

All in all, part of doctrine[20] agrees that, in the first article At least a "social welfare aspiration" does exist, ensuring environmental quality that meets the health and well-being of all individuals.

1.4. Compliance mechanism established by the Aarhus Convention

It seems appropriate to dwell on the appeal system established by the Aarhus Convention in cases where access to information is denied[21].

The crucial aspect of the Aarhus Convention is notably the existence of multilevel substantive and procedural mechanisms for appealing a refusal of the right to access environmental information.

[18] E. Barritt, *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship*, op. cit., p. 8.

[19] Ibi, pp. 143-44.

[20] Among others, M. Mason, *Information Disclosure and Environmental Rights: The Aarhus Convention*, in *Global Environmental Politics*, 2010, p. 11.

[21] As outlined in Article 9 of the Convention and the subsequent transposing acts, the right to judicial and administrative review in environmental law contexts allows individuals to challenge denied or inadequately addressed information requests through courts or independent bodies. It requires fast, affordable revision procedures, with all the subsequent decisions to be justified in writing. The public, including NGOs with specific qualifications, can challenge the substance and procedures of decisions affecting them. Notably, the right also implies educating the public about the possibilities and facilitating more straightforward access to justice.

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The Convention outlines provisions for a compliance review mechanism established by the Meeting of the Parties (MOP) through consensus. This non-confrontational, non-judicial, and consultative process encourages public involvement, allowing for public communications related to the Convention. This can be desumed from the meaning of Art. 15[22], concerning the review of compliance, indicating that a non-compliance review procedure shall be established, which should be both facilitative and preventive rather than punitive.

As a consequence of the Convention, a the Compliance Committee, composed of independent experts from State parties, signatories, and NGOs[23], was elected to address compliance matters. The committee's mandate includes considering submissions, reporting on compliance, monitoring implementation, and making recommendations. Remarkably, NGOs can also nominate committee members, a real innovation in multilateral environmental agreements[24]. The committee assesses compliance through referrals by the Secretariat, submissions by parties, and public communications, which represents a unique feature in environmental agreements. The public can communicate concerns about a party's compliance. Afterwards, the committee must respond to such communications unless found anonymous, abusive, manifestly unreasonable, or incompatible with the Convention's provisions. As previously mentioned, this approach reflects the Convention's commitment to safeguarding public rights rather than focusing solely on inter-party relations.

It should be noted that the Compliance Committee found irregularities in the activity of the European Commission[25]. In 2021, The Committee's findings alleged that the European Union

[22] It states as follows: "The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention".

[23] NGOs play a crucial role in the environmental field as they defend the common interest of living in a healthy environment. Thus, their participation is fostered in the framework of this Convention.

[24] E. Morgera, *An Update on the Aarhus Convention and Its Continued Global Relevance*, *Review of European Community & International Environmental Law*, op. cit., 140.

[25] As part of the doctrine underlines (for instance, see Pitea and Tanzi), the Committee exercises discretion in addressing non-compliance, deciding whether to involve the Member State alone or also the Union. In a case regarding the Union, the Committee may exclude its responsibility based on the structure and the obligation of Member States to implement Union

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had not properly adhered to Art. 9 (para. 3 – 4) on access to justice. In this particular case[26], the European Commission's decision to approve State aid for the nuclear power plant project was not challengeable by NGOs and individuals, despite the possibility that it might violate the Union's environmental law. Following the Meeting of the Parties to the Convention, through consensus, Member States set up optional mechanisms for reviewing compliance with the Convention's provisions[27]. After the incongruencies were detected and many complaints accumulated on this case, the Commission proposed reforming the Aarhus Regulation to improve access to justice on environmental matters.[28] However, the subject will be further analysed in the next Chapter.

Tanzi and Pitea observe that the uniqueness of the instituted system acts so that:

> « remedies are indirectly afforded to individuals that, in many domestic legal systems, would not be ordinarily available for the enforcement of provisions of international treaties of which the same individuals are the primary beneficiaries »[29].

directives. This pragmatic approach focuses on achieving practical compliance rather than assigning legal responsibility.

[26] Compliance Committee of the Aarhus Convention, *Findings and recommendations with regard to communication ACCC/C/2015/128 concerning compliance by the European Union*, adopted on 17 March 2021. This case is exemplary as it confirms the lengthy procedure to take a decision. Once the NGOs GLOBAL 2000 and OEKOBUERO – Alliance of the Austrian Environmental Movement – submitted a communication to the Compliance Committee, the Committee preliminarily deemed the communication admissible in July in May 2016. Following multiple submissions from NGOs and observers like Friends of the Earth and ClientEarth, a hearing was held in March 2018, confirming the communication's admissibility. The Committee deferred its deliberations in July 2019, pending a relevant CJEU ruling issued in September 2020. The communicants, observers, and the EU submitted subsequent comments. The Committee finalised its findings in January 2021 and adopted them in March 2021, agreeing to publish them for its seventy-second meeting. So, all the procedures took about six years to conclude. In Chapter 2, this case will be broadly presented.

[27] J. Wates, *The Aarhus Convention: a Driving Force for Environmental Democracy*, in *Journal for European Environmental & Planning Law*, 2005, p. 3.

[28] See section on the Aarhus Regulation's amendment.

[29] A. Tanzi, C. Pitea, *The Interplay between EU Law and International Law Procedures in Controlling Compliance with the Aarhus Convention by EU Member States*, in M. Pallemaerts, *The Aarhus Convention at Ten - Interactions and Tensions between Conventional International Law and EU Environmental Law*, op.cit., pp. 373-374.

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However, the integration of the Aarhus Convention within the EU legal framework shows the intricate balance between international law, Union law, and national sovereignty. As the EU priorities are environmental protection and public participation, the interplay between the different legal orders is crucial for ensuring judicial protection of the rights enshrined in the Convention.

1.5. The First pillar: access to environmental information

Artt. 4 and 5 of the Convention contain the provisions of the first pillar, which concerns access to environmental information.

Although each pillar presents a distinct right, they are all essential and interlocked[30] in achieving environmental protection objectives[31] and environmental democracy[32]. On the other hand, despite their interconnectedness, different authors of the doctrine, such as Lee and Abbot[33], consider the first pillar as the most robust[34]. Reasonably, accessing information is a way to participate in decision-making, and access to justice should be only considered an *accessory* right.[35]

The Convention introduces two distinct forms of the right to information. The presence of two separate provisions is due to the two aspects of the right to information: the passive right of access, that is, the obligation to provide the specific information requested by citizens, subject

[30] S. Whittaker, *The Right of Access to Environmental Information*, in *Cambridge University Press*, 2021, p. 39.

[31] The preamble remarked on the importance of sustainable development that allows "human well-being and the enjoyment of basic human rights, including the right to life itself" and in Art. 1 recalled that "[…]the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being […]", taking in mind its non-binding nature.

[32] Refer to Chapter 5 for a comprehensive analysis of the environmental democracy.

[33] M. Lee and C. Abbot, *The Usual Suspects? Public Participation under the Aarhus Convention*, in *The Modern Law Review*, 2003, pp. 80-88.

[34] Weaver, too, defines it as the *primus inter pares* among the pillars; in *The Aarhus Convention: Towards Environmental Solidarisation*, *Environmental Politics and Theory*, op. cit. , p. 75.

[35] Indeed, the possibility of individuals taking action against public institutions if their rights to access environmental information are not respected might compel public administrations to release such information to avoid complications.

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to certain exceptions of strict interpretation; and the active right of access, that is, the duty for public authorities to collect and disseminate environmental information regardless of any request.

Contemporary literature focuses predominantly on the passive form of the right. As Whittaker highlights, *«This imbalance creates numerous problems for how the right of access to environmental information is both conceptualised and implemented in practice.»*[36]

In detail, Art. 4 outlines each party's obligations regarding the provision of environmental information in response to public requests. The key points include requiring public authorities to make such information available promptly without demanding the requester to state an interest. Then, the information should be provided in the requested form unless justifiable reasons exist for an alternative type. Furthermore, it sets the timeline for responding to requests at one month, with a potential extension to two months based on the volume and complexity of the information. However, some exceptions have also been provided. Indeed, it specifies grounds for refusing a request, including situations where the information is not held, the request is overly broad, or disclosure could adversely affect interests such as national security, justice proceedings, commercial and industrial confidentiality, or environmental protection.[37] Nonetheless, since only certain information is exempted, public authorities are expected to release the non-exempted portion. Additionally, parties are encouraged to restrictively interpret the grounds for refusal, considering the public interest in disclosure as preeminent.

Moreover, the Article foresees that if a public authority does not possess the requested information, it should promptly redirect the applicant to the relevant authority or transfer the request accordingly. It must be noted that refusals shall be provided in writing, stating explicitly the reasons behind it and informing the applicant of the review procedure. Here, the EU-model imprint is evident since acts should be provided of the reasons and motivations to be legitimate. Finally, concerning the financial aspect, Parties may impose charges for supplying information; however, such charges must be reasonable, and authorities must publish an accessible

[36] Ibid, p. 471.

[37] Nevertheless, these circumstances must be limited and interpreted restrictively, as stated in the last paragraph of Art. 4: « The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment. » An important aspect to note is that releasing such information is considered to be in the public interest.

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document reporting costs and potential charges (also listing circumstances for levying or waiving fees and when advance payment is required for information disclosure).

As said, the first pillar also includes the active right of access to information encapsulated in Art. 5. In summary, it emphasises the importance of environmental information accessibility and dissemination. To assure this commitment, it outlines each participating party's obligations, including ensuring that public authorities possess and update relevant environmental information, establishing mandatory systems for information flow on environmental activities, and promptly disseminating information in the event of imminent threats. The article also underscores the need for transparency in making environmental information available to the public, encouraging electronic databases for accessibility, and publishing national reports on the state of the environment at regular intervals, « *not exceeding three or four years ».*

Parties are required to disseminate legislative and policy documents, international agreements, and other relevant information. The article adds that Parties shall encourage *private*[38] operators to inform the public about the environmental impact of their activities and emphasises the development of mechanisms for informed consumer choices. Additionally, it invites the establishment of pollution inventories or registers as part of a nationwide system, with specific exemptions to protect sensitive information following specified provisions.

However, as stated in the last paragraph, « *nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with»* the exceptions outlined in the previous article, and already examined here. Those exceptions make the Convention less impactful than it may be. As stated by Mason[39], the Convention fails in

[38] According to the article, they are not obliged to adhere to the commitments and objectives of the Convention. They may only be encouraged by the Parties. However, more recent developments, particularly in the EU context, have made environmental information disclosure (especially concerning emissions) more stringent and, in some cases, mandatory for private companies. An example of this is the Taxonomy Regulation, which came into effect on July 12, 2020, laying the groundwork for the EU taxonomy. It outlines four fundamental conditions that economic activity must satisfy to be classified as environmentally sustainable, including the reporting obligation. See the dedicated section in Chapter 2.

[39] Michael Mason, *Information Disclosure and Environmental Rights*: The Aarhus Convention, in *Global Environmental Politics*, 2010, 21-26.

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three areas: it accords much discretion in interpreting the obligations[40], there exists an *«indeterminate coupling of procedural and substantive rights»*[41], and there is not an obligation for the Party States to bind private actors to disclose their information[42]. It underscores a market-oriented view of regulatory authority, providing private operators protection against administrative and judicial challenges from civil society actors, with some nuances that will be provided next.

1.6. The contribution of the European Convention on Human Rights: the decision *Guerra vs. Italy*

Another important context in which the right to environmental information has developed is the ECHR. Although it does not explicitly acknowledge a human entitlement to environmental protection within its framework, it includes fundamental rights and freedoms that have facilitated the emergence and evolution of case law on environmental concerns. The right to a healthy environment results from an evolutionary interpretation of other already well-established fundamental rights. It is conceived as a new right by balancing the human rights expressly recognised by the Convention - such as Art. 8, "Right to respect for private and family life"; Art. 10 "Freedom of expression"; Art. 6 "Right to a fair trial"; Art. 2 "Right to life". This case law is also highly relevant for the EU, as the Court of Justice of the European Union tends to recognise it as a minimum standard to interpret the fundamental rights enshrined in the EU Charter of Fundamental Rights, which mostly correspond to those included in the ECHR[43] .

[40] It seems reasonable considering the diverse legal frameworks and governance capabilities of the different Parties within the UNECE region.
[41] As seen, the right to have a clean and healthy environment is not considered a right *per se*.
[42] Just as a reminder, the Convention is based, and its foundations are grounded on promoting sustainable development. Hence, the outcomes of the preparatory conferences, despite being innovative and progressive, are to some extent still based on a market liberal approach. Interestingly, the author reports that the European Union opposed Norway's suggestion to grant the public direct access to information from the industry.
[43] The ECHR has become the minimum standard of protection for rights guaranteed by both systems, and the CJEU tends to refer to it when dealing with rights also protected by the Charter.

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In particular, access to environmental information could be granted through an evolutive interpretation of Art. 10[44] and Art. 8 of the ECHR[45], like the 1998 decision *Guerra v. Italy*[46] of the ECtHR shows. Indeed, in this case, the ECtHR established that the protection of the rights referred to in Art. 8 includes the disclosure of information that could enable the individuals concerned to assess the risks inherent in living where activities dangerous for health are carried out[47].

According to the recalled decision, the State violated several human rights and transparency domestic laws, failing to notify the residents of Manfredonia about the health and environmental risks posed by a chemical factory close to the city. Despite the factory being classified as high risk in 1988 following incidents that led to the acute arsenic poisoning of 150 people, the emergency procedures for such occurrences were never disclosed to the community. Consequently, the affected residents brought a case to the ECtHR, leading to their eventual compensation.

Thus, Strasbourg's Court has recognised that the right to environmental information complements the acknowledgement of the substantive right to a healthy environment as a necessary extension of the right guaranteed by Art. 8. The significance of information on environmental matters lies in its direct instrumental role in preventing harm that may arise from pollution and dangerous activities.[48]

[44] The text of the Article, indeed, states that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. […]"

[45] The Article states that: "1. Everyone has the right to respect for his private and family life, his home and his correspondence." 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[46] *Guerra and others vs. Italy* case 116/1996/735/932 of 19 February 1998.

[47] *Ibidem*, para 60.

[48] The paragraph has been concluded by stating that "the Court holds, therefore, that the respondent State did not fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8 of the Convention." It refers to the obligation of actively disclosing environmental information about pollution or potentially harmful activities. This is taken *mutatis mutandis* from another previous case, *López Ostra v. Spain judgment, 1994.*

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2. THE RIGHT TO ACCESS INFORMATION IN EUROPEAN UNION LAW

Introduction

This chapter presents the EU legal framework and the approach to transparency policy and obligations.

First, discussing the evolution of the EU's environmental policy is helpful for better understanding the right of access to environmental information according to Union law. This will provide context for evaluating the level of transparency in decision-making and public involvement in the environmental field, as Principle 10 of the Rio Declaration and the Aarhus Convention require.

Many steps have been taken until now, and many more will be taken to ensure individuals enjoying their right. Indeed, as will be seen, an ongoing process of revision of the Aarhus

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Regulation should address some issues related to public participation, especially concerning access to justice.

Last, it is essential to review some interesting and, at the same time, ambiguous aspects of the interaction between international conventions – particularly the Aarhus Convention –, the EU, and national legal orders.

2.1. The EU's environmental competence and policy

The European Community, initially set up to create a common market area, began to extend its competencies to environmental policies in the 1970s, even though the Community's founding Treaties did not include the environment. Indeed, the CJEU took a step forward in recognising environmental competence through the "*back door*", that is to say, indirectly. The Community's intervention was deemed justifiable to eliminate potential market competition distortions resulting from diversified national environmental protection provisions. According to this, the absence of any harmonisation of national legislation in this area was a real risk[49]. The case of environmental protection is not isolated; the evolutionary way of interpreting the EU law and the Court's judicial *activism* helped expand the Community's intervention in other fields not explicitly mentioned in the founding treaties. That happens even today. Some of the measures adopted to counter the COVID-19 pandemic are a case in point, and many of current social and health actions and laws have been adopted by relying on the residual legal basis of Art. 352 TFEU, which should be used only as a last resort[50].

The Single European Act (SEA) of 1987 was an essential moment in European environmental policy, marking the recognition of environmental protection as a core objective of the European Community. Indeed, this significant development came as a response to the absence of specific

[49] Court of Justice, 18 March 1980, *Commission v Italy*, Cases C-91 & 92/79.

[50] Indeed, according to this Article, "If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament".

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environmental competencies outlined in the Treaty of Rome. As a result, the SEA established environmental protection as a new Community competence under three key instruments: autonomous action, integration into other policies, and consideration within the internal market[51]. However, despite this evolutions, challenges persisted, notably the unanimity rule in the Council, which often hindered effective decision-making also in the environmental field.

In the following treaties, including the Maastricht Treaty and the Treaty of Amsterdam, environmental competencies were extended, and democratic procedures were introduced to enhance environmental policymaking. However, environmental policy continued to lag behind the internal market, reflecting broader tensions between economic integration and environmental protection within the EU.
At the very least, these Treaties underscored the growing significance of environmental protection within the European integration project. They highlighted the complex interplay between environmental policy, economic integration, and other societal values. Overall, European environmental policy's evolution reflects a dynamic process of adaptation and consolidation in response to shifting political, financial, and environmental realities. Still, it has also undergone the so-called "*stretching-competences*" phenomenon, which refers to method of extending competencies informally through an expansive interpretation of the existing legal bases in the Treaties, sometimes even going so far as to stretch their content[52].

That said, public access to environmental information follows the same general path. Alongside placing responsibilities on governmental bodies, the enlargement of the environmental policy has sparked demands from advocacy groups and individuals for procedural entitlements, including access to information, involvement in decision-making processes, and avenues for legal remedies[53].

Furthermore, in line with global trends, the EU has gained space on environmental matters due to the growing and worsening climate and environmental-related issues. Access to information

[51] N. De Sadeleer, *EU Environmental law and the Internal Market*, Oxford, 2014, pp. 10-13.
[52] A. Campolmi, *Verso una competenza esclusiva dell'Unione europea in materia ambientale? tendenze della prassi e proposta di riforma dei trattati,* in *Quaderni AISDUE*, 2023, pp. 14-15.
[53] D. Obradovic, N. Lavranos, *Interface between EU law and National Law*, in *Common Market Law Review*, 2007, p. 79.

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was seen as a complementary instrument to control emissions and pollution. Besides this, building "a body of law more specifically aimed at reducing environmental pollution" was undoubtedly necessary, both at the international, with the Aarhus Convention, and European levels[54]. Indeed, as Ebbeson stresses, involving public opinion in decision-making processes concerning the environment is apt to enhance the quality of decisions by incorporating several knowledge, perspectives, and subjective viewpoints that might otherwise be overlooked[55], and, thus, a more plausible response to pollution and climate-related issues.

Notwithstanding this, despite the lack of prerogatives in environmental matters at the beginning of the European integration project, access to information was seen more as a democratic principle and a general rule to integrate into the functioning of the European decision-making process. On the other hand, access to environmental information was also made effective in the Member States through their participation in the ECHR.

Then, following the conclusion of the Aarhus Convention, the Union lawmakers undertook a thorough reassessment of various EU regulatory procedures to ensure alignment with the Convention's provisions. Employing a dual-track approach, the lawmaker adopted a series of directives to compel Member States to establish participatory processes across a spectrum of environmental sectors such as water management[56], nature conservation[57] and industry (emissions). Simultaneously, the EU enacted general provisions mandating public participation in environmental decision-making processes, as Regulation 1367/2006 outlined. As will be seen below, this regulation empowered the (current) EU institutions to incorporate public input into environmental plans and programs.

[54] McCrory R., *Principles of European Environmental Law*, in Europa Law Publishing, 2004 p. 5.
[55] Ebbesson. J., *'The Notion of Public Participation in International Environmental Law'*, *in Yearbook of International Environmental Law*, 1997, p. 70.
[56] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.
[57] In particular, the two main directives that made the creation of the Natura 2000 Network possible are the Birds (Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds) and Habitats (Council Directive 92/43/EEC) Directives, which together form the cornerstones of EU biodiversity policy. In those directives, it is already observable that a critical focus has been given to the participatory rights essential to create the holistic Network aimed at conserving flora, fauna, and landscapes.

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Last, the national courts now also play an essential role in interpreting and enforcing environmental principles[58].

2.2. Current legal framework: Primary law – Access to information as a democratising instrument

As said, access to information detained by the institutions is essential for democracy and good governance, and it has been foreseen by Union law since various decades. The Declaration n. 17 annexed to the Treaty of Maastricht pushed the Commission to find the appropriate measures to increase public access to information[59]. A Code of Conduct[60], jointly adopted by the Commission and the Council, followed this Declaration.
In this phase, access was not considered a "right" *per se*, since it originated from acts of self-regulation through which institutions had limited their discretion. Although the Code had been incorporated into binding acts, such as the Council Decision on public access to Council documents[61], the recognition of the right remained within the discretion of the issuing institutions[62], which could thus limit or exclude it[63].

The Treaty of Amsterdam represented a fundamental step forward as it established the right of access to documents of European institutions through Art. 255 TEC[64], extending this right to

[58] E. Scotford, *Environmental Principles and the Evolution of Environmental Law*, Oxford, 2017.
[59] It states that, "The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions."
[60] European Commission, Council, *Code of Conduct concerning public access to Council and Commission documents*, *Official Journal* L 340, 31/12/1993 pp. 41-42.
[61] 93/731/EC: Council Decision of 20 December 1993 on public access to Council documents, OJ L 340, 31.12.1993, pp. 43–44.
[62] A. Oddenino, *Osservazioni in tema di effettività dell'accesso ai documenti delle istituzioni comunitarie*, in *Diritto pubblico comparato ed europeo*, 2000, p. 1653.
[63] Considering that the starting point is a mere declaration annexed to the Treaty.
[64] Treaty establishing the European Community (Amsterdam consolidated version) - Part Five: Institutions of the Community - Title I: Provisions governing the institutions - Chapter 2: Provisions common to several institutions.

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all citizens of the Union and «*any natural or legal person residing or having its registered office in a Member State*». However, the Article had some elements that could have been improved. Although it recognised the right of access to information, it was included in the section of the Treaty dedicated to the functioning of the institutions rather than among the principles or rules on citizenship[65]. Additionally, the right of access was limited to documents of the European Commission, Parliament, and Council, without mentioning those of agencies and bodies.

These issues have been solved thanks to the amendment of the following treaties. The Treaty of Lisbon made an essential advancement in access to information. Firstly, this Treaty grants "the same legal value as the Treaties" to the Charter of Fundamental Rights and, therefore, to its Art. 42[66], which is relevant for access to information.
Although the right to access to information is not mentioned in the European Convention on Human Rights (ECHR), the ECtHR has recognized it based on other human rights (freedom of expression and right to private life; see Chapter 1).

