

An aerial, high-angle photograph of a massive crowd of people, seen from above. The individuals are densely packed in the lower half of the frame and more spread out in the upper half. They are wearing a variety of colorful clothing, creating a mosaic of colors. Long shadows are cast across the ground, indicating a low sun position. The overall scene conveys a sense of a large-scale gathering or event.

IMPLEMENT FOR LIFE

POWER FOR THE PEOPLE



EXECUTIVE SUMMARY

In the EU, citizens have the right to take part in decisions about their environment. EU Member States should provide the public with the opportunity to engage in decision-making, such as through public consultations.

However, barriers to public participation are numerous and growing in the EU. These restrictions are both dangerous for our democracies and our environment.

This report reveals examples of EU governments failing to deliver on laws that should ensure public participation in environmental decision-making, as well as recommendations and advice on how to better include the public and NGOs in environmental matters.

Among the issues discussed in the report is the requirement to have the public concerned and NGOs involved in plans, programmes and projects. There are some common barriers to this involvement in the Member States.

The report points out the need for diverse contributions of stakeholders to shape policy, to avoid economic interests dominating over environmental ones, and to preserve the public interest. The phenomenon of 'squeezing of civil society' is looked at both at Member State and EU level.

The conclusions and recommendations should provide insights useful to governments and national authorities, the European Commission, NGOs and concerned citizens.

This report delivers highlights on some key participation barriers in the EU and provides case studies to illustrate this.

INTRODUCTION

The essence of democracy lies in the opportunity given to citizens to exercise power over government by expressing their voice and political preferences. The EU is a strong promoter of democratic values. Yet one should not take for granted fundamental participation rights even in a political system that is not rigged or biased, where the day-to-day governance is participatory, inclusive and plural.

The reality of every governance structure, also in Europe, is that it will always be easier for some stakeholders to be heard than others, with some being closer to the decision-making powers and who will therefore be able to influence policy and legislation disproportionately.

The [Aarhus Convention](#) sets the cornerstone of the primary ingredients of environmental governance, expressed in its so-called three pillars: access to information, access to public participation and access to justice. We addressed shortcomings in access to justice for NGOs in environmental matters in our first report 'Challenge Accepted?'. This report will look more closely at the barriers and opportunities for NGOs in environmental governance to influence better implementation of environmental laws through public participation.

Since its inception, the EU is constantly trying to improve its democratic legitimacy, not least in response to some critical voices claiming

that the supra-national decision-making process of the EU lacks democratic legitimacy as EU processes are more removed from EU citizens than national ones. While the EU attempts to redress some of these deficits, national systems within the EU are also not always optimal, and this report will look at the extent to which NGOs are given the space they should be guaranteed to participate in democratic processes.

Democracy in the EU is not limited to the May 2019 European Parliament elections, but extends to public participation, a key tool to ensure that EU environmental laws are implemented properly in the interest of communities and well-being of society. It is a core requirement in many pieces of legislation, from water protection, nature conservation and capping air pollution, as well as central to better regulation and the EU approach to legislation development. Decisions impacting the environment taken by governments and local authorities are generally considered to be more coherent, progressive and are more widely accepted, and hence legitimate, when there has been an inclusive and timely participation of all stakeholders to inform the decision-makers.

Consequently, public participation is an essential ingredient for authorities who strive for public acceptance and proper implementation of environmental laws.

PUBLIC PARTICIPATION AT EU LEVEL

Strengthening mechanisms for people - not just businesses - to influence decisions and laws made by the EU.

NGOs have led many public campaigns to raise awareness on environmental problems, that have demonstrated that the public cares about the environment and want decision-makers to take action on [water quality](#), [plastics](#), [biodiversity loss](#) and [right to repair](#). At the EU level, [mechanisms are available for citizens](#) to participate in consultations and express their opinions and concerns over matters that are being discussed by the EU institutions. There is also a right for EU citizens to [ask for new EU legislation and to make petitions](#) guaranteed by the [treaties](#). However, in practice, most consultations at EU level are held on specific legislation and issues established by the institutions, with very little possibility to contribute to broad policy lines and priority areas. The effect of this is that environmental concerns are much less prominent in broad policy lines of the EU and that public participation at EU level comes late in the political and legislative procedures. In addition, the contributions of the public and stakeholders are not always adequately reflected in the outcome of consultations. For instance, outside of closed-door lobbying, there is very little scope for the public and NGOs to influence the spending priorities in the [Multi-Annual Financial Framework](#) of the EU, which also sets and reflects the political agenda for the next six years.

