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Environmental Rights Report

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INTRODUCTION

This report was written as part of the BE LIFE project. The main objective of the project is to improve the available resources on environmental democracy rights for those who are trying to exercise these rights, those with a duty to uphold such rights (public authorities, the judiciary, etc.), and other stakeholders.

1. Aarhus environmental rights and the right to a healthy environment

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 1998)[1] (in the following: AC), is an international treaty that establishes a set of procedural environmental rights often also referred to as 'environmental democracy rights'. These rights reflect the principle that environmental protection can best be achieved with the involvement of all stakeholders, and particularly the public. The three pillars of the Convention are access to information, public participation and access to justice in environmental matters. The EU as well as all its member states are parties to the Convention and therefore bound to implement it within the EU legal order and in national environmental legislation.

The guarantee of these procedural rights aims – according to Art 1 AC – at 'contribut[ing] to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'. Thus, a link to the right to a healthy environment (R2HE) is explicitly made in the operative part of the AC, without however defining such a right. While there is still no self-standing legally binding R2HE on a global or European level, since the adoption of the AC in 1998, the R2HE has undergone

[1] UNECE, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

important developments:[2] Given that environmental risks increased dramatically with more negative impacts on human beings, international environmental law and human rights law increasingly converged and even partly merged,[3] culminating in the recognition of the R2HE in a resolution of the UN General Assembly in 2022.[4] On a European level, within the Council of Europe, within the Reykjavik process the potential of a self-standing R2HE in the context of the ECHR is under discussion, while jurisprudence has interpreted Article 8 of the European Convention on Human Rights to approximate the R2HE in certain respects.[5] On the EU level, while the EU Fundamental Rights Charter only contains a principle of environmental protection in Art. 37, the recent jurisprudence of the CJEU points to 'a turn to rights' in environmental contexts.[6] Given that today procedural environmental rights which are the centre of the AC are being 'eroded', arguably 'closer attention to the legal significance of the substantive right contained in the Convention can help to reinvigorate the procedural Aarhus rights'.[7]

1.1 Public access to environmental information

[2] See e.g. UN GA A/79/270, 2 August 2024, Seventy-ninth session, Overview of the implementation of the human right to a clean, healthy and sustainable environment, para. 1.

[3] This is visible in soft law but also legally binding jurisprudence, recently in ECtHR Verein Klimaseniorinnen Schweiz and others v Switzerland App no 53600/2020 (ECtHR, 9 April 2024) which referred in interpreting the ECHR's provisions to the AC, but also to the UNFCCC or the Paris Agreement.

[4] UN General Assembly, Resolution 76/300 [2022], adopted by 161 votes in favour, zero against and 8 abstentions. Before, the UN Human Rights Council had adopted a resolution on the right to a healthy environment (Human Rights Council, Resolution 48/13 [2021]).

[5] Compare e.g. Council of Europe Parliamentary Assembly, Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process, Report, Doc. 15955, 28 March 2024, available at: https://rm.coe.int/mainstreaming-the-human-right-to-a-safe-clean-healthy-and-sustainable-/1680af0866 For the potential impacts of the inclusion of the R2HE in the ECHR see e.g. Kobylarz: *Why Recognizing the Right to a Healthy Environment Would Strengthen the Environmental Human Rights Framework under the European Convention on Human Rights, VerfBlog,* 2025/4/07, https://verfassungsblog.de/ip-hr2he-recognizing-right-would-strengthen-echr/.

[6] Krommendijk *'*The Human Right to a Healthy Environment from an EU Charter Perspective*', (*VerfBlog*,* April 2025), https://verfassungsblog.de/ip-hr2he-eu-charter-perspective/,. He points to CJEU (Grand Chamber), 25 June 2024, C-626/2, *Ilva*.

[7] Barritt, The Aarhus Convention and the Latent Right to a Healthy Environment, *Journal of Environmental Law*, Volume 36, Issue 1, March 2024, p. 67–84.

The right of access to environmental information, constituting the Convention's first pillar, is articulated in Articles 4 and 5. This right obliges public authorities to both respond to information requests and actively disseminate relevant environmental information to the public.

Article 4 guarantees that public authorities must make environmental information available to any applicant—natural or legal person—without requiring them to state an interest. Responses must be provided within one month, or two months where justified by the complexity of the request. Refusals are permissible only under a limited set of exceptions, such as those protecting national security or commercial confidentiality, which must be interpreted restrictively and weighed against the public interest in disclosure of the information.[8]

Article 5 imposes a duty on public authorities to proactively collect and disseminate environmental information. This includes data on the state of the environmental elements (such as air, water, soil, and biodiversity), as well as factors affecting these elements, including emissions, noise, and waste.[9] Authorities are required to make this information accessible via electronic databases and other public platforms, ensure it is up to date, and present it in a clear and understandable form.[10] In cases of imminent threat to human health or the environment, Article 5 further requires urgent and immediate dissemination of relevant information.

The definition of "environmental information" is found in Article 2(3) and is notably broad. It encompasses not only environmental data but also information on policies, legislation, programmes, and activities impacting the environment, as well as data on environmental effects on human health and safety.[11]

[8] Art 4 AC.

[9] Art 5 (1) (a-b) AC.

[10] Art 5 (2-3) AC.

[11] Art 5 (1) AC

The European Union has transposed the Aarhus Convention into its legal framework through Directive 2003/4/EC,[12] which governs access to environmental information held by Member State authorities, and Regulation (EC) No 1367/2006,[13] which applies to EU institutions and bodies. These instruments establish minimum standards for access to information on the Union level to implement the Convention.

Access to information, as set out in the Aarhus Convention, is foundational for effective public participation and environmental accountability. It empowers individuals and civil society to engage meaningfully in environmental decision-making and provides the tools necessary to hold public authorities accountable for upholding environmental standards.

1.2 Public participation in environmental procedures

The right to public participation is included in Articles 6 to 8 of the Convention. These provisions aim to ensure that individuals and civil society organisations have meaningful opportunities to influence decisions that affect the environment.

Article 6 sets out detailed procedural requirements for public participation in decisions regarding specific activities listed in Annex I of the Convention, which includes inter alia industrial facilities and installations, waste management operations, and other environmentally significant projects.(1) Where activities not listed in Annex I may have a significant environmental effect, Article 6 may still apply, subject to a case-by-case determination by public authorities.

The Article mandates that the public be informed early and in an adequate, timely, and effective manner, particularly before any decisions are made.[14] This includes notifying the public of the nature of the proposed activity, the decision-making procedure, and the opportunities for public input. Importantly, Article 6(7) grants the public the right to submit

[12] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26.

[13] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies [2006] OJ L264/13.

[14] Art 6 (2) AC.

comments, information, and opinions during the consultation phase, and Article 6(8) requires public authorities to take due account of this input in the final decision. Article 7 extends participatory rights to the preparation of plans and programmes relating to the environment. While it is less prescriptive than Article 6, it obliges public authorities to make appropriate legal, practical and/or other provisions for participation, taking into account the objectives of the Convention. It thus covers a wide array of planning instruments, such as national energy strategies, sectoral and climate plans, and land-use frameworks, ensuring the public has a voice in long-term policy decisions that shape environmental outcomes. This provision is especially relevant regarding several instruments contained in the EGD.

Article 8 requires that public participation be provided in the development of normative instruments such as laws, regulations, and administrative rules that may have a significant effect on the environment. While this Article primarily addresses the executive branch, it also encourages a participatory legislative process.

Participation must be early, effective, and inclusive. Procedures must allow sufficient time for participation, ensure access to relevant information, and allow input from all interested members of the public, including non-governmental organisations. The Convention also encourages the use of electronic tools to broaden engagement.[15]

Under EU law, these obligations are reflected in procedural instruments including the Environmental Impact Assessment Directive[16] and the Strategic Environmental Assessment

[15] United Nations Economic Commission for Europe (UNECE), *The Aarhus Convention: An Implementation Guide* (2nd edn, UNECE 2014) 128–132.

[16] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 2014/52/EU) [2012] OJ L26/1.

Directive.[17] Regulation (EC) No 1367/2006 operationalises public participation obligations within the decision-making processes of EU institutions and bodies.[18]

The participatory rights embedded in the Aarhus Convention thus form a cornerstone of environmental democracy. By institutionalising the role of the public in environmental governance, the Convention not only strengthens transparency and legitimacy but also contributes to better adherence to environmental standards through informed and inclusive decision-making.

1.3 Access to justice

The third pillar of the Aarhus Convention is the right of access to justice, as established in Article 9. This right ensures that members of the public and environmental organisations can challenge violations of environmental law and procedural rights before judicial or quasi-judicial bodies. It also serves as an essential mechanism to guarantee the effectiveness of the other two pillars—access to information and public participation—by providing remedies when these rights are denied or improperly applied.

Article 9(1) provides that where a request for environmental information is not handled in accordance with the Convention, the requesting party must have access to a review procedure before a court of law or another independent and impartial body established by law. This ensures that the right to information is enforceable and subject to oversight. Article 9(2) grants members of the public having a sufficient interest or maintaining impairment of a right the ability to initiate legal proceedings to challenge the substantive or procedural legality of decisions, acts, or omissions that fall under Article 6 (i.e., specific activities with environmental impact). Parties to the Convention may also extend the access to justice provisions of Article 9(2) to other procedures such as those under Article 7. While Art 9 allows for some flexibility regarding the form of implementation in national legal orders, Parties

[17] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L197/30.

[18] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies [2006] OJ L264/13.

must interpret Art 9 in a manner that promotes broad access and is not unreasonably restrictive.[19]

Article 9(3) mandates that members of the public must have access to judicial or administrative procedures to challenge acts and omissions by private persons or public authorities that contravene environmental law. This grants the public access to environmental law enforcement, allowing for legal protection in areas such as pollution control, nature protection, and forestry. The scope of this provision is broad, but its application has often been limited in practice due to restrictive standing rules or procedural barriers at the national level. [20] Complaints procedures are one mechanism for implementation of this provision. The Aarhus Convention Compliance Committee (ACCC) has consistently interpreted this provision to mean that environmental non-governmental organisations should enjoy wide access to the courts to uphold environmental law.[21]

Articles 9(4) and 9(5) further require that access to justice must be fair, equitable, timely, and not prohibitively expensive, and that decisions be issued in writing and made publicly accessible. Parties are also encouraged to provide information to the public on how to access review procedures and to support capacity-building and legal assistance where necessary.[22] These guarantees aim to remove practical and financial barriers to environmental litigation and to ensure that fundamental due process is guaranteed.