Secondly, the text of Art. 255 TEC has been incorporated with amendments into the new Art.15 (3) TFEU[67], that has been now placed among the principles rather than the provisions governing the functioning of the institutions. Moreover, the current version of the Article undergoes substantial revision, shifting from a specific rule on access to documents to the affirmation of the general principle of transparency in EU actions, the promotion of good governance and civil society participation. Thirdly, the right of access to documents is applied to all EU institutions, bodies, and agencies without any exception. Article 15, TFEU, provides

[65] It now corresponds to Art. 15 of the TFEU, which is included in the section on the Principles governing the Union; see further details below.
[66] This Article, as will be seen, is a very important step as it guarantees a fundamental right to the right of access to information, allowing citizens to use it for the purpose. Indeed, every citizen of the Union, as well as any individual or organisation residing or headquartered in a Member State, possesses the entitlement to access documents from the institutions, bodies, offices, and agencies of the Union, regardless of their format.
[67] It is formulated as follows: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph."

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the legal basis of Regulation 1049/2001 and the subsequent Aarhus Regulation, which will be examined afterwards.

So, access to documents has evolved as fully-fledged general principle of the institutional activity and a fundamental right.
Besides, it must be clear that the Treaties have outlined other principles on good governance and transparency. Indeed, these are considered paramount principles included in Art. 1 of the TEU. In creating the Union, the Member States agreed to pursue a

> « new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen »[68].

This Article translates the declaration n. 17 contained in the Maastricht Treaty into binding principles. More importantly, it can be seen as an attempt to bring citizens closer to the European decision process.
An analysis of the Charter of the Fundamental Rights, which establishes the right of access to documents of the European institutions, is deemed essential.

2.3. EU Charter of the Fundamental Rights

Since the Lisbon Treaty, alongside the Charter, came into effect, there has been a notable increase in litigation related to fundamental rights. The most prominent decisions delivered by the CJEU often revolve around these rights (including the right to access information) rather than traditional economic integration matters[69].
Concerning access to environmental information, a couple of articles can be considered relevant. Firstly, Art. 37 of the EU Charter states as follows:

> « A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. »

[68] TEU, Art. 1, para. 2.
[69] T. Tridimas, *Fundamental Rights, General Principles of EU Law, and the Charter*, in *Cambridge Yearbook of European Legal Studies*, 2014, p. 363.

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As can be read, this article excludes the possibility of determining a subjective right but it rather defines a principle that binds the Union in its actions. This, of course, raises the question of its justiciability[70]. Nevertheless, it has to be read in conjunction with Art. 7 EU Charter, which concerns the protection of private life and it is connected to the case law of the ECtHR, for example, the case *Guerra v. Italy*. In the event that a measure or decision overtly violates provisions of environmental protection, or institutions are responsible for omission, legal actions can be taken both to demand a high level of environmental protection and the respect of private life rights. This implies a balance between interests at stake. Indeed, Art. 52 of the EU Charter provides for limitations on the rights recognised by the Charter, provided that these limitations do not undermine the essential content of the rights, are not disproportionate, and are not inadmissible[71].

Interestingly, the EU legislator recognises that the more efficient way to implement Art. 37 EU Charter is through access to information and citizen participation, opting for a "proceduralization" of the environmental rights[72].

Then, Art. 42 of the Charter guarantees the right of access to documents held by EU institutions, which is

> « related to several other fundamental rights recognized in the Charter, most notably the freedom of expression and information (Article 11) and the right to good administration (Article 41). In fact, right of access to documents must actually be understood as a precondition for these rights. »[73]

This right adds value by explicitly recognising the right to access documents within the EU's fundamental rights framework, unlike international human rights conventions such as the European Convention on Human Rights which do not explicitly include this right[74].

[70] EU Network of independent experts on fundamental rights, *Commentary of the Charter of Fundamental Rights of the European Union*, 2006, p. 315.
[71] R. Adam, A. Tizzano, *Lineamenti di diritto dell'Unione europea*, Giappichelli, Torino, 2019, p. 331.
[72] EU Network of independent experts on fundamental rights, *Commentary of the Charter of Fundamental Rights of the European Union*, op. cit., p. 317.
[73] Ibidem, p. 334.
[74] Idem, 335.

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However, as already seen, this right is also enshrined in the Art. 255 of the TFEU, which provides more detailed provisions regarding its application. According to Art. 52 of the Charter, conditions and limits for access to documents are defined by the TFEU, as it states:

> « Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties. »

For what concerns environmental information, the Treaties do not explicitly mention it, although it can be constructed from a joint reading of the provisions discussed above.
However, direct mentions to the right are mainly developed in secondary laws adopted to implement the obligations of the Aarhus Convention. Two worthies of analysis are the Environmental Information Directive and the Environmental Information Regulation (or Aarhus Regulation). The following sections will present these legal sources, which are fundamental in many rulings of the CJEU[75].

2.4. Environmental Information Directive: from Directive 90/313/EEC to Directive 2003/4/EC

Even before the Aarhus Convention, the EU had common standard rules, other than primary law, on access to environmental information, enshrined in the Council Directive 90/313/EEC of 7 June 1990[76] on the freedom of access to environmental information[77].

[75] For instance, the very recent preliminary ruling in the case *Roheline Kogukond MTÜ and others v Environment Agency,* C-234/22, which the Court held on 7 March 2024, and has given the interpretation of Directive 2003/4/EC concerning the definition of environmental information and the exceptions of disclosure.
[76] Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, OJ L 158, 23.6.1990, pp. 56–58.
[77] The ECJ's robust case laws concerning Directive 90/313/EEC and its rulings retain significance in formulating and interpreting the updated Directive, especially on the delineation of the boundaries of Member State discretion in the disclosure of information. In A. Ryall, *Access to Environmental Information in Ireland: Implementation Challenges*, in Journal of Environmental Law, Oxford, 2011, p. 50.

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This directive was then replaced by the current directive 2003/4/EC[78], which reflects the content of the Aarhus Convention[79].

Directive 2003/4/EC, known as the Public Access to Environmental Information Directive, was adopted on January 28, 2003, and came into effect on February 14, 2005. It plays a crucial role in promoting transparency in environmental governance[80] within the EU by ensuring public access to environmental information held by national public authorities[81]. The relevant obligations are delineated by Art. 3(1), which obliges these authorities to provide environmental information upon request without requiring the requester to state an interest. Indeed, the directive mainly focuses on the passive right[82] rather than the active one, to which only an article is dedicated[83].
Although Art. 4(1) allows for certain exceptions that may deter access to information, for example in order to protect the confidentiality of commercial or industrial information, these exceptions must be interpreted narrowly, considering information dissemination as the relevant public interest[84]. Indeed, it allows to hold public authorities accountable for their environmental policies and practices, thus encouraging compliance with EU environmental laws.

The decisive advancement between Directive 90/313/EC and Directive 2003/4/EC lies in the formulation and definition of the nature of access to information. Directive 90/313/EC

[78] 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, OJ L 41 of 14.2.2003, pp. 26–32.
[79] S. Whittaker, *The Right of Access to Environmental Information,* Cambridge, 2021, p. 48.
[80] Refer to the comprehensive analysis of environmental governance and democracy in Chapter 5.
[81] Despite the directive being referred to the public authorities, according to the CJEU's interpretation, it should be granted a broad "scope" and interpreted widely. Thus, "environment-related information" extends to documents not associated explicitly with public service provision. See, Court of Justice, Judgment of 26 June 2003, *Commission v France,* C-233/00, *OJ*.[81]
[82] S. Whittaker et al. "*Back to Square One: Revisiting How We Analyse the Right of Access to Environmental Information,* in *Journal of Environmental Law*, 2019, p. 478.
[83] In this regard, Art. 7 states that "Member States shall take the necessary steps to provide general information to the public on the state of environment by such means as the periodic publication of descriptive reports."
[84] See the following chapter for the case law.

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describes access to environmental information as a "freedom"[85]. By contrast, Directive 2003/4/EC formulates as a "right" as it states:

> « [t]he objectives of this Directive are: (a) to guarantee the right of access to environmental information held by or for public authorities […] »

This subtle difference has practical implications when it comes to implementation. A "right" is an institutional provision often enforced through laws, whereas a "freedom" is a more abstract concept that is typically safeguarded rather than imposed or constrained. This right, in particular, imposes authorities to take positive actions that may represent an administrative burden. As can be read in the Commission's report on applying this directive, despite various issues in transposition and practical application, *«[m]ember States generally felt that the Directive had a positive impact on the involvement of civil society. On the negative side, the administrative burden was a major concern for many»*[86].

The most relevant primary law for this study is the Aarhus regulation. Before to analyse its content, it is essential to keep a close eye on the EU's participation in the homonym Convention. Indeed, the Union's participation in international conventions is still contested, and not entirely defined by the Treaties as it mainly depends on the topic addressed case by case. Thus, since the EU is the only international organisation part of the Convention, the following part will briefly describe the EU's role and impact and contribution.

2.5. The interactions between the Aarhus Convention and the Union Law

[85] Art. 1 of Directive 90/313/EEC states: "[t]he object of this Directive is to ensure freedom of access to and dissemination of information on the environment held by public authorities and to set out the basic terms and conditions on which such information should be made available.
[86] European Commission, *Report from the Commission to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on Public access to environmental information*, Brussels, 2012, p. 5.

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2.5.1. The EU's participation in the Aarhus Convention

Considering the historical context, the Nineties represented a keystone for many aspects of the EU and its integration process. During this period, global concern for the environment and calls for more public involvement rose in environmental decision-making, and the European Commission used this *momentum* to expand its role in environmental issues. Therefore, by providing financial support to NGOs that promoted human, environmental, and social rights, the Commission was able to strengthen its influence in these areas. As a result, this strategic move helped ensure that environmental and social considerations were incorporated into the Maastricht Treaty, further embedding these issues into the EU's framework.
As an effect of this evolution, and the competence expansion in environmental matters, the EU was able to participate in regional and international negotiations on environmental and climate discussions.

Despite formally obtaining the legal personality with the Lisbon Treaty[87], *de facto,* the EU could already negotiate and conclude international agreements, as well as join international organisations and statutes. Of course, the centralisation of external policies was justified by the need to unify and centralise part of the international relations[88].
According to the formulation of Art. 216 of the TFEU (ex-Art. 300), the EU has the right to participate in international fora, given that the EU

> « may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope ».

It must first be proven the EU's competence in the field to be regulated by the international agreement. The Aarhus Convention concerns environmental matters, which, according to Art. 4 of the TFEU, correspond to a shared competence between the Member States and the Union. As detailed in the previous section, the EU gained control access to environmental information

[87] Art. 47 TEU now formulates "The Union shall have legal personality".
[88] A. Pisapia, *Gli accordi misti nel quadro delle relazioni esterne dell'Unione europea*, 2019, p.6.

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policies thanks to standard rules already adopted in 1990[89]. Nevertheless, the reality is much more complex. As seen in the first Chapter, the Convention is composed of three pillars: access to information, public participation and access to justice. While the EU already regulated the first two pillars, justice remains an exclusive Member States' competence. That is why the negotiation arrangement between the EU and Member States depended on the discussions agenda of the conference.

According to the CJEU case law, when a subject belongs to both the jurisdiction of the Member States and the Union, its implementation necessitates a *«close association between the institutions of the Community and the Member States»*[90]. This cooperation is crucial during the negotiation[91] and conclusion stages and in fulfilling the obligations outlined in the agreement. That said, this approach is evident in the environmental treaty-making process, where Member States have consistently participated as parties in nearly all environmental conventions[92] negotiated and concluded by the Union.

Finally, to accommodate the fact that the EU was the only non-state contracting party, the notion of "public authority," defined by Art. 2 of the Convention, has been formulated to englobe its institutions. For this purpose, "public authority" includes as well «*institutions of any regional economic integration organisation.*»

[89] In particular, the Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (see section 2.3.).
[90] Opinion 2/91 of 1993 together with the "sincere cooperation principle" of the art. 4(3) TEU.
[91] However, it is interesting to note that the Commission, regarding the coordination of the position to be taken at the conference, acted as a truly independent and assertive party, and not always it shared a common position with the Member States. As Delreux highlights, «[t]hey [member states] sometimes supported the position as presented by the Commission, but they also sometimes ignored the EU position and expressed their national preferences, even if this was not in line with the coordinated EU position. » T. Delreux, *The EU in Environmental Negotiations in UNECE: An Analysis of Its Role in the Aarhus Convention and the SEA Protocol Negotiations*, in *Review of European Community & International Environmental Law*, op. cit., p. 332.
[92] As follows the most well-known include the United Nations Framework Convention on Climate Change and the Kyoto, as well as the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

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2.5.2. The legal effects of the Convention in the EU legal order

Art. 3(5) of the TEU, that establishes the EU's key objective of contributing to the strict observance and development of international law, makes the connection between the EU law and international law - specifically treaties binding on the EU - clear. Furthermore, under Art. 216(2) of the TFEU, international agreements entered into force in the EU are interposed between primary and secondary law. Therefore, they bind its institutions, organs and bodies. Once ratified by the EU, the Aarhus Convention became an integral part of the EU legal order, driving policies related to public participation, access to information and justice in environmental matters[93].

The doctrine has differing views regarding the position of mixed agreements[94] within the EU legal order. According to a monist approach, international treaties prevail over the Union's secondary law[95].

In this regard, it is crucial to define the notions of "self-executing" effect and "direct effect", as they guide the judicial and administrative authorities when applying international treaty provisions in the EU legal order. More accurately, an international treaty provision may have a "self-executing" effect if it implies a clear and precise obligation that is unconditional and does not provide for the adoption of a further act. Finally, the assessment of these conditions must also be made according to the agreement's purpose, object, and context.

On the other hand, a direct effect provision confers rights and obligations to natural or legal persons who can claim them before national courts[96]. The CJEU has shown reluctance to accord

[93] Undoubtedly, there is an advantage of the EU and its Member States being part of the same Convention. Integrating the Aarhus Convention into the Union law offers significant legal advantages as remedies available for Union law enforcement also apply to the Convention.

[94] B. Pirker, *Access to Justice in Environmental Matters and the Aarhus Convention's Effects in the EU Legal Order: No Room for Nuanced Self-executing Effect?*, in *Review of European Community & International Environmental Law*, 2016, p. 82.

[95] For a broader analysis see section on the interactions between the Aarhus Convention and the Union and national laws.

[96] F. Martines, *Direct Effect of International Agreements of the European Union*, in *European Journal of International Law*, 2014, pp. 129-131.

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the Aarhus Convention a self-executing character because further national measures need to be taken,[97] but it is also skeptical regarding the direct effect[98].

2.5.3. The competence to interpret mixed agreements, the view of the Court of Justice

To what extent do the EU law and the CJEU impact international law? According to Art. 218, paragraph 11, TFEU, the CJEU has an advisory competence and verifies the legitimacy of the Council's decision. Furthermore, the CJEU can also exercise an *ex-post* control trough the procedure according to Art. 263 TFEU annulling the Council's decision, but also under Art. 267 TFEU through a preliminary ruling on validity in cases where a national court questions the compatibility of the decision to conclude an agreement with primary law.
Then, Art. 218(11) explicitly states that international law must be consistent with primary law. The Treaties implicitly suggests the same by specifying that (only) secondary law must be in conformity with the agreements concluded by the EU.

Generally, coherence and unity in international representation are ensured through loyal cooperation between the Union and its Member States. The CJEU affirms that:

> «Where it is apparent that the subject-matter of an agreement or convention falls partly within the competence of the Community and partly within that of its Member States, it is essential to ensure close cooperation between the Member States and the Community institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered

[97] Court of Justice, opinion of Advocate General Jääskinen, 8 May 2014, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, Case, 2014, C-401/12 P, C-403/12 P.
[98] There has been a vast debate on whether Art. 9 of the Aarhus Convention, concerning access to justice, should be considered as having a direct effect or not; the CJEU claimed that it has not by explaining that the disposition requires states to take national acts in order to create adequate procedures that allow individuals to hold refusal decisions. Indeed, the first coma of the article is formulated as follows: " 1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law".

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into. Tat obligation to cooperate flows from the requirement of unity in the international representation of the Community. »[99]

Interestingly, in 2009, Marsden introduced the concept of the *Europeanization* of international law[100], alluding to the fact that conventional international law is placed between primary and secondary law. Considering the increasing number of mixed agreements concluded by both the EU and the Member States over recent decades - particularly in the field climate change and environmental protection -, it is possible to speak of a "Europeanization of international environmental policy", in which the CJEU once again plays a driving role.

Art. 218 of the TFEU defines the procedure for ratifying international agreements negotiated by the European Commission on behalf of the Union. These agreements cover a wide range of matters, including environmental and climate-related ones. Mixed agreements, according to Art. 218(8) TFEU, need a double ratification procedure: by all the Member States in the Council by qualified majority or unanimity[101], and by each Member State, separately, according to their constitutional procedures[102]. Tizzano and Adam point out that, although the participation of Member States is legally justified most of the time, the conclusion of mixed agreements is sometimes driven by political factors, aimed at preventing the Union from managing significant international relations on its own[103].

Having said that, in all the phases of the procedure, the Court plays a role both *a priori,* and after through the action for annulment.

[99] Court of Justice, judgment of 20 Aril 2010, *European Commission v Kingdom of Sweden*, EU:C:2010:203, para 73.
[100] S. Marsden, *MOX Plant and the Espoo Convention: Can Member State Disputes Concerning Mixed Environmental Agreements Be Resolved Outside EC Law*?, in *Review of European Community & International Environmental Law*, 2009, p. 317.
[101] It states that « The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession […] »
[102] T. Delreux, *The European Union in International Environmental Negotiations: A Legal Perspective on the Internal Decision-Making Process*, in *International Environmental Agreements: Politics, Law and Economics*, 2006, p. 248.
[103] R. Adam, A. Tizzano, *Lineamenti di diritto dell'Unione europea*, op. cit., p. 424.

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Indeed, to prevent the conclusion of an international agreement which might alter the constitutional framework of the EU, any Member States, the Parliament, the Council, or the Commission may seek the opinion of the CJEU on the compatibility of the envisaged agreement[104]. This also allows the Court to pronounce itself in advance to avoid facing consequences afterwards, as the Union's responsibility could be implicated in international law in such a scenario[105].

Then, as will be seen in the following sections, the CJEU interprets EU secondary law with reference to international conventions of which the EU is part. In general terms, the CJEU has constantly contributed to defining the position of the international agreements in the EU legal order, as done with the leading decision *Haegman*[106]. As Wessel observes, one of the most repeated sentences by the CJEU is (still today), "*Since an international agreement concluded by the European Union is an integral part of EU law [...]*"[107], suggesting the very notion that international law that is binding on the European Union is part of the Union legal system. This is also applied to mixed agreements, considering that

> « the Court has already ruled that mixed agreements have the same status in the Community legal order as purely Community agreements, as these are provisions coming within the scope of Community competence »[108].

[104] More precisely, the last paragraph of Art. 218 reads: "A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised."
[105] A. Masson, P. Nihoul, *Droit de l'Union europeéenne, Droit institutionnel et matériel*, Bruxelles, 2011, p. 116.
[106] European Court of Justice, judgment of 30 April 1974, *R. & V. Haegeman v Belgium*, case 181/73, ECLI:EU:C:1974:41, paras 4-6.
[107] R.A. Wessel, *International Agreements as an Integral Part of EU Law: Haegeman*, in G. Butler and R.A. Wessel, *EU External Relations Law: The Cases in Context*, Oxford: Hart Publishing, 2022, p. 12.
[108] Court of Justice, judgment of 30 May 2006, *Commission v Ireland*, in case C-459/03, ECLI:EU:C:2006:345, para 84.

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This was also highlighted in the 2011 decision *Brown Bear*, in relation to the Aarhus Convention[109]. Thus, the CJEU can interpret and clarify the meaning of provisions of a mixed agreement that lies beyond the Union's exclusive competence[110]. It can examine the entire mixed agreement to delineate which provisions fall under the Member States' jurisdiction and which under the Union's.

The way the Court conceives the effect of an international agreement within the EU legal order has implications not only for the domain of public participation, but can also be generalised to other international treaties on human rights. As Gadkowski remarks, determining the direct effect of the mixed agreements has important implications when considering those regarding rights for individuals[111]; this is an important observation, as international agreements very seldom provide for individual rights in a way that could be directly invoked[112]; the Aarhus Convention is one of the rare cases in the environmental field.

2.5.4. On the direct effect

The concept of direct effect appeared long time ago, since it was the essential outcome of the *Van Gend en Loos* case in 1963[113]. Particular attention has been paid to the impacts that provisions concerning individual rights can have on legal and natural persons, as well as the related obligations for the Member States. Then, case law evolved, and the CJEU came to grant a direct effect to international treaties[114] following the same reasoning. Here, it is essential to

[109] Court of Justice, Judgement of 8 March, 2011, *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky*, case C-240/09, in *Curia*, 2011.
[110] E. Neframi, *Mixed Agreements as a Source of European Union Law*, in E. Cannizzaro et. al., *International Law as Law of the European Union*, Leiden, 2012, pp.
The author, nonetheless, points out that "the status of a mixed agreement in the EU legal order is the result of several parameters: the extent of the EU legislation, the extent of the EU competence, the need for uniform interpretation, and the need to effectively comply with international obligations." (p. 329).
[111] A. Gadkowski, *Direct Effect of the European Union's Mixed Agreements and the Rights of Individuals*, in *Przegląd Prawa i Administracji*, 2017, p.27.
[112] F. Martines, *Direct Effect of International Agreements of the European Union*, in *European Journal of International Law*, 2014, p. 138.
[113] Court of Justice, judgement of 5 February 1963, *van Gend & Loos v Netherlands,* case 26-62, ECLI:EU:C:1963:1.
[114] According to the judgment in *Demirel v Stadt Schwäbisch Gmünd*, international agreements can have a direct effect, and their legal force supersedes secondary law; thus, they must be

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understand the legal *rationale* applied to this domain. Indeed, direct effect has important implications for environmental organisations, as many of their activities concern the protection of participation rights - such as those defined by the Aarhus Convention - and the challenge institutional acts before national courts.

The already mentioned *Brown Bear* judgment comes in handy. The Court was demanded, among other questions, to determine whether Art. 9(3) of the Convention has direct effect[115]. As can be read in paragraph 39 of the decision, the CJEU did not recognise a direct effect to the provision in question because only

> « Member States are responsible for the performance of these obligations […] and it will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations. »

Reasonably, this will not happen shortly, considering that the article touches on administrative and judicial proceedings[116], which are sectors jealously kept by the Member States.
Nevertheless, the Convention can have such an effect given that some of its provisions meet the criteria. Generally speaking, and according to the Court, a provision of an international agreement concluded by the Union has a direct effect if it contains a clear and precise obligation that does not require further measures for implementation. So, the Court, once considered the

respected. So, by definition, an international agreement is directly applicable if it contains a clear and precise obligation that is not subject to the adoption of a subsequent measure.

[115] In this context, the Court determined that a provision in an agreement between the Union and a non-member country is directly applicable if it includes a clear and precise obligation that does not require further measures for implementation. However, it finds that Art. 9(3) of the Aarhus Convention lacks such clarity, as it does not directly regulate individuals' legal positions. Since only individuals meeting certain criteria specified by national law can exercise rights under Art. 9(3), further measures are needed for its implementation.

[116] It prescribes the instauration of adequate administrative procedures. It states as follows: "[…] each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."

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overall purpose of the agreement, evaluates separately each provision, prioritising an examination of its wording and purpose[117], and adopting a case-by-case approach.