Before deciding whether and how to legislate on an issue, an impact assessment (IA), which sets out the EU's options and includes a public consultation, must be carried out. IAs are often biased through the methodology and data used, as it is easier to identify and focus on the short term costs to business than the wider environmental costs of inaction, or benefits of action, over longer time periods and through a more complex chain of impacts. There are also more criteria focusing on economics than environment. The biases in IAs often seem political, in some cases indicating a more or less pre-defined outcome, where environmental impacts are given less weight in the final decision than the economic considerations. These assessments are frequently not made publicly available in time, denying an adequate reaction to the assessment from the public and NGOs.

As a result, there is not enough transparency on the final decisions taken at EU level, even when there are public and open consultations. In particular, there is not enough transparency on how the consultation contributions are handled and how final decisions are made. Indeed, sometimes the final decision does not reflect the outcome of the consultation contributions, questioning which other considerations took precedence over a clear public opinion and why.



Mercury legislation proposal

The Commission proposal for legislation to regulate mercury was disappointingly unambitious. In fact, there was no justification for ignoring [the response of many EU citizens](#) simply because they had been stimulated by a public campaign. In [the mercury consultation](#), the question of mercury used in dentistry received double the number of answers than the other questions, and therefore clearly showed where a more robust stance by the EU was needed and what the public demanded. Yet, although this result was recognised, it was assessed as a subjective perspective of the problem and was ultimately not taken into account, leading to a very weak Commission proposal on the phase-out of mercury in dentistry. On all other points in the mercury consultation, the public also proposed to go beyond the provisions of the Minamata Convention; but again, [this was ignored by the actual proposal in 2016](#).



Recommendations:

- The **public should be able to influence broad policy lines and priorities** of the EU
- There should be **clear guidelines** on how final decisions are made



ENVIRONMENTAL ASSESSMENTS TO PROMOTE SUSTAINABLE DEVELOPMENT

Assessments should integrate environmental considerations into all policy areas: a core principle in the EU Treaty

Meaningful public consultations and the involvement of the public affected prior to the final project approval should, in theory, lead to the creation of projects that serve the public interest and the environment. An environmental impact assessment (EIA), or a strategic environmental assessment (SEA), aims to limit the environmental harm of a project or programme by assessing its environmental impacts at an early stage of the planning process, by gathering information and contributions from the public affected by the development. NGOs in particular can provide their expertise and input into the planning processes of projects, public plans and programmes, leading to fewer conflicts at a later stage, better quality planning and can therefore significantly lower the environmental impact of a project.

At the EU level, there are two Directives that govern how to conduct assessments prior to the approval of a project, plan or programme: the [Environmental Impact Assessment Directive](#) (EIAD), and the [Strategic Environmental Assessment Directive](#) (SEAD). The key difference between them is that the SEAD applies to

public plans and programmes and operates at a higher planning level, with fewer details and is thus carried out at an earlier stage than an EIA. Hence, an effective SEA can directly influence a public strategy, leading to more environmentally friendly plans and programmes. An EIA will then be carried out at a later stage for a specific project that may be part of a larger plan or programme and assesses the specific environmental impacts in more detail.

