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CHALLENGE ACCEPTED?

THE STATE OF ACCESS TO JUSTICE IN THE EU

The European Environmental Bureau (EEB) is the largest network of environmental citizens' organisations in Europe. It unites 190 civil society organisations from 41 countries, working for a better future where people and nature thrive together.

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The BeLIFE project focuses on the role citizens and civil society can play in enforcing and ensuring compliance with European Environmental Law, particularly the European Green Deal. The main objective of the project is to enhance compliance with EU environmental and climate law and to strengthen environmental democracy rights.

This report is an update of the 2018 'Challenge accepted?' report, which was part of a series of reports published under the Implement for LIFE (IFL) project.

This report focuses on Access to Justice and how barriers to it can affect the way EU environmental laws are followed in the Member States.

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Executive summary

The implementation of the Aarhus Convention is meant to ensure the protection of the right of every person of present and future generations to live in an environment adequate to their health and well-being. The third pillar of the Aarhus Convention, access to justice, is found in its Article 9. It is a legal safeguard for the two preceding pillars (access to information and public participation) and is crucial to securing the legitimacy of state-public partnership and dialogue. Access to environmental justice allows environmental NGOs (ENGOs) and individuals the right to challenge decisions which harm the environment in court. There is no real environmental accountability-holding unless those persons exercising their rights can do so with "*the legal "teeth" of justiciability*".[1] Access to justice gives enforceability to procedural environmental rights. However, the EEB's 2018 report found that barriers to environmental justice are widespread across the EU. This updated report looks at developments that happened since 2018-2025, and the challenges that persist.

The report identifies and explains five key aspects to access to justice: 'standing', 'time', 'knowledge', 'costs' and 'effective remedies', based on research and cases on topics such as noise pollution, duty of vigilance of companies, mining waste, climate change, nature protection, ecological damage, air pollution, and climate and energy, and makes recommendations to remove persisting barriers in each of these aspects.

ROLE OF NGOS

NGOs play an important role as watch-dogs, monitoring that rules intended to protect the environment and society are followed properly. In this sense, the ability for NGOs to access courts is a key element for them to exercise their public interest function. This report includes case studies from across the EU. The recommendations made and identified needs aim to help to improve access to environmental justice across the EU and remove some of the current barriers that are undermining Europe's hard-fought environmental protection.

[1] The Aarhus Convention: Towards Environmental Solidarisation, Duncan Weaver (2023), p. 127

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Introduction

The Aarhus Convention (AC), which was adopted in 1998 under the auspices of the UN Economic Commission for Europe (UNECE), is an international treaty that regulates access to information, public participation in decision-making processes and access to justice in environmental matters. The Aarhus Convention aims to strengthen the role of civil society in promoting and protecting the environment and to increase the accountability and transparency of public authorities. It is also legally binding for the contracting parties to the AC ("Parties"), which include the European Union as a whole as well as its Member States separately.

ACCESS TO JUSTICE

Article 9 of the Aarhus Convention requires Parties to the Convention to ensure access to justice in environmental matters by providing members of the public with sufficient interest or rights to file actions against acts or omissions that violate environmental law. In that regard the Aarhus Convention requires the Parties to interpret the criteria for standing for standing broadly and make the procedures fair, equitable, timely and not prohibitively expensive.

To briefly breakdown the third pillar, Article 9(1)[2] AC assigns access to review procedures relating to Article 4 on information requests. The procedures are available to any person who made an environmental request, in line with the "any person" right in Article 4. Article 9(2) assigns access to review procedures to the public concerned[3] vis-à-vis: (a) infringements of Article 6 participatory provisions for specific activities (themselves provided to the public concerned) and (b) other relevant provisions. Article 9(3) mandates broad public access to review procedures[4] relating to alleged contraventions of national environmental law. This latter provision is the closest that the Aarhus Convention comes to establishing environmental *actio popularis*, given its empowerment of the public to challenge environmental illegalities in Parties' jurisdictions. The public would be within their rights to litigate against owners and operators of facilities implicated in environmental illegality, as well as public authorities themselves. Meanwhile, Article 9(4) establishes minimum

[2] "Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law".