At the European Union level, the EIA Directive and SEA Directive contain provisions requiring judicial review of certain environmental decisions. Moreover, Regulation (EC) No 1367/2006 (the Aarhus Regulation) applies the Convention to EU institutions and bodies. The

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[19] United Nations Economic Commission for Europe (UNECE), *The Aarhus Convention: An Implementation Guide* (2nd edn, UNECE 2014) 163–168.

[20] Clément, 'The Aarhus Convention: Access to Justice in Environmental Matters and the Role of NGOs' (2015) 24(2) *RECIEL* 183.

[21] Aarhus Convention Compliance Committee, *Findings and Recommendations with regard to Communication ACCC/C/2005/11 (Belgium)* (28 July 2006) ECE/MP.PP/C.1/2006/4/Add.2, paras 34–35.

[22] Art 9(5) AC.

implementation of Article 9(3) at the EU level has been widely criticized, particularly concerning restrictive standing rules before the Court of Justice of the European Union (CJEU).

Access to justice is central to ensuring the rule of law in environmental matters. It enables public oversight, promotes the upholding of environmental standards, and empowers civil society to enforce environmental protections.

THE EUROPEAN GREEN DEAL AND HOW SECTORAL LEGISLATION ENSHRINES ENVIRONMENTAL RIGHTS

1. Context

Several important gaps remain in European law implementing the Aarhus Convention. Even though Art. 9(3) UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, AC), 'the enforcement provision', is regarded by some as the most important pillar in Art. 9 AC, the EU has so far not transposed Art. 9(3) AC into law binding on the Member States or EU institutions.[23]

Back in 2003, the Commission had proposed a directive by which Article 9(3) AC was to be uniformly transposed into secondary Union law.[24] However, since Member States could not agree, the Commission withdrew the proposal for the Access to Justice Directive in 2014.[25] Content-wise, this proposal aimed to oblige Member States to ensure that members of the public[26] have access to administrative or judicial proceedings in order to take action against

[23] Eliantonio/Richelle, Access to Justice in Environmental Matters in the EU Legal Order: The "Sectoral" Turn in Legislation and Its Pitfalls, *European Papers* Vol. 9, 2024, No 1, pp. 261-274 doi: 10.15166/2499-8249/756, pp. 261-274 (CC BY-NC-ND 4.0) 263.

[24] COM(2003) 624 final (24 October 2003), Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters. The proposed directive was adopted by the EU Parliament in 2004 (606 P5_TA(2004)0239), but rejected by the Council.

[25] OJ EU 2014, no. C 153/3.

[26] With regard to private individuals: those who fulfil the criteria laid down in the member states' legal systems.

measures or omissions by public authorities and private individuals that violate environmental law. The sufficient interest or legal standing of environmental organisations should be presumed (Art. 9 (2) sentences 3 and 4 AC).[27] Subsequent initiatives to implement Art. 9(3) AC comprehensively did not succeed.[28]

Other obstacles exist at Member State level, e.g. regarding the legal standing of environmental NGOs and individuals, prohibitive costs, insufficient scope and standard of review applied by the judges.[29]

The CJEU tried to fill these gaps through jurisprudence (e.g. *Braunbär,*[30] *PROTECT*[31]). In addition, the Commission addressed shortcomings with soft law, e.g., through the Notice on Access to Justice in Environmental Matters.[32] In 2017, the Commission regarded this Notice, 'an interpretative communication on access to justice in environmental matters', as 'the most appropriate and effective means to address the problems'.[33] A reference point for the application of access to justice in environmental matters in EU law is 'substantial existing CJEU case-law'.[34] The Notice would 'provide significant clarity and a reference source' for national administrations responsible for ensuring the correct application of EU environmental law; national courts; the public, notably individuals and environmental NGOs; and economic

[27] Compare Art. 5(1) of the proposal.

[28] Commission Notice on access to justice in environmental matters, C/2017/2616. OJ C 275, 18 August 2017, para. 10; German Environment Agency (Umweltbundesamt), Wissenschaftliche Unterstützung des Rechtsschutzes in Umweltangelegenheiten in der 20. Legislaturperiode, Band II: Annex (2025) 136.

[29] Compare e.g. Bechtel, 'Access to Justice to Enforce the European Green Deal' (2023) <https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/access-to-justice-to-enforce-the-european-green-deal/> , referring to 2022 Environmental Implementation Review (COM(2022) 438 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0438), which recommends to 21 out of 27 Member States to improve access to justice by the public concerned.

[30] Case C-240/09 Lesoochranárske zoskupenie [2011] ECLI:EU:C:2011:125 (Grand Chamber)..

[31] Case C-664/15 *Protect [2017]* ECLI:EU:C:2017:987.

[32] Commission Notice on access to justice in environmental matters, C/2017/2616. OJ C 275, 18 August 2017, 1–39.

[33] Ibid., para. 9.

[34] Ibid., para. 9.

operators.[35] The Commission stressed that '[a] legislative option in the form of a dedicated access to justice legal instrument was also not further pursued' given previous experience. Interestingly, back in 2017, the Commission also did not regard 'a sector-by-sector legislative approach, focusing on adding access-to-justice provisions in areas in which specific challenges have been identified' to 'help in the short term' – the EU legislature would 'not appear to be currently receptive'.[36] Only three years later, however, the Commission regarded a sectoral approach as the right thing to do. In its 2020 Communication on 'Improving access to justice in environmental matters in the EU and its Member States', the Commission called on the co-legislators, the European Parliament and Council, to support provisions on access to justice in EU legislative proposals made by the Commission for new or revised EU law concerning environmental matters. The Commission noted that '[i]n recent years, the Council has been reluctant to adopt such provisions' (even though such access to justice provisions are drafted in light of CJEU case law as summarised in the COM Notice 2017), thereby 'departing from its previous approach' which had led in the past to the adoption of several directives.[37] The COM 2020 refers in para. 19 to several pieces of sectoral legislation.[38] The Commission stresses that 'clear provisions in EU environmental legislation in this matter would be in the interest

[35] Ibid., para. 9.

[36] Ibid., para. 10.

[37] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Improving access to justice in environmental matters in the EU and its Member States, COM(2020) 643 final (14 October 2020), para. 33.

[38] It mentions as examples: Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1-21; Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage OJ L 143, 30.4.2004, p. 56-75; Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17-119; Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, OJ L 197, 24.7.2012, p. 1-37; Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26-32.

of legal certainty and also necessary to underpin the obligation to grant effective judicial protection of the rights enshrined in EU law'.[39]

Thus, the latest approach to fill the gaps in implementation of the Aarhus Convention is to insert access to justice provisions in legislative proposals, applying a sectoral approach. In addition, references to Art. 9(3) AC are made in Commission communications or in recitals to secondary legislation. The European Green Deal (EGD)[40] – an ambitious environmental and climate policy package – provided an opportunity for the EU legislator to follow such a sectoral approach and promote the implementation of access to justice in environmental matters as established by the AC. It was in 2022 in the context of the EU Deforestation Regulation (see below) that the European Parliament and Council for the first time reached political agreement on including such access to justice provisions in the text of a Regulation.[41]

2. The sectoral legislation

Sectoral legislation in this report is understood to mean laws and regulations that govern environmental protection and resource management within specific sectors or areas of activity. In this report both sectoral legislation for industrial sectors and environmental media are addressed. Sectoral legislation is not an innovation – it existed already long before the EGD came into play, e.g. Art. 13 Environmental Liability Directive[42] contains complaints in line with Art. 9(3) AC.[43] Similarly, the Access to Information Directive, Environmental Impact

[39] Ibid., para. 34.

[40] European Commission, The European Green Deal, COM(2019)640.

[41] See e.g. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7444

[42] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143 , 30/04/2004 P. 0056 – 0075.

[43] According to Art. *13 ('Review procedures'), para. 1, '[t]*he persons referred to in Article 12(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.' Para. 2 stipulates that '[t]his Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings'. Art 12(1) mentions '[n]atural or legal persons: (a) affected or likely to be affected by environmental damage or (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively, (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition'. They 'shall be entitled to submit to the competent authority

Assessment Directive (EIA Directive), Industrial Emissions Directive (IED) and Seveso III Directives include such provisions.[44] In addition, already before the EGD, there had been unsuccessful attempts of the Commission to integrate access to justice provisions in legislative acts or proposals thereof (rejected by the Council), e.g. in 2017 in legislative proposals of the Single Use Plastics Directive, Drinking Water Directive[45] and Water Reuse Regulation - instead only a recital was introduced.[46]

In the following section, an overview of access to information, public participation and access to justice provisions in legislative acts of the EGD will be given: first those provisions already adopted; then provisions proposed and still being negotiated; and those proposed access to justice provisions rejected by the Council.

2.1 Overview of access to information provisions in sectoral legislation in the EGD

All the legislative files that are covered by this report contain provisions relating to access to information and specify according to their focus what kind of information needs to be provided to the public and sometimes also establish or utilize platforms on which the information needs to be provided. The legislation is thereby focused on the duty of member states to actively inform the public regarding the environment. Generally, however, the Directive on access to environmental information obliges member states to grant access to

any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive. What constitutes a "sufficient interest" and "impairment of a right" shall be determined by the Member States. To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).'

[44] See also European Environmental Bureau, The EEB's Provisional Analysis of the Performance of the EU on Access to Justice, 2023, 7 ff; https://eeb.org/wp-content/uploads/2023/12/EEBs-Assessment-of-A2J-Implementation-2.pdf

[45] Proposal for a Directive on the quality of water intended for human consumption (recast) COM/2017/0753, proposed and rejected provision: Article 16 Access to justice.

[46] See recitals 29, 47 and 39, respectively.

information and actively disseminate information to the public on a horizontal level.[47] This includes all environmental information that falls within the definition contained in Art 2 (1) of the Access to Information Directive. The sectoral provisions within the legislative acts therefore mainly fulfil the purpose of specifying the right on access to information for the respective fields. A short description of the focus of the provisions relating to access to information is provided below.

The **Deforestation Regulation** establishes an information system located at the Commission that has to contain the due diligence statements necessary under the Regulation.[48] According to Art 33(4) of the Regulation the datasets contained in the information system need to be made available to the wider public, however in an anonymised form.

The **Industrial Emissions Directive** contains an elaborate provision concerning access to information with regard to permits granted under the Directive, in which the competent authorities are required to make the contents of the decision public. This also encompasses the reasons on which the decision is based, the results of the consultations held and how they were taken into account.[49]

The recast of the **Ambient Air Quality Directive** contains the obligation for member states in its Art 26 to make air quality information publicly available, including real-time data and annual reports to inform the public about air pollution levels and health risks arising therefrom. The directive also mentions in its recital 9 that better information to the public is needed and should guide the objectives from the directive.