When carried out correctly, environmental and strategic impact assessments allow for a meaningful dialogue between civil society, public authorities and the developers and can lead to projects, plans and programmes that are sustainable and take environmental impacts into account. In practice, however, there are multiple issues with the implementation and application of the EIAD and SEAD and more could be done to protect the environment and improve public participation, particularly of NGOs.

| | EIA | SEA |
|--|-----------------------------|--------------------------------------|
| BINDING | NO | NO |
| TAKES INTO ACCOUNT THE ENVIRONMENTAL ASPECTS OF A PROJECT | YES | YES |
| NGOs AND PUBLIC CAN PARTICIPATE - THROUGH PUBLIC CONSULTATIONS | YES | YES |
| TYPE | Public and private projects | Public plans, programmes, strategies |
| EVALUATIONS | Detailed | Few details |

Taking participation seriously

Unfortunately, it seems that not all stakeholders value public participation to the same extent. Public participation often seems to be perceived as a process of formality, and thus more of a hindrance. However, successful environmental implementation requires a shared understanding of the value of public participation. It therefore seems to be the case that participation must be taken more seriously in various aspects to overcome common barriers to participation.

EIA reports of higher quality would help NGOs to contribute to the process on the basis of the report as less time needs to be spent on researching the true environmental costs of a planned project, if the report is an independent, reliable and objective source. As the developer currently employs the expert of its choice for an environmental impact report, it can also exert [considerable influence over the content of the report](#). Greater transparency and independence of experts would further increase the quality of EIA reports and establish a more realistic picture of the actual environmental impacts.

Instead of being valued for their participation and expertise, NGOs are often blamed for prolonging a procedure by raising questions and contesting the plan when they are seeking to ensure compliance with EU environmental law. This scapegoating has also led to NGO participation being limited through recent legislation in Austria and Germany (see 'Squeezing of CSOs' section below). Combined with the inadequate consideration of alternatives, this damages the public perception of the EIA as a process that the public can influence, that is worthwhile, leads to better planning and lower environmental impacts. If there is no scope for engagement and prevention or reduction of environmental impacts, then its credibility and added value may be doubted. NGOs can use their expertise to assist in suggesting alternatives and assessing the viability of these alternatives for the developer. The [comparison](#) of an alternative route to the motorway through the [Kresna Gorge](#) in Bulgaria that set out the financial, social and environmental aspects, provides a good example of such constructive practices.

Polish Vistula Spit Canal

In November 2018, the Polish government started the construction of a canal between Vistula Lagoon and the Baltic Sea. The project has been greatly criticised by environmental groups that [have appealed to the Environment Commissioner](#) Karmenu Vella to step in and halt the 800 million euro project which is in breach of EU nature protection laws under which the 90km-long Vistula Lagoon is protected. The construction has no environment permit and an Environmental Impact Assessment which was carried out in 2011 recommended abandoning the project because of the foreseen negative effects. In the letter sent to the Commission, environmental groups explained that the public or NGOs had not been informed of the permits' issue procedure and therefore were not able to participate. The NGOs have claimed that Poland has acted against the Aarhus Convention and are now waiting for the Commission to take action.

More about the case on [META 1](#) and [2](#).



The NGO network Justice and Environment has [identified the vague and abstract nature of the planning documents of SEAs](#) as a predominant obstacle to public participation. While EIAs cover concrete projects, SEAs are set in rather general terms dealing with strategic goals and long-term projections. SEAs are therefore more difficult to relate to and to understand which may also lead to a lack of interest for NGOs and the general public. Justice and Environment thus conclude that the formality of the SEA and its perception as a necessity render the impact of public participation questionable.

[Some authorities contest that an SEA is necessary to outline policies](#), with the rationale that it is up to the authorities to define policies and that requiring consultations at high-level might crystallise policies that hinder the flexibility of later projects. However, there seems to be no evidence available to substantiate the need to limit SEAs: on the contrary, the European Court of Justice (CJEU) [indicates that there should be a wide scope of SEAs](#), particularly in light of the need to integrate environmental concerns in all policy areas as a way to promote sustainable development (Article 11 of TFEU).

If an EIA or SEA becomes a mere formality exercise, without early, open and effective public consultation and without the assessment of alternatives, the value of such procedures becomes questionable. Therefore, it is essential that public consultations are carried out at an early stage, when all the options are still open and there is scope for a true analysis of alternatives. It is primarily for the Member States and the responsible authorities to ensure that developers take this requirement seriously and encourage early public consultations.



