



Communication to the Aarhus Convention Compliance Committee regarding the European Commission's sustainability indicators and the current data centre build-out

I. Information on correspondent submitting the communication

1. This communication is submitted by: Lighthouse Reports, Trans 33512 JJ Utrecht, Netherlands.
2. The authorised contact person is Daniel Howden, Managing Director. Email: daniel@lighthousereports.com Tel: +30 694 266 4876.

II. Party concerned

3. The European Union, specifically the European Commission.

III. Facts of the communication

4. The European Commission is withholding necessary environmental information from the public, undermining citizens' ability to participate meaningfully in one of the most critical environmental issues of our time: the enormous and accelerating data centre build-out. The Aarhus Convention guarantees the rights of access to information, public participation in decision-making, and access to justice in environmental matters. The Commission is currently, both in its lawmaking and its application of the law, in breach of these three pillars. It is breaching them in its contention that a set of "sustainability indicators" that it has collected from data centre operators across the EU is commercially confidential. These indicators constitute a unique source of information on CO2 emissions, water intake, heat emissions and other factors which can allow citizens to understand the environmental effects of data centres in their neighbourhoods, and hold governments accountable for decisions relating to them. The Commission has refused to disclose this information, citing blanket and unspecified commercial secrecy as an exemption, in explicit contravention to the rights upheld by the Convention. Its refusal to disclose this information has cascaded down to the vast majority of Member States.
5. Across the world, a critical shift is occurring. Countries, and companies richer than many countries, are racing to attain strategic advantage in Artificial Intelligence. The outcomes of this race – for democracy, labour, the information environment, culture,

security, the global economy and every other domain of human endeavour – remain uncertain. But one thing proceeds with certainty: the build-out of the material infrastructure which houses and powers the unprecedented compute underpinning this race.

6. Data centres are increasing, in quantity, size and capacity, everywhere.¹ As the demands of the AI race accelerate, the EU aims to triple its data centre capacity by 2035.² It recognises the challenges posed by the rapidly increasing energy demand of data centres, their substantial environmental and climate impact, their need for large quantities of cooling water and their CO2 emissions.³
7. The European Commission's Directorate-General for Energy (DG ENER) wrote in November 2025: "It's in Europe's best interest to have highly energy efficient and sustainable data centres and ensure that they support, rather than detract from the clean energy transition. This calls for more reuse of waste energy and more use of renewable energy sources."⁴ As DG ENER itself recognises, Europe cannot currently evaluate or regulate the sustainability of data centres because of "the lack of actual consumption data in the public discourse".⁵ This can only be rectified by disclosure. DG ENER has stated it starkly: "Transparency is key".⁶
8. And yet, the same DG ENER has erected a wall of silence around how the data centre industry – backed by some of the wealthiest companies on the planet – is performing. In doing so, it is concealing emissions-related data from the public in a manner which impedes public participation in decision-making and undermines environmental democracy.
9. This communication concerns a database of energy and sustainability indicators of all data centres in the EU with an "installed information technology power demand of at least 500 kW", encompassing inter alia all the so-called "hyperscalers" which are powering the AI build-out.⁷ Such is the state of public information on the topic, it is unclear even how many data centres this comprises; the best available figures seem to add up to around 2160.⁸ In 2023, the recast Energy Efficiency Directive 2023/1791 mandated an "ambitious energy efficiency target": Member States must collectively ensure a reduction of energy consumption of at least 11.7% in 2030 compared to projections made in 2020.⁹ As part of this effort, the European Commission determined that a set of indicators should be collected for all data centres above the consumption threshold. These indicators include data relating to total energy use and renewable energy use, cooling system performance, water input and waste heat.
10. The indicators will ultimately be used to set minimum performance standards for data centres in Europe. As the Commission's Study Group has stated, this is necessary to

¹ Directorate-General for Energy, "In focus: Data centres – an energy-hungry challenge", 17 Nov. 2025, at Annex 15, pp.1-2.

² "Commission proposes tech sovereignty package to strengthen Europe's digital autonomy and resilience", 3 Jun 2026, at https://ec.europa.eu/commission/presscorner/detail/en/ip_26_1187.

³ Annex 13. "Energy performance of data centres", European Commission, downloaded 22 Sept 2026.

⁴ Annex 15, p.3.

⁵ Ibid.

⁶ Ibid.

⁷ Delegated Regulation (EU) 2024/1364 of 14 March 2024 on the first phase of the establishment of a common Union rating scheme for data centres, Article 1, at Annex 2.

⁸ "Assessment of the energy performance and sustainability of data centres in EU: First technical report", DG ENER, July 2025, pp.22-24 at Annex 16.

⁹ Directive 2023/1791 of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (hereafter "Directive 2023/1791"), Article 4.1. See extract at Annex 1.

“improve [data centre] performance and contribute to the EU's climate objectives”; it requires “strengthening incentives for data centres to improve energy efficiency and sustainability, and improving transparency and comparability [...] so that performance standards can be defined and enforced consistently across EU countries.”¹⁰

11. We explain in Section V why disclosure of the indicators the Commission is collecting is not just urgent and important, but also, under the terms of the Aarhus Convention, necessary. Europe’s energy consumption will increase because of its increasing data centre build-out.¹¹ Increased energy consumption means increased greenhouse emissions. Data centre operators argue that, as time goes by, their data centres become greener, use more renewable energy, cool servers differently or produce less heat. The indicators at issue in this communication are the only way of knowing to what extent this is true. They offer the only route to answering critical questions relating to planning permissions, power grid access, environmental harms, net zero commitment progress, use of renewable energy as well as renewable energy credits, to name only some.
12. Across the world, public opposition to data centres is growing.¹² Public availability of accurate and meaningful sustainability indicators therefore takes on increasing urgency. Politicians who make decisions need to be transparent and accountable to citizens. What are the real impacts of these buildings? How do they compare one to another? The Commission’s stance on this data makes companies less able to engage meaningfully with the communities around proposed data centre sites, and prevents communication of any real sustainability advances that could positively influence opinion in these locations. Siding with commercial secrecy over the public’s right to know erodes legitimacy and damages trust further. To quote Regulation 1049/2001: “Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.”¹³
13. The absence of this data deprives the public of their ability, enshrined in the Aarhus Convention, to participate meaningfully in democratic decision-making processes and hold public bodies accountable. To give just one example, in Spain, the government recently set up a public participation process for the “Royal Decree regulating the requirements relating to energy sustainability, environmental sustainability, resilience and digital sovereignty applicable to data centres”. But stakeholders in this process submitted that their meaningful participation was impeded because of the lack of a

¹⁰ “Minimum performance standards for EU data centres”, https://energy.ec.europa.eu/resources/preparatory-studies/minimum-performance-standards-eu-data-centres_en.