In the **Urban Wastewater Directive** recast there is an obligation for member states to provide an extensive range of information concerning their wastewater collection [50] which

[47] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26.

[48] Art 33, Art 4(2) Deforestation Regulation.

[49] Art 25(2) IED.

[50] Art 22(1) UWD.

subsequently needs to be made available to the public within the Pollutant Release and Transfer Register.[51]

The **Green Claims Directive** mainly focuses on access to information from a consumer protection perspective and grants the public rights to access to information.

The **Soil Monitoring Law** which was not yet adopted contains in its draft Art 19 an obligation for member states to make soil health data from monitoring activities publicly available. It specifies that this information should be provided through a digital portal.[52]

The **Effort Sharing Regulation** highlights in recital 22 that the rights enshrined in the Aarhus Convention are "essential elements […] to safeguard the rule of law" and specifies in Article 1(6) of its text that member states need to publicly make information available about the use of revenues by transfers of emission allocations to tackle climate change.

Within the **Land Use Land Use Change and Forestry Regulation**, the Commission is obligated to publish its assessment of the national forestry accounting plans submitted by member states and its technical recommendations regarding those plans.[53]

The **Governance Regulation** also includes a requirement to make public access to information easier through the establishment of an online platform.[54] Moreover, it requires member states to make their National Energy and Climate Plans available to the public.[55]

2.2 Overview of public participation provisions in sectoral legislation in the EGD

The second pillar of the Aarhus Convention is implemented in EU law within the EIA and SEA directives, in the horizontal Directive on public participation in respect of the drawing up of

[51] Art 22(3) UWD.

[52] Art 19 Soil Monitoring Law.

[53] Art 8 (6) LULUCF-Regulation.

[54] Art 28 Governance Regulation.

[55] Art 3 (4) Governance Regulation.

certain plans and programmes relating to the environment […][56] and with regard to EU decisions in the Aarhus Regulation.[57] The Directive refers to plans and programmes contained in certain legal acts named in its annex I.[58] The Aarhus Convention requires public participation with regard to permitting procedures[59], which is implemented through the EIA directive and public participation with regard to plans and programmes which is partly implemented by the public participation directive but also sectoral provisions contained in the relevant legal acts.

The requirements for public participation are that it is early, i.e. when options are still open and effective.[60] That means that it must be possible to still impact the outcome of the decision with input by the public.

Therefore, in the following section, an overview of some public participation clauses in EGD legislative files is provided.

The **Deforestation Regulation** includes, in recital 63, a commitment to ensuring civil society involvement in the monitoring and implementation of the Regulation. It does not contain a specific provision on public participation with regard to environmental decision making but only relating to the participation of local communities in countries that import into the EU.[61]

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[56] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [2003] OJ L156/17.

[57] Art 9 Aarhus-Regulation.

[58] (a) Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste. (b) Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances. (c) Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources. (d) Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste. (e) Article 14 of Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste. (f) Article 8(3) of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management.

[59] Art 9 (2) AC.

[60] See also in the introduction to this report.

[61] Art 30 Deforestation Regulation.

The **Industrial Emissions Directive** includes extensive public participation provisions. Article 24 requires public consultation in permit granting processes. This encompasses also the granting of a permit for new installations[62], the granting of a permit for any substantial change[63] and sets a comprehensive standard in its Annex IV for how public participation must be undertaken. This includes that members of the public concerned shall be given early and effective opportunity to submit comments and that these must be duly taken into account. Moreover, it sets out concrete pieces of information that the public must receive in order to be able to effectively participate.[64]

The **Ambient Air Quality Directive** (recast) in Article 19 establishes that the public must be given early and effective opportunities to participate in the preparation, modification, or review of air quality plans and air quality roadmaps in accordance with the Directive on public participation.[65]

The recast of the **Urban Wastewater Treatment Directive** does not contain any references to public participation in decision-making, notably not even in the provisions relating to the integrated urban wastewater management plans include a reference to participation or consultation of the public concerned.[66]

The draft **Soil Monitoring Law** (not yet adopted), in Article 10 (1) (b) requires member states to ensure that the elaboration of sustainable soil practices is done by involving the public concerned with early and effective participation procedures. Art 12 (4) (a) similarly requires the participation of the public concerned in the establishment and concrete application of the so-called “risk-based approach”.

[62] Art 24 (1) (a) IED.

[63] Art 24 (1) (b) IED.

[64] Annex IV (1) (a-g) IED.

[65] Art 19 (7) Ambient Air Quality Directive.

[66] Art 5 Urban Wastewater Directive.

The **Effort Sharing Regulation** only refers to public participation in its recital 22 while the LULUCF-Regulation does not include any references to public participation.

The **Governance Regulation** contains robust public participation requirements. It mandates that Member States ensure early and effective opportunities for the public to participate in the preparation of **National Energy and Climate Plans (NECPs)** and **long-term strategies**. Article 10 explicitly requires participatory dialogue platforms at the national level to facilitate inclusive policy making.

The **Nature Restoration Regulation** includes the explicit requirement that member states ensure that the preparation of the restoration plans that the member states need to establish is transparent, inclusive and effective and that the public concerned is given early and effective opportunities to participate.[67] This constitutes a strong provision for public participation.

The **Renewable Energy Directive** also includes a provision regarding public participation and references the SEA Directive, which is relevant to the designation of renewables acceleration areas for which public participation is necessary.[68] It also includes a reference to the Aarhus Convention in its recital 30 which mentions that provisions relating to public participation remain applicable.

2.3 Overview of access to justice provisions in sectoral legislation in the EGD

Different sectoral legislation that came out of the EGD contains specific provisions on environmental transparency, public participation in environmental decision-making and access to justice that goes beyond general minimum standards,[69] either because these

[67] Art 14 (20) Nature Restoration Regulation.

[68] Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources [2023] OJ L 2023/2413.

[69] Minimum standards: Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, Directive 2003/35/EC of the European Parliament and of the

minimum standards are either not sufficient or sufficiently clear, or where unique features of a law need to be accounted for.

While most legislative acts within the EGD fail to give access to justice, some contain provisions that fulfil the standard of the Aarhus Convention. The effectiveness of these sectoral provisions can be assessed by looking at who has legal standing to challenge which kind of acts by which kind of actors. The following legislative acts and their sectoral provisions are (roughly) sorted according to their adherence to standards set out by the AC.

The **Industrial Emissions Directive (IED)**[70], recast in 2024, aims to reduce emissions into air, water and land by industrial activities and large-scale pig and poultry farming. Such facilities can only operate if they have a permit. Permits are only given to those facilities which comply with the core principles of the Directive such as using the best available techniques (BATs) to prevent emissions. Other than mentioning the Aarhus Convention in recital 27, Article 24 obliges member states to grant access to information as well as participation of the public during the permit procedure. In addition, Article 25 provides access to justice by allowing the public to challenge the substantive and procedural legality of decisions, acts or omissions subject to Article 24. The recast version specifically adds that parties cannot be precluded from access to justice proceedings for not participating in the permit procedure (paragraph 1). While the Directive leaves it to Member States to decide at which stage these acts may be challenged and who has sufficient interest or is impaired in their rights to challenge these acts, it does clarify that environmental NGOs are to be granted this right (paragraph 3). It also highlights in paragraph 1 that the review procedure should be fair, equitable, timely and not prohibitively expensive. Similar access to justice provisions can be found in the newly added Article 70h, although the scope of activities only includes those mentioned in Annex Ia (rearing of pigs and poultry).

Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

[70] Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024 amending Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC on the landfill of waste (Text with EEA relevance),OJ L, 2024/1785, 15.7.2024.

One criticism is that only acts by state actors can be challenged, not those by private actors as Article 9(3) AC stipulates. In addition, there is no specific standard of review for challenged acts, so it is up to member states' own national law as to the kinds of remedies (e.g. compensation or annulment of a decision) available.

The **Deforestation Regulation**[71] aims at preventing both deforestation and deterioration of forests through restricting trade with goods associated with deforestation. Article 32 grants the right to review the legality of any of the decisions based on the Regulation for any natural or legal person with sufficient interest in accordance with national law. The standing of environmental NGOs is not specifically mentioned, unlike in other new legislation, which would require those NGOs to rely upon other legal provisions including the legal standard arising from the EU's and member states' obligations from the AC, which obliges them to grant standing to environmental NGOs meeting certain requirements. .[72] However, the Aarhus Convention is mentioned in the regulation's recitals[73], which according to CJEU jurisdiction[74] are used to interpret legislative acts. Thus, member states should be expected to comply with AC standards. Similar to the IED, only acts of the competent national authorities may be challenged, not those of private actors. In the case of this particular Regulation this deficiency matters less as most decisions would be made by public authorities. As to the legal ground, the Regulation only refers to the "legality" of decisions, though this can be interpreted in conformity with the AC as meaning reviews of both substantive and procedural legality.

[71] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150 9.6.2023.

[72] Art 2(5) AC.

[73] Recital 78 Deforestation Regulation.

[74] Case C-298/00 P, Italy v Commission, ECLI:EU:C:2004:240, para. 97; Cases C-402/07 and C-432/07, Sturgeon, ECLI:EU:C:2009:716, para. 42

The standard of review is again left for the states to determine according to their own law. Any financial or other barriers to access to justice are not mentioned in the Article. A corresponding provision was removed during the legislative process.[75]

The **Ambient Air Quality Directive**[76], only recently recast in November 2024, focuses on reducing harmful air pollution by closely monitoring air quality and establishing plans to improve it. In its Article 27 the Directive obliges member states to enable the public to challenge the following three kinds of decisions based on this directive: the location and number of sampling points (Art 9), air quality plans and air quality roadmaps (Art 19) and short-term action plans (Art 20).

Acts can be challenged on substantive and procedural grounds by anyone with sufficient interest or who is impaired in their right (paragraph 1). Here, environmental NGOs are specifically mentioned to fulfil this criterion; otherwise, member states are free to define this requirement in accordance with national law.

Paragraph 2 requires that any proceedings shall be fair, equitable, timely and not prohibitively expensive. Member states may again decide at what stage a decision may be challenged but they shall not render it impossible or excessively difficult (paragraph 3).