[3] NGOs meeting the definition of "public concerned" will meet the requirement, here, of having a sufficient interest or maintaining impairment of a right. It should also be noted that determination of whether an NGO indeed has a sufficient interest, or is in the position to maintain the impairment of a right, must be in compliance with Parties' national law and "consistently with the objective of giving the public concerned wide access to justice". So state Parties cannot, when applying the third pillar, use their discretion to limit persons' locus standi.

[4] This provision goes as close as possible towards an environmental actio popularis, affording the general public, where they meet criteria specified in Parties' law, "access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities" contravening Parties' domestic law relating to the environment. It can be argued Article 9.3 constitutes a duty for state Parties to "facilitate environmental law enforcement by the public" (Hedemann-Robinson, M. (2022, June, *Access to environmental justice and European Union institutional compliance with the Aarhus Convention: A rather longer and more winding road than anticipated*. European Energy and Environmental Law Review: p. 177).

standards for review procedures, decisions and remedies, whilst Article 9(5) requires Parties to ensure effective access to justice.[5]

THE EUROPEAN UNION

Both Directive 2003/4/EC on public access to environmental information and Directive 2003/35/EC on public participation include access to justice provisions. While there is no directive specifically dedicated to access to justice in EU Member States which would apply horizontally in all sectors, the Court of Justice has developed extensive jurisprudence on the subject. In addition, there is a growing number of access to justice provisions in new and revised EU law.[6] Additionally, a 2020 Communication on improving access to justice in environmental matters called on Member States to step up implementation and drew up four priority action areas such as: the full transposition of EU secondary law on access to justice (mainly those under the Environmental Impacts Assessments, Environmental Liability and Industrial Emissions Directives); calling on co-legislators to support access to justice rules to be included in sectoral EU proposals; removing obstacles from national law, in line with case-law of the Court of Justice of the EU; calling on national judges to a improve access to justice.

The sixth Aarhus Convention Implementation report, which was adopted by the Commission on 2 July 2025 describes the legislative, regulatory and other measures by which the EU implements the Aarhus Convention. At EU level the avenues to obtain access to the courts on environmental matters gets complicated quickly. The implementation report details how the Title IV of the Aarhus Regulation, as amended by Regulation (EU) 2021/1767 (Articles 10 to 12), sets out the conditions under which an EU institution or body is required to review certain actions that may contravene environmental law it has adopted (an 'administrative act'), or to review its failure to act. An NGO or other members of public which meet the criteria set out in Article 11 of the Aarhus Regulation are entitled to make a request for internal review to the EU institution or body which adopted the administrative act. According to Article 12 of the Aarhus Regulation, a requesting party whose request for review was unsuccessful may institute proceedings before the EU courts in accordance with the relevant Treaty provisions. The Court, however, reviews only the validity of the institution's decision adopted in accordance with Article 10 of Regulation No 1367/2006 (the review decision), not that of the underlying administrative act itself. During the entire administrative and judicial review procedure, the initial administrative act of the EU institution remains in force since neither the IRR (internal review requests) nor proceedings before the EU courts have a suspensive effect. However, the Commission does need to follow up if the CJEU annuls a Commission reply to the IRR after finding a breach of EU environmental law at administrative level. If the Court concludes that an IRR is admissible (in cases where the Commission rejected the request as inadmissible), the Commission is required to examine the request on

[5] Article 9.5 contains the requirement for Parties to ensure that information is provided to the public on the above review procedures, and also by the need for assistance mechanisms to be established, so as to remove or reduce financial or other barriers to access to justice.

[6] You can consult a detailed analysis of different sectoral access to justice provision in the BeLIFE Environmental Rights Report, available at https://eeb.org/library/belife-environmental-rights-report/; and in Mariolina Eliantonio and Justine 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, European Forum, Insight of 8 July 2024, pp. 261-274, ISSN 2499-8249 - doi: 10.15166/2499-8249/756.

substance (if it has not already done so) and must also interpret admissibility criteria in line with the Court's ruling in future cases. To date, however, the Commission has not reviewed the substance of one of its acts and proceeded to amend the underlying administrative act, suspend its effects, or withdrew it completely following an IRR, so the effectiveness of this review procedure is uncertain.