On the other side, as Jendrośka observes, national courts in several Member States are cautious regarding acknowledging direct effect. Typically, though they recognise the Convention as a mixed agreement, they primarily interpret its provisions in line with relevant secondary Union law (i.e., regulations and directives adopted accordingly), and this trend appears to be mirrored in the behaviour of governments and parliaments[118].

Finally, the EU adopted Regulation (EC) No 1367/2006 in order to fulfill obligations taken under the Aarhus Convention. This regulation applies to EU institutions, bodies, and member states when applying EU law.

2.6. The Aarhus Regulation

The Aarhus Regulation was adopted as Regulation (EC) 1367/2006 of the European Parliament and the Council on September 6, 2006. It regulation was aimed to incorporate the Aarhus Convention in the EU legal system, thus facilitating public access to environmental information and participation in decision-making processes at the EU level.

The Aarhus Regulation is thoughtfully structured to ensure its comprehensive application across various aspects of environmental governance. It begins with Chapter I, which lays the groundwork by defining the regulation's objectives, scope, and key terms, establishing a clear foundation for the subsequent provisions. Chapter II then focuses on ensuring public access to

[117] J. Jendrośka, *Public Participation in Environmental Decision-Making. Interactions Between the Convention and EU Law and Other Key Legal Issues in its Implementation in the Light of the Opinions of the Aarhus Convention Compliance Committee*, in M. Pallemaerts, *The Aarhus Convention at Ten - Interactions and Tensions between Conventional International Law and EU Environmental Law*, 2011, pp. 107-115.
[118] Idem, p. 114.

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environmental information held by EU institutions, setting out rules that promote transparency and accountability. Moving forward, Chapter III addresses public participation, requiring that the public be actively involved in developing environmental plans, programs, and policies with clear and timely procedures. Chapter IV ensures that the public can seek legal recourse if their rights under the regulation are violated, thus securing access to justice in environmental matters. Finally, Chapter V provides the necessary concluding provisions, detailing the regulation's entry into force and ensuring its effective application within the EU framework. This well-organized structure allows the regulation to comprehensively address the three pillars of the Aarhus Convention.

The articles dedicated to environmental information are, in particular, from Artt. 3 to 8. For example, Art. 6 sets deadlines for providing the information, typically within one month of the request. Art. 7 deals with the case of information held by third parties and the necessary cooperation to obtain it.

This Regulation can be read in conjunction with the broader transparency framework that has been established in the institutions. Indeed, another regulation on the general right of access to information already exists, and it is called Transparency Regulation[119]. The doctrine highlights two main differences: the Aarhus Regulation extends the public's right to access environmental information alongside methodical dissemination of such data. Then, unlike the more generic Transparency Regulation, the Aarhus regulation explicitly addresses environmental concerns and introduces a right to obtain *information* rather than to, more specifically, *documents*[120].

2.7. Adjusting persistent shortcomings

[119] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. It will not be the object of analysis here; it has been previously mentioned concerning the *Capitani v. Parliament* case. The Court used it to interpret the dispositions concerning the exceptions to refuse someone access to the EU institutions.

[120] S. D. A. Ferreira, *The Fundamental Right of Access to Environmental Information in the EC: A Critical Analysis of WWF-EPO v. Council*, op. cit., p. 402.

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After a complaint filed in 2008 by an NGO[121], and a lengthy procedure lasting about 10 years, the Compliance Committee determined that the EU had failed to comply with Art. 9, paragraphs 3 and 4, of the Convention regarding public access to justice[122].

Thus, the Aarhus Regulation has been identified among the European Green Deal Strategy[123] reforms as the Commission took the opportunity and pledged to reconsider the Aarhus Regulation to enhance citizens' and NGOs' access to environmental justice at both EU and national levels[124]. Consequently, on October 14, 2020, the Commission drafted a legislative proposal to enhance the internal review process of administrative acts[125]. This proposal aimed at broadening the scope of internal review to cover non-legislative acts of general scope and extends deadlines for internal review procedures.

Additionally, it introduces a new recital clarifying "legally binding acts" following CJEU case law. Furthermore, while Art. 10 states that an *"administrative act for which EU law explicitly requires implementing measures at the EU or national level cannot be the subject of a request for internal review"*[126], it extends the right to request internal review not only for administrative acts but also for the *omissions* by EU institutions and bodies that may violate environmental law.

[121] Case ACCC/C/2008/32 European Union.

[122] G. Reale, *L'adeguamento del diritto comunitario alla convenzione di Aarhus in materia ambientale*, in *Altalex*, 2022.

[123] As proof of the necessity to complete the plan by enhancing better access to justice and environmental democracy, the mention of reforming the existing mechanisms has been put at the end of the document, stating that the Commission: « consider revising the Aarhus Regulation to improve access to administrative and judicial review at EU level for citizens and NGOs who have concerns about the legality of decisions with effects on the environment. The Commission will also take action to improve their access to justice before national courts in all Member States. » in European Commission, *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*, op. cit., p. 23.

[124] European Commission, *Improving access to justice in environmental matters in the EU and its Member States*, Communication 643, 2020.

[125] European Commission, *Proposal for a regulation on amending 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*, COM(2020) 642.

[126] European Parliament, *Proposal for amending the Aarhus regulation on access to justice in environmental matters*, legislative train, 2023.

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These amendments, later incorporated into the Regulation (EU) 2021/1767[127], are designed to strengthen access to justice in environmental matters, while more broadly enhancing public participation and improving the transparency of EU policy-making[128].

The most significant amendment broadens the subjects entitled to challenge administrative acts[129]. Following the CJEU case law, the Council and the European Parliament have agreed to extend the legal standing beyond the NGOs, thereby allowing other members of public opinion to request, under certain (though, quite strict) conditions, the internal review of administrative acts[130].

The internal review mechanisms of administrative acts are essential, since they complement the judicial protection system provided by the Treaties (through Artt. 263, 265 and, indirectly, through Art. 267 TFEU) and bridge the existing gaps in access to justice for individuals in environmental matters[131].

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[127] Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 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 356, 8.10.2021, p. 1–7.

[128] As can be read on a dedicated website of one of the most notorious environmental NGOs, ClientEarth, « this hard-won victory closed a decade-long battle over the scope of administrative acts contravening environmental law that can be subject to an internal review request […]. » Even though this improvement has been indicated and desired for many years by NGOs and civil society, the results of the recent reforms can be proven only in the next few years. So, the answer to whether people can now easily challenge administrative acts in case of breach of environmental law will be available once case law furnishes sufficient material.

[129] Indeed, in Case C-404/13, *ClientEarth v. European Commission*, where the CJEU ruled that the Aarhus Regulation applies not only to environmental NGOs but also to individuals and groups affected by environmental decisions. The Court clarified the scope of access to justice under the Aarhus Convention, ensuring that the public has the right to challenge environmental decisions made by EU institutions.

[130] Members of the public opinion will be required to demonstrate a restriction of their rights caused by an alleged violation of environmental law and to show that they are directly affected by this harm compared to the general public. Alternatively, they must prove that the request is justified by a sufficient public interest and is supported by at least 4,000 members of the public residing or established in at least five Member States, with at least 250 of them residing or established in each of those Member States. In either case, the members of the public must be represented by an NGO or a lawyer.

[131] A. Favi, *Riflessioni sull'effettività dell'accesso della società civile alla giustizia in materia ambientale dopo la riforma del regolamento di Aarhus*, in *Quaderni AISDUE*, 2022, pp. 615-616.

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2.8. The EU's struggle with the Access to Documents Regulation

The Aarhus regulation directly mentions the more general Regulation (EC) 1049/2001 regarding public access to documents of European Parliament, Council and Commission[132]. Nevertheless, at the EU level, the differences between access to environmental information and other access rules are minimal, as the ongoing trend is toward a generalised approach of legitimacy through transparency and openness of institutions across nearly all policy areas. Indeed, public participation, including access to information, "*can be a third and direct chain of legitimation besides the very long chains leading to the EP and the national parliaments*"[133].

In light of the case-law[134], it seems that the EU courts and the European Ombudsman have found that the Commission's handling of information requests often fails to meet the requirements the Regulation 1049/2001, citing issues such as missed deadlines, improper application of refusal reasons, and insufficient demonstration of overriding public interest in refusals[135].

In the last few decades, efforts have also been made to reform and expand the scope of the Access to Documents Regulation to improve institutional transparency. However, these attempts have been unsuccessful[136] due to the absence of a common position among the co-legislators. Specifically, the Council's reluctance has been a significant obstacle "*as Part of the Council is not keen on moving on the matter, fearing an impact on access to documents*

[132] It refers to it by saying that "Regulation (EC) 1049/2001 shall apply to any request by an applicant for access to environmental information held by the Community institutions and bodies without discrimination as to citizenship, nationality, or domicile and, in the case of a legal person, without discrimination as to where it has registered seat or an effective centre of its activities."
[133] G. Winter, *Theoretical Fundations of Public Participation in Administrative Decision-Making*, in G. Bándi et. al., *Environmental Democracy and Law, Europe*, op. cit., p.33.
[134] See, for instance, cases T-120/10 and T-449/10 *Client Earth and others v Commission*.
[135] E. Kruzikova, *Implementation of public participation principles – Experience of the EU*, in G. Bándi et al., *Environmental Democracy and Law, Europe*, op. cit., p. 144.
[136] Regulation (EC) No 1049/2001, governing public access to EU documents, currently applies only to the European Parliament, Council, and Commission. Following the Lisbon Treaty, a 2011 proposal aimed to extend this access to all EU institutions. The European Parliament advocates for broader access and a more comprehensive definition of 'documents', while some Member States seek to diminish the scope of the Regulation.

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originating from Member States in the framework of procedures linked with EU institutional work"[137].

Overall, environmental policies have positively impacted the functioning of the European institutions, and demand for more open-access settings continues to grow. For instance, although the Council still adheres to its "transparency-hostile"[138] approach of consensus-seeking negotiations based on diplomatic secrecy, it has not been immune to calls for greater openness[139].

Given that the Aarhus Convention and EU legislation documented until now primarily target public institutions, it is now insightful to provide a legal analysis of the obligation of environmental transparency that EU law imposes on the private sector.

2.9. The disclosure obligations for the Private sector

EU legislators have opted to regulate disclosure obligations for the private sector through specific norms targeting particular industries. Therefore, private companies are required to provide information as well. The most significant norms and directives that foresee environmental data disclosure for private industries are presented below.

The Corporate Sustainability Reporting Directive[140] (CSRD), which will replace the previous Non-Financial Reporting Directive[141] (NFRD), affects environmental data disclosure and

[137] European Parliament, *Legislative Train – Revision of the Access to Documents Regulation*, 2024, pp. 1-3.
[138] M. Hillebrandt, *Twenty-five years of access to documents in the Council of the EU*, in Politique Européenne, 2018, p. 167.
[139] Nevertheless, it must be understood that this evolution coincided with a wave of transparency, during which freedom of information laws were adopted worldwide at an unprecedented pace. A "transparency turn" led to the establishment of various global forums (such as the UNECE) that actively disseminated transparency norms and FOI blueprints.
[140] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322/15, of 16.12.22.
[141] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity

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expands the scope and depth of companies' reporting requirements. These norms modernises and

> « strengthens the rules concerning the social and environmental information that companies have to report. A broader set of large companies, as well as listed SMEs, will now be required to report on sustainability. Some non-EU companies will also have to report if they generate over EUR 150 million in the EU market »[142].

The first reports will be published in 2025. Despite businesses' efforts to maintain the privilege of withholding internal information[143], this directive responds to the growing interest and value that stakeholders place on sustainability information.

Then, it is appropriate to mention the EU Taxonomy Regulation[144], a framework designed to classify economic activities based on their environmental sustainability. Companies are now required to disclose the extent to which their activities align with the criteria set by the taxonomy for environmental sustainability.
Moreover, The EU Emissions Trading System[145] (EU ETS) requires companies in specific sectors to monitor, report, and verify their greenhouse gas emissions. This system is a cap-and-trade scheme designed to reduce emissions by limiting the total amount of greenhouse gases

information by certain large undertakings and groups Text with EEA relevance, OJ L 330/1, of 15.11.2014.
[142] As stated on the Commission's dedicated page under "Sustainable Finance," this will be a great achievement as "the new rules will ensure that investors and other stakeholders have access to the information they need to assess the impact of companies on people and the environment and for investors to assess financial risks and opportunities arising from climate change and other sustainability issues."
[143] J. Bazylińska-Nagler, *The Right of Access to Environmental Information in the Light of the Case C-673/13 P of 23 November 2016 — European Commission V Stichting Greenpeace Nederland*, in *Wroclaw Review of Law, Administration & Economics*, 2017, p. 67.
[144] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance), OJ L 198/13, of 22.6.2020.
[145] Established, for the first time in the EU by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance), OJ L 275/32, of 25.10.2003.

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that concerned entities can emit. Consequently, it indirectly expands the obligation of information disclosure for market actors in the most polluting sectors.
Additionally, the REACH Regulation [146] (Registration, Evaluation, Authorisation, and Restriction of Chemicals) requires companies to register chemicals used in their products and provide information on their environmental impact. Hence, this regulation aims to protect human health and the environment from chemical risks.

These are the most relevant examples of norms that aim to make the economy and the corporate sector more environmentally responsible and transparent[147]. However, it must be remarked that many small enterprises are exempt from these norms due to their size or turnover.

In conclusion, in recent years, an extensive legal framework limiting private companies' ability to withhold environmentally and climate-relevant information has been developed, thereby countering the argument made by Bazylińska-Nagler, who claims that « *there is a significant contradiction between environmental democracy standards in EU law and the protection of confidential commercial or industrial information*»[148].
An interview with a legal officer of the European Commission[149] has partly confirmed this evolution. Indeed, the Commission's commitment to transparency also strives to balance private economic interests with the broader principle of transparency and access to information.

[146] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396/1, of 30.12.2006.
[147] They are also voluntarily following international standards and frameworks for environmental reporting, such as the Global Reporting Initiative (GRI), which offers a comprehensive set of guidelines for sustainability reporting.
[148] J. Bazylińska-Nagler, *The Right of Access to Environmental Information in the Light of the Case C-673/13 P of 23 November* 2016 — *European Commission V Stichting Greenpeace Nederland*, op. cit., p. 67.
[149] Based on the interview that is discussed in the final Chapter.

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3. NOTION, SCOPE AND LIMITS OF THE RIGHT TO ACCESS ENVIRONMENTAL INFORMATION: THE CASE LAW OF THE COURT OF JUSTICE OF THE EU

Introduction

The foundations of freedom of information in Europe have historical roots. For example, transparency laws were enacted as far back as 1766 in Sweden[150]. Still, when it comes to environmental information, things are, of course, different. Evolution in this particular domain has happened gradually in the last decades, thanks first to the case law of the ECtHR[151] and the CJEU. Therefore, in this Chapter, the most relevant case law of the Court of Justice is reviewed

[150] Misha Singh and Shekhar Singh, *Transparency and the Natural Environment,* Economic and Political Weekly, Apr. 15-21, 2006, Vol. 41, No. 15 (Apr. 15-21, 2006), p. 1443.
[151] The European Court of Human Rights has significantly contributed to attributing access to environmental information as a fundamental right status, and its interpretations are highly guiding, as seen in the *Guerra v. Italy* case reported in the first Chapter.

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with the purpose of delineating the central notions concerning access to environmental information.

The case law of the CJEU holds a position of utmost importance, as not only has it defined terms such as "information," "public," and "authority" but it also shaped the purpose of the right to access environmental information. This is crucial for correctly implementing and enhancing the Environmental Information Access Directive and the Aarhus Regulation. Following, this section aims to delve into the legal reasoning of the CJEU on notions that are also applicable to other domains (for instance, "body governed by public law"[152] which is increasingly relevant for the correct implementation of the European citizenry rights, as outlined in Art. 20 of the TFEU[153] and art. 9 of TEU[154]), and to describe the prevailing approach of the Court concerning this right. The analysis of the case law is helpful to understand whether the CJEU is adopting "autonomous" interpretations or if its legal reasoning is just more functional to secure the effective implementation of the EU law and the pursuing of EU goals and policies. The answer to this question has practical implications on the scope of the right to access to information, and the way it is balanced with other rights, regardless of their nature.

The last section of the Chapter examines the relevant rulings and opinions of the Court in defining the exceptions to the right to access to environmental information. Indeed, according to the case law, the exceptions to access to environmental information, as provided for in Art. 4 of Directive 2003/4/EC, are considered *strictly exceptional* to the general principle of ensuring its wide dissemination. As a result, these exceptions, which relate to the protection of private life and commercial interests, must be interpreted narrowly so as to prevent any restriction of the directive's core principles. However, as shown in the previous Chapter, due to the generic manner in which these exceptions are defined, public administrators and Courts enjoy a certain degree of discretion in interpreting their scope. This discretion may lead to

[152] As a general definition, for the moment, it is sufficient to know that it refers to entities that perform public functions and are subject to public control, and that is a new concept, as will be seen, introduced by the Union Law.
[153] It states, in its par. 2, that now citizens "of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties."
[154] It foresees as follows: "[i]n all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union."

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variations in the understanding and interpretation of the exceptions, thereby affecting the scope of the right to access environmental information.

Generally speaking, the environmental domain particularly requires a careful balance between different interests, both private and public. It is therefore essential to delineate the boundaries and limits of such interests. This section aims to reveal the underlying rationale, or the "soul", of the Court's approach to the standardisation of the EU environmental law.

3.1. Defining the key notions of the right to access environmental information

It is time to acknowledge how participatory rights are substantially conceived and enforced in the EU system. For practical reasons, the focus will mainly be on the concepts that help to reduce the complexity of "access to environmental information", thereby leaving aside other participatory rights. However, it is important to emphasise that many other matters are worth considering, as they are closely related to access to environmental information; for example, many of the dilemmas revolve around the issue of legal standing (that is, who can challenge decisions taken by public authorities and within what limits. Who is entitled to bring a case before a court following the refusal of a request for environmental information?). Hence, a subsection will explore issues relating access to justice, drawing on recent developments.

Individuals and NGOs are crucial in detecting potential violations of Union environmental law by lodging complaints against administrative bodies or starting legal proceedings. Thus, considering that, for the moment, nature has no recognised legal standing[155], NGOs and private parties are the only subjects able to represent it before the courts.

[155] There is an ongoing and significant debate in the doctrine on this concept; for instance, S. Baldin, *Il buen vivir nel costituzionalismo andino. Profili comparativi*, Giappichelli, Torino 2019. An inspiration and milestone in this context is the book by the American author Christopher D. Stone, titled *Should Trees Have Standing?*, published in 1973. In this work, Stone envisions nature as a plurality of legal entities possessing rights, highlighting how, over the centuries, rights have been progressively extended to increasingly broader classes of both natural and legal persons. The big question is, however, who should represent the interests of these new legal entities. The consensus in Rights of Nature literature is that all members of society should have this capability, emphasising the *actio popularis*. Indeed, it seems appropriate to recall the statement of Advocate General Sharpston in the hearing of *Case 240/90* (the already mentioned *Brown Bear Case*) that « neither water nor the fish swimming in it can go to court. Trees likewise have no legal standing ».

However, the Aarhus Convention takes a more pragmatic approach, assigning the task of standing for the environment to environmental NGOs. This is a significant step forward, as it provides a platform for the environment to be represented. This nuanced approach, though not

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Besides these debated considerations, it is undeniable that, in the absence of other remedies[156], the CJEU's contribution in the environmental field is of great importance, particularly in light of its task to, in the words of the CJEU in *Van Gen en Loos*, « *secure uniform interpretation of the Treaty* » and of the EU environmental law.

For these and other reasons that will be examined later, it is essential to understand the evolution of the CJEU's case law, even though some scholars have criticised it for being "excessively rigid" and not very bold[157].

3.1.1. The preliminary reference: an undervalued instrument in the environmental field

According to Art. 267 of the TFEU, the CJEU « *shall have jurisdiction to give preliminary rulings concerning: a) the interpretation of the Treaties; b) the validity and interpretation of acts of the institutions, bodies, offices, or agencies of the Union* ». During the process of European integration, the preliminary reference became the keystone of the European judicial system[158].

In the environmental field, the preliminary reference is an essential remedy, particularly in light of the significant legislative developments following the European Green Deal. However, according to a European Parliament's study, this procedure is seldom used in environmental cases, with application rates differing significantly among Countries. This infrequent use might be connected to the need of urgent decisions involving industrial and societal impacts.

perfect, offers a glimmer of hope, as the anthropocentric view is slightly balanced by the creation of new substantial rights.

A recent study of the European Parliament also provides a detailed dissection of the issue. See European Parliament, *Can nature get it right? A Study on Rights of Nature in the European Context*, 2021, which also proposes some solutions to take more seriously engagement concerning environmental matters.

[156] Some examples are the Treaty revision or the creation of a European Environmental Ombudsman.

[157] B. Pirker, *Access to Justice in Environmental Matters and the Aarhus Convention's Effects in the EU Legal Order: No Room for Nuanced Self-executing Effect?*, in *Review of European Community & International Environmental Law*, op. cit., p. 1.

[158] The CJEU reiterates that « the EU has a new kind of legal order, the nature of which is peculiar to the EU, its own constitutional framework and founding principles, a particularly sophisticated institutional structure and a full set of legal rules to ensure its operation […]» Opinion 2/13, para 158.

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Additionally, the judicial culture within Member States significantly influences the use of this procedure[159].

However, the report specifies that the scarce and uneven use of Art. 267 TFEU is a problem for the EU legal system as a whole. Thus, despite the aforementioned reasons for the limited use of the preliminary reference in environmental matters, its value is undeniable, especially in the absence of other effective instruments for enforcing EU environmental law.

National courts are responsible for referring preliminary questions before the CJEU, and, thanks to them the CJEU's preliminary rulings have crystallised key concepts of the EU administrative and procedural law, thereby harmonising national systems. For example, in decision C-664/15[160], the referring court was required to set aside disapply a rule of national procedural law when it would have impeded the participation of NGOs in administrative proceedings[161].

Furthermore, administrative judges should also be empowered to exercise judicial control over the administration, as *« decision taken by the competent authorities must be subject to judicial review, in particular in order to verify they have not exceeded the limits set for the exercise of those powers »*[162].

As provided by EU legislation, public authorities now have a certain degree of discretion when acting on environmental matters. Therefore, national courts are tasked with verifying that administrative processes and acts respect the limits, competencies, and modalities provided by

[159] European Parliament, *Can nature get it right? A Study on Rights of Nature in the European Context*, op. cit., p. 55.

[160] Court of Justice, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd*, Case C-664/15, ECLI:EU:C:2017:987, para 55.

The entire paragraph states as follows: « In that regard, it must be noted that it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring proceedings, in accordance with both the objectives of Art. 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an environmental organisation, such as Protect, to challenge before a court a decision taken following an administrative procedure that may be contrary to EU environmental law ».

[161] The case arose when an NGO was denied the right to participate in proceedings regarding the renewal of a water extraction permit for a fish farm in Austria, and the CJEU decided that NGOs must be allowed to challenge decisions that may contravene environmental laws to ensure effective public participation and access to justice in environmental matters according to the relevant laws object of this analysis.

[162] Court of Justice, judgement of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others,* case C-197/18, ECLI:EU:C:2019:824, para 72.