The **Urban Wastewater Treatment Directive**[77] regulates the treatment of domestic and industrial wastewater to prevent water pollution. Article 25 of the Directive concerns access to justice. The public may review and challenge both the procedural and substantive legality of decisions, acts or omissions subject to articles 6, 7 or 8, if they can prove sufficient interest or an impairment of a right. This means decisions on secondary, tertiary, and quaternary

[75] Initially added through amendment 222 but later removed: Amendments adopted by the European Parliament on 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council on making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM(2021)0706 – C9-0430/2021 – 2021/0366(COD))(1))

[76] Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe (recast), OJ L, 2024/2881, 20.11.2024.

[77] Directive (EU) 2024/3019 of the European Parliament and of the Council of 27 November 2024 concerning urban wastewater treatment (recast) (Text with EEA relevance), *OJ L, 2024/3019, 12.12.2024.*

treatment of wastewater are challengeable. Therefore, there is only partial access to justice as the public has no standing under the Directive in matters of the duty of authorities to carry out monitoring and risk assessment or extended producer responsibilities for private persons. The latter cannot be challenged as only acts of public authorities fall under the provision.

Again, as NGOs are not explicitly mentioned to have sufficient interest, it is left up to the member states to comply with the AC and decide who exactly benefits from this right. In addition, the provision does not regulate how and at what stage decisions may be reviewed. It does however obligate states to provide fair, equitable, timely and not prohibitively expensive access to justice. In the new recast version, the Directive also mentions that prior participation in the proceedings is not necessary to challenge a decision.

There are two Directives that are being negotiated at the time of writing,[78] the **Directive on Soil Monitoring and Resilience**[79] with its goal to monitor and improve the quality of soil and the **Green Claims Directive**[80], aiming to regulate claims on environmental merits of consumer products ("greenwashing"). The proposal for the former has a similar provision (Article 22) to the ones already illustrated above, including a specific mention of environmental NGOs having sufficient interest to challenge acts. Still in the current proposal not all decisions and acts may be reviewed, only those concerning the "assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities" (Paragraph 1). Again, the actions of private persons could not be challenged under the draft.

The access to justice provision in the latter proposal, the Green Claims Directive, differs from those just mentioned. According to the proposed Article 16 Paragraph 5, only persons or organizations, including NGOs, who have submitted a substantiated complaint regarding a

[78] This report was written in May 2025.

[79] Proposal for a Directive of the European parliament and of the Council on Soil Monitoring and Resilience (Soil Monitoring Law), COM/2023/416 final

[80] **Proposal** for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims **(Green Claims Directive),** COM(2023) 166 final, 22 March 2023

trader who failed to comply with the Directive may access a court to review procedural or substantive legality of decisions.

It should also be noted that several legislative acts did contain proposals including a provision granting access to justice that were later removed. Among them is the **Nature Restoration Law**[81] which aims at restoring ecosystems by rehabilitating habitats and lost species. The draft proposed by the European Parliament[82] featured a broad access to justice provision but it was removed[83] in the final and published version. Now the Aarhus Convention is mentioned only in recital 82, a trend to be observed in the legislative practice of the EU.[84] The recital also references the CJEU jurisprudence which calls on member states to implement Article 9(3) of the AC by providing legal remedies for the public. While one could argue that this is still better than no mention of the AC at all, recitals are not legally binding and even if they might be used to interpret certain provisions, the clear refusal to integrate an access to justice provision contradicts any argument to use it as such.[85] It is therefore advisable to base this approach directly on the AC.

Similarly, the **Land Use, Land Use Change and Forestry Directive** (LULUCF)[86] featured a provision in its proposal granting access to justice but was later adopted without it. The **Effort**

[81] Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 [2024] OJ L, 2024/1991, 29.7.2024.

[82] Proposal for a Regulation of the European Parliament and of the Council on nature restoration

COM/2022/304 final, 22 June 2022.

[83] After EP had approved compromise proposal of Regulation text in February 2024, representatives of eight EU Member States withdrew their approval before Council vote in March 2024.

[84] German Environment Agency (Umweltbundesamt), Wissenschaftliche Unterstützung des Rechtsschutzes in Umweltangelegenheiten in der 20. Legislaturperiode, Band II: Anhang (2025) p. 143.

[85] Ibid, p. 146.

[86] Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU [2018] OJ L 156, p. 1.

Sharing Regulation (ESR)[87] and the **Governance Regulation**[88] which create a framework for climate and environmental action in the EU, also initially included such provisions which were later dropped during trilogue negotiations. This is particularly disappointing as both the ESR and the Governance Regulation have overarching applicability and are central in the EUs effort to reach climate targets. The Governance Regulation refers to the Convention only in recital 28 and 29, although focusing more on early public participation and access to information. The problem of a missing access to justice clause becomes particularly apparent with a central instrument of the Governance Regulation, namely the National Energy and Climate Plans (NECP) for which the Regulation does not include a right of review. As a central element of member states climate policy for years to come, reviewability for these plans would be essential to ensure environmental democracy. Even though member states are under the obligation to include a right of review in their national legal order, most do not allow the review of the NECP.

2.3.1 (IN)CONSISTENCIES WITHIN ACCESS TO JUSTICE PROVISIONS

When it comes to which acts may be challenged, some provisions mention all acts that are based on the respective Directive or Regulation, while others only allow acts based on certain articles to be challenged. They all have in common that they only concern acts by public authorities, not those of private actors, which is not in accordance with Art. 9(3) AC.

Anyone with sufficient interest or who is impaired in their right has legal standing to challenge these acts, but there is no consistency as to whether environmental NGOs automatically fulfill

[87] Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 [2018] OJ L 156, p. 26.

[88] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU, Council Directives 2009/119/EC and (EU) 2015/652, and repealing Regulation (EU) No 525/2013 [2018] OJ L 328, p. 1.

this criterion. Of course, it should be expected from MS that where this is the case they interpret it in accordance with the AC and do grant them access to justice.

In most provisions, but not all, it is stressed that there is no requirement for prior participation in procedures. The same applies to the legal ground – usually decisions can be challenged based on substantive and procedural grounds and where this is not explicitly stated it can be assumed to be applied in accordance with the AC.

The provisions are silent on the stage at which acts may be challenged and what the review procedure should look like. Still in e.g. the Ambient Air Quality Directive it is explicitly mentioned that MS should not render it impossible or excessively difficult. In addition, access should be fair, equitable, timely and not prohibitively expensive; this is mentioned in several provisions (IED, UWTD, AAQD).

2.3.2 CONCLUSION ON ACCESS TO JUSTICE PROVISIONS

Since obstacles to access to justice (lack of standing, prohibitive costs, insufficient standard of review etc.) usually follow from binding national procedural rules, integrating legally binding sectoral provisions in EU legislation are to be preferred to recitals. In general, the inclusion of access to justice provisions in sectoral legislation is likely to contribute to ensuring better protection of rights. Still, several challenges exist also with sectoral legislation:

References to national law in the clauses constitute a challenge in relation to legal certainty. It was in the context of the EU Deforestation Regulation that in 2022 the European Parliament and Council for the first time reached political agreement on including such a provision in the main text of a Regulation.[89] However, the wording that was agreed on contains three references to national law, a stark contrast to the wording of the original Commission proposal which was much clearer.

Legal scholarship has already criticized that 'the insertion and scope of access to justice provisions in these acts seems haphazard and not justified by underlying legal considerations, but rather the product of political compromise'. It even argued that 'this fragmented

[89] See e.g. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7444

approach cannot be seen as appropriately complying with the requirement of ensuring "wide access to justice"' under the AC.[90] While the sectoral approach would constitute 'a step in the correct direction' it could not 'be regarded as fulfilling the objective of ensuring the "wide access to justice" promise of the Aarhus Convention'.[91]

Consistency among different legislative acts in the environmental field is a major challenge: they 'represent a minor part of EU environmental law' while Art. 9(3) AC aims at encompassing all environmental areas.[92] Apart from that, in relation to existing mechanisms in sectoral legislation 'clear discrepancies in scope emerge, with the ensuing difficulties for Member States to transpose this mosaic of similar – yet not completely overlapping – obligations'.[93]

In conclusion, while a general directive to transpose Art 9(3) AC would be preferable, sectoral legislation can provide effective access to justice. As long as there is a provision granting at least the possibility to challenge some acts, it can be interpreted in the meaning of the Aarhus Convention thereby broadening its scope. Of course, where there is no such provision and only a reference in the recitals, it becomes harder to use as a legal basis that member states are required to implement. Still, even in these cases one can still rely on the fact that all member states are parties to the Aarhus Convention and as the European Court of Justice has made clear[94]: member states are always responsible for guaranteeing access to justice so that the public can make sure that individuals, companies and public authorities comply with environmental law.

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[90] Eliantonio/Richelle, 263-64.

[91] Ibid., 274.

[92] Ibid., 274. current approach implies that EU citizens and ENGOs will only be able to reply on a mechanism of access to justice foreseen by EU legislation (and thus to be foreseen in national law) in certain areas.

[93] Ibid., 274. Regarding the risk of inconsistency see also Bechtel, 'Access to Justice to Enforce the European Green Deal' (2023) <https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/access-to-justice-to-enforce-the-european-green-deal/

[94] Case C-664/15, Protect [2017] ECLI:EU:C:2017:987 (Grand Chamber).

THE RELATIONSHIP OF EXISTING COMPLIANCE MECHANISMS TO THE ENVIRONMENTAL RIGHTS ESTABLISHED BY THE GREEN DEAL

1. environmental compliance mechanisms within Eu law

The issue of enforcement of EU environmental law exists on several levels: Firstly, there are the mechanisms for compliance of the EU institutions with the requirements of the Aarhus Convention. Secondly, EU law supports compliance of member states with access to justice requirements that they need to implement in their national law. And thirdly, the degree of maintaining access to justice within EU member states relating to environmental rights contained in the EGD can be assessed. The following analysis focuses on the two former aspects of environmental compliance.

1.1 The standard set forth by the Aarhus Convention

The requirements concerning public participation, information and access to justice that can be found in elements within the EGD legislation are based on Articles 4, 6 and 9 of the Aarhus Convention, to which the EU and all its member states are parties. Therefore, these provisions and their interpretation by the Aarhus Convention Compliance Committee (ACCC) as far as incorporated in EU law by the Court of Justice of the EU (CJEU) serve as the standard for assessing compliance by the EU and its member states with environmental democracy rights.[95]

[95] See also in the introduction.

Moreover, the CJEU has produced a wide range of jurisprudence regarding the standards of environmental democracy rights, including access to justice.[96]

In the following section, an overview of existing complaints mechanisms is provided and their relevance for the enforcement of the rights arising from the EGD is analysed.