Until recently, too, State aid decisions were not open to for IRRs,[7] but this has been partly addressed in the introduction, on 12 May 2025, of a new mechanism which allows NGOs to request that the European Commission conducts an internal review of certain State aid decisions to establish whether they breach EU environmental law.[8]

MEMBER STATES

The EU's 2025 Environmental Implementation Review (EIR) highlights a widening gap in the enforcement and application of EU environmental law by Member States. Access to Justice is a fundamental guarantee for NGOs and individuals to ensure that laws are being implemented: without proper access to justice, decisions which harm the environment cannot be challenged in court.

In 2021, the EU published the eJustice fact sheets on access to justice in environmental matters informing the public of the applicable rules in each Member State.

The EEB conducted a national level case law research on the implementation of Article 9 Aarhus Convention in mostly France and Germany,[9] which shows both progress and challenges. While both countries have made efforts to align their national laws with the requirements of the Aarhus Convention, several obstacles remain, particularly in the areas of legal standing.

Standing

Article 9(1) of the AC ensures that any person who requests access to environmental information can challenge the handling of such requests by public authorities. Taking Germany as an illustrative example, this is regulated by the Environmental Information Act (UIG). However, the principle of the impairment of rights limits access to justice, as it requires individuals or organizations to demonstrate a violation of their subjective rights.

Article 9(2) of the AC provides the public concerned with the right to challenge decisions, acts, and omissions subject to public participation obligations. In Germany, the impairment of rights principle also applies here, making it difficult for environmental NGOs to assert their

[7] Anna-Lici Scherer, Access to Environmental Justice under the Aarhus Convention: Evaluating the Contemporary Hurdles for ENGOs in Challenging State Aid Decisions under EU Law, *Journal of European Competition Law & Practice*, Volume 15, Issue 3, April 2024, Pages 197–208, https://doi.org/10.1093/jeclap/lpae027.

[8] This internal review mechanism was adopted in order to adress the findings of the Aarhus Convention Compliance Committee (the 'ACCC') in case ACCC/C/2015/128.

[9] Based on the review of nearly a hundred court decisions regarding access to environmental justice issued between 1 January 2019 and 17 December 2024 in both jurisdictions.

rights unless they are recognized under the Environmental Remedies Act (UmwRG). The recognition process for NGOs is stringent and time-consuming, often hindering their ability to participate effectively in legal proceedings. Article 9(2) AC requires that the public concerned be given the opportunity to participate in national review procedures, provided that the members of the public have a sufficient interest or assert a violation of the law. Accordingly, it should be possible to challenge the substantive and procedural legality of decisions, acts and omissions to which Article 6 AC and other relevant provisions of the AC apply. According to Article 2 (5) AC, the public concerned is the public affected or likely to be affected by the environmental decisions or the public with an interest therein. Environmental NGOs typically have an interest in environmental decisions as Article 2 (5) AC states, if they are committed to environmental protection and fulfil all applicable requirements under national law. If they fulfil these preconditions, the respective environmental NGO falls under the scope of Article 9(2) AC and is subject to that provision.

Article 9(3) of the AC extends the right to access to justice to the public in general, not just the public concerned. Article 9(3) AC goes further than Article 9(2) AC, as it states that not only members of the public concerned should be granted a right of action under the above-mentioned conditions, but members of the public in general. According to Article 2(4) AC, the public includes one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. This does not mean that Article 9(3) enables popular complaints (*actio popularis*).[10]

As with Article 9(2), in Germany, the impairment of rights principle again poses a significant barrier. The application of the impairment of rights principle is challenging in connection with the provisions of environmental and nature conservation law, as these fundamentally serve to protect the environment and nature and thus the general public. To address this issue, Germany enacted the Environmental Remedies Act (Umweltrechtsbehelfsgesetz, "UmwRG").[11] Under the UmwRG, a German or foreign environmental NGO can lodge legal remedies against a number of administrative decisions and measures of German authorities without having to assert an impairment of individual rights (Verbandsklage).