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Union environmental law and, in the event of any interpretative doubt, to refer the question to the CJEU.

3.1.2. Nexus between access to information and institutional transparency

Despite the limited use of the preliminary reference in environmental matters, CJEU case law on access to environmental information is sufficiently developed o analyse the scope and the possibilities for public participate in decision-making processes, as well as the shortcomings of the system.

Access to information is closely linked to transparency. As noted, the more people are aware of the activities and decisions of institutions, the better able they will be to participate at all levels of the decision-making process, regardless of the domain. Indeed, a general discourse on transparency and the importance of access to information for the functioning of European democracies has been firmly established through the recent case law in the *De Capitani'*s *saga*[163], which concerns the general principle of transparency and the broadest possible openness of the decision-making processes.

The case of *De Capitani vs the European Parliament* focuses on the right to access the four-column tables of the *trilogues*. The Parliament initially denied the access, justifying its decision with the need to protect the decision-making process. Nevertheless, the General Court ruled that *trilogues* constitute a crucial stage of the legislative process and that transparency is essential. The Court then found that the Parliament had not justified how external pressures could harm decision-making and therefore ordered the publication of the four-column documents, thereby enhancing transparency and aligning informal processes with formal ones. However, following this decision, concerns have arisen that sensitive discussions might be transferred elsewhere, potentially creating a double standard in legislative procedures. The European Ombudsman also noted the absence of transparency in *trilogues*. In a related case, De Capitani sought access to internal Council documents, and the Court again ruled in his

[163] See, Court of Justice, judgment of 22 March 2018, *De Capitani v. European Parliament*, in case T-540/15, ECLI:EU:T:2018:167.

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favour, dismissing the Council's argument that disclosure would compromise mutual trust among Member States[164] (see *case T-163/21*).

It is interesting to remark how the CJEU has reinforced its views throughout the case. Indeed, the CJEU has restrictively interpreted Art. 4 of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents. In fact, in *Capitani v. European Parliament*, the Court states that:

> «[t]he Parliament cannot base the contested refusal of access on a general presumption of non-disclosure; it remains to be examined whether that institution complied with its obligation to provide […] explanations as to how full access to the documents at issue could undermine specifically and the interest protected by the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001, the likelihood of which must be reasonably foreseeable and not purely hypothetical »[165].

Here, some of the leitmotifs of classic case law emerge: the need to provide explanations following a refusal and, consequently, the obligation to evaluate the legal basis and legitimacy of each request on a case-by-case approach.

A recent ruling of March 2024, in a case involving the notorious EONG ClientHearth and the Council[166], has reiterated the importance of transparency within Union institutions. In these joined cases, ClientEarth challenged the Commission's refusal to grant access to documents concerning the impact assessments of EU environmental policies. The Commission denied access, arguing that disclosure would have undermined its decision-making processes and the confidentiality of internal deliberations. On the other hand, ClientEarth contended that the refusal violated the principles of transparency and public participation under EU law, explicitly invoking the Aarhus Convention and Regulation (EC) No 1049/2001 on public access to documents. Therefore, these cases required an evaluation that balances institutional confidentiality with public's right to access environmental information.

[164] Also stating hat the requester must be aware of the provisional nature of the information and that public opposition also plays a role and can influence changes to proposals.
[165] General Court (Seventh Chamber, Extended Composition), judgement 22 March 2018, *De Capitani v. European Parliament,* Case T-540/15, par. 84.
[166] Court of Justice, judgment of 13 March 2024, *ClientEarth v Council*, joined cases T-682/21, T-683/21, ECLI:EU:T:2024:165.

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First, the CJEU once again clarified transparency requirements for EU institutions to ensure that the legislative procedure is not opaque. It reaffirmed the standards for adequately justifying EU decisions, which are historical principles of the case law, and also outlined the conditions under which access to documents may be validly refused[167] that will be examined in this section. Then, it highlighted and clarified that any "risk" an EU institution uses to justify withholding disclosure must be specific, actual, reasonably foreseeable, and not hypothetical. Thirdly, it illustrated the practical understanding the EU Courts have of the day-to-day realities of EU rulemaking[168].

The ongoing ecological transition increasingly demonstrates the need for greater participation and accountability in decisions. Considering the consistent adoption of environmental acts at the EU level in light of the ambitious objectives of the European Green Deal[169], there is a need to strengthen the right to access environmental information and to ensure that all processes allow public participation and facilitate consultation[170].

In this context, cases related to environmental transparency are slightly increased[171].

Thus, as has been observed, the issue of accessibility to environmental information remains significant and contested, perhaps more than ever.

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[167] Ibi, para 88-103.

[168] D. Kyriazis, *Access to documents: an important victory for transparency in ClientEarth v Council,* in *EU Law Analysis*, 2024.

[169] Member States have pledged to attain carbon neutrality by 2050, honouring their obligations within the Paris Agreement. The European Green Deal serves as the blueprint for the EU's pathway toward achieving this 2050 objective.

[170] It is possible to affirm that there exists a strict connection between the various democratic principles seen here as if they were two sides of the same coin. NGOs and citizens could only participate in environmental decision-making with the proper information. Information is a term encircled by many interpretative issues.

[171] A recent case worth mentioning is the one of May 14, 2020, when France received a formal notice from the European Commission urging it to enhance citizens' access to environmental information within four months. In response, the Ministry of Ecological and Solidarity issued a circular letter about implementing the right to access environmental information on the same day. Following this, France implemented additional measures, including the internal audit of CADA, also known as the Commission for Access to Administrative Documents. There was also a modification of its internal regulations to expedite the processing of requests for opinions on environmental information. Despite improvements in the timeliness of producing notices by CADA, they still need to be more prolonged. Consequently, the European Commission issued a reasoned opinion on January 26, 2023, marking the last step before potential referral to the CJEU. See, for the developments, F*rance Nature Environnement, droit d'accès à l'information environnementale : la france persistera-t-elle dans l'illégalité* ?, 18th April 2023.

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However, due to its unique nature and recent development, the right to environmental information is not exempt from interpretative challenges. The following subsection will attempt to address the question of how information should be understood. Indeed, semantically speaking, it may have different meanings (e.g., document, data, paper record). Which of these forms best corresponds to the actual meaning of "information"?

To complicate matters, information related to emissions has a more circumscribed meaning and holds a special status. Indeed, exceptions to its disclosure are to be interpreted very narrowly[172], as strictly applied by the CJEU[173].

3.1.3. Defining "environmental information"

Beyond the adjective "environmental", defining "information" itself appears complex, given the various semantic nuances it can carry. As a starting point, Art. 2, para 3 of the Aarhus Convention, states that:

> « "Environmental information" means aural, electronic or any other material form on:
> (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

[172] In this regard, in the Judgment of 23 November 2016, *Bayer CropScience and Stichting De Bijenstichting*, the Court stressed that disclosure of such information should be the general rule, and exceptions should be narrowly interpreted. The Court clarified that confidentiality of commercial or industrial information cannot be invoked to withhold information on emissions into the environment. Moreover, the Court found no need to distinguish between "emissions," "discharges," and "releases" into the environment, as they broadly overlap and serve the same purpose in environmental protection. The Court concluded that relevant data on emissions into the environment must be disclosed if separable from other information, even if disclosure may adversely affect specific interests outlined in Directive 2003/4/EC.
See also Court of Justice, judgement of 8 October 2013, *Greenpeace Nederland and PAN Europe v European Commission*, in case T-545/11, ECLI:EU:T:2013:523. In this case, the Court ruled in favour of the two associations and determined that certain sections of the requested document contained information about emissions into the environment. As a result, the Commission could not claim confidentiality over commercial and industrial information and should have granted the associations access to those parts of the documents.
For further details, refer to subsection 3.2.2. dedicated to the "emissions-rule".

[173] For an introduction to the specific distinction, see the analysis of C. Mereu, K. Van Maldegem, *EU Court of Justice landmark rulings on access to environmental information*, in Fieldfisher, 2016.

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> (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
> (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making ».[174]

This definition is extensive, but the one provided by the EU, in its Aarhus Regulation 1367/2006, is even broader, including "*reports on the implementation of environmental legislation*" [175] . This formulation is crucial to prevent executive institutions from indiscriminately evoking the confidentiality of the decision-making process as a reason to refuse access requests to environmental information.
Notwithstanding this, the notion may also be read as including any information with an "indirect" connection with the environment, or which may have implications on the "state of human health and safety"[176]. This approach was already visible in the CJEU case law. Indeed, in the judgment of 26 June 2003, *Commission v France*, the Court defined information relating to the environment as the one which relates:

> « either to the state of the environment or to activities or measures which could affect it, or to activities or measures intended to protect the environment, without the list in that provision including any indication such as to restrict its scope, so that 'information relating to the

[174] United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter*s, op. cit., Art. 2 para 3.
[175] Regulation (EU, Euratom) 1367/2006 of the European Parliament and 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, GU L264/13 of 25.9.2006, Art. 2 para 1(d).
[176] Idem, last point of para 1 (d).

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environment' within the meaning of Directive 90/313/EEC must be understood to include documents which are not related to carrying out a public service »[177].

This implies that "relation with public service" is not the only criterion to be considered, but priority must be accorded to the nature of the information detained by the public authority. In this case, the legal basis was Directive 90/313/EEC, which was, as previously observed, a base for the draft of the Aarhus Convention[178].

The "elements" that can be accessed are understood broadly. Thanks to the legislators's forward-looking choice, norms on access to environmental information use the term "information". By contrast, the Transparency Regulation[179] uses the term "documents". Consequently, before the adoption of the Aarhus Regulation, many requests from EONGs' could have been refused due to this more "restrictive" meaning[180]. This difference in wording warrants further study as it represents a critical element distinguishing access to environmental information from general civic access[181].
Notwithstanding this, D. A. Ferreira[182] remarked that, initially, the definition of "information" in the Aarhus Regulation was assimilated to that of "documents" in the Transparency

[177] Court of Justice, judgment of 26 June 2003, *Commission v France*, Case C-233/00, EU:C:2003:371, para 44-47.
[178] This shows once again the deep influence of the EU administrative approach on the International level.
[179] As mentioned in this study, the Transparency Regulation aims to ensure the public has the broadest and most straightforward access to EU institutions' documents and promote good administrative practices within the European Commission. It establishes the general legal framework governing the public's right to access documents from the European Parliament, the Council, and the Commission. Thus, the reference to "documents" is explicit.
[180] See, for example, the case of *WWF v Council* in the early 2000.
[181] This will be a matter of study in the Chapter dedicated to discussing the two different regimes.
[182] In her case law analysis, she also tried to answer the question of whether the fundamental right of access to documents is solely to provide access to existing documents or, instead, to ensure that individual citizens, their associations, and other legal entities have the essential right to access information "as a whole". She clearly supported the second interpretation, with the objective being to enable actors to evaluate how public authorities exercise their powers and manage their interests.

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Regulation, with the Court missing the opportunity to interpret it in a progressive and teleological method[183].

At the national level, Member States are called to implement Directive 2003/4/EC on public access to environmental information[184], which contains an almost identical definition of environmental information. A report on its implementation, published by the Commission, highlighted that only in a few instances did Member States incorrectly transposed the definition into national law, and that they are addressing these issues[185]. The CJEU's broad interpretation, as demonstrated in *Case C-266/09*[186], has set a precedent for Member States despite some national authorities having hesitated to classify specific technical documents as environmental information.

The broad interpretation is also reflected in Italian case law. In particular, the Regional Administrative Courts of Calabria and Lazio have granted a wide scope to access to environmental information[187] based on both the wording and the purpose of the relevant provisions. Porrato, analysing the Italian case law, goes further and estimates that, given the particular broadness of the concept of environmental information, this right entails an "elaborative activity" on the part of public administration, requiring a more comprehensive and targeted access than that provided by the norms on the general civic access norms, which limit access to documents that are already created, held and available[188].

[183] S. De Abreu Ferreira, '*The Fundamental Right of Access to Environmental Information in the EC: A Critical Analysis of WWF*-EPO v. Council', in *Journal of Environmental Law*, op. cit., p. 408,

[184] Note that the choice to use a directive is related to different reasons, from the shared competence nature of the matter to the fact that it consists of a domain where national administrative and procedural aspects are touched.

[185] European Commission, *Report to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on Public access to environmental information*, Brussels, 2012, p. 5.

[186] Court of Justice, judgment of 16 December 2010, *Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden*, case C-266/09, ECLI:EU:C:2010:779.

[187] TAR Calabria, judgment of 19 September 2014 n. 793.

[188] R. Porrato, *Informazione ambientale e trasparenza: due discipline a confronto,* in *Il Piemonte delle Autonomie: Rivista quadrimestrale di scienze dell'Amministrazione*, op. cit., p. 6.

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3.1.4. The subjects of the rights: "public and public concerned"

Now, it is now time to review the notion of "public", as its meaning remains quite abstract[189]. The term "public" may refer to the authorities that hold environmental information and are responsible for decision-making. Nevertheless, the term has also a further meaning in this context, as it refers to the subjects holding the right to access information: individuals, citizens and NGOs (generally, legal or natural persons). Thus, the following sub-section will examine and clarify the double meaning of "public", and it will seek to answer the questions of who has the right to access environmental information and who is obliged to provide that access.

Once again, the Aarhus Convention, which clearly distinguishes between the "public" and the "public concerned", provides a good starting point. As will be seen, the first two pillars (citizen participation and access to information) adopt a broader conception of "public" than the third pillar, which concerns access to justice. Indeed, Art. 2(4) of the Convention defines "public" as «*one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups*». Therefore, this definition includes anyone or "any person".

Related to this, according to Art. 9(3) of the Convention, the one incorrectly implemented in the EU system[190], "any person" should have legal standing without demonstrating any interest in acting. This article supports the concept of *actio popularis*[191], meaning that "any members of the public" may have access to justice when national environmental laws are allegedly violated. It must be emphasised that this provision is particularly empowering, as it allows individuals to enjoy from environmental legal standing. It is also note that these rights apply to everyone, regardless of whether they are citizens[192].

[189] Marjan Peeters, *Judicial Enforcement of Environmental Democracy: A Critical Analysis of Case Law on Access to Environmental Information in the European Union*, in *Chinese Journal of Environmental Law*, op. cit., p. 39.
[190] Related to the shortcomings of the access to justice. See sections 2.7. and 3.1.7.
[191] D. Weaver, *The Aarhus Convention: Towards Environmental Solidarisation*, in *Environmental Politics and Theory*, op. cit., p. 109.
[192] This is the case now concerning all the access rights because, as seen, they are perceived as fundamental human rights instead of citizen rights. To note, for example, Art. 42 of the Charter of Fundamental Rights of the EU foresees that « 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

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On the other side, the subsequent paragraph of Art. 4 defines "public concerned". It specifies that the "public concerned" includes those personally affected by or interested in environmental decision-making, including, therefore, NGOs that promote environmental protection in accordance with national law requirements. Weaver affirms that *« whilst Parties can set requirements for NGOs' standing in domestic law, requirements should neither be politically charged nor too onerous»* [193]. Parties should encourage civil society to be part of the environmental governance. In the decision *Djurgården-Lilla Värtans Miljöskyddsförening*[194], the CJUE emphasised that environmental NGOs meeting national law requirements must be automatically considered as having an interest[195], thereby falling within the meaning of the "public concerned". The CJEU then reiterated this conclusion in the above-mentioned *Slovak Brown Bear case*[196].

In brief, the public may have general rights to be informed and to provide comments or opinions during the decision-making process, whereas the "public concerned" has specific rights to challenge environmental decisions, actions, or omissions that violate environmental laws or the participation rights guaranteed under the Aarhus Convention.

documents of the institutions, bodies, offices and agencies of the Union, whatever their medium ».

[193] D. Weaver, *The Aarhus Convention: Towards Environmental Solidarisation*, in *Environmental Politics and Theory*, op. cit., p. 110.

[194] Court of Justice, judgment of 15 October 2009, c *Djurgården-Lilla Värtans Miljöskyddsförening,* ase C-263/08, EU:C:2009:631.

[195] Court of Justice, judgement of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening V Stockholms kommun genom dess marknämnd*, in case C-263/08, ECLI:EU:C:2009:631, para 48.

[196] In para 49 of the judgement of 8 March 2011, *Slovak Brown Bear*, in case C-240/09, the Court highlighted one of its pillar case law, stating that it is unconceivable to interpret the Convention "in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law.", according to the principle of effectiveness.

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3.1.5. Public authority: profile in the European Administrative Law

Participatory rights in environmental governance require the establishment of reciprocal relations between individuals and institutions. This entails obligations for public authorities to ensure that these rights are effectively implemented[197].

Nevertheless, the term "Public authority" is difficult to define due to the various perspectives from which it can be considered. It might be analysed from the perspective of the formally attributed title or by examining the actual functions performed. The CJEU has clarified these notions through significant decisions, introducing a historical EU-related administrative concept.

Which authorities are relevant regarding access to environmental information? According to the definitions given by the Aarhus Convention, "public authority"[198] refers to government at various levels (national, regional, local, etc.); individuals or entities performing public administrative functions under national law, especially concerning the environment; and individuals or entities with public responsibilities or functions related to the environment and under the control of public institutions.

However, it is worth noting that this definition excludes bodies or institutions acting in a judicial or legislative capacity[199].

The CJEU has adopted and applied the concept of public law body, originally developed in public procurement law, to the EU environmental law[200].

[197] Keep in mind that private actors such as industries, companies and enterprises are not obliged but rather encouraged to grant public access to their environmental information.

[198] Art. 2 (1) dedicated to definitions.

[199] See last section.

[200] In European law, the functional concept of "public law body" has been introduced specifically for public procurement purposes. This concept helps the Court identify entities that must comply with public procurement regulations. The question arises whether a particular entity is a public law body. To qualify, it must have a legal personality, be controlled by the state, and be established for general interest purposes of a non-industrial or non-commercial nature. Private entities managing such roles in specific situations can also fall under this concept, making it flexible.

The strict distinction between public and private is no longer adequate. One must examine the relevant norms and their purpose to determine the entity's nature, which, in this case, is related to the environmental sector. The distinctions can become strained. The same entity might be subject to different sets of regulations at various times, sometimes public law and at other times private law.

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First, its rulings emphasised that the entitlement of "public authority" must be determined case by case and cannot be answered in general terms[201]. Examples of entities considered "public authorities" by individual Member States, sometimes based on national Court rulings, include heat generation companies, water or waste management companies, and local environmental foundations, as seen in the case here below involving a water company.

However, entities that act as public authorities in the environmental field have to follow specific conditions which are clarified by the CJEU in the *Fish Legal* decision by introducing a dual functional test to prove the meaning of Art. 2(2)(b)[202] of the Directive 2003/4/EC. In paragraph 52 of the judgment, it states as follows:

> « [t]he second category of public authorities, defined in article 2(2)(b) of Directive 2003/4, concerns administrative authorities defined in functional terms, namely entities, be they legal persons governed by public law or by private law, which are entrusted, under the legal regime which is applicable to them, with the performance of services of public interest, inter alia in the environmental field, and which are, for this purpose, vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law »[203].

The key notions of these definition appear to be "*entrustment*" to exercise a public function, the "*special powers*" that position the entity at a different level compared to others in the sector (by virtue of being governed by public law), and the requirement that the tasks be *related to the environment*.

As a result, the entitlement of "public authority" for the purpose of access to environmental information can also be attributed to commercial companies that are not entirely autonomous. The Court specifies that:

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[201] See, for example: Court of Justice, judgment of 10 September 2014, *Iraklis Hralambidis v Calogero Casilli*, case C-270/13, EU:C:2014:2185.

[202] « any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment ».

[203] Court of Justice, judgement of 19 December 2013, *Fish Legal, Emily Shirley v Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd, Southern Water Services Ltd*, in case C-279/12, ECLI:EU:C:2013:853, para 52.

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> « The mere fact that the entity is a commercial company subject to a specific system of regulation for the sector in question cannot exclude control within the meaning of Article 2(2) of Directive 2003/4/EC since it may follow from the system concerned that the entity does not have genuine autonomy vis-à-vis the State, even if the latter is no longer in a position, following privatisation of the sector in question, to determine the entity's day-to-day management »[204].

Having said that, it is possible to conclude that the concept of "public authority" may incorporate a wide range of entities that hold functions of public interest and are somehow related to the environment. In case of administrative proceedings against entities that have denied access to their environmental information, national judges must verify if the legal conditions mentioned are fulfilled, and to determine whether they are bound as any other "regular" institution.

Judges also have to determine who can challenge the refusal of access to information or administrative decisions infringing European environmental law and refer the question to the CJEU in case of doubts. Nevertheless, a debate concerning legal standing has arisen, and it is now worth examining.

3.1.6. Reviewing access to justice on environmental matters – a weakness in the EU system

Unlike other participation rights, access to justice has generated more challenges over the years. Issues of legal standing in environmental-related lawsuits test some of the historical concepts and foundational principles of both national and EU legal systems.

As Pitto[205] observes, the Aarhus Convention likely intended to broaden access to justice on environmental matters. Nevertheless, the CJEU interpreted this norm restrictively, and adopted a cautious approach. Given that there is no generalised right to act against environmental administrative decisions, this right is granted only to the "concerned public" and not to the "public" in general, and Member States are responsible for determining their own criteria[206].

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[204] Court of Justice, *Fact Sheet on Public access to environmental information*, op. cit., p.8.

[205] S. Pitto, *A chi interessa l'ambiente? La "globalità" dei diritti di partecipazione e l'accesso alla giustizia,* in *Diritto Pubblico Comparato Europeo online, 2021, p. 4426.*

[206] Court of Justice, Judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd*, in case C-664/15, ECLI:EU:C:2017:987, para 86.

It states as follows: « […] Member States may, in the context of the discretion they have in that regard, establish procedural rules setting out conditions that must be satisfied to be able to pursue such review procedures.»

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Moreover, the Court has long been reluctant due to certain established pillars of EU law. At the time of the Convention's adoption, the European legal system restricted legal standing to those who were the addressees of acts or who were in some way affected "directly and individually". In its well-known and historical *Plaumann* judgment[207], the Court had the opportunity to clarify that the requirement of "individually concerned" can be considered satisfied if the act indicates data or elements that allow the subject to be distinguished from the general public[208].
Eliantonio[209] and others have rationally collected some criticalities under different angles. For instance, even when NGOs have participated in the administrative procedure leading to an environmentally harmful decision, the CJEU has restricted their legal challenges to procedural errors, excluding actions based on the substance of the decision. Moreover, the scope of the right to challenge EU acts under Art. 263(4) TFEU does not significantly improve the situation for NGOs, as most environmental measures are not classified as "regulatory acts not entailing implementing measures"[210], and therefore still require proof of individual harm[211].