1.2 Complaint to the ACCC

The Aarhus Convention Compliance Committee serves as the main compliance body under the Aarhus Convention. It is mandated to review compliance and implementation of parties with the Aarhus Convention upon submission, referral, communication or request.[97] As a result of the review, the Committee gives recommendations for corrective action. The Committee's actions are not binding and do not function as a redress mechanism.

Compliance cases can arise in various ways. A contracting party that has reservations about another party's compliance with its obligations under the Convention can make a submission.[98] The secretariat of the Convention is tasked with referring matters to the Compliance Committee if it becomes aware of possible non-compliance by a party.[99] In terms of private enforcement the mechanism under the ACCC offers considerable options to "members of the public",[100] who can submit communications. The procedural requirements are that communications may not be anonymous, an abuse of the right to make communications, manifestly unreasonable nor incompatible with provisions of decision I/7

[96] Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* [2011] ECLI:EU:C:2011:125; Case C-260/11 *Edwards and Pallikaropoulos v Environment Agency and Others* [2013] ECLI:EU:C:2013:221; Case C-570/13 *Gruber v Unabhängiger Verwaltungssenat für Kärnten* [2015] ECLI:EU:C:2015:231 and many more.

[97] Paragraph 13 of annex to decision I/7 ECE/MP.PP/2/Add.8, 02.04.2004.

[98] Paragraph 18 of annex to decision I/7.

[99] Paragraph 17 of annex to decision I/7.

[100] For a clear definition see Art 2(4) AC: "The public means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups"

by the Meeting of the Parties that established the compliance mechanism or the Convention itself.[101]

This mechanism is generally applicable both to the EU and to all EU member states as parties to the Convention. Regarding the EGD sectoral legislation and the environmental standards contained therein, it is relevant for enforcement on both levels. If legislation or acts of the EU itself may be non-compliant with the Convention, the complaints mechanism under the ACCC can be used for enforcement of the rights granted under the Aarhus Convention. There are already several examples of communications brought against the EU in which the ACCC found a case of non-compliance – e.g. with the requirements of a request for internal review of state aid decisions of the ACCC.[102] Through a complaint to the ACCC about EU legislation or acts of EU organs, recommendations of the ACCC on how to achieve compliance could be reached. Complaints could especially focus on the lack of access to justice clauses within EU environmental legislation, or a lack of public participation in EU legislative processes.[103]

1.2.1 RELEVANCE OF COMPLAINTS BEFORE THE ACCC FOR THE ENFORCEMENT OF EGD RIGHTS

Within the national context, any non-compliance of a member state with obligations related to rights enshrined in the Aarhus Convention can be brought before the ACCC by a communication. This can either concern the modalities of the implementation of the EGD or the application of EGD rights by national authorities and courts. As regards environmental rights established through the EGD, this can for example relate to inadequate public participation in the creation of plans foreseen in the sectoral provisions, such as the NECP within the Governance Regulation or restoration plans arising from the Nature Restoration Regulation. Since EU law only provides a minimum standard, in case subsequent national implementation does not suffice to comply with rights enshrined within the Aarhus

[101] Paragraph 20 of annex to decision I/7.

[102] ACCC/C/2015/128 European Union, all materials available at: https://unece.org/env/pp/cc/accc.c.2015.128_european-union.

[103] Examples of successful communications include case ACCC/C/2015/128 concerning a lack of access to justice in state aid matters and Decision VII/8f concerning inadequate public participation in NECPs.

Convention, the ACCC can determine there is non-compliance with the Convention regardless of whether the member state has strictly implemented EU law.

1.3 Rapid Response Mechanism under the Aarhus Convention

At its seventh session in October 2021 the Meeting of the Parties to the Aarhus Convention adopted a Rapid Response Mechanism through decision VII/9, based on Article 3 para 8 of the Convention. The mechanism is established in the form of a Special Rapporteur whose role is to take measures to protect any person experiencing or at imminent threat of penalization, persecution or harassment for seeking to exercise their rights under the Aarhus Convention if there is a lack of redress in the member state. The decision recognizes that an "environmental defender" is "any person exercising his or her rights in conformity with the provisions of the Convention". [104] Under the Rapid Response Mechanism, the Special Rapporteur has various tools available to address complaints and protect environmental defenders. He can write letters to the Party concerned, issue immediate and ongoing protection measures, use diplomatic channels, issue public statements or bring the matter to the attention of other relevant human rights bodies.[105]

Penalization, persecution or harassment is a condition for application of the RRM. This can range from arrest and detention, search and seizure, intimidating, repeated or prolonged telephone calls[106] to defamatory statements issued against environmental defenders[107] or SLAPP suits.[108]

1.3.1 RELEVANCE OF THE RRM FOR THE ENFORCEMENT OF EGD RIGHTS

[104] Recital 9, Meeting of the Parties to the Aarhus Convention, decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention, ECE.MP.PP.2021.CRP.83.

[105] Meeting of the

[106] Weber 'Are climate activists protected by the Aarhus Convention? A note on Article 3(8) Aarhus Convention and the new Rapid Response Mechanism for environmental defenders.' *RECIEL*. 2023; 32(1): 67-76.

[107] ACCC/C/2009/36 Spain (n 41)

[108] The term SLAPP suit is used to describe litigation efforts aimed at silencing environmental defenders. SLAPP suits often involve civil litigation and allegations of defamation; the litigants usually demand large sums of damages, thus threatening targeted activists and journalists with potential financial burden. Additionally, defendants are immediately faced with the need of legal assistance, which can be expensive as well.

Through the RRM, environmental defenders who are subjected to persecution or harassment when exercising environmental democracy rights under the EGD can seek assistance from the Special Rapporteur. Thereby the mechanism can serve to ensure an effective exercise of the rights arising from the Aarhus Convention that were implemented in the EGD. More details regarding complaints to the Special Rapporteur will be covered in part 3 of this report.

1.4 Request for internal review

Under Article 10 of the Aarhus-Regulation[109] environmental non-governmental organisations that fulfil the criteria set out in Article 11 of the Regulation[110] are entitled to make requests for internal review of any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene EU environmental law. This constitutes a form of administrative review, since the concerned EU institution or body subsequently needs to issue a review of its own administrative act, deciding whether it acted in conformity with EU environmental law.[111] After this decision, the NGO that lodges the review request is permitted to appeal to the EU courts, which constitutes a form of judicial review.[112] Until 2021, the acts subject to review under the Aarhus regulation were very strictly limited to decisions relating to chemicals and GMOs; however, after the ACCC issued recommendations that these criteria were too narrow to adhere to the standard of the Aarhus Convention, the Regulation was amended to include all administrative acts that contravene environmental law.

1.4.1 RELEVANCE OF RIRS FOR THE ENFORCEMENT OF EGD RIGHTS

[109] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 in the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

[110] The criteria are that the NGO is an independent non-profit-making legal person, has the primary objective of promoting environmental protection, has existed for more than 2 years and the RIR relates to the objectives and activities of the organization.

[111] Milieu Consulting for DG Environment, Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters, 2019 p. 36.

[112] Art 12 Aarhus Regulation with a reference in the provision to Art 263 TFEU.

Requests for internal review are especially relevant to ensure environmental rights arising from the EGD when acts of EU institutions or bodies are concerned. If such an act is of an administrative nature and contravenes EU environmental law, including the sectoral legislation of the EGD, or endangers the goals of the EGD through a contravention of EU environmental law generally, a request for internal review and subsequent possibilities to appeal to the Courts can ensure compliance with EU environmental law. Environmental NGOs have for example brought a request for internal review against a delegated regulation supplementing the Taxonomy Regulation, that established criteria for determining whether an economic activity is qualified as environmentally sustainable. The RIR was not successful before the Commission, but the NGOs have appealed before the EU general court, which has not yet decided the case.[113] Another relevant example is the request for internal review brought by environmental NGOs against council regulation 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy for misusing the Council's competence for emergency regulations, violating EU environmental law and international law. The Council rejected the RIR, but the NGOs appealed to the General Court, which has not yet decided the case.[114] Moreover, NGOs have brought RIRs against various acts including Commission Implementing Regulation (EU) 2017/2324 renewing the approval of the active substance glyphosate,[115] Decision of European Commission of October 31st 2019 to approve 4th list of Projects of Common Interest,[116] Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards

[113] https://environment.ec.europa.eu/law-and-governance/aarhus/requests-internal-review_en; https://www.clientearth.org/latest/press-office/press-releases/eu-taxonomy-environmental-groups-start-legal-action-against-sustainable-gas-classification/; https://climatecasechart.com/non-us-case/clientearth-and-others-v-commission/; Case T-215/23 filed in 2023 but to date not decided.

[114] https://www.oekobuero.at/de/news/2023/07/anfechtung-der-eu-notfallma%C3%9Fnahmen-verordnung/; https://bankwatch.org/wp-content/uploads/2023/03/2023_03_Legal-Challenge-against-Council-Regulation.pdf.

[115] Available at: https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/ef2d045f-6862-413c-8315-e3b25fd14bcb/details?download=true.

[116] Available at: https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/ec8936f2-fe4a-4299-881c-59f2188cf7fe/details?download=true.

economic activities in certain energy sectors, and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities.[117]

1.5 Actions for annulment under Art 263 TFEU

An action for annulment under the TFEU is designed to protect natural as well as legal persons against unlawfully binding acts by institutions, bodies, offices and agencies of the EU. In the respective proceedings the CJEU or the General Court examine the contested acts according to the legal standards of Union law generally.[118] There are four grounds for annulment under Art 263: lack of competence, infringement of an essential procedural requirement which includes the right to defense, the right to a trial and the right to good administration of their affairs, infringement of the Treaties or of any rule relating to their application and misuse of powers. In contrast to the Request for internal Review under the Aarhus Regulation, an action for annulment can also include legislative and not solely administrative acts. The act under review must be legally binding, which means it must be intended to have legal effects.[119] For private parties, including NGOs and individuals the applicant must demonstrate that their interests are affected through the binding nature of the contested act and bring about a clear change in the applicant's legal position and "the measure affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons".[120] Due to this very narrow interpretation by the CJEU environmental NGOs are until now virtually excluded from launching a direct action for annulment against general acts of the EU that are not directly addressed to them due to non-compliance with union primary law. This jurisprudence is commonly referred to as the Plaumann-formula.[121] Moreover, the CJEU has held to date that reliance on Art 9(3) Aarhus

[117] Available at: https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/f8d10ac6-3ec7-4ed7-a7f1-65a3927d476c/details?download=true.

[118] European Parliamentary Research Service, Action for annulment of an EU act (2019) available at: https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)642282.

[119] Case 60/81 IBM v Commission EU:C:1981:264, [1981] ECR 2639.