¹¹ The most recent estimates from the European Commission, to be found in the explanatory memorandum supplementing Directive (EU) 2023/1791 (21 Sept 2026), are that “In 2024, data centres in the EU consumed 68 TWh of electricity. This consumption is expected to rise to 114 TWh by 2030 [...] These projections could be revised upwards considering the strong growth of emerging digital services and technologies. The accelerated adoption of artificial intelligence will be one of the main drivers of this growth.” See Annex 12, p.1.

¹² See the European Data Centre Monitor website at <https://eudcmonitor.com/>; also e.g. “What’s behind the global backlash against datacentres?”, The Guardian, 2 Sep 2026 at <https://www.theguardian.com/world/2026/sep/02/wednesday-briefing-whats-behind-the-global-backlash-against-datacentres>.

¹³ Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, 30 May 2001, available at <https://eur-lex.europa.eu/eli/reg/2001/1049/oj/eng>.

“public and accessible register detailing the energy and water requirements of data centres and the civilian population”.¹⁴

14. On 21 September 2026, following industry consultation, the Commission published details of the labelling scheme it proposes to apply to data centres starting in 2027.¹⁵ Although presented as a win for transparency, the new scheme in fact doubles down on concealment of the most fundamental environmental impacts. Offering ratios calculated from indicators instead of actual numbers, it prevents the public from understanding real energy consumption and emissions. The choice of ratios over actual consumption figures has no basis in technical constraints; it is a choice that favours the industry over public interest. As the authors of the technical report, commissioned by DG ENER into the labelling scheme, noted: “whether the operators’ trade secrets outweigh the public interest in transparency is less a technical question than a political one.”¹⁶
15. In industry forums, where data centre leaders speak among themselves about the future, they refer to ordinary citizens protesting their constructions as “cave people”, to policy makers as “a group of schoolteachers”.¹⁷ The Aarhus Convention guarantees that even schoolteachers have a role to play in guiding policy, and even cave people can hold governments accountable for undermining environmental democracy. It is this guarantee that the Commission is breaking at this critical moment.
16. We bring this complaint against the European Union. For the purposes of the present communication, we have focused on the European Commission, given its role as initiator, builder, maintainer and ultimate end user of the database. But our experiences indicate that, where this environmental data is concerned, the Commission sits at the top of an edifice of non-disclosure encompassing the vast majority of the EU. We urge the Committee to review this communication in the light of this broader context, detailed more fully in Section VI. When we asked Member States to disclose the data they themselves had submitted to the database, 10 maintained that they held no data relating to their own submissions. Four did not respond at all. Six argued, in similar terms to those used by the Commission, for commercial confidentiality of the performance indicators. We appealed refusals in 15 countries and moved to further oversight body requests in five, to be met by further refusals and delays.
17. We do not think this wall of silence has arisen by accident. Instead, there is a clear and consistent determination among policy makers across the European Union to deny or deter access to, and obfuscate understanding of, how data centres are performing and the environmental impacts they are having.
18. This is a critical failing on four levels. It conceals real environmental harms which are happening across Member States now. It prevents insight into, and accountability for, decisions which are to be made on the basis of this data, including the setting of minimum performance standards. It means that countries outside the EU – many of which face a more immediate climate emergency than their European counterparts –

¹⁴ “Alegaciones al proyecto de real decreto por el que se regulan los requisitos de sostenibilidad energética, medioambiental y de resiliencia y soberanía digital aplicables a los centros de datos”, Sep 2026, p.5, available at <https://tunubeseacamirio.com/wp-content/uploads/2026/09/2do-borrador-Alegaciones-al-Real-Decreto.odt>.

¹⁵ “Commission enhances energy efficiency and sustainability of data centres in the EU”, 21 Sep 2026, at https://ec.europa.eu/commission/presscorner/detail/en/ip_26_1667.

¹⁶ See para 42 below.

¹⁷ Datacloud Conference 2026, “Keynote Panel: How is the data centre ecosystem keeping up with AI demand?”, at <https://youtu.be/AUd8WMFAceI?si=ToL1Mjx856ZNc8Cn&t=1802>.

are unable to parse what the impact of Europe's data centre build-out means for their own policies. It makes it harder for the industry to gain legitimacy and build trust via public perception of technological advances.

19. We submit that the Commission holds primary responsibility for this wall of silence, and that its basis for denying public knowledge of the effects of Europe's massive data centre build-out is self-defeating and manifestly ill-founded. The Committee's recognition of this would be the swiftest way to begin to set right the manifold wrongs which this denial entails. Europe's success or failure in overcoming the challenge posed by AI's energy consumption is being decided now. We do not believe it makes sense to fight battles for public access in two dozen countries when the Commission can expedite the solution to all of them.