[207] Court of Justice, judgement of 15 July 1963, *Plaumann & Co.v. Commission of the European Community,* in case 25-62, ECLI:EU:C:1963:17.
[208] Ultimately, the existence of an interest in bringing an action can only be envisaged if the applicant demonstrates that it has a situation that is different from that of all those who, theoretically, could be affected by the measure in question. Hence, this interpretation, translated into the environmental field, could concretely translate into a general preclusion for NGOs to bring an action against acts contrary to environmental law, given the difficulty of identifying direct prejudice for legal persons or, in any case, for associations operating in this sector.
[209] M. Eliantonio, *Legittimazione attiva per la tutela ambientale di fronte ai giudici europei e nazionali*, Dottorato in Diritto Pubblico, Comparato e Internazionale, 2013.
[210] Art. 263 (4) TFEU.
[211] Among the observations that Villani makes, there is one pertinent here. According to the newly adopted Transparency Register, NGOs actively collaborate with both the European Parliament and the Commission, especially during the legislative procedure. They play a significant role in implementing and monitoring EU policies, particularly in humanitarian and environmental sectors. In the environmental field, NGOs have been crucial in pushing the EU to adhere to international environmental law. They also engage in judicial proceedings, leveraging the right to an effective remedy (Art. 47 of the Charter of Fundamental Rights) to support both individual rights and collective interests, including those of future generations. There is no doubt that they perfectly respect the procedural criteria. See, S. Villani, *L'accesso alla giustizia ambientale da parte delle ong nel quadro giuridico dell'unione europea alla luce della prassi recente*, in *Eurojus*, 2023, p.150.
Also, she interestingly puts the issue in a comparative approach, observing how the common law states have some possibilities of collective action, such as class actions, while civil law countries, the majority in the EU, limit legal standing more stringently.

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On the positive side, the Aarhus regulation has at least paved the way for NGOs to challenge administrative acts at the EU level. In practice, the protection is still unsatisfactory, as the Convention Compliance Committee has found that both the Regulation and judicial protection are not compliant, challenging the jurisprudence of the CJEU[212].

It is interesting to observe how the Court interprets the criteria of being "directly and individually concerned". Indeed, it takes a noticeably liberal approach in cases involving specific economic policies than in environmental policies[213].
On the other side, at the national level, the Court strongly encourages Member States to be as comprehensive as possible with regards to procedural rules. As previously observed, the *Slovak Brown Bear* judgment affirms that «*procedural rules at the national level, therefore, must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law*»[214].

As mentioned in the previous sections, in 2021, the reform of the Aarhus Regulation addressed some issues concerning public access to justice, bringing a considerable improvement. Eventually, "other members of the public" can now take action[215] (albeit subject to several conditions[216]), by demonstrating that they have directly suffered an injury or if they demonstrate sufficient public interest.

[212] European Parliament, *Briefing Implementing the Aarhus Convention Access to justice in environmental matters*, 2017, p. 1-7. See also, G. Ragone, *The GMO Authorization procedure in EU: inclusivity, access to justice and participation in decision-making*, in *Diritto Pubblico Europeo Rassegna Online*, 2019, p. 216.
[213] Ibidem, p.5. In a similar vein, another European Parliament study confirms this, highlighting how often NGOs' claims are not admitted before the Court. See European Parliament, Directorate General for Internal Policies, *Standing Up for your right(s)*, 2012.
[214] It has been possible to observe that the procedural rules in the Italian case have been "generous". Pitto highlights that the Italian judges have already used an extensive approach, considering the environmental associations as important subjects acting in the general interest. Thus, they are able to "challenge whatever act that is detrimental of a legally relevant environmental asset" (Administrative Court of Toscana, judgment n. 2584 of 2 December 2009), in S. Pitto, *A chi interessa l'ambiente? La "globalità" dei diritti di partecipazione e l'accesso alla giustizia*, op. cit., pp. 4424-4429.
[215] S. Villani, *L'accesso alla giustizia ambientale da parte delle ong nel quadro giuridico dell'unione europea alla luce della prassi recente*, in *Eurojus*, op. cit., p. 163.
[216] These are the restrictions posed by the new Art. 11(3): « (a) they shall demonstrate impairment of their rights caused by the alleged contravention of Union environmental law and that they are directly affected by such impairment in comparison with the public at large; or (b)

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Overall, the legal standing remains one of the most debated issues in EU law doctrine, offering valuable insights into modern judicial systems themselves. Given that a different interpretation by the CJEU, widening the criteria set out by Art. 263(4) TFEU, is unlikely to emerge, one can only hope for a future reform of the Treaties that clearly defines legal standing in the environmental sector.

3.2. The scope of access to information, its limits, and the different interests at stake

3.2.1. Data quality, excessive costs, and time limits

The right to access environmental information requires specific standards to be respected. It is not sufficient to provide just any information to the requester in order to fulfil the obligations. In fact, respecting this right also entails responding promptly and providing high-quality data without imposing excessive charges on the recipient. These represent the minimum standard.

First, Art. 8 of Directive 2003/4/EC establishes standards for the quality of environmental information, requiring Member States to ensure that data is up-to-date, accurate, and comparable to the highest quality they can provide. However, achieving high quality data remains challenging due to differences in resources, capacity, as well as the absence of standardised methods for ensuring and measuring quality and comparability[217].

Concerning time limits, respect for deadlines mostly depends on the efficiency of the administrative and bureaucratic systems. Indeed, deadlines vary across Member States. Art. 3(2) of Directive 2003/4/EC requires that environmental information be provided promptly and, in any case, no later than one month after the request is received. If the information is

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they shall demonstrate a sufficient public interest and that the request is supported by at least 4 000 members of the public residing or established in at least five Member States, with at least 250 members of the public coming from each of those Member States.»

[217] European Commission, *Report to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on public access to environmental information*, op. cit., p. 12.

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extensive and complex, the deadline can be extended by an additional month, with a mandatory explanation for the delay[218].

As previously noted, and as reported by the Commission[219], Member States have adopted different maximum timeframes for responding to requests, ranging from 5 to 20 days. The same report highlights that, in some circumscribed cases « *where the deadline is extended, national legislation does not always require that the applicant has to be informed and that reasons have to be given*»[220].
Indeed, making information directly available in a database and accessible via the Internet may consistently reduce the timeframe. However, timeframes are sometimes not respected because the information must be gathered from multiple departments and offices, or may require consultation with third parties, such as private companies.

Furthermore, concerning the charges, the Court has specified the concept of "reasonable amount"[221] in case C-71/14 *East Sussex County Council*. Generally, it is clear, according to this judgement, that fees for providing specific environmental information cannot include costs for maintaining a database used by the public authority, but can cover overheads related to staff time spent on handling individual information requests, postal and photocopying costs, as long as the total fee is reasonable[222]. More specifically, any interpretation of a "reasonable amount" that deters people from accessing information or limits their access must be rejected. However, even if a charge does not constitute a deterrent given an individual's economic situation, public

[218] The timeframe might be, in some circumstances, extended, but the request must be fulfilled, according to Art. 3 (2)(b), "within two months after the receipt of the request by the public authority if the volume and the complexity of the information is such that the one-month period referred to in (a) cannot be complied with. In such cases, the applicant shall be informed as soon as possible, and in any case before the end of that one-month period, of any such extension and of the reasons for it."
[219] European Commission, *Report to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on public access to environmental information*, op. cit., p. 6.
[220] Ibidem
[221] Art. 5 (2) states that "Public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount."
[222] Court of Justice, Judgment of 6 October 2015, *East Sussex County Council v Information Commissioner and Others*, case C-71/14, ECLI:EU:C:2015:656, para 29-41.

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authorities must ensure that it is not perceived as unreasonable, considering the public interest in environmental protection[223].

Due to its relevance and centrality as a public interest, legislators have deemed essential to accord fewer exceptions for information concerning environmental emissions.

3.2.2. The "emissions-rule"

The second subparagraph of Art. 4 (2) of Directive 2003/4/EC[224] provides that Member States may not invoke certain grounds - listed in the previous paragraphs, including the confidentiality of public authorities' proceedings, the confidentiality of commercial or industrial information, and the protection of personal data and files, and the protection of the environment - to refuse requests for information concerning emissions into the environment.

The Court recently on the concept of "information on emissions into the environment," a category that may have entails important implications for people's daily lives.
Indeed, in 2016, the CJEU addressed the interpretative issues in two cases[225]. First, the Court ruled that "emissions into the environment" include data on the release of substances such as plant protection products or biocides, whether actual or foreseeable under normal conditions of use, thereby avoiding an interpretation limited solely to industrial emissions[226]. Therefore, this interpretation includes information on the nature, composition, and effects of these

[223] Idem, paras 42-45. Here, the Court wanted to make clear that public authorities are not allowed to make access to information costly in a way that pushes people to renounce their access rights. This is based on a previous case law (*Commission v Germany* case C-217/97).
[224] It is formulated as follows: " […] Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment."
[225] In Case C-673/13 P, Greenpeace and PAN Europe requested documents about glyphosate's marketing authorisation. The Commission withheld parts of a report claiming that it protected intellectual property rights, but the General Court ruled that information on environmental emissions must be disclosed. In Case C-442/14, Bijenstichting requested documents on plant protection products, but Bayer objected due to confidentiality concerns. The Dutch authority partially disclosed the documents, and the case was referred to the Court of Justice, which determined that the information qualified as environmental emissions, necessitating disclosure despite confidentiality claims.
[226] Court of Justice, judgement of 23 November 2016, *Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden*, in case C-442/14, ECLI:EU:C:2016:890, para 60-81.

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emissions, as well as data allowing the public to verify the accuracy of emission assessments. On the other hand, the Court excludes purely hypothetical emissions.
In this regard, in case C-673/13 P [227], the Court overturned the General Court's decision, holding that the information must directly relate to emissions rather than merely have any connection to them, and remitted the case for a new assessment.

Thus, as public interest in "information related to emissions into the environment" is paramount, the scope of confidentiality for commercial and industrial information must be reconsidered. Nevertheless, Bazylínska-Nagler the CJEU's judgement EU could impact manufacturers of plant protection products and biocides, potentially affecting their ability to protect trade secrets and other sensitive information[228].

Besides this, exceptions (or limitations) to access to environmental information *tout court* are more pronounced.

3.2.3. The concept of internal measures

As foreseen by Art. 4 of the Directive 2003/4/EC, "internal measures" are among the exceptions permitting refusal to grant access to information[229]. In 2021, the Court was asked to interpret this article in a case involving *Land Baden-Württemberg and D.R.*, concerning an environmental information request related to the "Stuttgart 21" project [230]. The Federal Administrative Court of Germany sought clarification on whether "internal communications" referred to information that remained within the internal sphere of a public authority and whether the exception to access for such internal communications was time-limited. The Court ruled that Art. 4(1)(e) includes all information circulating within a public authority that has not left its internal sphere by the date of the access request, provided it was not intended for public

[227] Court of Justice, judgement of 23 November 2016, *Commission v Stichting Greenpeace Nederland and PAN Europe,* in case C-673/13 P, ECLI:EU:C:2016:889.
[228] J. Bazylińska-Nagler, *The Right of Access to Environmental Information in the Light of the Case C-673/13 P of 23 November 2016 — European Commission V Stichting Greenpeace Nederland*, in *Wroclaw Review of Law, Administration & Economics*, 2017, p. 79.
[229] It states that: "Member States may provide for a request for environmental information to be refused if: […] (e) the request concerns internal communications, taking into account the public interest served by disclosure.".
[230] Court of Justice, judgment of January 2021, *Land Baden-Württemberg v D.R.*, in Case C-619/19, ECLI:EU:C:2021:35.

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release. Concerning the second question, the exception for refusing access to internal communications is not time-limited but applies only as long as the protection of the information remains justified[231].

3.2.4. Protection of ongoing legislative and judicial procedures

The *De Capitani* saga and the issues of transparency in the EU institutions have already been discussed, and it is important to revisit them, as they addressed the exception to access documents intended to protect decision-making processes. In this regard, the Aarhus Regulation, directed to the institutions of the Union, makes direct reference to the Transparency Regulation. Art. 4(3)[232] of the Transparency Regulation foresees that a refusal is justifiable to protect the decision-making process "*unless there is an overriding public interest in disclosure*" of that information.

However, the Court recently restricted the Commission's ability to refuse access to documents, emphasising that exceptions to disclosure must be interpreted narrowly, particularly for environmental information as provided by the Aarhus Regulation. In 2017, with the decision *Saint-Gobain Glass Deutschland v Commission*[233], the CJEU adopted the same approach to

[231] L. Squintani, *Case Law of the Court of Justice of the European Union and the General Court: Reported Period 01.09.2020-15.03.2021*, in *Journal for European Environmental & Planning Law*, 2021, pp. 334-335.

[232] It is formulated as follows: "Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."
Access to a document containing public opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process unless there is an overriding public interest in disclosure.

[233] Court of Justice, judgment of 13 July 2017, *Saint-Gobain Glass Deutschland v Commission*, in case C-60/15P, EU:C:2017:540.
The main takeaways of this essential judgment are as follows: the decision-making process exception in Art. 4(3) of Regulation No 1049/2001 must be interpreted strictly, covering only decision-making activities, not the entire administrative procedure. The Court reemphasised that risks of negative repercussions or influence of disclosing information do not justify withholding information. This strict interpretation also applies to the Aarhus regulation.

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reject the Commission's arguments for confidentiality to protect decision-making, reinforcing the *mantra* that transparency and public participation are paramount in the EU system[234]. Ankersmit[235] has pointed out the importance of the decision *ClientEarth v Commission*[236], a similar and more recent judgement, emphasising different profiles: it rejects general presumptions of confidentiality for the Commission's documents, particularly those related to its right of legislative initiative.

The same rules may equally apply at the national level. Yet, total exclusion from the obligations of Directive 2003/4/EC is accorded to institutions acting in legislative and judicial functions. However, the Court pointed out that ministries adopting "*normative regulations which are of a lower rank than a law*" are not automatically exempted from the obligations[237].

Furthermore, access to information can be denied due to ongoing investigations[238]. Thus, the administration must seek approval from the competent prosecutor to disclose requested

[234] See for instance, paragraph 92: "the disclosure of those documents is likely to increase the transparency and openness of the legislative process as a whole, in particular the preparatory steps of that process, and, thus, to enhance the democratic nature of the European Union by enabling its citizens to scrutinise that information and to attempt to influence that process. As is asserted, in essence, by ClientEarth, such a disclosure, at a time when the Commission's decision-making process is still ongoing, enables citizens to understand the options envisaged and the choices made by that institution and, thus, to be aware of the considerations underlying the legislative action of the EU. In addition, that disclosure puts those citizens in a position effectively to make their views known regarding those choices before those choices have been definitively adopted, so far as both the Commission's decision to submit a legislative proposal and the content of that proposal, on which the legislative action of the European Union depends, are concerned".

[235] L. Ankersmit, *Case C-57/16P ClientEarth v Commission: Citizen's participation in EU decision-making and the Commission's right of initiative*, in *European Law Blog*, 2018.

[236] Court of justice, judgement of 4 September 2018, *ClientHearth v Commission*, in case C-57/16P, ECLI:EU:C:2018:660.

[237] Court of Justice, judgement of 18 July 2013, *Deutsche Umwelthilfe v Bundesrepublik Deutschland*, in case C-515/11, ECLI:EU:C:2013:523, para 18-38.

[238] Aarhus convention Art. 4 (4)(c): " A request for environmental information may be refused if the disclosure would adversely affect: […] (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature".

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environmental information[239]. Only the concerned judicial authority can decide if disclosure would harm investigations[240].

3.2.5. Balancing other relevant interests and some conclusive remarks

In its case law on access to environmental information, the CJEU uses a pragmatic and functional approach to balancing the different interests at stake. Indeed, it interprets Art. 4 "*as meaning that the balancing exercise it prescribes between the public interest served by the disclosure of the environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities*"[241]. Hence, other public interests, such as international relations, public security, national defence, or private industrial and commercial interests compete, according to the Directive, with the right to access environmental information. Moreover, this right has to be balanced with intellectual property rights, the safety of private life, the confidentiality of personal data, and the protection of the environment[242].

In brief, the CJEU's fundamental case law highlights how transparency and public participation rights are balanced against other significant interests. The pragmatic and functional approach adopted underscores the importance of narrowly interpreting exceptions to disclosure on a case-by-case basis, ensuring that environmental information remains accessible to the public and thereby assuring democratic participation in environmental matters.

However, the right to environmental information is evolving, and that is why it is interesting to monitor how related case law will develop and whether the CJEU will adopt a more stringent approach to balancing competing interests. Whether the Court will prioritise environmental and health interests over economic interests in its decisions remains to be seen, especially as these issues increasingly take centrality in the European political debate.

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[239] R. Porrato, *Informazione ambientale e trasparenza: due disciplinea confronto,* in *Rivista quadrimestrale di scienze dell'Amministrazione*, op.cit., p.17.
[240] Ibidem
[241] Research and Documentation Directorate of the Court of Justice, *Fact sheet on Public access to environmental information*, op. cit., p. 9.
[242] Art. 4 (2) of Directive 2003/4/EC.

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The next chapter explores access to environmental information, with a particular focus on Italian case law.

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4. A GLANCE AT THE ITALIAN LEGAL SYSTEM

4.1. Introduction to the "*constitutionalisation*" of the environment as a "value", a long but necessary trail

It is now time to examine and provide a brief overview of how access to environmental information is incorporated into the Italian legal system. Before doing this, it is appropriate to describe briefly how the environment has been "constitutionalised".

After the adoption of the 1948 Constitution, the absence of a reference to the environment led to contrasting views in legal doctrine regarding the position of the environment as a fundamental general principle in the domestic order, as will be discussed next.
The Constitutional Court has played an essential role in defining the scope of environmental value based on Artt.9 and 32 of the Constitution, respectively, concerning the protection of the landscape, the historic-artistic heritage, and the inviolable right to health.
In a historic judgement, the Constitutional Court defined the environment as an essential element of "quality of life"[243]. In this way, the subjective right to a healthy environment emerged before the 2001 constitutional reform[244]. Therefore, after the revision of Art. 117, the Constitution explicitly refers to the environment by regulating the division of competencies between the State and regions. It now states that the State has the exclusive legislative power concerning the protection of the environment, ecosystems, and cultural goods.
The environment has also been identified through the solidaristic approach. The solidarity principle[245] is a pillar of the Republic. As Montaldo highlights, when examining the vertical dimension of the solidarity principle - specifically, the responsibility of the Republic in

[243] Constitutional Court, judgement n. 641, 1971, in *Rivista giuridica scientifica di fascia A.*
[244] G. Basile, E. Benacci, *Compendio di Diritto dell'Ambiente*, 2022, p.35.
[245] The dynamics of the principle of solidarity are enshrined in Art. 2, which states: "The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled." but, as Montaldo points out, they are also echoed in Art. 3, para 2 of the Constitution, which articulates the Principle of substantive equality. This, too, represents an expression of the centrality of the human person and the priority of achieving their full development and social integration.

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intervening for various social purposes - this also entails an obligation for the State institutions to protect the environment. This duty requires ensuring adequate living conditions for citizens and protecting the environment in which they live[246].

That said, since these principles are already embedded in the constitutional system, as demonstrated by the established case law of the Constitutional Court, the utility of the recent 2022[247] constitutional revision might be questioned.

Therefore, to what extent would this revision change in existing framework? First, it incorporated "the protection of the environment, biodiversity, and ecosystems, also in the interest of future generations" into the third clause of Art. 9 of the Constitution. Furthermore, Art. 41 has identified "environmental damage" and "environmental purposes" as elements that the private economic initiative must take into account. Thus, it explicitly mentions the term "environment" and the main related principles that were previously developed through case law. Besides, as Grassi observes, the revision is significant because, for the first time, the first twelve articles of the Constitution, containing the fundamental principles, have been amended[248].

This is all the more relevant given the ongoing environmental transition and the need to implement the Green Deal policies.

The reform has also positive implications for access to information, which may eventually become a constitutionally protected right, as is already the case in other European countries such as Norway[249], Croatia, Belgium[250], and Austria. That said, the practical value of such a revision is questionable.

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[246] R. Montaldo, *Il valore costituzionale dell'ambiente, tra i doveri di solidarietà e prospettive di riforma*, in *Quaderni Costituzionali*, 2021, p. 449.

[247] Constitutional revision law n°1 of February 11, 2022.

[248] S. Grassi, *La tutela dell'ambiente nelle fonti internazionali, europee ed interne,* in *Federalismi*, 2023. p. 17.

[249] For example, Art.100 of the Constitution of the Kingdom of Norway states that "[…] Everyone has a right of access to documents of the State and municipalities and a right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of the individual or for other weighty reasons. The authorities of the state shall create conditions that facilitate open and enlightened public discourse".

[250] The Belgian Federal Constitution, in its Art. 32, states that "[e]veryone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Art. 134".

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The next section will explore the evolution of the right to access environmental information, starting from the creation of the Ministry of the Environment and looking at its direct consequences.

4.2. Access to information from the origins: a brick of the environmental protection

Despite the growing recognition of the environment as a value deserving of extensive protection in Italy, a corresponding legislative effort to effectively enhance public participation in environmental procedures remains weak[251].

The first legislative act addressing both administrative and environmental concerns was Law 349/86, which established the Ministry for the Environment, although it came considerably later than similar measures in countries such as France. This delay suggests that Italy was less sensitive to environmental policies than other neighbouring countries[252].
Notwithstanding this, Italy recognised the need to ensure access to information for environmental protection earlier than the European Community[253].
The establishment of a Ministry entirely dedicated to environmental affairs and the new opportunities it created for citizens to participate in public administration laid the foundation for a more transparent and accessible administration, at least in the environmental sector. This approach soon extended to the public administration as a whole. This implied a shift towards becoming a "crystal house"[254] where action would be visible "from the outside". Indeed, as previously remarked, citizens can be adequately and consciously equipped to exercise their participatory right through prior knowledge of the environmental status, political initiatives,

[251] L. Carbonara, Il *principio di partecipazione nel procedimento ambientale*, p.9.
[252] A. Fricano, *Genesi e sviluppi di un diritto costituzionale all'ambiente*, in *Quadrimestrale di teoria generale, diritto pubblico comparato e storia costituzionale*, 2021, p.11.
[253] According to Art. 14 of this Law, any citizen has the right to access information on the state of the environment that is available at the offices of the Public Administration. Although the provision seems innovative, it appears vague as it relies on other existing laws for its implementation.
[254] N. Colleo, *Il principio democratico e la materia ambientale: la partecipazione dei privati dalla Convenzione di Aarhus alla legge n. 168/2017 in materia di domini collettivi*, in Federalismi, 2020, p. 67.

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programs or urban plans. The analysis of the main norms, currently in force in the domestic legal system on this subject, highlights how the right to access has been established as an obligation for the public administration[255].

Furthermore, as demonstrated by an early judgement of the Constitutional Court[256], accessing environmental information not only serves the purpose of acquiring knowledge but also enhances the respect for the principle of prevention and the conservation of the natural balance, reflecting the significant importance now placed on ecosystem protection[257]. Following, the principle of sustainable development further reinforced this interpretation. Indeed, the Legislative Decree (D. Lgs.) n. 4 of 2008 introduced the principle of sustainable development to "protect current and future generations". According to this, public administrations must prioritise environmental and cultural heritage considerations when taking decisions involving public and private interests[258].

As Colleo remarks, the effective administration of environmental goods does not merely satisfy the interests of a limited group of actors. Given the object's cross-cutting nature and strong connection to almost all areas of human life, they inevitably affect the lives of every citizen[259]. Therefore, this creates a vested interest for each individual in the proper management of these goods.

4.3. Main legislative sources

It is now time to examine the significant legislative sources. As discussed, Law 349 of 1986 was a crucial stage in constructing the right to environmental information.

