

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 a fundamental element of the rule of law and makes sure that laws can be enforced and that authorities are held accountable.

In environmental matters, access to justice is a safeguard against climate commitments, targets, and quotas 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.

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 strong. As a new addition to the Effort Sharing System, the provision on access to justice risks becoming a bargaining chip in the upcoming trilogue negotiations. Giving up on allowing citizens to hold their governments to account over greenhouse gas emissions targets would undermine the whole fit for 55 package. Please find below the main reasons on why the provision must remain in the final text:

- 1. Rule of law:** Accountability of public authorities is a fundamental democratic principle. Access to Justice is the tool to exercise that principle. It is an international obligation under the Aarhus Convention.
- 2. Enforceability:** 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.
- 3. National empowerment:** By creating access to justice at the national level, issues are solved at the source rather than politicizing them via the European Commission or the European Court of Justice, empowering people to enforce laws directly.
- 4. Harmonization:** All available research shows that access to environmental justice is uneven across EU Member States. With numerous EU funds and emission quotas distributed across Europe, access to justice supports a level playing field on how the funds and quotas are administered.

The ESR provision

The wording is based very closely on similar provisions in existing EU law such as the Industrial Emissions Directive, the Seveso III Directive on major accident hazards, and the 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 precise text can be found [here](#) under Amendment 42.

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 if National Energy Climate Plans or Long-Term Strategies do not adhere to EU law.
- 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 sets a precedent for the European Parliament's strong stance on the rule of law and citizen's environmental rights.
- It puts EU Member States in compliance with its Aarhus Convention obligations¹.
- It implements the Communication on access to justice in environmental matters².

What the provision doesn't do

- It does not create any new 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 which would slow down the implementation of the Effort Sharing Regulation. 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.

¹ Articles 9(3) and (4) <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

² Para 33,
https://ec.europa.eu/environment/aarhus/pdf/communication_improving_access_to_justice_environmental_matters.pdf