[120] Case 25/62 Plaumann & Co v Commission [1963] ECR 95, 107.

[121] Ibid.

Convention in proceedings under 263 TFEU is not permissible, as it does not contain any unconditional and sufficiently precise obligations that directly regulate the legal position of individuals.[122]

1.5.1 RELEVANCE OF ACTIONS FOR ANNULMENT FOR THE ENFORCEMENT OF EGD RIGHTS

An action for annulment under Art 263 could firstly be relevant for EGD enforcement, if it is an appeal against a decision by an EU institution about a request for internal review under the Aarhus Regulation.[123] Besides this case an action for annulment by an environmental NGO would have to fulfil the Plaumann criteria and thus bring about a clear change in their legal position and individually affect them. Moreover, it would have to fulfil at least one of the grounds for annulment. Relevant cases could be where an essential procedural requirement such as the right to a fair trial is infringed upon by a union act relating to the EGD or where acts contradict the rules of the treaties. However, since there is a strict two-month limitation to bring an action for annulment after the issuance of an act, a direct action for annulment against legislation of the EGD that is already in force is not possible anymore. If proposals for still outstanding legal acts are adopted, this could be an option to enforce procedural guarantees or contradictions with the EU treaties. A direct enforcement of the rights that the EGD itself grants in the realm of environmental law is however probably not possible under the instrument of an action for annulment.

1.6 Preliminary reference procedure under Art 267 TFEU

The preliminary reference procedure under Art 267 TFEU is of great relevance for the enforcement of environmental democracy rights throughout EU law. The CJEU can give preliminary rulings regarding the interpretation of the Treaties[124] and the validity and

[122] Case T-600/15 PAN Europe and Others v European Commission EU:T:2018:763.

[123] See examples above under footnotes 54 and 55.

[124] Art 267 (a) TFEU

interpretation of acts of the institutions, bodies, offices or agencies of the Union.[125] Preliminary reference procedures are initiated by national courts of the EU member states. The national courts initiate the procedure either when they have questions or doubts regarding the correct interpretation or validity of an EU law or act necessary to their decision. If it concerns a court of last instance, the court is obligated under Art 267 to submit the question for preliminary ruling. Preliminary reference procedures are a highly important instrument for the development of EU law, especially EU environmental law since national Courts, which submit the questions, are the main enforcers of EU law through the national legal order of member states. Through the rulings of the CJEU the EU legal principles of primacy of union law, direct effect and effectiveness can find application within member states. As mentioned in chapter 1 of this report, the jurisprudence of the CJEU played a major role in the effective implementation of the right of access to justice within the union legal order, since there is to date no horizontal regulation on access to justice on the EU level.[126] Through this procedure the CJEU established the right of concerned persons to invoke directly effective provisions of EU environmental law in national courts, which plays a major role for effective environmental protection in many member states.[127] The jurisprudence of the CJEU shapes how the rights of the public concerned are implemented in member states, as states tend to follow the rulings of the CJEU more stringently than the recommendations of the ACCC.

1.6.1 RELEVANCE OF PRELIMINARY RULINGS FOR THE ENFORCEMENT OF EGD RIGHTS

[125] Art 267 (b) TFEU

[126] See p. 11 of this report and Commission Notice on access to justice in environmental matters, C/2017/2616. OJ C 275, 18 August 2017, 1–39.

[127] Case C-72/95 Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland EU:C:1996:404, [1996] ECR I-5403; Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij EU:C:2004:482, [2004] ECR I-7405; Case C-237/07 Dieter Janecek v Freistaat Bayern EU:C:2008:447, [2008] ECR I-6221; Case C-404/13 ClientEarth v Secretary of State for the Environment, Food and Rural Affairs EU:C:2014:2382.

To achieve access to justice within member states, the CJEU has relied on Art 9 of the Aarhus Convention and Article 47 of the Charter of Fundamental Rights.[128] It also plays a role in interpreting access to justice provisions that are included in EU law, e.g. the Environmental Impact Assessment Directive and the Industrial Emissions Directive. This function is highly relevant for the implementation of rights arising from the EGD. Application within member states is already triggering and will in the future trigger national proceedings concerning the applicability or interpretation of rights arising from the EGD. Through a preliminary ruling the CJEU can then clarify and shape the interpretation of the provisions Union-wide. The preliminary reference procedure can constitute an indirect action for annulment through a national court that requests a preliminary ruling by the CJEU.

1.7 Infringement proceedings and complaints to the Commission

If the EU Commission identifies possible infringements of EU law either on the basis of investigations or arising out of complaints from citizens, businesses or other stakeholders it can start an infringement procedure according to Art 258 TFEU. For this purpose, the Commission first sends a letter of formal notice to the member state concerned which must reply with details within 2 months. After the consideration of the member state's reply, the Commission when concluding that the member state is failing to comply with its obligations under EU law can send a reasoned opinion explaining to the member state why it considers there to be a breach of EU law. The member state is then requested to inform the Commission which measures it took to comply with EU law. If the Commission is still not satisfied it may decide to refer the matter to the CJEU. It needs to be mentioned that most infringement proceedings are settled during the formal procedure and not referred to the Court. This is because member states implement the changes requested by the Commission but also due to political considerations. The exact content and process of infringement proceedings are usually not public, which is a major shortfall for ensuring democratic control and

[128] Case C-240/09 Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky EU:C:2011:125, [2011] (Habitats Directive), Case C-664/15 Protect, EU:C:2017:987[2017] (Water Framework Directive), Case C-197/18 Wasserleitungsverband Nördliches Burgenland v Land Burgenland EU:C:2019:824 [2019] (Nitrates Directive).

transparency.[129] The timespan in which the Commission investigates further can last many years: an infringement procedure against Austria for non-compliance with Aarhus rights in the EU legal order was started in 2014.[130] To date it has however not been brought before the CJEU even though Austria is not yet compliant with EU law. The Commission in 2023 also opened infringement proceedings regarding access to justice in the Netherlands and Slovakia.[131]

If the Commission decides to bring the proceedings to the CJEU, it decides whether the member state complies with EU law and orders the rectification of the situation.

Infringement proceedings are a powerful instrument by which the Commission can ensure that member states comply with their obligations under EU law, especially as regards gaps in implementation. The Commission can not only start infringement proceedings upon results from its own investigations but also react to complaints by private entities. Natural and legal persons can report a breach of EU law by a national authority with the Commission and thereby trigger investigations and subsequent infringement proceedings against member states.

1.7.1 RELEVANCE OF INFRINGEMENT PROCEEDINGS THE ENFORCEMENT OF EGD RIGHTS

This process is not a form of quick redress and not targeted to solve an individual personal situation. It can however play a role when member states fail to implement directives from the EGD into their national law. Either the Commission can act upon its own or private persons

[129] https://www.politico.eu/article/ursula-von-der-leyen-green-enforcement-environmental-law-policy-lack-transparency/; Eliantonio (2018) The role of NGOs in environmental implementation

conflicts: 'stuck in the middle' between infringement proceedings and preliminary rulings?, Journal

of European Integration, 40:6, 753-767.

[130] Infringement procedure Nr. 2014/4111.

[131] See press release of the European Commission of 7 February 2024, available at https://ec.europa.eu/commission/presscorner/detail/en/inf_24_301

or NGOs can use the opportunity for a complaint to inform the Commission about a failure to adhere to EU law.

1.8 EIR

The Environmental Implementation Review is an instrument designed to improve the implementation and compliance of member states through reports by the Commission on the status of implementation and priority measures to ensure compliance. The idea behind the Environmental Implementation Review is to assist member states with implementation and ensure that legal action by the Commission in the form of infringement proceedings does not become necessary.[132]

The implementation of provisions in the EGD that is necessary within member states can also be analysed by the Environmental Implementation Review. In chapter 3 of this report, EIRs are analysed to review whether they included detailed assessments regarding environmental rights enshrined in the EGD.

1.9 Petition with the EU Parliament Petitions Committee

The possibility to file a petition with the EU Parliament Petitions Committee is not a legal compliance mechanism but can call the Parliament's attention to issues with regard to environmental law. The petition can take the form of a complaint, request or observation and be brought by either EU citizens, residents or legal persons with a registered office in an EU member state.

2. Conclusion

Apart from the content of sectoral provisions within the acts in the European Green Deal, procedural mechanisms for the implementation of these rights are highly relevant for achieving proper enforcement of environmental law. The sectoral provisions contained in the EGD can be enforced through the existing compliance mechanisms on international and EU level as well as member state level. Generally, the focus of implementation and therefore also

[132] https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en

enforcement lies within the member states which must implement most environmental standards from sectoral legislation within their national legal orders.

Gaps in application of implemented provisions or a lack of implementation will most likely have to be challenged on member state level as a first step. This will usually be possible by the right to review through either an independent administrative body or a judicial organ.[133] Notably, the biggest gaps within member states exist where member states fail to implement access to justice in respect of certain whole areas of national law.[134] This can lead to the issue that access to review with respect to a certain administrative body is impossible for the public for procedural reasons and makes it much harder to rely on the direct application of EU law or even trigger proceedings before the CJEU. National procedures in the EU member states differ across jurisdictions and sectoral access to justice provisions take account of that in allowing member states a relatively wide margin of discretion.[135]

The compliance mechanisms on EU and international level, however, contain the same standard and possibilities for complaints from all EU member states. They start where member states or EU institutions itself do not implement the rights arising from the EGD or the Aarhus Convention in a legally correct manner. There are not only legal compliance mechanisms such as infringement proceedings before the CJEU but also political compliance mechanisms such as the possibility to submit a petition to the EP and the periodic review through the Environmental Implementation Review by the Commission.

[133] This corresponds with the standards set by Article 9 of the Aarhus Convention.

[134] Regarding Austria and the Netherlands there are open infringement proceedings by the Commission; in Austria access to justice with respect to forestry law is missing completely.

[135] Refer also to chapter 1.

ENVIRONMENTAL IMPLEMENTATION REVIEW

The Environmental Implementation Review (EIR) is an instrument designed to improve the implementation and compliance of member states through reports by the Commission on the status of implementation and priority measures to ensure compliance. Based on regular periodic reporting, an EIR for a member State is developed by Commission staff with the contributions of independent in-country experts. EIRs have been conducted so far in 2016, 2019 and 2022. The idea behind the EIR is to assist member states with implementation and ensure that legal action by the Commission in the form of infringement proceedings does not become necessary.