[255] D. Torsello, *Evoluzione e problematicità del diritto di accesso ambientale*, in *Rassegna Avvocatura dello Stato*, 2010, p.68
[256] Constitutional Court, judgment n°183 of May 22, 1987.
[257] Torsello, *Evoluzione e problematicità del diritto di accesso ambientale*, op.cit., p.69.
[258] I. A. Nicotra, *Dall'accesso generalizzato in materia ambientale al Freedom of information act*, in *Federalismi*, 2018, p. 3.
[259] N. Colleo, *Il principio democratico e la materia ambientale: la partecipazione dei privati dalla Convenzione di Aarhus alla legge n. 168/2017 in materia di domini collettivi*, op.cit., p. 63.

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This law was uniformly interpreted only after the enactment of Law 241 of 1990[260]. This law, which governs the broader area of access to administrative documents, definitively confirmed that access to documents held by administrative authorities – including access to environmental information – constitutes a subjective right.

Then, the Environmental Access Directive 2003/4/EC was adopted, and Italy implemented it through D. Lgs. 195 of August 19, 2005[261], which further reinforced the right to access environmental information. It states that "*the public authority shall make available, according to the provisions of this decree, environmental information it holds to anyone who requests it, without the requester having to state their interest*" (Art. 3, para 1)[262]. An innovative element worth mentioning is that the Decree required public authorities to create and update specific public catalogues of environmental information at least annually to provide the public with all the available environmental information and data[263].
The recent D. Lgs. 33 of 2013[264] further established detailed obligations in this regard. Indeed, it reorganized the norms concerning the right to civic access and the obligations of public administrations regarding publicity, transparency, and the dissemination of information. Specifically, Art. 40 requires that the administrations listed in Art. 2 of D. Lgs. 195 of 2005, publish environmental information on their official websites within a designated section entitled "Environmental Information"[265]. Yet, as D. Lgs. 82/2005, in Art. 3, provides for the exercise of this right through ICT tools[266], the effective respect of this right depends on the technological advancement and literacy,

[260] Also called "Law on the administrative procedure".
[261] According to Nicotra, it represents an example of a highly progressive legislative text, as it suggests for a new collaborative model between the state and the citizen. Nicotra, *Dall'accesso generalizzato in materia ambientale al Freedom of information ac*t, op. cit., p. 8.
[262] Original version: "1. L'autorità pubblica rende disponibile, secondo le disposizioni del presente decreto, l'informazione ambientale detenuta a chiunque ne faccia richiesta, senza che questi debba dichiarare il proprio interesse".
[263] B. Caravita et al., *Diritto dell'ambiente*, Firenze, 2016, p. 294.
[264] Better known as "Consolidated Law on Transparency."
[265] Ibidem, p. 296
[266] P. Mascaro, *Il diritto d'accesso all'informazione ambientale come diritto dell'uomo ad un ambiente salubre*, in *Rivista elettronica di diritto pubblico, di diritto dell'economia e di scienza dell'amministrazione*, 2022, p.9.

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4.4. Recent *élans* of the Italian Courts' approach

It is now time to examine how the concept of environmental information has been interpreted by domestic case law. With a judgment of July 6, 2023[267], the Council of State approved the positions and outcomes of the judge of the first instance[268]. The Administrative Court (TAR) of Torino correctly determined that Greenpeace, a national environmental organisation, had the right to access all documentation related to framework agreements, application contracts, conventions, and partnership agreements between the Politecnico of Turin and Eni S.p.a.[269]. This access was granted to assess the environmental protection implications of these documents, even though the agreements were formally intended to bring the academic system closer to the industry[270]. Furthermore, the court emphasised that access to environmental information, as per Law 241/1990 and D. Lgs. 195/2005, plays an important role in fostering public participation in environmental protection, also aligning with the EU Directive 2003/4/CE.

This decision is relevant because it enhances the case law at the national level. As proof of its fundamental role in creating case law, Maestroni remarks[271] that it contrasts with a previous ruling by the Administrative Court of Milan, which denied similar access to another environmental group[272].

On this regard, judges of the Council of State appropriately have confirmed the motivations of the TAR of Torino, recognising the widening of the right of access to environmental information motivated by the increasing relevance of the *environmental good*[273]. Eni operates in the energy field and is one of the leading companies in the sector. Thus, any action or

[267] Council of State, judgment of 6 July 2023 n. 6611, *Eni S.p.A v Greenpeace Onlu*s, in Giustizia Amministrativa, N. 06611/2023REG.PROV.COLL.

[268] Administrative Regional Court of Piemonte, judgement of 19 April 2022 n. 379, *Greenpeace Onlus v. Politecnico di Torino and Eni S.p.a*.

[269] ENI (Ente Nazionale Idrocarburi) is an Italian multinational energy company specialized in oil, natural gas, and renewable energy.

[270] Nevertheless, this case also underscores the significant role of transparency in safeguarding academic independence from energy industry companies.

[271] A. Maestroni, A*ssociazioni ambientaliste e trasparenza nei finanziamenti alla ricerca scientifica. Nuova frontiera dell'access agli atti*, in *Rivista Giuridica dell'Ambiente Online*, 2022, pp.1-2.

[272] P. Cosa, *Le informazioni ambientali ed il diritto di accesso*, in E. Capasso (Et. al.), *Rivista della Corte dei Conti Anno LXXVI - n. 4*, 2023, p. 251.

[273] Ibidem, p. 251.

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agreement (such as financial documents) with third parties may have environmental implications[274].

Moreover, environmental documents, although from private entities, are accessible as they become part of administrative acts or procedures[275]. According, the Regional Administrative Court of Veneto upheld this principle in a case involving a hydroelectric water plant, allowing access to project documents not covered by industrial secrecy[276].

4.5. Public administration and justice: Italy's reform objectives under the PNNR

Some measures are being implemented under the NextGenEU[277] financial instrument to enhance the administrative capacity and reform the justice system, and they will undoubtedly yield positive outcomes for citizens.

It has been observed that bureaucratic procedures and administrative traditions hinder access to environmental information in EU Member States.

Therefore, at the national level, Italy has committed to modernising and reforming the public administration and justice systems under the National Resilience and Recovery Plan[278]. The significant improvements will include incorporating new technologies, enhancing efficiency,

[274] Page 11 of the judgement states as follows: "[…] è palese la correlazione con la materia ambientale delle informazioni relative a rapporti di collaborazione tra imprese leader nel campo energetico e istituzioni di ricerca e di didattica universitaria, anche tenendo conto dell'esigenza di assicurare la massima trasparenza ai flussi finanziari e ai contenuti dei rapporti tra mondo delle imprese e Centri pubblici di ricerca e innovazione".

[275] In this decision, the Council of State also reminds that access cannot be unlimited and should be balanced with other interests at stake. See previous Chapter.

[276] Administrative Court of Veneto, Judgement of 17 December 2015, n°1335.

[277] NextGenEU is a €750 billion recovery package launched by the European Union to support member states in overcoming the economic and social impacts of the COVID-19 pandemic. The package aims to rebuild a greener, more digital, and more resilient Europe, with significant funding allocated to the Recovery and Resilience Facility, React-EU, and other initiatives. Member states have submitted national plans detailing their proposed reforms and investments, aligning with the EU's strategic priorities.

[278] The National Resilience and Recovery Plan (PNRR) is Italy's comprehensive strategy to recover from the pandemic and enhance long-term economic, social, and environmental resilience through targeted investments and reforms. It has followed the adoption of Regulation 2021/241/UE Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

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and reducing costs for businesses and citizens[279], which are essential steps toward fostering a more horizontal relationship between public administrations and other stakeholders. Additionally, efforts are made to simplify data exchange between administrations and enhance overall interoperability[280].

Regarding the justice system, a key goal in ensuring fair and equal access to justice is to make the judicial process more efficient and competitive by aligning it with the highest standards. This includes ensuring effective judicial remedies to protect rights, especially for vulnerable groups,[281] thereby facilitating compliance with the Aarhus Convention's third pillar on access to justice in environmental matters. Indeed, as the doctrine has stressed, Italy is among the countries that could still do more to align[282].

All these reforms are part of the broader mainstream goals of green and digital transition. The strategy for ecological transition widely acknowledges that people should have the opportunity to voice their opinions and participate in all public discussions, mostly on their local forums. Conversely, they are also experts in their living and territory conditions. That is why, as the International Union for Conservation of Nature suggests, "*local knowledge and community involvement are essential for sustainable resource management and biodiversity conservation*"[283].

4.6. Comparing Access Regimes and Practical Implications

[279] Italian Government, *Piano di Riprese e Resilienza*, 2021, pp. 90-95.
[280] Ibidem, pp.95-98.
[281] European Commission, *Annex to the Proposal for a Council implementing decision amending Implementing Decision of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Italy*, COM(2023) 765 final, pp.1-9.
[282] C. Feliziani, *Dall'accesso alla giustizia in materia ambientale alla giustizia ambientale*, in *Ordine internazionale*, 2023, pp.603-604. "Ebbene, tra i Paesi che potrebbero ancora fare di più figura anche l'Italia. Quanto al recepimento della Convenzione di Aarhus e, in specie, del suo terzo pilastro da parte del legislatore italiano, occorre infatti osservare come non sia mai stata dettata una disciplina".
[283] N. M. Dawson, and others, *The Role of Indigenous Peoples and Local Communities in Effective and Equitable Conservation'*, in *Ecology and Society*, 2021, pp.1-2.

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This section will compare the two legal regimes: generalised civic access and more specific environmental information access. Indeed, another primary objective of this chapter is to evaluate whether this duplication is necessary and to identify finding the reasons that justify it. The aim is trying to answer the following question: what are the advantages of decoupling these rights?

From a broader perspective, one must ask what role access to environmental information can and should play in a context marked by significant developments in the overall discipline of administrative transparency. This evolution is now decidedly oriented towards the widespread and comprehensive expansion of civic access, granting every citizen the ability to oversee the legality of administrative acts and enabling the sharing of informational assets held by public authorities.

4.6.1. Access to environmental information as a subjective right

With the adoption of D. Lgs. 195/2005[284], the national legislator has taken a big step forward in framing the right to access environmental information.

The original *freedom* of access has transformed into an actual *right* to access environmental information[285]. This shift is not merely linguistic; according to the most accepted interpretation, it significantly enhances the power of those seeking environmental information, turning the right into a full-fledged "entitlement"[286]. This change erases any remaining uncertainties associated with the previous term, "freedom," which was considered too vague.

The entitlement of this right to individuals entails a corresponding obligation on the authorities; some courts have begun to interpret this right as imposing a positive duty on the State to collect and disseminate information[287]. The ECtHR has held that States must provide environmental information based on their broader obligation to protect people from environmental harm[288].

[284] It incorporated the Aarhus Convention in the national order.

[285] See a more detailed analysis of the construction of environmental information as a human right in the subsection "Convergence with the human rights" of Chapter 1.

[286] M. Lipari, *L'accesso alle informazioni ambientali e la nuova trasparenza amministrativa*, 2022, p. 3.

[287] H. K. Knox and N. Tronolone, *Environmental Justice as Environmental Human Rights*, in *Vanderbilt Journal of Transnational Law*, 2023, p. 165.

[288]As seen in Chapter 1, the European Court of Human Rights has ruled that to safeguard the rights to life and to private and family life, States are obligated to provide information about potential environmental threats.

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Moreover, the amendments to Artt. 9 and 41 of the Constitution further elevate the value of environmental protection, and undoubtedly, they significantly impact the application of environmental transparency rules.

4.6.2. Origins and convergence

The environmental policies should be achieved through transparency, regardless of the scope of access rights in other sectors. Both national (law 349/1986) and European sources were based on this fundamental premise[289].

In Italy, the first transparency revolution began with Law 241/1990[290], which reformed local authorities. In the following years, the general rules on access evolved and were consolidated in 2016 with the Freedom of Information Act[291]. Nevertheless, the environmental information maintained its special *status*, thereby creating significant issues during its implementation. Now, the trend appears to be towards convergence, with general civic access increasingly resembling environmental access. However, despite this rapprochement, many distinctive characteristics persist. Lipari[292] listed some of the various characteristics and differences in his intervention held in Florence on July 1, 2023, in the context of the Conference on "*Environmental Choices, Administrative Action, and Protection Techniques after Constitutional Amendment Law 1 of 2022*", organised by the Research Office of Administrative Justice and the Regional Administrative Court for Tuscany. It is interesting to report here some of his most relevant analyses.

The most prominent element of access to environmental information concerns the active legitimacy or the entitlement to access environmental information. This entitlement is granted

[289] M. Presta, *Ambiente in genere. Accesso all'informazione ambientale,* in *Lexambienta*, 2007.
[290] New norms on administrative procedures and the right of access to administrative documents establish contemporary administrative principles such as transparency, efficiency, and efficacy.
[291] D. Lgs. 97/2016, whose provisions introduced a form of access derived from the Anglo-Saxon Freedom of Information Act (FOIA), defined as universal civic access. This form of access allows anyone to access not only information subject to mandatory publication (according to D. Lgs. No. 33/2013) but also data that is not necessarily required to be published by the holding administrations. See P. Cosa, *Le informazioni ambientali e il diritto d'accesso*, in *Rivista della Corte dei Conti,* 4/2023, p. 250.
[292] Marco Lipari is the Section President of the Council of State, with a background as an ordinary magistrate and TAR judge, and is a member of the Research Office of Administrative Justice.

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to *"anyone"*[293] without showing a differentiated (or personal) interest[294]. As has been observed, this right was conceived on the premise that everyone may be interested in knowing the state of the environment and the places in which they live. Individuals (meaning also NGOs) may act in the name of a collective and "diffuse" interest and in the defence of common goods, such as natural resources.

4.6.3. Consistent differences in terms and obligations

To Continue the comparative analysis, it is appropriate to revisit the concept of "information". In the context of access to environmental information, the term encompasses not only existing documents but also information that may be need to be generated[295] by the administration receiving the request, through the organisation and processing of the data it holds[296]. This interpretation is supported by the relevant case law[297]. Furthermore, it must be remember that environmental transparency requires an "active" administration that disseminates the data it holds without passively waiting for citizens' inquiries[298]. This obligation is not as clear and explicit when it comes to civic access concerning other types of information, despite the general goals of transparency and accountability.

[293] In this sense, the Council of State, in its ruling 4679 of 2022, ruled that it is not possible to preemptively exclude a subject from environmental access simply because also pursues economic-entrepreneurial goals. Therefore, there is no conflict between entrepreneurial interests and the goal of environmental protection. It also clarified that the "manifestly unreasonable nature of the request" (which justifies denial under Art. 5, paragraph 1, letter b) of D. Lgs.195 of 2005) is only applicable in cases where the request solely involves interests unrelated to environmental protection and the information is being used instrumentally (para 10.1 of the ruling).

[294] The difference is substantial compared to the *ordinary access regime*, which requires demonstrating a specific interest.

[295] Directive 2003/4/EC specifies that 'Environmental information' "shall mean any information in written, visual, aural, electronic or any other material form".

[296] M. Lipari, *L'accesso alle informazioni ambientali e la nuova trasparenza amministrativa*, op. cit., p. 5.

[297] See, for example, the TAR of Campania ruling 2882 of April 30, 2018. It clearly states that it is allowed to request that the administration holding the data also process the information.

[298] Law 195/2005 foresees that public authorities actively organise and disseminate relevant environmental information, primarily through electronic means. The information must be up-to-date, including treaties, legislation, policies, environmental impact studies, and monitoring data. Additionally, regular environmental reports must be published, and information must be promptly shared in case of imminent threats.

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Next, it should be noted that the rules for exceptions are stricter and differ for access to environmental information. Lipari understandably suggests that the EU's legislators are concerned with balancing the broad scope of the right with rigorous, objective limitations, which, at least at first glance, could significantly narrow the scope of environmental access[299]. This might seem reasonable given the EU's deep-seated liberal nature and the need to clearly and strictly define and justify any possible restrictions on the market and the economy. On the other hand, the same legislators indicate that such limitations should be applied with moderation through appropriate balancing[300], and, in any case, they would not apply to data concerning emissions. Thus, essential principles of EU law, such as reasonableness and proportionality, come into play to mitigate the risk of unfounded or excessive requests.

Both access regimes are based on the principle that silence following the expiry of the response deadline does not constitute an implicit rejection[301]. Indeed, the EU framework excludes the admissibility of implicit administrative decisions - particularly negative ones - as they would breach the duty to state reasons. Indeed, back in 2005, Advocate General Kokott affirmed that:

> « The right to good administration creates for the administration an obligation to give reasons for its decisions…. There is, therefore, a close connection between the obligation to give reasons and the fundamental right to effective legal protection »[302].

4.6.4. Legislative referrals

As seen in these cases, the interests of individuals seeking documents related to fundamental rights (on health, adherence to emission limits) outweigh the interests of those wishing to keep corporate or personal data private[303].

[299] M. Lipari, op. cit., p.5.
[300] The CJEU interpreted Art. 4 of Directive 2003/4/EC, which provides that the balancing of conflicting interests (information and confidentiality) must be carried out on a case-by-case basis in each case.
[301] Art. 3 (4) of Directive 2003/4/EC is formulated as follows, "The reasons for a refusal to make information available, in full or in part, the form or format requested shall be provided to the applicant within the time limit referred to in paragraph 2(a)." Thus, it does not allow the option of "silence dissent," where refusal might be expressed not through words or actions but through silence.
[302] Opinion of Advocate General Kokott in case C-186/04.
[303] TAR Liguria, Section I, September 22, 2016, No. 949.

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Examining Italian case law, many TAR rulings continue to affirm the systematic and general importance of the right to access environmental information while applying the strict condition that access requests must specifically refer to environmental matrices[304].

This specification is necessary because environmental information provisions generally offer more targeted protection to the recipients of the right than civic access laws.

Indeed, Art. 40 of D. Lgs. 33/2013[305] states, in paragraph 1, that "In matters of environmental information, the provisions for greater protection already provided by Art. 3-sexies of D. Lgs. 152 of April 3, 2006[306], by the Law 108 of March 16, 2001[307], and by D. Lgs. 195 of August 19, 2005, remain in effect". Thus, the rules governing access to environmental information prevail, but only insofar as they do not introduce more stringent limitations than those provided under the general civic access regime[308].

The relationship between the regimes, therefore, seems to be partly described as one of mutual integration[309], given the overlaps and connections foresaw by Art. 40 and in D. Lgs. 195/2005. As a result, every request for access to environmental information can be qualified as civic access, but not *vice-versa*.

4.6.5. Some reflections on information rights in Italy

As seen above, a doctrinal debate has grown in emphasising the distinctions between general civic access and access to environmental information, marking a critical development in legal practices. General civic access allows the public to request information from administrative authorities independently of their nature, promoting transparency and accountability across all

[304] See, for example, TAR Abruzzo, Pescara Section, Section I, October 9, 2017, No. 277.

[305] D. Lgs. 33 of 03/14/2013, "Reorganisation of the rules regarding the right of civic access and the obligations of publicity, transparency, and dissemination of information by public administrations", dedicates its Art. 40 to "Publication and access to environmental information". Overall, this decree is a cornerstone in Italian legislation aimed at embracing transparency within public administration.

[306] Currently known as the Code of the Environment.

[307] Law of the "Ratification and implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, with two annexes, made in Aarhus on 25 June 1998".

[308] M. Lipari, *L'accesso alle informazioni ambientali e la nuova trasparenza amministrativa*, op. cit., p. 18.

[309] R. Porrato, *Informazione ambientale e trasparenza: due discipline a confronto*, in *Il Piemonte delle Autonomie – Rivista quadrimestrale di Scienze dell'Amministrazione*, op. cit., p. 5.

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the ramifications of the administration. On the other hand, access to environmental information, "shyly" established by Law 349 of 1986 and reinforced by subsequent laws, is specifically tailored to ensure that citizens can obtain crucial environmental data, and therefore, it promotes specific and more detailed purposes.

They share the same *raison-d'etre,* as both are inspired by the Anglo-Saxon FOIA (Freedom of Information Act) model and are independent of the applicant's motivation and qualified interest. Moreover, both can be connected to the broader principle of *good performance of activities in the public interes*t[310], as established by Art. 97 of the Constitution[311]. Furthermore, they also entails a proactive approach from public administrations and adhere to the logic of the "right to know"[312]. That said, it seems reasonable to maintain their separation, as this decoupling has demonstrated how the two regimes positively and coherently integrate, mutually influencing each other's advancement[313].

However, Lipari argues that greater integration among the various domestic laws on access would be desirable, as they are currently characterised by an increasing proliferation of differentiated rules that often lack coherence and are dispersed across multiple legislative sources[314].

On the other hand, while simplification is needed, it is important to recognise that differences in access regimes may be beneficial as well. Indeed, access to environmental information serves multiple purposes and should be viewed from an environmental rather than a human-centred perspective. This perspective focuses on preserving the environment, biodiversity, climate, and human health. This broader reflection on the purposes of access to environmental

[310] Idem, p.1.

[311] In particular, according to the first coma of the Article, "Public offices are organised according to the provision of law, so as to ensure efficiency and impartiality of administration".

[312] M. Iacono, *La disciplina in materia di accesso. Accesso documentale e accesso civico*, in *Diritto.it*, 2022, p. 4.

[313] R. Porrato, *Informazione ambientale e trasparenza: due discipline a confronto*, in *Il Piemonte delle Autonomie – Rivista quadrimestrale delle scienze dell'Amministrazione*, 2014, pp. 1-5. The author explains that some elements of access to environmental information have been extended to civic access. For example, the procedural timeframe for access is set at thirty days. Additionally, the obligation to notify interested third parties and provide an explicit, reasoned decision granting or denying access has been extended to civic access.

[314] M. Lipari, *L'accesso alle informazioni ambientali e la nuova trasparenza amministrativa*, op. cit., pp. 24-25.

The same is observed at the EU level by Bándi. See, G. Bándi, *The Three Pillars of Environemental Democracy in a European Perspective*, in G. Bándi, in *Environemental Democracy and Law*, op. cit., p. 49.

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information should remain the defining element of the analysis and deserves to be emphasised in the final chapter.

5. BEYOND LEGAL DISCOURSE: DISTINCTIVE OBJECTIVES AND FINAL REMARKS

Building on the analysis developed in the previous chapters, this final chapter undertakes a multidisciplinary reflection on the right of access to environmental information, also taking into account its political dimension. It further examines the challenges that environmental governance will face at both the European and Italian levels, with particular attention to the right of access to information and other participatory rights.

5.1. Moving towards transitions

5.1.1. Access to information as part of the *EU Environmental Democracy*

First, the successful implementation of green initiatives requires the establishment of robust environmental democracies as a top priority. As a starting point, and in line with the approach followed throughout this research, it is essential to clarify the key notions. What, then, should

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be understood by *environmental democracy*? According to the definition provided by the Centre for International Environmental Law[315]:

> « it is based on the idea that land and natural resource decisions adequately and equitably address citizens' interests. Rather than setting a standard for what determines a good outcome, environmental democracy sets a standard for how decisions should be made ».

Thus, unlike the classical concept of liberal democracy, the emphasis here lies on active involvement in the decision-making process. It is widely recognised that the entire evolution of environmental democracy is therefore grounded in the three pillars of access rights[316].
Bándi provides a more straightforward description: « *Environmental democracy is about government being transparent, accountable, and involving people in decisions that affect the quality of their lives and their environment»*[317], where "government" means all branches of the public administration.