NGOs as key in identifying impacts, alternatives and deficiencies in EIA procedures

In addition to supporting the correct implementation of environmental law, NGOs also play an important role in identifying some of the more systemic issues of current impact assessment procedures. Their participation in EIAs and SEAs therefore not only helps to address and overcome those issues in the case at hand, but also leads to the development of expertise. This can inform the further improvement of the underlying procedural requirements through participation processes at both EU and national level (see also 'Public participation at EU level' and 'EU participation requirements at MS level' sections).

SALAMI-SLICING

While the CJEU has held that “the purpose of the [EIA Directive cannot be circumvented by the splitting of projects](#)”, the splitting up of one project into smaller parts ('salami-slicing') still appears to be a common problem that can lead to a failure to take the entire environmental impact of a large project into account. In its most drastic form, a project that requires an EIA is split up into smaller parts that in themselves are below the threshold of requiring an EIA due to their nature, size, emission or length. The CJEU has clearly established that [this practice is in breach of the EIA Directive](#) and [Member States must take action to implement this ruling in practice](#). A big risk of splitting planning permissions into different projects is that public participation in the final decision-making process will be fragmented, thereby limiting some communities and stakeholders from expressing their views and providing input to the entire project. See the [Motorway construction between Austria and Czech Republic](#) example, page 10.

CUMULATIVE EFFECTS

Despite the CJEU having clearly ruled that the environmental impact of projects [must be assessed jointly with other projects](#), in practice there appears to be a common failure to take cumulative effects of other projects into account. Particularly where the prior environmental harm of other projects is high, the planned project might be what tips the balance, leading to greater environmental harm than the project would cause in isolation. See the [Motorway construction between Austria and Czech Republic](#) and on [META](#).

CLIMATE CHANGE

Including climate change considerations into the early planning stages through an EIA is essential for meeting long-term policy goals such as the Sustainable Development Goals (SDGs) and the Paris Agreement commitments. It not only ensures compliance with EU and national legislation, but helps to achieve climate and biodiversity objectives and policies, increases a project's resilience to climate change, thereby prolonging its lifetime, and also [allows to manage potential synergies or conflicts](#) between climate change, biodiversity and other environmental issues. Yet, an adequate assessment of climate change considerations is often lacking in EIAs. See the [Motorway construction between Austria and Czech Republic](#) example, page 10.

LACK OF INDEPENDENT EXPERTS

As the developer employs the expert of its choice for the EIA report, the expert's independence can be questioned, which has led to demands for more independence and also greater transparency of the expert's qualifications. Where the objectivity of the EIA report cannot be assured, NGOs play an essential role in providing a balance to potentially one-sided reports prepared for the developer.



Motorway construction between Austria and Czech Republic

In the planning stages of the A5 between Vienna and Brno, the highway was split into three sections so that each section underwent a separate EIA procedure. This meant that the assessments on air pollutants, emissions and other environmentally harmful aspects only referred to the territorially limited effects. The Austrian Verwaltungsgerichtshof has previously held that while the splitting up of projects may be legitimate where there is a factual justification, it cannot be used to avoid an EIA procedure. This should also apply where in practice, a proper EIA procedure is avoided by not assessing the entire environmental harm.

In the planning of the A5 northern national motorway, the impacts on climate change were not assessed in an adequate way with only superficial assessments stating that “climate change effects remain low”. Particularly as the transport sector is a big emitter of CO₂, climate change factors play an important role in assessing the overall effects of the project on the planet, the environment and human health.

Pirin National Park, Bulgaria

Pirin National Park is a UNESCO World Heritage Site and includes two Natura 2000 sites.

After a long fight led by environmental NGOs and members of the For The Nature Coalition, the Supreme Administrative Court of Bulgaria ruled that the construction of new ski infrastructure and increased logging in Pirin National Park was illegal. The permission for the ski resort was first granted in 2000 but it was only at the end of July 2018, that the Supreme Administrative Court established that the SEA Directive and Habitats Directive were not properly implemented.