Additionally, certain administration internal environmental decisions, such as goal deviation decisions and noise action plans, are excluded from judicial review, limiting the scope of legal provisions for environmental claims.

Looking at another jurisdiction, we see that in France, standing requirements are favourable to accredited environmental protection associations, insofar as these benefit from a presumption of standing if they meet the relevant legal requirements. Admissibility of claims lodged by individuals or legal entities other than associations is much more limited.

[10] European Commission, Communication from the Commission on access to justice in environmental matters, 2017.

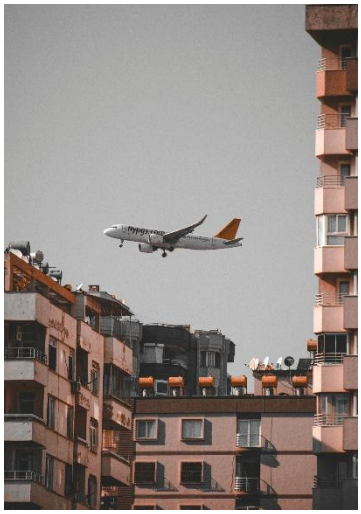
[11] The Aarhus Convention – National Implementation Report for Germany (2021); Ohler/Peeters/Eliantonio, How to Represent the Silent Environment? An Update on Germany's Struggle to Implement Article 9(3) of the Aarhus Convention, Journal for European Environmental & Planning Law 18 (2021) 370-389. A very similar set of rules on standing for NGOs is provided in Section 64 of the German Environmental Protection Act (Bundesnaturschutzgesetz, "BNatSchG"). Section 64 BNatSchG provides an additional right of action against decisions relevant to environmental and nature conservation. However, these only apply to recognised nature conservation associations.

CASE STUDY: CLIMATE CHANGE

In C-565/19 (Armando Carvalho and Others v European Parliament and Council of the European Union), the Court declared that an action for annulment against several EU acts associated with greenhouse gas (GHG) emissions was not admissible, due to the lack of individual concern. This case, often referred to as the 'People's Climate Case', was brought by ten families from Europe, Kenya, and Fiji, along with a Swedish association representing indigenous Sami youth (Sáminuorra), who are disproportionately impacted by climate change.

CASE STUDY: DUTY OF VIGILANCE OF COMPANIES

In civil procedure, we would like to emphasise the major contribution made by the first decision referred by the Paris Court of Appeal on 18 June 2024[12] regarding the duty of vigilance of companies. This overturned the judgement of the first instance court, by recognising the right of any person demonstrating a legal interest to bring such action to the court after a formal notice has been issued, regardless of whether or not they are the author of the formal notice.



CASE STUDY: NOISE POLLUTION

In the case of the Federal Administrative Court,[13] the Hesse Noise Action Plan (Noise Action Plan) was challenged, in particular the sub-plan for Frankfurt/Main Airport. The court ruled that the noise action plan is an internal administrative document without external legal effects on third parties and is therefore not subject to judicial review. The reasoning behind this is that internal administrative actions cannot infringe third party rights as they do not have legal effect outside the administrative body concerned altogether. The court reasoned that Article 9 para. 3 of the Aarhus Convention does not grant an individual right to challenge the noise action plan in this context.[14]

[12] Court of Appeal of Paris, 18 June 2024, No. 23/14348. Within the Court of Appeal of Paris, a special chamber 5-12 has been created to deal with disputes relating to the duty of vigilance and ecological responsibility.

[13] Federal Administrative Court, 28 November 2019, No. 7 C 2.18.

[14] Another example is the case decided by the Federal Administrative Court (Federal Administrative Court, 19 December 2013, No. 4 C 14.12.), in which the court emphasized that the UmwRG does not provide standing for environmental associations to challenge flight route regulations directly. This is because such regulations are not "decisions" in terms of Section 1 (2) no. 1 a) UmwRG that require an environmental impact assessment in terms of the Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz, "UVPG"). Since environmental NGOs only have standing in terms of

Our review of the Implementation Data suggests that the restrained implementation of the access to justice guarantees enshrined in Article 9(1) to (5) AC in Germany lies primarily in the specifics of the German legal system, namely the impairment of rights principle, which applies broadly in the German legal system[15] and not only in the environmental space. This does not mean that the German courts apply the relevant provisions of environmental or administrative law in a restrictive fashion. Rather, we came to the conclusion that the courts, while interpreting the laws broadly, are still restricted by the narrow scope of the limited exceptions from the impairment of rights principle.