The request to DG ENER

20. On 14 October 2025, reporter Lydia Emmanouilidou filed a request with DG ENER (see Annex 3). The context of the request is that Directive 2023/1791, adopted in 2023 and applicable from May 2024, establishes new binding obligations for data centre operators across the EU to report annually on their energy consumption, water use, waste-heat reuse, and overall efficiency performance. Data must be transmitted to the European Commission, which will establish a publicly-accessible database aggregating the information to improve transparency and support the EU's energy and climate goals.
21. The requested information included a small subset of the EU-wide database, namely submissions transmitted to the Commission by 1) Greece, 2) Germany, 3) the Netherlands and 4) Sweden, concerning data centres' energy consumption, water consumption and other performance indicators; along with correspondence, internal notes, or briefings exchanged between the Commission and the competent authorities of these Member States regarding those submissions or the design of the database. These four countries were chosen as a sufficient and non-burdensome test case for how the Commission chose to treat the dataset as a whole. The request explicitly asked for partial access in the case of sensitive material; individual justification and precise legal basis for each refusal; identification of concrete and specific harms that disclosure would cause; an explanation of why partial access was not feasible and an explanation of how the public interest test was applied. In sum, the request underlined that "blanket or generic refusals would not meet the requirements of the Regulation or the case law of the Court of Justice."¹⁸

The initial response

22. On 3 December 2025 DG ENER sent a response, refusing the first part of the request and stating that it held little for the second. The full response is included in Annex 4. The following is a summary of key grounds relied on.
 - a. Delegated Regulation 2024/1364, 5(5), requires that "the Commission and Member States concerned shall keep confidential all information and key performance indicators for individual data centres that are communicated to

¹⁸ Annex 3, p.1.

the database pursuant to Article 3. Such information shall be considered confidential information affecting the commercial interests of operators and owners of data centres in accordance with Regulation 1049/2001 Article 4(2) and Directive 2003/4/EC Article 4(2)(d).¹⁹

- b. Given that it is manifest that access to the referred category of information must be refused on the basis of Article 4(2) first indent, the Commission can rely on a general presumption to refuse access to said category of information, without the need to assess individually the requested documents which, moreover, cannot be currently retrieved by the Commission.²⁰
 - c. As far as other documents (correspondence, internal notes or briefings relating to the data submissions or database design) are concerned, Member States can “login directly to the database and upload their reports without the need for additional correspondence or exchange of any other document.”²¹
23. Alongside this refusal, DG ENER noted that the Commission was in the process of preparing a public dashboard on which the information reported to the database would be made accessible, in an aggregated format, and that this was still under development. It stated that a report, published in July 2025, covers the same aggregated information and contains several of the elements requested, including the number of submissions per country and data centre category, and an estimation of compliance rate.²²

The Confirmatory Application

24. Lydia Emmanouilidou filed a Confirmatory Application on 3 December 2025, pointing to substantive and procedural deficiencies in DG ENER’s response. The full text is included in Annex 3. The following is a summary of key grounds relied on.
- a. The Commission incorrectly relies on a general presumption of confidentiality, interpreting Article 4(2), first indent of Regulation 1049/2001 and Article 5(5) of Delegated Regulation 2024/1364 as a blanket presumption that all Member State submissions and related data “must be refused” even “if they were held”. But Directive 2023/1791 establishes transparency as the rule, not the exception. The Court has held that a general presumption can only be relied upon where the regulatory framework inherently presumes non-disclosure. Here, the opposite is true.²³
 - b. The refusal lacks the “specific and actual harm” assessment required by Regulation 1049/2001 Article 4(2). The case law is clear: the institution must explain how disclosure would “specifically and actually” undermine the protected interest, and must not rely on abstract or hypothetical risks.²⁴
 - c. With respect to the database reporting, DG ENER failed to confirm whether it actually holds the requested documents, whereas according to case law, the

¹⁹ Annex 4, pp.2-3.

²⁰ Annex 4, p.3.

²¹ Ibid.

²² Ibid.

²³ Confirmatory Application, Annex 3, p.4, I.1.

²⁴ Confirmatory Application, Annex 3, p.5, I.3.

institution must identify the documents requested and state whether they exist before applying a general presumption of confidentiality.²⁵

- d. Partial access is mandatory unless the institution demonstrates that redaction poses an excessive administrative burden. DG ENER's reply does not even consider partial access, despite the clear possibility of disclosing non-sensitive fields, in violation of 1049/2001 Article 4(6) and established case law.²⁶
- e. The initial reply contains no public-interest assessment, contrary to Regulation 1049/2001 Articles 4(2) and (3). The public interest is compelling: data centres are critical infrastructure for Europe's AI and digital transformation; their energy and water impacts are environmentally significant; Directive 2023/1791 explicitly links transparency to the Union's climate and energy objectives; disclosure advances democratic scrutiny of both national compliance and EU-level oversight.²⁷
- f. DG ENER's reference to a future public dashboard and to the July 2025 technical report does not satisfy the obligations under Regulation 1049/2001. The Court has held that the existence of summaries or external publications does not exempt institutions from providing access to the underlying documents.²⁸

Response to the Confirmatory Application

25. The Commission sent its response to the Confirmatory Application on 4 June 2026, six months after it was filed. The full text is included in Annex 5. The following is a summary of key grounds relied on.

- a. Article 5(5) of Delegated Regulation 2024/1364 states that the Commission and Member States concerned shall keep confidential all information and key performance indicators for individual data centres that are communicated to the European database. Such information shall be considered confidential information affecting the commercial interests of operators and owners of data centres in accordance with Article 4(2) of Regulation 1049/2001 and Article 4(2)(d) of Directive 2003/4/EC. It follows that all information and performance indicators for individual data centres in disaggregated form shall be kept confidential. The requested individual performance reports submitted by each data centre under Article 12 of Directive 2023/1791 constitute confidential information which, if disclosed, would seriously undermine the commercial interests of the centres.²⁹
- b. The CJEU has acknowledged that institutions may rely on general presumptions that apply to certain categories of documents. As an example, the Commission states that such an existence of general presumption has been recognised in "bids submitted in the framework for tenders" which contain "confidential technical and economic information [...]" which goes far beyond mere pricing information extending, inter alia, to information

²⁵ Confirmatory Application, Annex 3, p.5, II.1.

²⁶ Confirmatory Application, Annex 3, p.5, II.4.

²⁷ Confirmatory Application, Annex 3, p.6, III.

²⁸ Confirmatory Application, Annex 3, p.6, IV.