WWF launched an international campaign in support of Pirin National Park in 2016. The court decision followed a first instance decision of April 2018 where the court required that the new management plan for Pirin National Park undergoes an environmental assessment. Bulgaria's environmental minister had previously decided that the [new plan did not require a Strategic Environmental Assessment](#), despite permitting a significant enhancement of construction of an area 12,5 times larger than the previous plan.

It appears that the Bulgarian government tried hard to prevent an SEA from taking place. While a draft decision of the UNESCO World Heritage Committee had requested a full SEA for the new management plan, this seems to have been watered down through the lobbying efforts of the Bulgarian government as [the final decision no longer contained the request for an SEA](#). The outright circumvention of an SEA provides a clear implementation problem of EU environmental law.

This case clearly demonstrates the importance and value of NGO involvement in the SEA procedure. Their international campaign and persistence in pursuing this failure to adequately implement EU environmental law has played an indispensable role in the protection of Pirin National Park.



Recommendations:

The 2014 EIA Directive has tried to address some problems with how EIAs are conducted. Member States still need to guarantee that:

- NGOs and the public concerned have all **available information** on the proposed project well in advance to take part in consultations and influence the final decision;
- the information is **useful and understandable** to make contributions;
- NGOs and the public concerned are given a **wide opportunity to provide input and expertise**, and that authorities facilitate their involvement in consultations;
- the reports written by the experts are **not biased**;
- environmental and climate considerations are **always evaluated**;
- the final decision is **justified and transparent**.



PARTICIPATION IN MEMBER STATES

Public participation is not a tick-boxing exercise imposed by the EU, but a sign of good governance

In addition to participation opportunities through consultations at EU level, specific areas of EU environmental law also require Member States to ensure public participation when implementing these laws at the national level. In effect, the EU has incorporated the second pillar of the Aarhus Convention into different environmental regimes in this way. We therefore have participation requirements in legislation concerning air quality, water management, waste management, energy and climate plans, industrial emissions and conservation. All these areas require public participation by NGOs and the affected public in some form. These requirements across the various areas of environmental law reflect the importance of public participation for the implementation of EU environmental law.

Member States are responsible for implementing EU legislation in their territory, according to their national constitutional requirements that establish who the

competent authority is. This enables each Member State and local authority to apply EU law according to local and national institutional frameworks. While this is enriching to the EU and the Member States – with same laws designed differently to reflect realities on the ground – it also means that participation rights will not be applied equally in the EU. The different procedures for participation of NGOs has resulted in unfair outcomes that also put the environment at risk. For instance, the air quality plan for the region of Lombardy in Italy was challenged by NGOs because they were only given 30 days to provide input to a general draft document. Therefore, it was impossible for NGOs to understand [the concrete actions the region would take and what the value of their contribution had to the final plan](#). If Bulgaria, the public [was only given one week effective participation](#) for the update of a permit to a coal power plant!

- Under Art.6(5) of the National Emissions Ceiling Directive (2016/2284) Member States shall consult the public in accordance with Directive 2003/35 on public participation when drafting national air pollution control.
- The Water Framework Directive (2000/60/EC) (WFD) contains detailed requirements for the involvement of the public in producing river basin management plans. Art.14 WFD specifies the information that must be made available to the public and a timeframe of six months for public involvement and consultation.
- The elaboration of waste management plans or waste prevention programmes must also be open to public participation under Art.31 of the Waste Framework Directive (2008/98/EC), in accordance with Directive 2003/35 on public participation or the Strategic Environmental Assessment Directive 2001/42 where relevant.
- Art.10 of Regulation 2018/1999 requires early and effective participation opportunities in the participation of national energy and climate plans and specifically requires Member States to limit administrative complexity of participation procedures.
- Under the Industrial Emissions Directive (2010/75/EU), Member States must also give the public early and effective opportunities to participate in the granting or updating of permits, as set out in Art.24 of the Directive.

Box: Each directive gives specific participation rights to the public and NGOs.