Participation is an essential element of a democratic State and undoubtedly a point on which the legal scholarship strongly agrees[318]. The same holds true at the supranational level: given

[315] Centre for International Environmental Law, Environmental Democracy and Access Rights (webpage consulted on 5 July 24). It affirms that "[participation rights] are at the heart of environmental democracy, embodying the procedural dimensions of the right to a healthy environment". In this regard, it also declares that "far too often, the public is not meaningfully engaged in decisions that could affect their health, livelihoods, and culture".
[316] The Aarhus Convention, detailed in Chapter 1, is crucial in promoting environmental democracy. That said, it is possible to affirm that environmental democracy is fundamentally centred around three interdependent rights that are most effective when implemented together. While significant on their own, these rights achieve their greatest impact when they work simultaneously.
For this reason, it could serve as a model for future democracies, particularly as new forms of participation gain traction at the EU level.
[317] G. Bándi et al., *Environmental Democracy and Law, Europe*, Europa Law Publishing, Groningen, 2014, p. 4.
[318] For example, Pelligra Contino argues that increased legitimacy of administrative action leads to outcomes that more accurately reflect the community's will at local, national, and international levels. See, M. Contino Pelligra*, Partecipazione ai processi decisionali ed accesso alla giustizia in materia ambientale: riflessioni a partire dalla recente giurisprudenza della Corte di Giustizia*, in *Diritto Comparato ed Europeo*, 2017, p. 28.
The author emphasizes various national approaches to "participation." For instance, in the British system, it primarily manifests as "consultation" with those potentially affected by a decision (p. 26). Comparatively, he notes that public "participation" is historically embedded

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the limitations of understanding EU democracy solely through the parliamentary model, participatory democracy can provide a valuable contribution to enhancing democratic legitimacy within the Union[319]. That said, public participation is a crucial element in the environmental field and, over the years, has become a defining feature of environmental law, far more prominently than in other areas[320].

Indeed, access to environmental information provides an immediate opportunity to address environmental issues. «*Granting this right allows the public to play the "watchdog" of polluters and public regulators, who, in turn, are aware that their actions are under public scrutiny*»[321].

As a result, the expanding concept of participatory democracy in Europe has intensified the focus on mechanisms to ensure public involvement in environmental decision-making[322]. Since 2019, one of the EU's top priorities has been to strengthen citizen participation and transparency in all areas that directly affect them – a topic that will be discussed in greater detail below.

5.1.2. Citizen Participation as a Commission Priority

As mentioned, strengthening participatory rights has been a key policy priority of the current Von der Leyen Commission. In fact, a reform of the Aarhus Regulation concerning access to justice in environmental matters was adopted within the European Green Deal Strategy[323]. Regarding access to information, numerous efforts have been made to modernise communication systems, facilitating cross-border and cross-sector interactions between businesses and public administrations.

Various initiatives are currently ongoing to promote public participation in environmental governance. For instance, on 24 June 2024, the Joint Research Centre organised the *Citizen*

in some systems, such as the French system, where the "*enquête publique*" has been a participatory procedure conducted by an independent body since the 19th century (pp. 26-27).

[319] G. Parola, *Europe in Green: European Environmental Democracy*, London, 2013, p. 24.

[320] G. Bándi et al., *Environmental Democracy and Law, Europe*, op. cit, p. 3.

[321] G Parola, *Europe in Green: European Environmental Democracy*, op.cit., p. 24.

[322] E. Orlando, *Il dibattito pubblico nella Convenzione di Aarhus e nella legislazione europea,* in *Istituzioni del Federalismo*, 2020, p. 571.

[323] Refer to Chapter 3.

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Participation and Deliberative Democracy Conference[324], which on integrating citizen engagement into the green transition to address urgent environmental challenges such as biodiversity loss and climate change[325].

Nowadays, misinformation and disinformation have become integral features of the media landscape, and the constant "assault" of data can lead to distorted interpretations of current structural issues such as climate change. Therefore, enabling people to access trustworthy sources of information directly from those who "produce" it is essential to preparing society to face these shared challenges. Thus, public administrations should take an active role in disseminating information and enhancing their communication strategies. In this regard, at the EU level, the DG for the Environment has recently published a report[326] on trustworthy and public communication, anticipating the emergence of a new communication paradigm to support the green transition.

Overall, the Commission's objectives in this domain appear ambitious. Nevertheless, when ordinary citizens are asked about their perceptions of transparency and accessibility to EU institutions' documents, their responses tend to be rather pessimistic, reflecting a general sense of dissatisfaction. Environmental NGOs share a similarly critical outlook, at least to some extent. These organisations seek access to detailed technical information in order to allocate resources more efficiently, enhance the effectiveness of their actions, and advocate more

[324] Richard Kuehnel, Director of DG Communication, has highlighted the Commission's enthusiasm for citizen engagement, stating, "[i]n this mandate, the Commission has made significant strides following the Conference on the Future of Europe. It acknowledges that there is much to learn from citizens, who are experts in their real-life experiences and aware of their local contexts".

[325] The conference underscored the importance of democratic renewal, emphasising that effective climate action and environmental policies require the active involvement of citizens. In that regard, as proof of the importance given to participatory rights, various soft law acts were adopted in 2023: for instance, the Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes; the Communication from the commission to the European parliament, the council, the European economic and social committee and the ommittee of the regions - Enhancing the European Administrative Space (ComPAct) adopted on 25 October 2023.

[326] L. Smillie, and Scharfbillig, *Trustworthy Public Communications*, in *Publications Office of the European Union*, Luxembourg, 2024, JRC137725. This report provides evidence-based insights and recommendations to help public communicators strengthen democracies by effectively navigating new information ecosystems, building citizen trust, and addressing global communication challenges.

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persuasively for environmental protection. Their perceptions, gathered through the interview reproduced below, provide valuable insight into the persistent challenges faced by civil society actors in exercising the right of access to environmental information.

5.1.3. Why access to environmental information matters: an ENGO's perspective

During an interview with Hector Garcia[327], a lawyer who worked for an environmental NGO in Paris and a PhD candidate at the Sorbonne Law School, the discussion focused on the need to recognize the right to access environmental information and the justification for granting such information the special legal status, along with the numerous issues and legal complexities previously examined[328].

A key finding that emerged from the interview is the strong interconnection between participatory rights and access to information, which together are essential to ensure access to justice. Mr. Garcia argued that environmental information must indeed enjoy a special legal *status*. For several reasons. The most tangible one concerns the urgency and the diffuse public – particularly in situations involving industrial, health, or technological risks – so that individuals can make informed decisions about whether to remain or leave a risk area. This right to "remain or leave" can only be effectively exercised when people are aware of the associated risks

It is also true that people tend to place greater trust in non-governmental organisations than in public authorities when it comes to issues affecting their health and safety. This finding is supported by a study conducted by Coi and others, which highlighted significant differences in the perception of environmental risks among the Italian population[329] . The study also reported an insufficient circulation of information in certain areas particularly affected by natural or anthropogenic pollution.

When asked about the main obstacles and challenges he faced as a professional, the interviewee explained that he had proposed laws to make information more accessible and promote

[327] This interview was gently arranged and conducted on January 4, 2024. The statements presented here are opinions based on his academic pursuits and work experience in the field.
[328] Thanks to this contribution, it has been possible to gain a perspective from the ground.
[329] A. Coi et al., *Risk perception and access to environmental information in four areas in Italy affected by natural or anthropogenic pollution*, in *Environment International*, 2016. pp. 1-8.

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transparency, yet much work remains to be done. Too often, information was either unavailable or denied. At times, officials claimed that the administration did not possess the specific information, or they provided a large volume of unorganised data, leaving the requester disoriented. While this would not constitute a formal refusal, officials often claimed that the information did not exist, which effectively served as an obstacle to accessing it. Legal administrative remedies are available in such cases, but they can be difficult to pursue in urgent situations affecting people's health and safety, such as during discharges of hazardous materials. For this reason, he explained that he has advocated for specific mechanisms to ensure prompt access to environmental information and a rapid response to environmental issues.

Finally, regarding the question of legal standing, he noted that private individuals normally have the right to bring cases before the courts according to the law, but he pointed out that "*NGOs are often better equipped with the capacity, knowledge, and resources to obtain and interpret such information*" [330]. Therefore, granting NGOs appropriate legal standing on environmental matters is more reasonable, as it would not undermine the historic CJEU case law on legal standing.

5.2. Results and solutions

At this point, it is appropriate to summarise the key findings and propose solutions based on the insights gathered during this research.

The first part of this section will focus specifically on the state of environmental access in European Union law, drawing the perspective of a European Commission legal officer. To conclude, the section will suggest potential research questions that could further develop and complete this thesis.

[330] Indeed, according to the Communication on the Mid-term review of the Sixth Community Environment Action Programme of 2007, "NGOs are the institutions most trusted by the public when it comes to environmental issues. NGOs often have technical expertise that is essential when designing effective policies. They can also provide an invaluable link between policymakers and Europe's citizens".

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5.2.1. Implementing access policies: challenges faced by the Commission[331]

Transparency is one of the Commission's operating principles, including in the legislative context.

Accordingly, in line with the principle that transparency is the default, access to environmental information is automatically granted for all types of documents, subject to a specific verification process to determine whether any exemptions apply.

The Commission also undertakes various initiatives to strengthen the right to environmental information, including ensuring that Member States comply with Directive 2003/4/EC and addressing instances of non-compliance through infringement procedures. However, according to the most recent updates, no significant infringement cases have been reported, suggesting generally strong compliance across Member States, albeit with some nuances as previously noted[332].

Much of the development in environmental information access has emerged through case law. Preliminary references from national courts to the CJEU have helped clarify broad and sometimes ambiguous legislative terms, such as what constitutes a "public authority" or "environmental information".

It has also emerged that one of the main challenges faced by the Commission is balancing the need for transparency with other interests, such as privacy and commercial confidentiality. As discussed, this requires a careful case-by-case analysis to ensure that exceptions to information disclosure are interpreted narrowly, particularly in the case of emissions, where the possibilities to withhold information are limited and transparency is preeminent .

Moreover, technological advancements are increasingly shaping how environmental information is accessed and managed. For this reason, the Commission is modernising its IT systems to facilitate better access, although this brings new challenges, including those related

[331] Based on the interview of a legal officer working in the Commission. However, note that the interviewee's name will not be disclosed as they were not authorized to speak on behalf of the Commission, and their responses do not represent the Commission's official position. Due to time constraints, the interview was conducted informally without the spokesman's service. With that in mind, the legal officer from DG ENVE's Unit of Environmental Rule of Law and Governance was interviewed on July 9, 2024, and their insights helped confirm the research findings regarding the EU's current approach and challenges in accessing environmental information.

[332] Given that member states have considerable discretion in applying administrative procedures for accessing environmental information, the EU Pilot has predominantly addressed cases related to clarifications.

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to artificial intelligence. Indeed, the interaction between technological solutions and legal requirements remains a developing area, with ongoing debates about how AI can handle environmental information requests. Consequently, the open-access policy is advancing but remains a "living" process, reflecting the ongoing digital and political transformation.

5.2.2. Reflecting on the potential for domestic environmental access

As previously remarked, the role of public administration is crucial in the context of the ongoing ecological transition. As a result, a parallel transformation should occur in administrative law to define procedures and powers more clearly, thereby reducing ambiguity and enhancing effectiveness[333]. Indeed, the environment, as a constitutionally protected "value", is now conceptualised as a "cross-cutting" issue, involving multiple competencies across all levels of administration. The State, however, remains responsible for standardising the procedural rules for access to information throughout the national territory[334].

5.2.3. Shifting from the anthropocentric approach

When considering viable solutions to expand and fully implement access to environmental information, it is important to take into account broader approaches related to how the law currently addresses the environment and nature. As analysed, the right to access environmental information tends to emphasise individualistic and anthropocentric dimensions. This position facilitates adaptation to different national frameworks and aligns with established CJEU case law regarding legal standing.

At this regard, it is worth mentioning the study commissioned by the European Parliament, "Can Nature Get it Right"[335], which provides useful insights for some of its proposals. One radical solution that has been proposed involves placing the environment at the centre of legal and policy discussions. For instance, this could include empowering civil society groups and

[333] F. Spagnuolo, *Partecipazione, democrazia e diritto amministrativo nella governance del sistema terra,* in *Rivista Quadrimestrale di Diritto. Dell'Ambiente*, 2012, p.3.
[334] M. Pignatti, *La tutela dell'ambiente negli ordinamenti giuridici europei. Le valutazioni ambientali come strumenti di bilanciamento degli interessi e dei diritti*, in *DPCE*, 2022, p.1320.
[335] Regarding this point, a key consideration is to strengthen the EU legal system by effectively implementing the obligation under Art. 267 TFEU to seek preliminary rulings from the CJEU.

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environmental NGOs to seek damages on behalf of the environment[336]. Furthermore, environmental law should be enforced by an independent administrative authority, and judicial authorities should receive specialised training on environmental cases and be encouraged to cooperate[337].

Subsequently, the establishment of an Environmental Ombudsman at both the EU and national levels would represent a significant step forward. It is important to note, however, that this approach is not entirely novel, given that, in the last decades, Hungary – despite its relatively weak judicial system – has already implemented a similar mechanism by creating an Ombudsman for Future Generations[338]. By adopting this measure more widely, the burden of legal cases concerning administrative decisions or omissions could be reduced. Accordingly, the Environmental Ombudsman could serve as a watchdog for instances of unlawful administrative procedures in environmental matters.

5.2.4. Looking ahead, some research gaps

Looking ahead, some research areas in this field could be further developed. Firstly, the discussion with an EU legal officer have indicated the need for a more detailed examination of how digital technologies can be leveraged to improve access to environmental information.

Future research should also investigate the long-term effects of increased environmental transparency on environmental outcomes. In particular, longitudinal studies examining the link between greater access to environmental information and improvements in environmental indicators could benefit from an interdisciplinary approach, integrating legal analysis, environmental science, and the social sciences.

Finally, a research gap exists regarding the private sector's obligations to disclose environmental information. Empirical studies on the implementation and effectiveness of EU regulations and directives, such as the Corporate Sustainability Reporting Directive (CSRD) and the EU Taxonomy Regulation, remain scarce in the literature.

[336] European Parliament, JURI Committee, J. Darpö, *Can nature get it right? A Study on Rights of Nature in the European Context*, op. cit., p. 62.
[337] Ibidem, p. 63.
[338] S. Fülöp*, Methodology for an Institution representing Future Generations*, in Gyula Bándi *Environmental Democracy and Law*, op. cit., pp. 161-170.

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Conclusions

In conclusion, the right to environmental information has been explored from various perspectives, highlighting its diverse functions. This study has primarily focused on its legal development, tracing its evolution and layers across different levels. The introductory chapter focused on the Aarhus Convention, which is the fundamental starting point.

Nevertheless, the origin traces back to the Rio Declaration of 1992, a critical document that established key environmental principles and has inspired various regional conventions in the environmental field.

A detailed examination of the historical context was necessary to understand the trajectory of this right in environmental law. Moreover, this analysis has showed that access to environmental information has evolved into a fully-fledged human right. Alongside the other two pillars – citizen participation and access to justice – it forms a robust framework for building environmental democracies, which are crucial in navigating the ongoing ecological transition. What is surprising is the level of detail with which the Aarhus Convention defines the right to environmental information through Artt. 4 and 5, including specific provisions on timeframes, exceptions to disclosure, and judicial remedies.

In 1998, the year the Aarhus Convention was concluded, the European Court of Human Rights vigorously reinforced the alignment of access to environmental information with human rights in the case of *Guerra vs. Italy*. In this case, the ECtHR adopted an evolutionary interpretation of the rights contained in the European Convention on Human Rights, highlighting the relevance of access to environmental information for the protection of private life and family life. Therefore, this had direct implications for the EU, as the CJEU considered this case law, influencing its approach to environmental access rights.

Moreover, the second Chapter has broadly explored the EU legal framework. Before doing so, a brief overview of the evolution of environmental competence was presented to contextualise

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the role of participatory rights in shaping the institutional structure. A lesson emerged from this analysis: in the post-Maastricht era, the EU underwent profound changes and used participatory rights as a means to democratise itself. This shift is evident in developing broader institutional principles in the subsequent treaties. The ex-Art. 255 of the TEC on access to documents of EU institutions was moved from the chapter "Provisions common to several institutions" to the new Art. 15 of the TFEU, in the chapter that addresses the principles of the EU system and rules on citizenship, reflecting the increasing importance of this right. Hence, it is now considered an essential principle rather than merely a procedural norm of the institutions.

Furthermore, the integration of the right of access to documents into the EU Charter of Fundamental Rights further reinforces its status as a fundamental right. However, the Charter does not explicitly codify the right to environmental information. Instead, it is inferred from a joint reading of Art. 37, which concerns environmental protection, with other rights such as the right to access documents held by institutions (Art. 42), the freedom of information (Art. 11), and the right to good administration (Art. 41).

Nonetheless, direct references to access to environmental information are abundantly found in secondary law, creating an extensive body of legislation.

The EU is the only non-state party to the Aarhus Convention, and, according to some scholars, it contributed actively and positively at the Conference for the Convention, thanks to its established experience in matters of access to environmental documents.

However, the same cannot be said for the third pillar, which concerns access to justice in environmental matters, where the EU still faces difficulties due to challenges in untangling issues related to legal standing. In response to a 2008 NGO complaint and subsequent findings that the EU failed to comply with the Aarhus Convention on access to justice, the Aarhus Regulation has been amended under the European Green Deal Strategy. As a consequence, the 2020 proposal aimed to expand access to environmental justice by broadening the scope of internal reviews to include non-legislative acts and omissions by EU institutions and bodies and by extending legal standing beyond NGOs. Overall, these amendments, adopted in Regulation (EU) 2021/1767, seek to improve transparency and public participation and fill gaps in access to justice within the EU. Notwithstanding this, the EU still struggles to reform the Access to Documents Regulation, which is not limited to environmental information, due to the Council's "transparency-hostile" approach. It has been possible to conclude that these

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dynamics, related to environmental transparency, are being used as a model to enhance participatory democracy and openness within EU institutions.
Furthermore, this analysis revealed other interesting aspects of EU law, particularly concerning the interactions between the EU legal system and the Aarhus Convention and, more generally, with international agreements. In these contexts, many classical concepts from case law, such as the EU's participation in international agreements and their direct effect, are not to be taken for granted. This overview was essential to highlight the fact that the Aarhus Convention is unique in being one of the few environmental agreements that directly confer individuals' rights.
The following Chapter further discussed these issues, drawing on CJEU case law.

Chapter 3 is the cornerstone of the research, as it broadly defined the notions, scope, and limits of the right to environmental information. The numerous decisions in this area indicate that national judges appear concerned with understanding and clarifying this right despite the limited use of preliminary references on environmental matters. Indeed, challenges already emerge when addressing the concept of "information". Its broad interpretation now encompasses both material and immaterial elements, including documents, various types of data, and even information that has yet to be compiled. Subsequently, considering the various nuances of the term "public," other aspects of European administrative law have been examined, highlighting the distinction between "public" and "public concerned," which significantly affects the enjoyment of participatory rights.
The CJEU also plays a crucial role in defining the scope of the right to access environmental information by balancing the interests at stake; as demonstrated in the *De Capitani saga*, the CJEU has favoured transparency over protecting the decision-making process, highlighting its broad approach to upholding the principle of openness of the institutions. Yet, it mandates evaluating exceptions to the right on a case-by-case basis. However, with environmental issues gaining prominence, the question remains on whether the CJEU will prioritise environmental and health interests over economic ones and to what extent. Nonetheless, Directive 2003/4/EC leaves little room for discretion when it comes to information related to "emissions into the environment". According to the "emissions rule", confidentiality of commercial and industrial information or protection of private data must yield to the public interest in disclosing emissions information.

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Chapter 4 examined the Italian domestic context, highlighting that, although slower than some neighbouring countries, Italy had cautiously recognised a form of the right to access environmental information earlier than the European Community, with the enactment of Law 349/86 in 1986, which established the Ministry of the Environment for the first time.

It is therefore possible to observe a common pattern that environmental protection and transparency in public administration share. Indeed, the Ministry of the Environment can effectively pursue environmental policies by involving stakeholders and citizens in decision-making, and this approach extended to public administration as a whole. It seemingly influenced the transparency revolution of the 1990s with Law 241/1990, during which access to administrative documents was established as a subjective right.

Nevertheless, the actual introduction of the right to environmental information occurred with the incorporation of the Aarhus Convention and the implementation of the EU directives after the 2000s and the related domestic case law is still consolidating. In this regard, the recent judgment of 6 July 2023 by the Council of State endorsed the Administrative Court of Torino's decision to grant Greenpeace access to documents related to agreements between the Policlinico di Torino and Eni S.p.a., emphasising the importance of transparency for environmental protection and public participation. The decision significantly enhances national case law and contrasts with previous more restrictive rulings, reflecting the growing recognition of environmental good's relevance in legal reasoning. There is no denying that in Italy, the value of the environment as a constitutionally protected good has recently gained *momentum*, at least symbolically, following the 2022 Constitutional reform that formalised what Constitutional Court case law had already established decades earlier. That said, information is expected to become more accessible thanks to this evolving approach and the modernisation efforts the administration is undergoing under the National Resilience and Recovery Plan (PNNR).

In this Chapter, The goal was to explore the extent to which the duplication of the access regimes, generalised civic access and the more specific environmental information access, is deemed necessary, and under which circumstances. As observed, both share a common purpose: to grant every citizen control of the legality of administrative actions and possess salient informational assets. While the main purpose of civic access, as provided by the Freedom of Information Act (according to D. Lgs. 97 of 2016), is to promote citizen participation in administrative activities and encourage widespread oversight of institutional

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functions and the use of public resources, the primary focus of environmental information access is, unsurprisingly, centred on environmental matters. Indeed, the conclusion is that every request for access to environmental information can be seen as civic access, but not *vice versa*. Therefore, although some, like Professor Lipari, suggest greater integration of access norms to reduce inconsistencies and redundancies, maintaining distinct regimes may appear crucial, as environmental access prioritises environmental protection, biodiversity, and human health, reflecting its broader and more specific objectives.

The value added to the environmental information has finally been covered in Chapter 5. This chapter extended beyond a purely legal analysis, adopting a more discursive and political perspective. As a result, it delved into concepts that were only briefly touched upon in previous chapters, such as environmental democracy, which appears to be one of the European Commission's most significant long-term objectives through the promotion of participatory rights. On the one hand, the rights of democratic participation allow citizens to manage the *res publica* in the first person, according to an alternative channel to representative democracy.
On the other hand, the right to access environmental information, participation in decision-making, and access justice are recognised not only to protect one's interest in environmental quality but to protect the collective interest in the proper management of environmental resources too.
Yet, the perspective used in this chapter provided insights from the ground, helping to understand the real challenges of enhancing access to environmental information. At the same time, according to two contributions – one from an expert and NGO advocate, and the other from a legal officer of the Commission – there are still obstacles to overcome for a comprehensive implementation of the right to access to environmental information, and these are related mainly to procedural issues.

