

Briefing: Access to Justice in the Effort Sharing Regulation

On 8 June 2022 the European Parliament voted in favor of introducing Access to Justice in the negotiation mandate on the Effort Sharing Regulation ([Amendments 20 and 42](#)).

Access to justice

Access to justice is the right for individuals and organizations to go to court when there is a violation of law. It makes it possible to challenge the decisions, acts or omissions of public authorities that go against existing legal commitments. It is an essential element of democracy and the rule of law. It makes sure that laws are enforced, that decisions by the majority are upheld and that authorities are held accountable.

In environmental matters, access to justice is a safeguard against legal obligations becoming empty promises. With extreme temperatures across Europe and energy unreliability ahead of the winter, citizens must be able to hold their governments to account at home when legally binding climate promises are jeopardized.

While there is EU legislation on the right to access to information in environmental matters, this does not exist for access to justice. Consequently, many national legal systems have no or not sufficiently strong provisions enabling the public to go to court over environmental decisions. In practice NGOs and citizens often find it difficult obtaining standing in front of court.

Trilogues, why the provision needs to be maintained

While the Council Negotiation mandate is silent on access to justice in the Effort Sharing Regulation, the European Parliament's position is a critical improvement. Below are the main reasons why:

- 1. Rule of law:** Accountability of public authorities is a fundamental democratic principle in a community of law, such as the EU. Access to Justice is the tool to exercise that principle. It is an international obligation under the Aarhus Convention, and international human rights treaties.
- 2. No additional legal obligation:** By enabling access to justice already at the national level, issues are solved at the source rather than escalating them to the European Commission or the European Court of Justice, empowering people to enforce laws directly.
- 3. Compliance:** Citizens will be able to hold their national public authorities and governments to account for climate commitments those same governments have made at the EU level. This will help ensure implementing the EU's new climate targets and the fit for 55 package.
- 4. Harmonization:** All available research shows that access to environmental justice is uneven across EU Member States¹. Access to justice in the Effort Sharing Regulation will support a level playing field on adhering to emission reduction requirements.

¹ See the Commission Communication [here](#), and examples of research commissioned by the Commission [here](#), and [here](#).

The wording of the Amendment

Parliament's amendment suggests nothing new. It only uses existing provisions in other EU environmental laws as a blueprint: Article 9 of Industrial Emissions Directive, Article 23 of the Seveso III Directive on major accident hazards, and Article 25 Environmental Impact Assessment Directive. It also mirrors the Parliament's position on access to justice in the LULUCF (Land use, land-use change, and forestry).

All the concepts included in the provision are already pre-defined by either other EU laws or EU case law. This includes the concepts of "public concerned"; "sufficient interest"; "interest of NGOs". The text of Amendment 42 can be found [here](#).

What the provision does

- It enables the public to go to court over failures to comply with Article 4 of the Effort Sharing Regulation. This includes the greenhouse gas emissions limits in paragraph 1 and 2.
- It enables the public to go to court with respect to National Energy Climate Plans or Long-Term Strategies.
- It obliges Member States to enable access to justice on the Effort Sharing Regulation commitments at national level.
- It strengthens the implementation and enforcement of the Regulation across all Member States.
- It puts EU Member States in compliance with their Aarhus Convention obligations².
- It helps implement aspects of the Communication on access to justice in environmental matters³.

What the provision doesn't do

- It does not create any new substantive obligations for Member States but rather enables the public to exercise existing rights which should be guaranteed already but in practice are not.
- It does not open the floodgates to court cases. On the contrary, it would add enforcement resources in case implementation is delayed.
- It does not water down the obligations of Article 9(3) and (4) of the Aarhus Convention. Rather it strengthens them by transposing them into national law. In national courts, the reliance on international conventions is less effective than reliance on national legislation.
- It does not impact the recently negotiated Aarhus Regulation. That regulation is binding upon EU institutions only whereas the Effort Sharing Regulation is concerned with Member States.

² Articles 9(3) and (4) <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

³ Para 33, of the [Commission's communication](#)