²⁹ Response to Confirmatory Application, Annex 5, p.5.

concerning future business plans, know-how, research and development and also to information on costs.”³⁰ The Commission “is of the opinion that a similar reasoning can be applied in relation to information contained in the requested documents”; “the situation of competitors submitting bids in the context of public procurement could thus be analogous to the situation of the data centres”.³¹

- c. Disclosure of the data for individual data centres would allow business competitors to get access to sensitive commercial information on the business models, operations and technologies used within data centres, undermine the commercial interests of these data centres and affect their competitive position. This risk is real and non-hypothetical.³²
- d. Given the *erga omnes* effect, and given that similar confidential information is contained in every individual report, the Commission can rely on a general presumption to refuse access to the category of documents, without the need to assess them individually; DG ENER did not err in relying on such general presumption.³³
- e. The Commission considers it was not established that the principle of transparency was especially pressing in this case, and found no public interest sufficiently strong to override commercial interests.³⁴
- f. Partial access is denied, without further reasoning.³⁵

IV. Provisions of the Convention with which non-compliance is alleged

31. We allege non-compliance with Articles 4.1, 4.4 and 4.6.

V. Nature of alleged non-compliance

Article 4.1

32. Article 4.1 stipulates that (subject to the following paragraphs in the Article) public authorities must make environmental information available to the public; and that (4.1.b) this information should be disclosed in the form requested unless (4.1.b.i) it is reasonable to make it available in another form (giving reasons if so). The Commission has refused to disclose the information requested. We analyse its refusal with reference to Articles 4.4 and 4.6 below.

Article 4.4

³⁰ Response to Confirmatory Application, Annex 5, part 2.1, p.5.

³¹ Ibid. p.6.

³² Ibid.

³³ Ibid.

³⁴ Response to Confirmatory Application, Annex 5, part 3, pp.7-8.

³⁵ Response to Confirmatory Application, Annex 5, part 4, p.8.

33. Article 4.4.d allows for refusal of a request for environmental information if the disclosure would adversely affect “the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest.” But it also requires that “within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed [emphasis added]”. The Implementation Guide is clear: data relating to emissions is “an exception to the exception” and cannot be claimed as confidential commercial information under any circumstances.³⁶ In addition, the entirety of Article 4.4 is governed by the caveat that “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 [emphasis added].”
34. The Commission itself states that the data we seek has been collected precisely because it relates to emissions into the environment and other environmental impacts:
- [Data centres] have a substantial environmental and climate impact. One factor here is the large quantities of water they need for cooling purposes. Another is CO2 emissions, if the sources of power they use to operate are not decarbonised. [...] A European database, prepared by the Commission, collects and publishes data relevant for the energy performance and water footprint of data centres with a significant energy consumption.³⁷
35. The entirety of the data collected falls under the Aarhus Convention’s definition of environmental information because the database’s whole raison d’être is to form a basis for “administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment”.³⁸
36. We submit that, for the protection of the environment, the actual data collected, rather than ratios, percentages or other derivatives, matters. In the following paragraphs we outline why this is so.
37. The first group of indicators required by the 2024 Delegated Regulation are termed the “energy and sustainability indicators”. These include indicators relating to energy consumption and to the amount and type of renewable energy consumption as a subset of this, namely the following:³⁹
- a. EDC – total energy consumption of the reporting data centre, including the use of electricity, fuels and other energy sources used for cooling, with separate measurement of EDC-BG, i.e. the amount of EDC coming from back-up generators
 - b. EIT – total energy consumption of information technology equipment
 - c. ERES-TOT – total renewable energy consumption
 - d. ERES-GOO – total renewable energy consumption from Guarantees of Origin

³⁶ The Aarhus Convention: An Implementation Guide, New York and Geneva 2000, p.60 (pdf p.72), at <https://unece.org/fileadmin/DAM/env/pp/acig.pdf> (extract in Annex 6).

³⁷ Directorate-General for Energy, “In focus: Data centres – an energy-hungry challenge”, 17 Nov. 2025, Annex 15.

³⁸ Aarhus Convention Article 2.3.b.

³⁹ Annex 2, pp.8-12.

- e. ERES-PPA – total renewable energy consumption from Power Purchasing Agreements
 - f. ERES-OS – total renewable energy consumption from on-site renewables
38. Manifestly, indicators of total energy consumption compared to renewable energy consumption are related to emissions. In addition to these indicators of consumption, the reporting requirement includes additional data points specifically covering waste heat directly or indirectly. These include waste heat reused, average waste heat temperature, number of cooling degree days (a tracker for quantifying how much energy is needed to cool a building)⁴⁰ and cooling system setpoints, along with types of refrigerants used in the cooling and air conditioning equipment of the data centre computer room floor.⁴¹
39. The reporting requirement includes total water input and potable water input.⁴² It also includes electrical infrastructure redundancy level and cooling infrastructure redundancy level.⁴³
40. We note that at no point in its communications detailing its refusals did the Commission mention the Aarhus Convention, contrary to Article 1.2 of Regulation 1367/2006 on the application of the provisions of the Aarhus Convention.⁴⁴
41. We submit that, to the extent that these indicators relate to emissions, under Convention Article 4.4.d they should be disclosed without further ado. We also submit that, where some of these indicators may not correlate directly with emissions, they are nonetheless environmental information insofar as they pertain to “administrative measures [...] affecting or likely to affect the elements of the environment”⁴⁵ and should fall under the more general restriction to Article 4.4, that “grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure”.⁴⁶ Any non-disclosure needs to proceed on a case-by-case basis, involving examination of actual data and documents, rather than on blanket presumption favouring commercial secrecy. This is consistent with the position taken by the CJEU in C-266/09 *Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden*⁴⁷ and by the Committee in ACCC/C/2013/89 *Slovakia*.⁴⁸

⁴⁰ For explanation see [https://databank.worldbank.org/metadataglossary/environment-social-and-governance-\(esg\)-data/series/EN.CLC.CDDY.XD](https://databank.worldbank.org/metadataglossary/environment-social-and-governance-(esg)-data/series/EN.CLC.CDDY.XD)

⁴¹ Annex 2, pp.10-12.

⁴² *Ibid.*, pp.9-10.

⁴³ *Ibid.*, p.7.

⁴⁴ Annex 7, p.3, Article 1.2.

⁴⁵ See paragraph 35 above.