Credit: ČEZ Group

Prunéřov coal power plant, Czech Republic

[Prunéřov coal power plant complex](#), run by CEZ Group, is the largest single industrial source of CO₂, SO₂ and NO_x emissions in the Czech Republic, emitting more than 9 million tons of CO₂ annually. In 2008, CEZ Group submitted its project announcement to prolong operations for another 25 years and to replace existing blocks of the power plant. The project plan involved the use of outdated technology; the best available technology at the time would lower CO₂ emissions significantly. Even though the Ministry required CEZ to consider alternatives with a higher net energy efficiency, CEZ did not propose alternatives in the documentation and insisted on developing the project without substantial changes. Nonetheless, CEZ received the required permits. The public's (particularly NGOs') objections were not reflected.



Expansion of the Heathrow airport

To manage the growing flux of travelers (78 million passengers in 2017), a plan to construct a third runway in the Heathrow airport was proposed in 2015. Since the start of the project, concerns regarding the effect it would have on air quality, and more globally on climate change, emerged.

ClientEarth criticised the National Policy Statement issued by the government as it failed to prove that air quality targets would be respected in the area if the construction was to be carried out. Greenpeace revealed that according to documents published by the UK government, if a third runway is to be constructed it would likely breach air pollution laws.

As part of the assessment process, a 10-week consultation launched on 17th January 2018 and running until 28th March 2018 was conducted. However, the results were not available at the time of the Parliament's decision in June 2018, which authorised the construction of the third runway. Read more on [META](#).

SQUEEZING OF CIVIL SOCIETY

Political pressures to silence and discredit NGOs and civil society groups are a threat to democracy

The involvement and participation of NGOs and the freedom for NGOs to operate is essential for a pluralistic and democratic society. However, this freedom to operate is increasingly being threatened by formal burdens such as new registration and financing requirements, but also more informally through the discrediting and smearing of NGOs.

This increase in regulatory burdens and negative sentiments against NGOs is often referred to as the squeezing of civil society space and has become a growing concern throughout Europe. Particularly humanitarian NGOs have come under attack, rendering their [assistance to refugees increasingly difficult](#) (examples in [Greece](#) and [Italy](#)). While many measures are not targeted specifically at environmental NGOs, the effects are often felt across the entire civil society sector, undermining their essential work in democracy.

New and additional requirements, often allegedly justified under the guise of accountability, transparency or security requirements, aim to distract NGOs from their actual advocacy work and to alienate NGOs from wider society. Funding cuts and additional requirements relating to the publication of funds also threaten the existential basis of NGOs which are often dependent upon international donations.

This squeezing of civil society through funding cuts and the connected stigmatisation of NGOs has been particularly severe in Hungary. Under a 2017 act “on the transparency of organisations supported from abroad”, [NGOs receiving more than 7.2 million HUF \(approximately 23,000€\) annually from sources outside of Hungary](#) must register as “foreign-funded” and use this label on all their publications. Failure to comply with the law [can lead to the organisation’s dissolution](#).

Similar discrediting and stigmatisation due to international funding is widespread, with NGOs being labelled as “[Sorosoids](#)” (i.e. an accusation that NGOs work to promote an alleged personal agenda dictated by Georg Soros) or alike and accused of representing foreign interests in several countries such as [Bulgaria](#), [Latvia](#), [Romania](#) and [Slovenia](#). Likewise, politicians in Bulgaria have called environmental organisations “[pseudo-environmentalists](#)”, where negative media campaigns against NGOs are also common and the coverage of advocacy campaigns focus on a negative image of the organisations, rather than on the content itself. This stigmatisation of NGOs and the accusation of serving foreign interests instead of

the public good seeks to discredit and detach NGOs from society and aims to undermine their legitimacy and role in the political discourse.

In addition, more formal restrictions on participation are also increasingly common throughout Europe. As discussed above, the participation of environmental NGOs in the planning of new strategies or projects brings in expertise, representation, and can help to ensure the implementation of and compliance with environmental law. Nonetheless, environmental NGOs have often been the scapegoat for lengthy planning and construction periods of large infrastructure projects. Instead of improving planning documents so that they comply with environmental law from the start, NGO participation that seeks to ensure the correct implementation of EU environmental law is blamed for slowing down the process. This type of reasoning was also the basis for [a recent German law](#), allowing for public hearings to be skipped and participation to be diminished in certain planning processes.