→ **Needs:**

Member States should allow wide legal standing to NGOs in environmental matters, in line with established EU law and case law, given the important role that NGOs play in supporting the implementation of laws.

Time

Article 9(4) of the AC mandates that review procedures must be timely[16]. In order to ascertain whether review procedures are to be considered excessively long, the ACCC has stated that it is relevant to assess *"the complexity of the factual or legal issues raised by the case or the issue at stake for the applicant."*[17] The ACCC has also stated that dormant court rulings are not adequate or effective remedies.[18]

Article 11 of the EIA Directive, Article 25 of the Industrial Emissions Directive, Article 23 of the Seveso III Directive, Article 25 of the Urban Wastewater Treatment Directive and the

UmwRG in relation to a certain type of decisions, including decisions on environmental impact assessment, and a flight route regulation does not fall within the scope of such decisions, the claimant had no standing under UmwRG. The scope of application of the UmwRG can also not be extended by analogy, for example to fulfil (possible) requirements of Article 9(3) AC, as there is no unintended regulatory gap in the UmwRG. The court ruled that no such extention was possible. This decision is an example of the restraints that the limited scope of application of the UmwRG enshrines.

[15] We note that the impairment of rights principle is crucial for the German legal system and has its origin in Article 19(4) of the German Basic Law (Grundgesetz). Article 19(4) of the Constitution guarantees access to justice for those whose rights have been impaired.

[16] When considering identifying whether a procedure is "expeditious" or "timely" under article 9, paragraphs 1 and 4, respectively, the time limits set out in article 4, paragraphs 2 and 7, are indicative. (ACCC/C/2013/93 Norway, para. 90).

[17] ACCC/C/2012/69 (Romania), para. 87.

[18] The ACCC considers that the fact that a Supreme Court's ruling lay dormant for more than a year without any action by the courts, the Commissioner for Environmental Information or the public authority concerned demonstrates a failure by the Party concerned to ensure adequate and effective remedies for the review of environmental information requests. The Committee finds that, by maintaining a system whereby courts may rule that information requests fall within the scope of the AIE Regulations without issuing any directions for their adequate and effective resolution thereafter, the Party concerned fails to comply with the requirement in article 9 (4) of the Convention to ensure adequate and effective remedies for the review of environmental information requests(ACCC/C/2016/141 Ireland, para. 124, 127).

Article 27 of the revised Ambient Air Quality Directive all include procedural guarantees such as requirements for timely and not prohibitively expensive procedures.[19]

Substantive preclusion provisions can be an obstacle for environmental NGOs to successfully bring lawsuits. Substantive preclusion means that objections to certain administrative acts must be raised during the administrative procedure. If a party fails to do so and lodges a court claim in relation to the administrative act, they will lose the claim because the objections that have not been raised previously are disregarded in the court proceedings. This mechanism is intended to ensure the distribution of functions and burdens between administrative authorities and courts and to create legal, planning and investment security for project and planning organisations. The goal is also to speed up and concentrate complex authorisation and planning procedures. Such substantive preclusion provisions may, however, be in breach of the Aarhus Convention and the EU directives based on it (EIA Directive, IE Directive). These instruments require broad access to courts and a comprehensive review of the legality of environmentally relevant decisions. The CJEU has therefore clarified in several judgements[20] that substantive preclusion provisions are inadmissible within the scope of Article 9(2) AC, while they may be admissible within the scope of Article 9(3) AC under certain conditions.[21]

Substantive preclusion provisions can hinder environmental NGOs from successfully bringing lawsuits by limiting their ability to raise objections not previously mentioned during the administrative procedure. The introduction of abusive conduct clauses and intra-procedural preclusion rules further complicates the legal landscape for environmental NGOs, emphasizing the need for strategic legal planning and timely objection-raising during administrative procedures.