⁴⁶ See e.g. Findings with regard to communication ACCC/C/2007/21 concerning compliance by the European Community Adopted by the Compliance Committee on 3 April 2009, Annex 8, para 30c: “The Committee wishes to point out that this exemption may not be read as meaning that public authorities are only required to release environmental information where no harm to the interests concerned is identified. [...] Thus, in situations where there is a significant public interest in disclosure of certain environmental information and a relatively small amount of harm to the interests involved, the Convention would require disclosure.”

⁴⁷ Judgment of 16 Dec 2010, paras 55-9, at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0266>.

⁴⁸ Findings and recommendations with regard to communication ACCC/C/2013/89 concerning compliance by Slovakia Adopted by the Compliance Committee on 19 June 2017, paras 83-4: <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.13.e.pdf>.

42. In October 2025 the Commission's own "second technical report" on "the establishment of an EU-wide rating scheme" noted that energy consumption and carbon emissions were "the most sensitive metric" according to industry stakeholders. The authors described these figures as "very relevant transparency information" and recommended that they be published. But their conclusion speaks volumes about how this issue was perceived in the Commission: "However, whether the operators' trade secrets outweigh the public interest in transparency is less a technical question than a political one".⁴⁹
43. We respectfully submit that this portrayal of disclosure of environmental information as a "political" question is at odds with the Convention; in terms of energy consumption and emissions, far from being a "political" question, the law is clear.
44. We also submit that Article 5(5) of the 2024 Delegated Regulation, which the Commission relies on in its response to our Confirmatory Application, is itself inconsistent with the Convention in affirming that "the Commission and Member States concerned shall keep confidential all information and key performance indicators for individual data centres that are communicated to the European database" and that "such information shall be considered confidential information affecting the commercial interests of operators and owners of data centres" [emphasis added].

Article 4.6

45. Article 4.6 states that, where information is exempted from disclosure, if environmental information can be separated out without prejudice to the confidentiality of the information exempted, public authorities should make "the remainder of the environmental information" available.
46. The Commission argues that its public dashboard, which came online after Lydia Emmanouilidou's initial request but before the Commission's response to the Confirmatory Application, sufficiently fulfils the transparency requirements of Article 12.3 of Directive 2023/1791. But the substitution of the public dashboard for the requested data is manifestly insufficient.
47. The public dashboard is an aggregation of data offering weighted averages of four "key performance indicators" (KPIs) derived from calculations based on five of the two dozen indicators the Commission collects.⁵⁰ It offers these averages across reporting years, countries and then a choice of two subdivisions, namely five "size" categories or 10 "type" categories.⁵¹ It is not possible to see results across both size and type. Where fewer than three data centres within a category in a country have reported, no

⁴⁹ "Assessment of next steps to promote the energy performance and sustainability of data centres in EU, including the establishment of an EU-wide rating scheme: Second technical report", DG ENER, Oct 2025, p.30, available at <https://op.europa.eu/en/publication-detail/-/publication/29aa14ed-a4ba-11f0-a7c5-01aa75ed71a1>. See extract at Annex 14.

⁵⁰ Power Usage Effectiveness (PUE) = EDC/EIT (total energy consumption / total energy consumption of IT equipment); Water Usage Effectiveness (WUE) = WIN/EIT (total water input / total energy consumption of IT equipment); Energy Reuse Factor (ERF) = EREUSE/EDC (waste heat reused / total energy consumption; Renewable Energy Factor (REF) = ERES-TOT/EDC (total renewable energy consumption / total energy consumption). See formulae at Annex 2 p.15.

⁵¹ Interactive dashboard available at https://dashboard.tech.ec.europa.eu/qs_digit_dashboard_mt/public/sense/app/940a61c3-bcfe-47d6-a786-25d93aa63b85/sheet/ZLWpJa/state/analysis.

data is shown. The use of KPIs derived from the sustainability indicators rather than the indicators themselves already obfuscates actual performance; the use of weighted averages across categories compounds this. In some cases the KPIs are given as zero without further explanation. In other cases the “power usage effectiveness” KPI, which is the total energy consumption divided by the total energy consumption of installed IT equipment, is given as less than 1, which is impossible.⁵² The majority of the indicators (including all of those relating to breakdowns of renewables, waste heat and cooling listed in paragraphs 37-39 above) are entirely absent from the dashboard.

48. Similar issues prevent the new labelling scheme – not yet in force, but proposed by the Commission to begin in 2027 – from being a sufficient response to our request. The Commission did not rely on the labelling scheme in its response to our Confirmatory Application, but for avoidance of doubt, we explain its insufficiencies here. The effect of the proposed labels is to:
 - a. conceal the total energy consumption (EDC) of a data centre, along with the energy from backup generators;
 - b. provide renewable energy consumption figures as a series of percentages of the total consumption, without giving actual amounts;
 - c. conceal the indicators for waste heat reused and average waste heat temperature, publishing instead simply a “yes/no” binary for “whether the data centre is ‘waste heat reuse ready’ or not”;
 - d. conceal the water input and potable water input in terms of actual quantities, offering instead the “key performance indicator” of Water Usage Effectiveness, calculated as the total water input divided by the total energy consumption of IT equipment, whereas neither of these figures is disclosed;
 - e. disclose the number of cooling degree days but not the cooling system setpoints, types of refrigerants used in the cooling or air conditioning equipment;
 - f. overall, to reconfigure the amounts of energy and water used as ratios which give no indication of actual impacts on local populations.
49. The Commission holds the data we have requested now; it does not propose to publish any labels until August 2027 at the earliest. But even were it to do so, we submit that the labels are not compliant with Article 4.6.
50. We submit that “separating out”, in the terms of Article 4.6, and “aggregating” are different, almost opposed, methodologies. Policy questions of overriding public interest can only be answered by the data in its original form, or with minimal redactions. Far from “separating out” and “mak[ing] available the remainder of the environmental information that has been requested”, what the dashboard and, in the future, the labels accomplish is to obfuscate real impacts and performance under a veneer of transparency.
51. In detailing its refusal to our Confirmatory Application, at no point does the Commission attempt to list or define the data it has collected with a view to “separating out”. With good reason, we think: because any such focus on the facts would illustrate the extent to which this data fails to engage the commercial secrecy imagined by the Commission.

⁵² This would mean that the installed IT equipment consumes more energy than the whole physical structure including it.