The case of the Deutsche Umwelthilfe (DUH), Environmental Action Germany, also suggests that NGOs’ work to ensure compliance with EU environmental law is not (always) welcomed. DUH has pushed for diesel bans throughout Germany by way of court rulings in response to high levels of air pollution. As a result, the governing party (CDU) has now launched [an investigation to review DUH’s charitable status](#) and has voted to cut federal funding for the NGO. This direct attack on an organisation seeking to ensure compliance with EU environmental law to protect the environment and human health is very worrisome and may also hint towards the troublesome political influence of the diesel lobby.

This development is also worrisome against the backdrop of a [recent court decision](#) to withdraw the charitable status of the globalisation-critical organisation ATTAC Germany. The basis of this was the claim that [ATTAC’s work addresses too broad of a political spectrum](#) that does not fit with one of the 25 listed charitable purpose of the national charity tax law. While political activism connected to the listed purpose of environmental protection is not as such affected by this decision, [there are concerns surrounding the implications of this narrow interpretation](#) for political activities of environmental NGOs. The direct effect of the withdrawal of charity status is that tax advantages no longer apply, making an organisation’s funding and therefore their participation more difficult.

Another method to limit NGO participation can be illustrated by the changes to the Austrian Environmental Impact Assessment (EIA) Act. The amendment now requires NGOs to have at least 100 members, or to be an association of five NGOs that together meet the membership criteria, [in order to participate in an EIA](#). These changes will lead to a stark reduction in the number of NGOs eligible to participate in EIA procedures. Other environmental laws also refer to this provision in the EIA Act so that these new [requirements will also impact laws](#) on water rights, air pollution, waste management and nature protection. The restriction of participatory rights of environmental NGOs is likely to significantly reduce the number of NGOs that are able to participate in EIAs so that [Ökobüro considers the new law to be in violation of EU law and the Aarhus Convention](#).

The most direct form of participation restriction was displayed by Poland during the UN climate talks in Katowice in December 2018, where at least [12 members of civil society groups with UN accreditation were denied entry into Poland](#) based on them being a 'threat to security'. This very direct denial to participate and the seemingly deliberate targeting of environmental activists is particularly disturbing in light of [the importance of civil society participation in combatting the threat of climate change](#). On the same premise of security, the much talked about "Salvini

decree" in Italy, which was intended as a package law for national security, has also reintroduced the crime of "road blocking" which was decriminalised in 1999 and converted to an administrative sanction. The crime can now carry a sentence up to 12 years imprisonment. The threat of this law was felt in Turin on 21 March of this year. The Critical Mass cyclists, a movement present worldwide made up of citizens and cyclists riding in mass across cities to raise awareness about road safety and the need to increase bicycle lanes to tackle city pollution, [were blocked and assaulted by riot police](#). It is unacceptable to criminalise peaceful and legitimate action based on security arguments, if this can lead to abuse and disproportionate application of the law by authorities against non-violent cyclists and citizens, [especially in light of the historical connotations this crime has in Italy](#).

The important role NGOs and civil society movements play for the protection of the environment, and also that they have within democracy, must be acknowledged and supported across Europe. Financial support, solidarity and a return to proportionate transparency and registration obligations are required to protect activist movements and the role of NGOs in ensuring the adequate implementation of environmental policies and law.

Recommendations:

- Member States have to recognise the **crucial role** that civil movements have in democracy, and **allow for environmental groups to voice their concerns**.
- National laws need to guarantee that there are the broadest opportunities possible for **NGOs and groups to express themselves and contribute to public debates**.



THE MOVE TO SQUEEZE CIVIL SOCIETY SPACE AT EU LEVEL?