It is a fundamental rule of the European Union that member states are legally obliged to properly and fully implement EU policy and law, including environmental policy and law. This is essential to protect human health, to preserve a healthy environment and to avoid related unnecessary economic costs. When EU laws are not properly implemented, the Commission can take legal action, for example through initiating infringement proceedings as described in the chapter above. However, to avoid reaching that stage, the Commission first offers technical support to member states to guide them through implementation. The EIR is a useful tool that presents a snapshot of the implementation shortcomings and the necessary priority actions to redress the issues.

So the overall objective of the EIR is not to name-and-shame non-compliant member states but to improve the implementation of EU environmental laws and policies and doing it by identifying and addressing the main implementation gaps and their underlying root causes. The tool applied for this purpose are the individual member state reports (country reports) that address all relevant environmental thematic areas such as

- circular economy and waste management
- biodiversity and natural capital

- zero pollution (namely air quality, industrial emissions, major industrial accidents prevention, noise, water quality and management
- chemicals
- climate action

As can be seen, these topics very well coincide with the priority topics of the EGD, therefore when these reports highlight the main challenges and achievements of each member state in implementing key EU environmental laws and policies, they also give an overview of how the EGD is implemented on the national level. Policies that particularly fall under the EGD and thus are subject to examination in this report are the following:

- the Industrial Emissions Directive
- the Deforestation Regulation
- the Ambient Air Quality Directive
- the Urban Wastewater Treatment Directive

Given that the Nature Restoration Law was adopted in June 2024 and the last EIR reporting cycle published its country reports in 2022, the NRL is not yet covered by this reporting tool.

Findings of the EIR country reports

The individual country reports include the findings regarding a wide range of topics arranged according to the following order:

1. CIRCULAR ECONOMY AND WASTE MANAGEMENT

- Measures towards a circular economy
- Waste management

2. BIODIVERSITY AND NATURAL CAPITAL

- Nature protection and restoration
- Ecosystem assessment and accounting

3. ZERO POLLUTION

- Clean air
- Industrial emissions

- Major industrial accidents prevention – SEVESO
- Noise
- Water quality and management
- Chemicals

4. CLIMATE ACTION

- Key national climate policies and strategies
- Effort sharing target
- Key sectoral developments
- Use of revenues from the auctioning of EU ETS allowances

5. FINANCING

- Environmental investment needs in the EU
- EU environmental funding 2014-2020
- EU environmental funding 2021-2027
- National environmental protection expenditure
- Green budget tools
- Overall environmental financing compared to the needs

6. ENVIRONMENTAL GOVERNANCE

- Information, public participation and access to justice
- Compliance assurance
- Effectiveness of environmental administrations
- Reforms through the Commission's Technical Support Instrument
- TAIEX EIR peer-to-peer

As can be seen, while certain thematic areas (and policies) are separately described, there is a horizontal topic of information, public participation and access to justice under the chapter Environmental Governance dealing with issues relevant to this report. There are two ways to get a full picture of environmental implementation across the EU members states: to read each country report separately or to turn to the document that the European Commission

prepared called Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Environmental Implementation Review 2022 Turning the tide through environmental compliance. This document identifies common challenges across countries and how to combine efforts to deliver better results, including an Annex that summarises suggested actions for improvement for all countries.

On 7 July 2025, the European Commission and the European Committee of the Regions will host the presentation of the 2025 Environmental Implementation Review at the headquarters of the Committee of the Regions in Brussels therefore the outcomes of the latest reporting cycle will be available soon after the completion of this report.

The findings of the Commission Communication on EIR (dated 8 September 2022) regarding the selected four pieces of EU legislation are the following:

1.1 The Industrial Emissions Directive

"The transposition of the requirements applicable to industrial installations is belated. The Commission launched infringement proceedings against several member states for failure to correctly transpose the Industrial Emissions Directive [and the Seveso-III Directive]." (page 10) The countries that did not transpose the IED in time were AT, BG, CZ, DE, EL, IE, HR, SI, SK.

The Commission Communication also mentions that "The IED is being revised in order to make it more effective." (page 9) More information on this will be available in the 2025 EIR country reports.

1.2 The Deforestation Regulation

Strangely, the Commission Communication does not cover achievements or failures of the 2010 EU Timber Regulation (EUTR), however, by the time the last EIR country reports were due, it had enough "history" to draw conclusions about its practical implementation. Conversely, the Commission Communication only concludes that "As regards forests, which provide significant environmental and socio-economic benefits, in July 2021 the EU forest strategy for 2030 was adopted as part of the 'Fit for 55' package. Its key objective is to ensure healthy, diverse and resilient EU forests. In addition, in November 2021, the Commission

adopted a proposal for a regulation on deforestation-free products." More information on this will be available in the 2025 EIR country reports.

1.3 The Ambient Air Quality Directive

The Commission Communication highlights that "in terms of trends in years of life lost per 100 000 inhabitants for PM2.5, this has been reduced from 820 (2015) to 762 (2019) and for NO2 from 157 (2015) to 99 (2019) in the EU-27. However, in many Member States the limit values for these pollutants are persistently exceeded and are closely monitored by the Commission." Later the Communication mentions that despite improvements, air pollution is still a major health concern for Europeans.

It seems that air pollution is an area where simply exposing non-compliance by member states is not sufficient, and for this reason, the Communication describes that "where limits have persistently been exceeded, the Commission has been consistent in opening infringement proceedings for key pollutants, such as particulate matters and nitrogen dioxide." These countries were at the time of the publication of the Commission Communication

a. for particulate matter 10 (PM10) - BG, CZ, EL, ES, FR, HR, HU, IT, PL, RO, SI, SK, SE
b. for particulate matter 2,5 (PM2.5) - HR and IT
c. for nitrogen dioxide (NO2) - AT, BE, CZ, DE, EL, ES, FR, HU, IT, LU, PL, PT, RO.

The Communication goes on, that in some of the infringement cases, the Court of Justice of the EU (CJEU) has already handed down judgments which make remedial action even more urgent. These are BG, PL, HU, RO, IT, FR for particulate matters, and FR and DE for NO2.

1.4 The Urban Wastewater Treatment Directive

The Commission Communication finds that "Despite a degree of progress, urban wastewater is still not collected and treated as it should be in many Member States, which is why most of them are still facing infringement proceedings and a few have been subjected to financial penalties. Progress depends on Member States prioritising investments for wastewater collecting systems and treatment plants, including through efficient use of the cohesion policy funding where available, and European Investment Bank loans." Infringement procedures for bad application of the UWWTD were ongoing at the time of the publication of the Commission

Communication for 19 Member States: BG, BE, CY, FR, GR, HU, IR, IT, LV, LT, MT, PL, PT, RO, SK, CZ, SI, SE and ES, and GR, IT and ES were paying fines regarding the UWWTD.

1.5 Environmental governance with special regard to access to justice

Under the European Green Deal, all EU actions and policies will have to contribute to the achievement of its objectives. It explicitly states that the Commission will take action to improve access to justice for citizens and NGOs before national courts. As was described above, access to justice provisions were inserted into a number of pieces of EU legislation and others are under deliberation (while still others were not amended accordingly, missing a chance to include such provisions).

The Commission's findings (page 20) regarding environmental governance with a focus on access to justice depict a picture which was valid in 2022 but – according to our appraisal – is still mostly valid today.

In general, it establishes that regional and local fragmentation remains a challenge to environmental governance in Hungary, Italy, Luxembourg and Spain. This needs to be tackled, in particular by developing better environmental coordination mechanisms.

When turning to the specific issue of access to environmental justice, it acknowledges that ensuring effective access to justice at national level is essential to the implementation of environmental law and that the Commission has taken action to make sure that environmental NGOs and members of the public can seek review of measures to tackle air pollution, or of extensions of mining permits or hunting derogations. However the Communication also notices that there is still room for improvement in most member states in terms of improving the public's access to courts in order to challenge decisions, acts or omissions, particularly in the areas of planning relating to water, nature and/or air quality.

Most Member States also need to keep the public better informed about their access to justice rights and better public access to environmental information and the dissemination of that information would help to increase awareness of environmental matters and ensure more effective participation by the public in environmental decision-making and, eventually, result in a better environment.

All in all, the landscape presented by the Commission Communication regarding Aarhus rights is rather disappointing. Sadly, the Communication comes to an overall conclusion (page 23) that "the country reports also point to remaining shortcomings in implementing the three pillars of the Aarhus Convention: access to information, public participation and access to justice, which affects implementation and enforcement at national level."

The 2022 findings suggested a solution to this problem, both on the member state level and on the Union level. As for the former, in its Communication on 'Improving access to justice in environmental matters in the EU and its Member States' the Commission called for stepping up implementation by way of more effective access to justice in environmental matters in national courts. As for the latter, specifically, the European Parliament and the Council were called upon to adopt provisions on access to justice in new or revised EU legislative proposals (at the time of the publication of the Commission Communication, these were the proposals to revise the Industrial emissions Directive, Nature Restoration law and the Deforestation Regulation, which included specific access to justice provisions). As was described above, some of these provisions have already been adopted and form part of the referred directives/regulations.

The major question – and the reason why this report analyses EIR reports and the Commission Communication – is to review whether they included detailed assessments regarding environmental rights enshrined in the EGD and if they contributed to a better implementation of EU environmental policy and law. In 2016, with its first EIR communication the Commission committed to regular EIR cycles. These regular cycles were followed so far and produced the 2017 and the 2019 reports. This mechanism now benefits from a renewed mandate stemming from the European Green Deal. The European Green Deal points out that the Commission and member states must ensure that policies and legislation are enforced. It underlines that "the environmental implementation review will play a critical role in mapping the situation in each member state".

While not a compliance mechanism per se, the EIR can have two clear advantages for private enforcement of environmental policy and law in the European Union:

it is a rich source of information on the practical implementation of environmental policies in the Union for the members of the public – although it is based on self-evaluation of the

member states' public bodies responsible for the environment and climate, it is complemented by a summary study prepared by the Commission on the main findings and trends in an aggregate manner

it applies a systematic approach to EGD and focuses not only on individual pieces of EU legislation but also on financing the green transition and on horizontal issues such as environmental good governance and access rights

Although via the EIR process, there is no separate complaint procedure or remedy process provided to address failures of individual member states in implementing EGD, the information contained in these EIR country reports can be used to underpin claims related to EGD enforcement submitted at other available fora.