52. We submit that there is an overriding public interest in understanding a) how much energy and water each data centre uses and b) how these figures differ across owner and operator, location, type and age, since these offer answers to questions on which planning decisions, legislation, policy and environmental impact mitigations need to be based.
53. The Commission uses the analogy of “bids submitted in the framework for tenders” to justify a blanket presumption of commercial secrecy, since they include “technical and economic information” which “extends to information concerning future business plans, know-how, research and development and costs”. The Commission argues that “the situation of competitors submitting bids in the context of public procurement could thus be analogous to the situation of the data centres, as competing data centres could have, if disaggregated data were to be made public, access to sensitive commercial information of other individual data centres” [emphasis added]. The Commission suggests that the sensitive commercial information to which competitors could gain access includes type and number of customers, types of services, whether the data centre is growing or full and whether the data centre hosts AI training or streaming; as well as information about technologies used within the data centre (“how new the servers and storage equipment are, details on the cooling and backup power systems, details on the maximum capacity and utilisation of the servers and storage equipment, etc.).” The Commission asserts that “with such knowledge, [competitors] could undermine the commercial interests of these data centres and affect their competitive position.”⁵³
54. We submit that the conditional clauses underlined above (“could be analogous”, “could have”) are speculative, insufficiently evidenced and at odds with the case law. Article 4 of Regulation 1049/2001 mandates that access shall be refused only where disclosure “would” undermine the protected interest, not where it “could”. The CJEU has interpreted this as meaning “it must be shown that the documents requested contain elements which may, if disclosed, seriously undermine the commercial interests of a legal person” [emphasis added].⁵⁴ The Commission has made no case beyond the hypothetical, and has not tried to explain – let alone succeeding in explaining – how the sustainability indicators listed above, even when linked to specific buildings and operators, constitute commercial secrets. We note that none of these listed indicators (EDC, EIT, ERES, etc.) engages the technical mechanism for how these indicators are arrived at, merely the measured outcome. From this perspective, the tender analogy suggested by the Commission falls flat, precisely because tenders need to offer the sort of technical detail which these indicators do not and cannot.
55. Indeed, these paragraphs by the Commission go to the heart of why case-by-case analysis rather than blanket secrecy is crucial. The Commission offers no basis for asserting that information such as type and number of customers, type of operation, whether growing or full, is confidential rather than a matter of public record, given that data centre operators publish press-releases, websites, offer information about their operations to investors, etc. It offers no explanation of how simple indicators of consumption and emission could lead competitors to uncover secrets about age of equipment, specific system details or any of the other technical information it imagines could be engaged here. It cannot offer any justification for this precisely because it has failed to look at any of the material.

⁵³ Annex 5, Response to Confirmatory Application, p. 6.

⁵⁴ PTC Therapeutics International v EMA, T-718/15, paras 84-85, extract in Annex 10.

56. Lastly, we refer to the First Technical Report, published in July 2025, in which the authors made their own assessment of a subset of indicators to determine whether they a) were required for the assessment of the energy efficiency and sustainability of data centres under Task 1.2 of Directive Directive 2023/1791 and b) had potential privacy issues. In the case of all 12 energy and sustainability indicators which they considered, the authors found “no privacy issue” and determined that, by allowing them to consider these 12 indicators, “no sensitive information from the industry [was] disclosed”.⁵⁵ It thus appears that the most authoritative assessment of the data under discussion concluded that a substantial part of it did not engage issues of commercial confidentiality. (This should not be taken to imply that the remaining indicators do engage such issues; merely that the authors did not consider them in their report.)
57. In the absence of any case-by-case analysis by the Commission, we have no concrete instances to analyse why the requested indicators and associated operator data should be considered commercially secret; it is therefore impossible to balance public interest justifications against these non-existing instances. But, even allowing the possibility – a remote one, we think – that some of the requested datapoints are reasonably to be seen as commercial secrets, the Commission still has a duty to “separate out” the environmental information. As it stands the Commission’s response remains clearly in breach of Article 4.6.

VI. Use of domestic remedies

58. Our analysis of available remedies takes account of the unusual urgency of the situation on the ground and the overall picture of our efforts to gain disclosure of data relating to it, as well as on the Commission’s own statements and track record in previous cases before the Committee.
59. We seek the set of data centre sustainability indicators gathered by the Commission as part of its implementation of the Energy Efficiency Directive (EED), as detailed in Section V above. The impact potential of these sustainability indicators creates a once-in-a-generation, if not unique, moment. The EU aims to triple its data centre capacity by 2035.⁵⁶ The 2025 State of the Energy Union Report noted that “a significant gap remains in energy efficiency, indicating that additional measures and stronger implementation are needed to meet the EU’s 2030 energy savings targets.”⁵⁷ The associated working document described the EU as being “still far away from” the targets set in Directive 2023/1791.⁵⁸
60. Energy consumption growth, and the related emissions increases, are real and immediate. At its inception, Directive 2023/1791 put the expected increase in energy consumption of data centres in the EU at 98.5 TWh in 2030 compared to 76.8 TWh in

⁵⁵ “Assessment of the energy performance and sustainability of data centres in EU: First technical report”, DG ENER, July 2025, pp.14-15 at Annex 16.

⁵⁶ Annex 13, “Energy performance of data centres”, European Commission, downloaded 22 Sept 2026.