In the end, one thing seems clear: to truly advance, a shift from an anthropocentric approach to law towards placing the environment at the centre of the discussion is needed, and all the proposed solutions, applicable both at the EU and national levels, reflect this core idea.

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Bibliography

Doctrine literature

ADAM R., TIZZANO A., *Lineamenti di diritto dell'Unione europea*, Giappichelli Torino, 2019, pp. 331, 424.

ANKERSMIT L., *Case C-57/16P ClientEarth v Commission: Citizen's participation in EU decision-making and the Commission's right of initiative*, in *European Law Blog*, 2018.

BALDIN S., *Il buen vivir nel costituzionalismo andino. Profili comparativi*, Giappichelli, Torino 2019.

BÁNDI G. et al., *Environmental Democracy and Law, Europe*, Europa Law Publishing, Groningen, 2014.

BARRITT E., *The Foundations of the Aarhus Convention: Environmental Democracy, Rights and Stewardship*, London, 2020, pp. 5, 8, 143-144.

BASILE G., BENACCI E., *Compendio di Diritto dell'Ambiente*, 2022, p. 35.

ISSN 2038-1662

BAZYLIŃSKA-NAGLER J., *The Right of Access to Environmental Information in the Light of the Case C-673/13 P of 23 November 2016 — European Commission V Stichting Greenpeace Nederland*, in *Wroclaw Review of Law, Administration & Economics*, 2017.

A. CAMPOLMI, *Verso una competenza esclusiva dell'Unione europea in materia ambientale? tendenze della prassi e proposta di riforma dei trattati,* in *Quaderni AISDUE*, 2023, pp. 14-15.

CARAVITA B. et al., *Diritto dell'ambiente*, Firenze, 2016, p. 294, 296.

CARBONARA L., Il *principio di partecipazione nel procedimento ambientale*, p. 9.

COI A. et al., *Risk perception and access to environmental information in four areas in Italy affected by natural or anthropogenic pollution*, in *Environment International*, 2016.

COLLEO N., *Il principio democratico e la materia ambientale: la partecipazione dei privati dalla Convenzione di Aarhus alla legge n. 168/2017 in materia di domini collettivi*, in Federalismi, 2020, pp. 63-67.

CONTINO PELLIGRA M.*, Partecipazione ai processi decisionali ed accesso alla giustizia in materia ambientale: riflessioni a partire dalla recente giurisprudenza della Corte di Giustizia*, in *Diritto Comparato ed Europeo*, 2017.

COSA P., *Le informazioni ambientali ed il diritto di accesso*, in E. Capasso (Et. al.), *Rivista della Corte dei Conti Anno LXXVI - n. 4*, 2023.

CRAMER B. W., *The Human Right To Information, The Environment And Information About The Environment: From The Universal Declaration To The Aarhus Convention*, in *Communication Law and Policy*, 2009, p. 84.

DAWSON N. M. et al., *The Role of Indigenous Peoples and Local Communities in Effective and Equitable Conservation'*, in *Ecology and Society*, 2021.

ISSN 2038-1662

DE ABREU FERREIRA S., '*The Fundamental Right of Access to Environmental Information in the EC: A Critical Analysis of WWF*-EPO v. Council', in *Journal of Environmental Law*.

DE SADELEER N., *EU Environmental law and the Internal Market*, Oxford, 2014, pp. 10-13.

DELREUX T., *The EU in Environmental Negotiations in UNECE: An Analysis of Its Role in the Aarhus Convention and the SEA Protocol Negotiations*, in *Review of European Community & International Environmental Law*, 2009, p. 330, 332.

DELREUX T., *The European Union in International Environmental Negotiations: A Legal Perspective on the Internal Decision-Making Process*, in *International Environmental Agreements: Politics, Law and Economics*, 2006.

EBBESSON. J., *'The Notion of Public Participation in International Environmental Law'*, *in Yearbook of International Environmental Law*, 1997, p. 70.

ELANDER I. et al., *The Rio Declaration and Subsequent Global Initiatives*, in I. Elander et al. (ed.), *Consuming Cities : The Urban Environment in the Global Economy After Rio*, London, 1999, p. 41.

ELIANTONIO M., *Legittimazione attiva per la tutela ambientale di fronte ai giudici europei e nazionali*, Dottorato in Diritto Pubblico, Comparato e Internazionale, 2013.

EU Network of independent experts on fundamental rights, *Commentary of the Charter of Fundamental Rights of the European Union*, 2006, pp. 315-317, 334-335.

European Parliament, JURI Committee, J. Darpö, *Can Nature get it right? A Study on Rights of Nature in the European Context*, 2021.

FAVI A., *Riflessioni sull'effettività dell'accesso della società civile alla giustizia in materia ambientale dopo la riforma del regolamento di Aarhus*, in *Quaderni AISDUE*, 2022, pp. 615-616.

ISSN 2038-1662

FELIZIANI C., *Dall'accesso alla giustizia in materia ambientale alla giustizia ambientale*, in *Ordine internazionale*, 2023.

FERREIRA S. D. A., *The Fundamental Right of Access to Environmental Information in the EC: A Critical Analysis of WWF-EPO v. Council*, op. cit., p. 402.

FRICANO A., *Genesi e sviluppi di un diritto costituzionale all'ambiente*, in *Quadrimestrale di teoria generale, diritto pubblico comparato e storia costituzionale*, 2021, p. 11.

GADKOWSKI A., *Direct Effect of the European Union's Mixed Agreements and the Rights of Individuals*, in *Przegląd Prawa i Administracji*, 2017.

GRASSI S., *La tutela dell'ambiente nelle fonti internazionali, europee ed interne,* in *Federalismi*, 2023, p. 17.

HILLEBRANDT M., *Twenty-five years of access to documents in the Council of the EU*, in Politique Européenne, 2018.

IACONO M., *La disciplina in materia di accesso. Accesso documentale e accesso civico*, in *Diritto.it*, 2022, p. 1, 4.

JENDROŚKA J., *Public Participation in Environmental Decision-Making. Interactions Between the Convention and EU Law and Other Key Legal Issues in its Implementation in the Light of the Opinions of the Aarhus Convention Compliance Committee*, in M. PALLEMAERTS, *The Aarhus Convention at Ten - Interactions and Tensions between Conventional International Law and EU Environmental Law*, 2011.

KNOX H. K., TRONOLONE N., *Environmental Justice as Environmental Human Rights*, in *Vanderbilt Journal of Transnational Law*, 2023.

KYRIAZIS D., *Access to documents: an important victory for transparency in ClientEarth v Council,* in *EU Law Analysis*, 2024.

ISSN 2038-1662

LEE M. and C. ABBOT, *The Usual Suspects? Public Participation under the Aarhus Convention*, in *The Modern Law Review*, 2003, pp. 80-88.

LIPARI M., *L'accesso alle informazioni ambientali e la nuova trasparenza amministrativa*, 2022.

MAESTRONI A., A*ssociazioni ambientaliste e trasparenza nei finanziamenti alla ricerca scientifica. Nuova frontiera dell'access agli atti*, in *Rivista Giuridica dell'Ambiente Online*, 2022.

MANNUCCI G., *Legittimazione e interesse a ricorrere delle associazioni ambientaliste,* in *Federalismi*, 2023.

MARSDEN S., *MOX Plant and the Espoo Convention: Can Member State Disputes Concerning Mixed Environmental Agreements Be Resolved Outside EC Law*?, in *Review of European Community & International Environmental Law*, 2009.

MARTINA I., *La disciplina in materia di accesso. Accesso documentale e accesso civico*, in *Diritto.it*, 2022.

MARTINES F., *Direct Effect of International Agreements of the European Union*, in *European Journal of International Law*, 2014, pp. 129- 131.

MASCARO P., *Il diritto d'accesso all'informazione ambientale come diritto dell'uomo ad un ambiente salubre*, in *Rivista elettronica di diritto pubblico, di diritto dell'economia e di scienza dell'amministrazione*, 2022, p. 9.

MASON M., *Information Disclosure and Environmental Rights: The Aarhus Convention*, in *Global Environmental Politics*, 2010, pp. 11, 21-26.

MASSON A., NIHOUL P., *Droit de l'Union europeéenne, Droit institutionnel et matériel*, Bruxelles, 2011.

ISSN 2038-1662

MCCRORY R., *Principles of European Environmental Law*, in Europa Law Publishing, 2004, p. 5.

MEREU C., VAN MALDEGEM K., *EU Court of Justice landmark rulings on access to environmental information*, in Fieldfisher, 2016.

MONTALDO R., *Il valore costituzionale dell'ambiente, tra i doveri di solidarietà e prospettive di riforma*, in *Quaderni Costituzionali*, 2021, p. 449.

MORGERA E., *An Update on the Aarhus Convention and Its Continued Global Relevance*, *Review of European Community & International Environmental Law*, 2005, pp. 139-140.

NEDESKI N.*, Shared Obligations and the Responsibility of an International Organization and Its Member States,* in *International Organisations Law Review*, 2021.

NEFRAMI E., *Mixed Agreements as a Source of European Union Law*, in E. Cannizzaro et. al., *International Law as Law of the European Union*, Leiden, 2012.

NICOTRA I. A., *Dall'accesso generalizzato in materia ambientale al Freedom of information act*, in *Federalismi*, 2018, pp. 3, 8.

OBRADOVIC D., LAVRANOS N., *Interface between EU law and National Law*, in *Common Market Law Review*, 2007, p. 79.

ODDENINO A., *Osservazioni in tema di effettività dell'accesso ai documenti delle istituzioni comunitarie*, in *Diritto pubblico comparato ed europeo*, 2000, p. 1653.

ORELLANA M., *Governance and the Sustainable Development Goals: The Increasing Relevance of Access Rights in Principle 10 of the Rio Declaration'*, in *Review of European, Comparative & International Environmental Law*, 2016, p.51.

ISSN 2038-1662

ORLANDO E., *Il dibattito pubblico nella Convenzione di Aarhus e nella legislazione europea,* in *Istituzioni del Federalismo*, 2020.

PAROLA G., *Europe in Green: European Environmental Democracy*, London, 2013.

PIGNATTI M., *La tutela dell'ambiente negli ordinamenti giuridici europei. Le valutazioni ambientali come strumenti di bilanciamento degli interessi e dei diritti*, in *DPCE*, 2022.

PIRKER B., *Access to Justice in Environmental Matters and the Aarhus Convention's Effects in the EU Legal Order: No Room for Nuanced Self-executing Effect?*, in *Review of European Community & International Environmental Law*, 2016, p. 82.

PISAPIA A., *Gli accordi misti nel quadro delle relazioni esterne dell'Unione europea*, 2019, p. 6.

PITTO S., *A chi interessa l'ambiente? La "globalità" dei diritti di partecipazione e l'accesso alla giustizia,* in *Diritto Pubblico Comparato Europeo online, 2021.*

PORRATO R., *Informazione ambientale e trasparenza: due discipline a confronto*, in *Il Piemonte delle Autonomie – Rivista quadrimestrale delle scienze dell'Amministrazione*, 2014, p. 1-5.

PRESTA M., *Ambiente in genere. Accesso all'informazione ambientale,* in *Lexambienta*, 2007.

RAGONE G., *The GMO Authorization procedure in EU: inclusivity, access to justice and participation in decision-making*, in *Diritto Pubblico Europeo Rassegna Online*, 2019.

REALE G., *L'adeguamento del diritto comunitario alla convenzione di Aarhus in materia ambientale*, in *Altalex*, 2022.

RYALL A., *Access to Environmental Information in Ireland: Implementation Challenges*, in Journal of Environmental Law, Oxford, 2011, p. 50.

ISSN 2038-1662

SCOTFORD E., *Environmental Principles and the Evolution of Environmental Law*, Oxford, 2017.

SINGH M., SINGH S., *Transparency and the Natural Environment,* in *Economic and Political Weekly*, 2006, p. 1443.

SMILLIE L., SCHARFBILLIG, *Trustworthy Public Communications*, in *Publications Office of the European Union*, Luxembourg, 2024, JRC137725.

SPAGNUOLO F., *Partecipazione, democrazia e diritto amministrativo nella governance del sistema terra,* in *Rivista Quadrimestrale di Diritto. Dell'Ambiente*, 2012.

SQUINTANI L., *Case Law of the Court of Justice of the European Union and the General Court: Reported Period 01.09.2020-15.03.2021*, in *Journal for European Environmental & Planning Law*, 2021.

TORSELLO D., *Evoluzione e problematicità del diritto di accesso ambientale*, in *Rassegna Avvocatura dello Stato*, 2010, p. 69.

TRIDIMAS T., *Fundamental Rights, General Principles of EU Law, and the Charter*, in *Cambridge Yearbook of European Legal Studies*, 2014, p. 363.

VILLANI S., *L'accesso alla giustizia ambientale da parte delle ong nel quadro giuridico dell'unione europea alla luce della prassi recente*, in *Eurojus*, 2023.

VIÑUALES J. E. (ed.), *The Rio Declaration on Environment and Development: A Commentary*, in *The Cambridge Law Journal*, Cambridge, 2016, p. 169.

WATERS J., *The Aarhus Convention: a Driving Force for Environmental Democracy, in Journal for European Environmental & Planning Law,* 2005, p. 9.

ISSN 2038-1662

WATES J., *The Aarhus Convention: a Driving Force for Environmental Democracy*, in *Journal for European Environmental & Planning Law*, 2005.

WEAVER D., *The Aarhus Convention: Towards Environmental Solidarisation*, *Environmental Politics and Theory*, Cham, 2023, p. 75.

WESSEL R.A., *International Agreements as an Integral Part of EU Law: Haegeman*, in G. BUTLER and R.A. WESSEL, *EU External Relations Law: The Cases in Context*, Oxford: Hart Publishing, 2022, p. 12.

WHITTAKER S. et al., *Back to Square One: Revisiting How We Analyse the Right of Access to Environmental Information,* in *Journal of Environmental Law*, 2019, pp. 39, 468, 478.

WHITTAKER S. et al., *Freedom of Environmental Information: Aspirations and Practice*, 2023, pp. 34-35.

WHITTAKER S., *The Right of Access to Environmental Information*, in *Cambridge University Press*, 2021, p. 48.

Case Law

Administrative Court of Abruzzo, Pescara Section, Section I, judgment 277 of 9 October 2017.

Administrative Court of Calabria, judgment 793 of 9 December 2014.

Administrative Court of Campania , judgment 2882 of 30 April 2018.

Administrative Court of Liguria, Section I, judgment 949 of 22 September 2016.

Administrative Court of Toscana, judgment 2584 of 2 December 2009.

ISSN 2038-1662

Administrative Court of Veneto, judgement 1335 of 17 December 2015.

Compliance Committee of Aarhus Convention, *communication ACCC/C/2015/128 of 17 March 2021 concerning compliance by the European Union*, ECE/MP.PP/C.1/2021/21.

Constitutional Court, judgment 183 of 22 May 1987.

Council of State, Section IV, judgement 4679 of 8 June 2022.

Council of State, Section VIII, judgment 6611 of 6 July 2023, *Eni S.p.A v Greenpeace Onlu*s.

Cour of Justice, judgement of 4 September 2018, *ClientHearth v Commission*, Case C-57/16P, EU:C:2018:660.

Court of Justice, judgment of 10 September 2014, *Iraklis Hralambidis v Calogero Casilli*, case C-270/13, EU:C:2014:2185.

Court of Justice, judgement of 18 July 2013, *Deutsche Umwelthilfe v Bundesrepublik Deutschland*, Case C-515/11, EU:C:2013:523.

Court of Justice, judgement of 15 July 1963, *Plaumann & Co.v. Commission of the European Community,* in case 25-62, EU:C:1963:17.

Court of Justice, judgement of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening V Stockholms kommun genom dess marknämnd*, Case C-263/08, EU:C:2009:631.

Court of Justice, judgement of 19 December 2013, *Fish Legal and Emily Shirley v Information Commissioner and Others*, Case C-279/12, EU:C:2013:853.

ISSN 2038-1662

Court of Justice, judgement of 19 December 2013, *Fish Legal, Emily Shirley v Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd, Southern Water Services Ltd*, Case C-279/12, EU:C:2013:853.

Court of Justice, judgement of 23 November 2016, *Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden*, Case C-442/14, EU:C:2016:890.

Court of Justice, judgement of 23 November 2016, *Commission v Stichting Greenpeace Nederland and PAN Europe,* in case C-673/13 P, EU:C:2016:889.

Court of Justice, judgement of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others,* Case C-197/18, EU:C:2019:824.

Court of Justice, judgement of 8 March, 2011, *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky*, Case C-240/09, EU:C:2011:125.

Court of Justice, judgement of 8 October 2013, *Greenpeace Nederland and PAN Europe v European Commission*, Case T-545/11, EU:T:2013:523.

Court of Justice, judgment of 13 July 2017, *Saint-Gobain Glass Deutschland v Commission*, Case C-60/15P, EU:C:2017:540.

Court of Justice, judgment of 13 March 2024, *ClientEarth v Council*, Joined cases T-682/21, T-683/21, EU:T:2024:165.

Court of Justice, judgment of 16 December 2010, *Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden*, Case C-266/09, EU:C:2010:779.

Court of Justice, judgment of 18 March 1980, *Commission v Italy*, Cases C-91 & 92/79, EU:C:1980:86.

ISSN 2038-1662

Court of Justice, judgment of 20 Aril 2010, *European Commission v Kingdom of Sweden*, EU:C:2010:203, para 73.

Court of Justice, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd*, Case C-664/15, EU:C:2017:987.

Court of Justice, judgment of 20 October 2005, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, Case C-6/04, EU:C:2005:626.

Court of Justice, judgment of 23 November 2016, *Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden*, Case C-442/14, EU:C:2016:890.

Court of Justice, judgment of 26 June 2003, *Commission v France*, Case C-233/00, EU:C:2003:371, para 44-47.

Court of Justice, judgment of 30 April 1974, *R. & V. Haegeman v Belgian State*, Case 181/73, EU:C:1974:41, para 4-6.

Court of Justice, judgment of 30 May 2006, *Commission v Ireland*, Case C-459/03, EU:C:2006:345, para 84.

Court of Justice, judgment of 30 September 1987, *Demirel v Stadt Schwäbisch Gmünd*, Case 12/86, EU:C:1987:400.

Court of Justice, judgment of 6 October 2015, *East Sussex County Council v Information Commissioner and Others*, case C-71/14, EU:C:2015:656.

Court of Justice, judgment of 7 March 2024, *Roheline Kogukond MTÜ and others v Environment Agency,* Case C-234/22, EU:C:2024:211.

ISSN 2038-1662

Court of Justice, judgment of January 2021, *Land Baden-Württemberg v D.R.*, Case C-619/19, EU:C:2021:35.

Court of Justice, jugement of 22 March 2018, *De Capitani v. European Parliament*, Case T-540/15, EU:T:2018:167.

Court of Justice, opinion 2/91 of 19 March 1993, EU:C:1993:106.

Court of justice, opinion 2/13 of 18 December 2014, EU:C:2014:2454, para 158.

Court of Justice, opinion of Advocate General Jääskinen of 8 May 2014, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, Joined cases C-401/12 P, C-403/12 P, EU:C:2014:310.

Court of Justice, opinion of Advocate General Kokott of 27 January 2005, case C-186/04, ECLI:EU:C:2005:70.

European Court of Human Rights, *Guerra and others vs. Italy*, judgement of 19 February 1998, case 116/1996/735/932, CE:ECHR:1998:0219JUD001496789, para 60.

General Court (Seventh Chamber, Extended Composition), judgement of 22 March 2018, *De Capitani v. European Parliament,* Case T-540/15, EU:T:2018:167, para 84.

Acts and Laws

Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes, OJ L 2023/2836 of 20.12.2023.

ISSN 2038-1662

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Enhancing the European Administrative Space (ComPAct) adopted on 25 October 2023, COM/2023/667.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-term review of the Sixth Community Environment Action Programme, COM(2007)225 of 30.04.2007.

Constitutional law n°1 of 11 February 2022, Modifiche agli articoli 9 e 41 della Costituzione in materia di tutela dell'ambiente, in GU Serie Generale n.44 del 22-02-2022.

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.4.1979.

Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, OJ L 158, 23.6.1990, pp. 56–58.

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992.

Decreto legislativo n.33 of 14 March 2013, *Riordino della disciplina riguardante il diritto di accesso civico e gli obblighi di pubblicità, trasparenza e diffusione di informazioni da parte delle pubbliche amministrazioni*, GU 80 of 05.04.2013.

Decreto Legislativo 195 del 19 agosto 2005, recante “Attuazione della direttiva 2003/4/CE sull'accesso del pubblico all'informazione ambientale”, GU 222 del 23.09.2005.

Decreto legislativo 25 maggio 2016, n. 97, Revisione e semplificazione delle disposizioni in materia di prevenzione della corruzione, pubblicità e trasparenza, correttivo della legge 6 novembre 2012, n. 190 e del decreto legislativo 14 marzo 2013, n. 33, ai sensi dell'articolo 7

ISSN 2038-1662

della legge 7 agosto 2015, n. 124, in materia di riorganizzazione delle amministrazioni pubbliche, GU 132 del 08.06.2016.

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322/15 of 16.12.22.

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance), OJ L 322 of 16.12.2022.

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327 of 22.12.2000.

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, OJ L 41 of 14.2.2003, pp. 26–32.

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance), OJ L 275/32 of 25.10.2003.

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance, OJ L 330/1 of 15.11.2014.

European Commission, Annex to the Proposal for a Council implementing decision amending Implementing Decision of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Italy, COM(2023) 765 of 24.11.2023.

ISSN 2038-1662

European Commission, communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Improving access to justice in environmental matters in the EU and its Member States, COM/2020/643.

European Commission, Council, *Code of Conduct concerning public access to Council and Commission documents*, *OJ* L 340/41, 31.12.1993, pp. 41-42.

European Commission, Proposal for a regulation on amending 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, COM(2020) 642.

European Commission, *Report from the Commission to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on Public access to environmental information*, Brussels, 2012, p. 5.

European Commission, *Report to the Council and the European Parliament on the experience gained in the application of Directive 2003/4/EC on Public access to environmental information*, COM/2012/0774, pp. 1-13.

European Parliament, *Briefing Implementing the Aarhus Convention Access to justice in environmental matters*, 2017.

European Parliament, *Legislative Train – Revision of the Access to Documents Regulation*, 2024.

European Parliament, *Proposal for amending the Aarhus regulation on access to justice in environmental matters*, legislative train, 2023.

ISSN 2038-1662

Italian Government, *Piano di Riprese e Resilienza*, 2021.

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001, pp. 43–48

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396/1 of 30.12.2006.

Regulation (EU, Euratom) 1367/2006 of the European Parliament and 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 L264/13 of 25.9.200.

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance), OJ L 198/13 of 22.6.2020.

Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 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 356, 8.10.2021, p. 1–7.

ISSN 2038-1662

Regulation 2021/241/UE Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17–75.

Report of the World Commission on Environment and Development, *Our Common Future*, (UN Doc. A/42/427, 4 August 1987), Annex, at paragraph 27.

United Nations Economic Commission for Europe, C*onvention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, Aarhus, Denmark, 25 June 1998.

United Nations, *Rio Declaration on Environment and Development of June 1992*, A/CONF.151/26.

ISSN 2038-1662