Political agendas have slandered the NGO community - but the EU needs to ensure that its role is preserved

One may not believe that there is a trend to restrict public space in the EU, precisely because the EU is generally an advocate for democratic freedoms and rights, given also its rich legislation on human rights to support this. Yet the apparently small but significant changes that are occurring in some Member States to restrict the right of participation of NGOs and citizens permeate and [have been reflected at EU level](#). Only in 2017 there was an EU-led movement to challenge and question the role of NGOs receiving EU funding – often the only organised counterparts to the industry lobby. Again, with the premise of security and financial transparency, the proposal, which cast doubt on all NGOs receiving EU funding, and hence discredited the entire NGO community without relying on any proof to substantiate an alleged risk, led to a wave of negative media attention on NGOs. While this initiative did not pass, [such rhetoric can wrongly damage the credibility of all those NGOs](#) who do invaluable and crucial work for society correctly and transparently. Indeed, such accusations and attempts to weaken NGOs is even more troubling with [the increase of power of industry lobby groups](#) who disproportionately influence public policy.

There are opportunities for worthy NGOs to receive funding from the EU, such as through the LIFE programme which funds environmental and climate action. Such funding has been vital for ensuring that there are NGOs that can represent environmental interests at EU level. Considering that there are formal mechanisms for NGOs to participate and contribute to shaping policy and legislation (see above), the funding opportunities available to NGOs need to take into account the practical and financial resources necessary for NGOs to adequately participate in these processes. Too often [NGOs have to carefully decide how to use their resources](#) and strike a difficult balance between implementing their specific projects for which they receive funding, while also trying to influence policy-making in a lasting way.

Recommendations:

- **EU institutions should be transparent** regarding their dialogues with all stakeholders, NGOs and business alike.
- The EU needs to **preserve and strengthen its financial support to NGOs** that ensure that EU policies are designed in the interest of EU citizens and the environment.



CONCLUSIONS AND RECOMMENDATIONS :

- ➡ NGOs should support each other in consultations to prompt a wide stakeholder representation in policy, legislative and project design;
- ➡ The adherence to NGO campaigns by the people is a direct democratic expression and must be taken on board by decision-makers;
- ➡ Member States and the EU need to ensure that there is funding available for NGOs to fully work on their cause, including to enable a more full participation in national processes and decision;
- ➡ Member States must always inform and involve NGOs early in public participation processes and consultations, to ensure that their contributions are given at a time where there is still an opportunity for them to make a difference in the final decision-making;
- ➡ Member States' laws have to be in line with the Charter of Fundamental Rights, to ensure freedom of assembly and freedom of expression. All legislation, including within a security context, always need to uphold civil and political human rights;
- ➡ Member States and the EU institutions need to have clear public guidelines on how policies are decided and why they may lead to a result which contrasts to the majority of opinions;
- ➡ The Commission needs to guarantee that all impact assessments balance every interest, and that environmental considerations are always taken into account equally with economic ones;
- ➡ Democracy requires wide representation of interests in political debates. For a fully functioning and legitimate democracy, national authorities and the EU need to ensure that NGOs are fully part of the political dialogue and are not only included as a formality;
- ➡ Member States need to facilitate engagement, allow for early participation, listen to all stakeholders, and explain how EIAs and SEAs inform their final decisions.

UPDATES



In a major win for [access to justice](#), Spain's Supreme Court has overturned its own judgment, ruling that non-profit environmental organization [IIDMA must not pay court costs](#) in its case over the country's Transitional National Plan (TNP) for large combustion plants.



On 5 April, the Commission released the second cycle of the Environmental Implementation Review (EIR) [country reports](#).



The EEB is organising [an event during the EU Green Week](#) on enabling NGOs to engage in implementation of environmental law, where the problems that are raised in this series of reports will be discussed.



This was our second report in a series of four. Our next report will be released in September 2019 and will focus on Access to Information as a tool for implementing environmental rules in Member States. For more information on the Implement For LIFE project of the EEB, [visit our website](#).





EEB
European
Environmental
Bureau

European Environmental Bureau

Rue des Deux-Eglises 14-16
B-1000 Brussels, BELGIUM

Tel +32 2 289 1090

eeb@eeb.org | www.eeb.org
meta.eeb.org



With the support of the
LIFE programme of the
European Union

*This communication reflects the authors' views and
does not commit the donors.*