ANNEX

Legislative acts of the EGD with access to justice provisions adopted

Art. 32 Deforestation Regulation 2023[136]	*Article 32 Access to justice* 1. Any natural or legal person having a sufficient interest, as determined in accordance with the existing national systems of legal remedies, including where such persons meet the criteria, if any, laid down in the national law, including persons who have submitted a substantiated concern in accordance with Article 31, shall have access to administrative or judicial procedures to review the legality of the decisions, acts or failure to act of the competent authorities under this Regulation. 2. This Regulation shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review

[136] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2010] OJ L 150 9.6.2023, p. 206.

	procedures be exhausted prior to recourse to judicial proceedings.
Industrial Emissions Directive revision (IED) 2024 [137]	*Article 70h Access to justice* 1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to this Chapter when one of the following conditions is met: (a) they have a sufficient interest; (they maintain the impairment of a right, where administrative b procedural law of a Member State requires that as) a precondition. Standing in the review procedure shall not be conditional on the role that the member of the public concerned played during a participatory phase of the decision-making procedures under this Directive. The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide for adequate and effective remedies, including injunctive relief as appropriate.

[137] Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024 amending Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC on the landfill of waste (Text with EEA relevance) [2024] OJ L, 2024/1785, 15.7.2024.

	2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.
Ambient Air Quality Directive recast (AAQD) 2024[138]	*Article 27* **Access to justice** 1. Member States shall ensure that, in accordance with their national legal system, members of the public concerned have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge the substantive or procedural legality of all decisions, acts or omissions by Member States concerning the location and number of sampling points under Article 9 in accordance with the relevant criteria laid down in Annexes III and IV, air quality plans and air quality roadmaps referred to in Article 19, and short-term action plans referred to in Article 20, of the Member State, provided that any of the following conditions is met: a) they have sufficient interest; b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition. Member States shall determine what constitutes a sufficient interest and impairment of a right consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation that promotes the protection of human health or the environment and meeting any requirements under national law shall be deemed sufficient for the purposes of the first subparagraph,

[138] Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe (recast) [2024] OJ L, 2024/2881, 20.11.2024.

	point (a). Such organisations shall also be deemed to have rights capable of being impaired for the purposes of the first subparagraph, point (b). 2. The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide adequate and effective redress mechanisms, including injunctive relief as appropriate. 3. Member States shall determine the stage at which decisions, acts or omissions may be challenged, such that access to a review procedure before a court of law or another independent and impartial body established by law, is not rendered impossible or excessively difficult. 4. This Article does not prevent Member States from requiring a preliminary review procedure before an administrative authority and does not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. 5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures referred to in this Article.
Urban Wastewater Treatment Directive recast (UWWTD) 2024[139]	*Article 25 Access to justice* 1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law, or another independent and impartial body established by law, to

[139] Directive (EU) 2024/3019 of the European Parliament and of the Council of 27 November 2024 concerning urban wastewater treatment (recast) (Text with EEA relevance) [2024] OJ L, 2024/3019, 12.12.2024.

	challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 6, 7 or 8 where at least one of the following conditions is met: a) they have sufficient interest; b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition. The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide for adequate and effective redress mechanisms, including injunctive relief where appropriate. 2. Standing in the review procedure shall not be conditional on the role that the member of the public concerned played during a participatory phase of the decision-making procedures under this Directive. 3. Member States shall determine at what stage the decisions, acts or omissions referred to in paragraph 1 may be challenged. 4. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures referred to in this Article.

Proposals for legislative acts of the EGD with access to justice provisions not yet adopted

Art. 22 Proposal for a Soil Monitoring Law Proposal for a Directive of the European parliament and of	Article 22 Access to justice Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have

the Council on Soil Monitoring and Resilience (Soil Monitoring Law) COM/2023/416 final Not yet adopted	access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the assessment of soil health, the measures taken pursuant to this Directive and any failures to act of the competent authorities. Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient. Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.
Art. 16 Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green	Article 16 Complaint-handling and access to justice 1. Natural or legal persons or organisations regarded under Union or national law as having a legitimate interest shall be entitled to submit substantiated complaints to competent authorities when they deem, on the basis of

Claims Directive), COM(2023) 166 final, 22 March 2023 Not yet adopted (see https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=celex:52023PC0166)	objective circumstances, that a trader is failing to comply with the provisions of this Directive. 2. For the purposes of the first subparagraph, non-governmental entities or organisations promoting human health, environmental or consumer protection and meeting any requirements under national law shall be deemed to have sufficient interest. 3. Competent authorities shall assess the substantiated complaint referred to in paragraph 1 and, where necessary, take the necessary steps, including inspections and hearings of the person or organisation, with a view to verify those complaints. If confirmed, the competent authorities shall take the necessary actions in accordance with Article 15. 4. Competent authorities shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the person or organisation referred to in paragraph 1 that submitted the complaint of its decision to accede to or refuse the request for action put forward in the complaint and shall provide the reasons for it. 5. Member States shall ensure that a person or organisation referred to in paragraph 1 submitting a substantiated complaint shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive, without prejudice to any provisions of national law which require that administrative review procedures be exhausted prior to recourse to judicial

	proceedings. Those judicial review procedures shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary. 6. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.

Proposals for legislative acts of the EGD with access to justice provisions but rejected

Art. 16 Proposal for a Regulation of the European Parliament and of the Council on nature restoration COM/2022/304 final, 22 June 2022 Text adopted[140] but without access to justice provision[141]	*Article 16 Access to justice* 1. Member States shall ensure that members of the public, in accordance with national law, that have a sufficient interest or that maintain the impairment of a right, have access to a review procedure before a court of law, or an independent and impartial body established by law, to challenge the substantive or procedural legality of the national restoration plans and any failures to act of the competent authorities, regardless of the role members of

[140] Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869, *OJ L, 2024/1991, 29.7.2024,*
ELI: http://data.europa.eu/eli/reg/2024/1991/oj

[141] On June 17, 2024, the Council adopted revised version of the Regulation, which, however, does not contain Art. 16 of the original draft Regulation.

There is now only a general reference to the Aarhus Convention in recital 82. This follows a recent trend in EU legislative practice.	the public have played during the process for preparing and establishing the national restoration plan. 2. Member States shall determine what constitutes a sufficient interest and impairment of a right, consistently with the objective of providing the public with wide access to justice. For the purposes of paragraph 1, any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have rights capable of being impaired and their interest shall be deemed sufficient. 3. Review procedures referred to in paragraph 1 shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary. 4. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.
Proposal of European Parliament for new Art. 11a	Amendment (5a) the following Article is inserted: '*Article 11a Access to justice* 1. Member States shall ensure that, in accordance with their national laws, members of the public concerned who have a sufficient interest or who claim the impairment of a right where administrative procedural law of a Member

Governance Regulation, P9_TA(2020)0253[142] European Climate Law, Amendments adopted by the European Parliament on 8 October 2020 on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (COM(2020)0080 – COM(2020)0563 – C9-0077/2020 – 2020/0036(COD))1	State requires such a right to be a precondition have access to a review procedure before a court of law or other independent and impartial body established by law with a view to challenging the substantive or procedural legality of decisions, acts or omissions subject to Article 10 of Regulation (EU) 2018/1999. 2. Member States shall determine the stage at which decisions, acts or omissions may be challenged. 3. Member States shall determine what constitutes a sufficient interest and impairment of a right, consistent with the objective of giving the public concerned wide access to justice. To that end, nongovernmental organisation covered by the definition in Article 2(62a) shall be deemed as having a sufficient interest or having rights capable of being impaired for the purpose of paragraph 1 of this Article. 4. This Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

[142] [in the course of negotiation of the European Climate Law to include a right of action for members of the public against the "integrated national energy and climate plans" and the "long-term strategies" as defined in Art. 9 and 15 of the Governance Regulation]

	5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.'
Proposal of the European Parliament for a new Art. 15b Efforts Sharing Regulation (ESR) 2018/842, P9 TA(2022)0232	Amendment (7c) The following article is inserted: *'Article 15b Access to justice* 1. Member States shall ensure that, in accordance with their national legal system, members of the public concerned who meet the conditions set out in paragraph 2, including natural or legal persons or their associations, organisations or groups, have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge the substantive or procedural legality of decisions, acts and omissions: (a) that fail to comply with the legal obligations provided for in Articles 4 to 8 of this Regulation; or (b) that are subject to Article 10 of Regulation (EU) 2018/1999. For the purposes of this paragraph, an act or omission that fails to comply with legal obligations arising under Articles 4 or 8 includes an act or omission with respect to a policy or measure adopted for the purposes of implementing those obligations, where that policy or measure fails to make a sufficient contribution to such implementation. 2. Members of the public concerned shall be deemed to meet the conditions referred to in paragraph 1 where:(a) (b) they have sufficient interest; or they maintain impairment of a right, where administrative procedural law of a Member State requires that as a precondition. What constitutes a sufficient interest shall be determined by Member States consistently with the objective of giving

	the members of the public concerned wide access to justice and in conformity with the Aarhus Convention. To that end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have sufficient interest for the purposes of this paragraph. 3. Paragraphs 1 and 2 shall not exclude the possibility of being able to have recourse to a preliminary review procedure before an administrative authority and shall not affect the requirement to exhaust administrative review procedures prior to having recourse to judicial review procedures, where such a requirement exists under national law. Any such procedure shall be fair, equitable, timely and not prohibitively expensive. 4. Member States shall ensure that practical information is made easily available to the public on access to administrative and judicial review procedures.'
Art. 15a, Amendments[(1)] adopted by the European Parliament on 8 June 2022 on the proposal for a regulation of the European Parliament and of the Council Amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and	EP proposal 16a) The following Article 15a is inserted: *Article 15a Access to justice* 1. Member States shall ensure that, in accordance with their national legal system, members of the public concerned who meet the conditions set out in paragraph 2 have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge failure to comply with the legal obligations provided for in Articles 4 to 10.

committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review (COM(2021)0554 – C9-0320/2021 – 2021/0201(COD))[(2)] (LULUCF)	2. Members of the public concerned shall have access to the review procedure as referred to in paragraph 1 when: a) they have sufficient interest; or b) they allege impairment of a right, where administrative procedural law of a Member State requires that as a precondition What constitutes a sufficient interest shall be determined by Member States, consistently with the objective of giving the members of the public concerned wide access to justice and in conformity with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters To that end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed to have sufficient interest for the purposes of this paragraph 3. Paragraphs 1 and 2 shall not exclude the possibility of being able to have recourse to a preliminary review procedure before an administrative authority and shall not affect the requirement to exhaust administrative review procedures prior to having recourse to judicial review procedures, where such a requirement exists under national law. Any such procedure shall be fair, equitable, timely and not prohibitively expensive 4. Member States shall ensure that practical information is made easily available to the public on access to administrative and judicial review procedures.