⁵⁷ Report From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: State of the Union Energy Report 2025, 6 Nov. 2025, Introduction, at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025DC0667&qid=1762869324977>

⁵⁸ Assessment of progress towards the objectives of the Energy Union and Climate Action, 6 Nov. 2025, p. 34, at https://energy.ec.europa.eu/publications/assessment-progress-towards-energy-union-and-climate-action-objectives-swd_en

2018.⁵⁹ By September 2026 a supplementary memorandum had shifted the figure upwards: the anticipated consumption by 2030 is now 114 TWh.⁶⁰ In June 2026, the European Network of Transmission System Operators for Electricity (ENTSO-E) stated that data centres have already “shifted from predictable consumers to systemically relevant loads that affect secure grid operation.”⁶¹ ENTSO-E anticipates a total electricity demand increase of over 50% from 2025 to 2030.⁶² Across the world, projections are that data centre energy consumption will “more than double” by 2030.⁶³

61. The reality behind these figures is that the current build-out of data centres is already outpacing efforts to mitigate its environmental impacts. Google’s most recent environmental report states that “our AI infrastructure buildout is currently accelerating faster than the grid is decarbonizing”⁶⁴ and that “our growth has widened the gap between our continued progress and our ambitions [to 24/7 carbon free energy and net zero]”.⁶⁵ Further details add to the picture: “our water consumption increased 34% from 2024 to 2025,”⁶⁶ “our total electricity demand has increased by over 250% [since 2019] to support our products and digital services”,⁶⁷ “our total ambition-based emissions increased 18% compared to 2024”.⁶⁸ The company is clear: “The biggest change to our environmental impact is the expansion of our technical infrastructure. ... We recognize that our climate impact has been growing alongside the unprecedented growth of AI.”⁶⁹
62. Similar increases were reported this year by Microsoft and Amazon.⁷⁰ In September 2026, at the time of writing this communication, the Commission has just published the 2025 aggregated data on its public dashboard. While essentially useless for understanding how data centres might impact any particular location, the new figures show one headline fact: across the EU as a whole, compared to 2024, fewer data centres have reported; but they are using in total 25% more power and 50% more water.⁷¹
63. Wherever figures are available, they attest to a current and rapid increase in data centre construction and power grid connection. In Germany it is reported that 99 new

⁵⁹ Directive 2023/1791, 13 Sept 2023, para 85. Extract at Annex 1.

⁶⁰ C(2026) 3472 final, 21 Sep 2026, Explanatory memorandum, p.1, at Annex 12.

⁶¹ Annex 9. Extracts from ENTSO-E Public Webinar Data Centres, 23 June 2026, slide 21.

⁶² Ibid, slide 23.

⁶³ Annex 13, “Energy performance of data centres”, European Commission, downloaded 22 Sept 2026.

⁶⁴ Google Environmental Report 2026, p.4, full text available at <https://sustainability.google/reports/google-2026-environmental-report/>, extracted in Annex 11.

⁶⁵ Ibid.

⁶⁶ Ibid, p.35.

⁶⁷ Ibid., p.10.

⁶⁸ Ibid., p.69.

⁶⁹ Ibid. pp.10, 69.

⁷⁰ “Google’s AI boom sends emissions, power use soaring”, Axios, 30 June 2026, at <https://www.axios.com/2026/06/30/google-ai-boom-emissions-power-use>; “Datacentres drive up big tech’s carbon emissions to a third of those of France”, The Guardian, 11 July 2026, at <https://www.theguardian.com/us-news/2026/jul/11/microsoft-amazon-google-datacentre-carbon-emissions-france>.

⁷¹ In 2024, 829 data centres reported a total energy consumption of 16.4 TWh and a total water input of 5.77m cubic metres. In 2025, 773 data centres reported a total energy consumption of 20.7 TWh and a total water input of 8.75m cubic metres. This represents a 26% energy consumption increase and a 51% water input increase in one year. See interactive dashboard at https://dashboard.tech.ec.europa.eu/qs_digit_dashboard_mt/public/sense/app/940a61c3-bcfe-47d6-a786-25d93aa63b85/sheet/ZLWpJa/state/analysis, extracts at Annex 18.

data centres are planned with 41 already under construction.⁷² In Italy, the quantity of power applied for in new requests by data centre operators to connect to the national grid has risen exponentially over the last 5 years.⁷³ Greece has 30 pending connection applications.⁷⁴

64. These indicators matter, in a way which is local, concrete and specific. Each new data centre impacts a place, a community and an ecosystem, as well as contributing to overall environmental changes. The risks of the current transparency deficit are concrete. Actual environmental harms across all Member States are concealed. Insight into and accountability for decisions about how much environmental impact each data centre should be allowed to have on a location and community, are made without public oversight. Citizens are unable to challenge planning decisions or hold governments to account over legally binding net zero commitment. Other countries, battling with climate change and looking to the EU for guidance on data centre impacts, cannot get a data-driven insight to help them make responsible choices.
65. Faced with this critical juncture, we began seeking disclosure in October 2025, not only from the Commission but also from 27 Member States. Our clear findings are that the Commission is the only viable source of transparency for this critically important data.
66. 10 Member States contend that they do not hold this data, insofar as data centre operators enter it directly into the database and no state body has downloaded it. We believe that, by choosing not to download the data relevant to them, Member States cannot possibly understand to what extent their data centre market is impacting their environment, their energy efficiency goals and their net zero commitments. We also note that this is contrary to the 2025 Delegated Regulation Article 5(3).⁷⁵ But arguing this in 10 venues is resource intensive, slow and a piecemeal approach to a systemic problem.
67. At least six Member States have argued for blanket confidentiality over commercial interests and sensitivity in terms substantially the same as those the Commission has adopted. We have pursued remedies in numerous of these. In France, we have already passed once through the Commission d'Accès aux Documents Administratifs, whose ruling in favour of our request was met by a nonsensical response from the Ministry of Ecology, insofar as they released data in separate columns with the rows randomly jumbled within each column, making the data meaningless. In Ireland, the refusal of our request for the indicator data by the Department of the Environment, Climate and Communications remains under appeal since 23 January 2026, and as of 17 September 2026 was yet to progress from acceptance stage to investigation stage. In the absence of a final decision we are unable to proceed to the High Court. In Sweden, we appealed the Swedish Energy Agency's refusal of our request on 27 October 2025; the Court of Appeal issued a decision on 5 March 2026, sending the case back to the Swedish Energy Agency for a new assessment; the Agency responded on 13 March 2026 with a new refusal and invited us to file a new case.

⁷² "Wettlauf um die Unabhängigkeit", Tagesschau, 28 Aug 2026, at

<https://www.tagesschau.de/investigativ/ndr/rechenzentren-ki-100.html>

⁷³ "Data center in Italia: è boom di richieste alla rete Terna (+48%)", Il Sole 24 Ore, 23 Aug 2026, at

<https://www.ilsole24ore.com/art/data-center-italia-e-boom-richieste-rete-terna-48percento-AJUI5Zs>

⁷⁴ "Greece has no plan for data centers", Solomon, 16 Sep 2026, at

<https://wearesolomon.com/mag/format-el/erevnes/xoris-sxedio-i-ellada-gia-ta-data-centers/>

⁷⁵ Annex 2, p.5.

