



# The Aarhus Convention

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- **Objective : « to contribute to the protection of the right of every person of present and future generation to live in an environment adequate to his or her health and well-being »**
  - **Three pillars providing for procedural rights:**
    - Right of access to environmental information**
    - Right of public participation in environmental decision-making**
    - Right of access to justice in environmental matters**
  - **European Community is a Party to the Convention, as about all MS**
  - **Community legislation to implement Aarhus requirements: in particular Directives 2003/4 and 2003/35 on first and second pillar, also containing provisions on access to justice**
  - **Proposal for a Directive on access to justice in environmental matters**
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# The 3 pillars of Aarhus

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## 1. Access to information

- Access upon request (art 4).
- Collection and dissemination of environmental information by public authorities (art 5).

## 2. Public participation in decision making

- Participation in decision-making concerning projects (art 6).
- Participation in decision-making concerning plans, programmes and policies relating to the environment (art 7).
- Participation during the preparation of legislation (art 8).

## 3. Access to justice

- in case of violation of the right of access to environmental information (art 9.1).
  - in case of violation of the right of public participation in decision-making on projects (art 9.2).
  - in case of infringement of national law relating to the environment (art 9.3).
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## Directive 2003/4/EC Access to environmental information

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### **DIRECTIVE 2003/4/EC on public access to environmental information repealing Directive 90/313/EEC.**

- **Implements Articles 4 , 5 and 9.1 of the Aarhus Convention**
  - **Covers both ‘passive’ (upon request) and ‘active’ (dissemination of env. information) disclosure of env. information held by public authorities**
  - **‘Public authority’?– government authorities at all levels: national, regional and local authorities, even private non-governmental bodies that serve public functions or provide public services (i.e. supplying drinking water), whether or not they have specific responsibilities for the environment.**
  - **‘Environmental information’? any information, on any material form, on the state of the environment and its components, or referring to measures, policies, legislation, plans and programmes, data used in economic analyses, the state of human health and safety which might be affected by the state of environment.**
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## Directive 2003/4/EC Access to environmental information

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- ***Deadline for providing information : within one month from the request / two months in exceptional situations (volume and complexity reasons)***
- ***It is not an 'unlimited right' :***
  - ***reasonable charges for supplying information (reproduction & mailing) can be imposed***
  - ***limited and specific grounds for refusal of access to environmental information: to be interpreted restrictively, taking into account public interest served by disclosure and whether information relates to environmental emissions***
- ***'Firewalls': refusals by public authorities to be reasoned and in writing; access to administrative and judicial review procedures to be provided by national law.***



## Directive 2003/4/EC Access to environmental information

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- **Disclosure of information as a general rule**
- **Public authorities may refuse if request is too general or manifestly unreasonable, or concerns material in the course of completion, or internal communications**
- **Public authorities may refuse disclosure of information if it would ‘adversely affect’:- the course of justice, the ability to receive a fair trial; international relations, enquiries of a criminal or disciplinary nature; the confidentiality of commercial or industrial information as protected by national law (except: information on emissions relevant for environmental protection); intellectual property rights; confidentiality of personal data; the protection of the environment to which information relates: e.g. location of eagles’ nests.**



## Directive 2003/4/EC Access to environmental information

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- **Active dissemination of env. Information**
  - **Public authorities are obliged to organise and disseminate environmental information, tell the public what kind of environmental information they have, promote public environmental awareness, inform about how to access information, how to participate in environmental decision-making and about access to justice.**
  - **Member States should ensure that environmental information increasingly becomes available in electronic databases easily accessible to the public.**
  - **Member States are obliged to publish and disseminate a national report on the state of and pressures on the environment every three or four years or less.**
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## Directive 2003/4/EC Access to environmental information

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### Related access to legal remedies

- **When** a request for information has been ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with the provisions of the Directive.
- **How** : reconsideration by the public authority concerned or by another public authority, or administrative review by an independent and impartial body. The procedure shall be expeditious and either free of charge or inexpensive.

In addition access to a review procedure before a court of law or another independent and impartial body.

- **Reasons for the final decision in the review procedure shall be stated in writing, at least in case of refusal of access to information.**



## **Directive 2003/4/EC Access to environmental information**

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### **Progress as compared to earlier Directive 90/313/EC on the freedom of access to information on the environment**

- **It is conceived as a general right (not only for EU citizens)**
- **More detailed definition of public authorities**
- **Wider and more explicit definition of environmental information (e.g. biodiversity, GMOs)**
- **Shorter deadline for answering requests**
- **Improved 'openness' active dissemination policy : more precise grounds for non disclosure of information**
- **Two types of review procedures have been granted**





## Directive 2003/35/EC Public Participation

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**DIRECTIVE 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.**

- **Important instrument for ensuring public participation in environmental decision-making under EC law, implements Articles 6, 7 and 9.2 of the Aarhus Convention.**
- **Participation of the public in the drawing up of certain environmental plans and programmes (Annex I).**
- **Improves public participation and establishes access to justice, in relation to the authorization of environmentally significant projects, amending Directives 85/337/EC (EIA directive) and Directive 96/61/EC (IPPC Directive).**



## **Directive 2003/35/EC Public Participation**

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**Provisions on public participation in environmental decision-making also in other environmental directives, such as:**

- **Directive 2001/42/EC (SEA Directive): public participation in the preparation of plans for different sectors (e. g. agriculture, fisheries, energy, industry, transport, ...) with environmental impact**
- **Sector-specific legislation, e.g. Water Framework Directive 2000/60/EC (River Basin Management Plans), Emissions Trading Directive 2003/87/EC (national allocation plans).**



## Directive 2003/35/EC Public Participation

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### Public participation in the preparation, modification or review of certain plans and programmes

- Plans and programmes (Annex 1) under Directives on waste, batteries and accumulators, water pollution from nitrates, hazardous waste, packaging, air quality).
- How ? To provide information to the public, for the public to express comments and opinions, when all options are open, provide reasonable time-frames
- Results of the public participation to be taken into due account.
- Detailed arrangement to be determined by the Member States.
- Exceptions ? plans and programmes serving national defence or taken in case of emergency; plans and programmes for which a public participation is carried out under Directives 2001/42/EC or 2000/60/EC.



## Directive 2003/35/EC Public Participation

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**Amendment of Directives 85/337/EEC and 96/61/EC, as concerns public participation in relation to the assessment and authorisation of environmentally significant projects**

- **Information of the public about the project and the opportunity to participate**
  - **Public concerned to be given early and effective opportunities to participate in the environmental decision making, reasonable time-frames**
  - **Public concerned entitled to express comments and opinions before the decision is taken. Outcome of public participation to be ‘taken into due account’ in final decision**
  - **Detailed arrangements to be laid down by the Member States**
  - **Information about decisions taken and underlying considerations**
  - **public participation arrangements in relation to transboundary cases.**
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# Directive 2003/35/EC Public Participation

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Amendment of Directives 85/337/EEC and 96/61/EC adding requirements for access to justice

- Legal standing: The public concerned - having a sufficient interest or alternatively  
- maintaining the impairment of a right.
  - Access to a review procedure
    - before a court of law or
    - another independent and impartial body established by law.
  - To challenge the substantive and procedural legality of decisions, acts or omissions subject to public participation according to these Directives.
  - « Sufficient interest » and « impairment of a right » to be determined by the Member State, with objective of giving wide access to justice to the public concerned.
  - Special status for NGOs - promoting environmental protection and- meeting any requirements under national law to be granted legal standing.
  - Procedure to be fair, equitable, timely and not prohibitively expensive.
  - Information on review procedures shall be made available.
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