68. The Commission holds all data from all Member States. Taking into account the full picture of results to date across the EU, we believe that attempting to circumvent the Commission by going individually to all Member States, and exhausting the remedies available in each, is not a viable way of arriving at disclosure. It is also beyond any resources that we could reasonably muster.
69. We filed our initial request to the Commission nearly a year ago, on 14 October 2025, and filed our Confirmatory Application promptly on 3 December 2025. We note that the Commission, while mandated by law to respond within 30 working days, did not respond until 4 June 2026. We have requested investigation by the Ombudsman into the Commission's response. We are aware from previous cases considered eligible by the Committee that the span of review by the Ombudsman and reconsideration by the Commission has lasted in one instance "nearly two years and four months"⁷⁶ and in another "526 days after the confirmatory application was made and 319 days after the EC refused the confirmatory application".⁷⁷ We are also aware that in multiple cases the Commission itself has argued that decisions by the Ombudsman are not legally binding, and cannot therefore constitute a remedy.⁷⁸
70. We respectfully submit that, given the special urgency and systemic outcomes of this case, the facts already meet the Committee's criteria of a remedy that is "unreasonably prolonged or obviously does not provide an effective and sufficient means of redress."⁷⁹ We note the Committee's longstanding affirmation that "this provision [regarding exhaustion of domestic remedies] does not imply any strict requirement that all domestic remedies must be exhausted. The Committee would not be precluded from considering a case even where the application of the remedy was not unreasonably prolonged."⁸⁰
71. Under these circumstances, we respectfully submit that the urgency and public interest of this case justify our communication to the Committee at this time. We believe that a ruling of admissibility by the Committee would send an important signal that the data centre build-out cannot continue without meaningful transparency and accountability on the part of industry and decision-makers, and meaningful possibility of participation in decision-making by the public. These are the very pillars of the Aarhus Convention.
72. Last year, Microsoft's Chief Sustainability Officer wrote that "the path ahead has gotten harder": "In 2020, Microsoft leaders referred to our sustainability goals as a 'moonshot,' and nearly five years later, we have had to acknowledge that the moon has gotten further away. However, the force creating this distance from our goals in the short term is the same one that will help us build a bigger, faster, and more powerful rocket to reach them in the long term: artificial intelligence."⁸¹
73. It is this circular reasoning – that AI will save humanity from the harms imposed on it by AI – that we invite the Committee to challenge, wielding instead the rights of

⁷⁶ Findings and recommendations with regard to communication ACCC/C/2013/96 concerning compliance by the European Union Adopted by the Compliance Committee on 4 August 2020, para 92, available at https://unece.org/sites/default/files/2020-12/ece.mp_pp_c.1.2021.3.eng_0.pdf

⁷⁷ ACCC/C/2024/207, "Written statement on preliminary admissibility", p.1, available at https://unece.org/sites/default/files/2024-03/frCommC207_20.02.2024.pdf

⁷⁸ For example, ACCC/C/2013/96, as above.

⁷⁹ For example, ACCC/C/2021/186, para 5, available at https://unece.org/sites/default/files/2024-06/C186_Portugal_preliminary_determination_admissibility.pdf.

⁸⁰ See Admissibility Decision, ACCC/C/2010/54 at Annex 17.

⁸¹ "Progress on the road to 2030", Microsoft, 13 Feb 2025, at <https://blogs.microsoft.com/on-the-issues/2025/02/13/progress-on-the-road-to-2030/>

access to information, public participation in decision-making, and access to justice in environmental matters.

VII. Use of other international procedures

74. No other international procedures have been invoked.

VIII. Confidentiality

75. We do not request confidentiality.

IX. Supporting documentation (copies, not originals)

Annex 1. Extract from Directive 2023/1791 on energy efficiency and amending Regulation 2023/955 (recast), 13 September 2023. 2pp.

Annex 2. Delegated Regulation 2024/1364, 14 March 2024, on the first phase of the establishment of a common Union rating scheme for data centres. 17pp.

Annex 3. Request to DG ENER and Confirmatory Application. 9pp.

Annex 4. Initial response from DG ENER. 4pp.

Annex 5. Response to Confirmatory Application from DG ENER. 8pp.

Annex 6. Extract from Aarhus Convention Implementation Guide. 1p.

Annex 7. Extract from Regulation 1367/2006, 6 September 2006, on the application of the provisions of the Aarhus Convention. 3pp.

Annex 8. Findings with regard to communication ACCC/C/2007/21. 9pp.

Annex 9. Extracts from ENTSO-E Public Webinar Data Centres, 23 June 2026. 4pp.

Annex 10. Extract from PTC Therapeutics International v EMA, T-718/15, 5 February 2018. 2pp.

Annex 11. Extracts from Google Environmental Report 2026. 4pp.

Annex 12. Extract from Explanatory memorandum supplementing Directive 2023/1791, 21 September 2026. 2pp.

Annex 13. European Commission. Energy performance of data centres. 5pp.

Annex 14. European Commission. Extract from Assessment of next steps to promote the energy performance and sustainability of data centres in EU, including the establishment of an EU-wide rating scheme: Second Technical Report, October 2025. 2pp.

Annex 15. European Commission. In focus: Data centres – an energy-hungry challenge. 4pp.

Annex 16. European Commission. Extract from Assessment of the energy performance and sustainability of data centres in EU: First Technical Report, July

2025. 6pp.

Annex 17. Admissibility decision, ACCC/C/2010/54. 2pp.

Annex 18. Dashboard summaries 2024 and 2025. 2pp.

X. Signature

Daniel Howden, Managing Director, Lighthouse Reports

Lydia Emmanouilidou, Pablo Jiménez Arandia, Ludek Stavinoha, Riccardo Coluccini, Beatriz Ramalho da Silva, Tomas Statius, Margot Gibbs, Jaya Mirani, Crofton Black