Knowledge

Article 9(5) of the AC requires Parties to ensure that the public is informed about access to administrative and judicial proceedings and that mechanisms to support access to justice are in place. Parties are expected to ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice. The requirement in article 9, paragraph 4, for review procedures to be “fair” should be read as a requirement to ensure that claimants are able to know the reasons for the

[19] Looking at a national jurisdiction we have analysed, Germany, interim relief proceedings are relatively efficient (taking an average of 1,8 months), but regular judicial relief can take an average of 16 months. Should a party choose to initiate appellate proceedings, it would take a minimum of another year to obtain a decision. Germany ensures that the public is informed about their rights and remedies mainly through internet tools. Agencies such as the Federal Environmental Agency (Umweltbundesamt) and the Federal Ministry for the Environment, Nature Conservation,Nuclear Safety and Consumer Protection (Bundesministerium für Umwelt, Naturschutz, nukleare SIcherheit und Verbraucherschutz) publish useful information on environmental procedures and remedies on their websites. Moreover, there is a special website dedicated to the AC and its guarantees, including the remedies available nationally.

[20] The most important being Commission/Germany, Protect, Stichting Varkens.

[21] Franzius, Does the amendment to the Environmental Remedies Act fulfil the requirements of EU law?; Ohler/Peeters/Eliantonio, How to Represent the Silent Environment? An Update on Germany’s Struggle to Implement Article 9(3) of the Aarhus Convention, Journal for European Environmental & Planning Law 18 (2021) 370-389

decision of the review body, inter alia, to enable the claimants to challenge that decision where they so choose.[22]

Article 1(2) of the Aarhus Regulation stipulates that EU institutions and bodies must endeavour to assist the public with regard to access to justice in environmental matters. Article 4(5) of the Environmental Information Directive, Article 11 of the EIA Directive, Article 25 of the Industrial Emissions Directive, Article 23 of the Seveso III Directive, Article 27(5) of the AAQD and Article 25(4) of the UWWTD all stipulate that practical information is to be made available to the public on review procedures.

The European e-Justice Portal, launched in 2010 and updated in 2021, is an electronic 'one-stop shop' for information on European justice and access to European judicial procedures. It provides a single-entry point for all justice-related questions and online procedures on criminal, civil or administrative law. It is targeted at different groups of users such as citizens, lawyers, judges, national authorities and businesses. Member States' provisions on access to justice for environmental matters are also incorporated in the site.

In Germany, the relevant judicial review proceedings would almost always be conducted by administrative courts. The decisions of administrative courts in Germany shall be made available publicly, as long as they are anonymised. This is mostly done through the according websites of each court. This is not, however, a statutory requirement. The Federal Administrative Court of Germany[23] and the Federal Constitutional Court of Germany[24] ruled that the obligation to make decisions publicly available results out of the constitutional principles of rule of law, democracy and division of powers. This, however, only concerns court decisions that are "worthy of being published". This is the case if a court decision serves "the actual or presumed interest of the public". Since this is not a statutory defined term, each court can have a different interpretation of whether a decision fulfils this criterion. Therefore, it cannot be guaranteed that every decision in environmental matters is published. Should the applicant opt for administrative review only without initiating subsequent judicial proceedings and not initiate subsequent court proceedings, it is most likely that the administrative decision would not be made publicly available in a manner required by Article 9(4) AC, as there is no statutory requirement to do so. Consequently, while court decisions on environmental matters can be accessed freely provided that they are "of public interest", claimants generally do not have public access to administrative decisions on environmental matters.

[22] (ACCC/C/2013/81 Sweden, para. 96).

[23] Federal Administrative Court, 26 February 1997 - 6 C 3.96.

[24] 50 Federal Constitutional Court, 14 September 2015 - 1 BvR 857/15.

→ **Needs:**

Training for judges and other officials on environmental law and environmental processes. Judges need to appreciate the nature of environmental claims and the importance of giving injunctive relief to on-going environmental cases.

Costs

Article 9(4) of the AC mandates that proceedings in environmental matters must not be 'excessively expensive'. Whether this requirement is enforced by fee waivers or by cost-recovery mechanisms is not decisive. [25]

When it comes to the EU courts, proceedings before the General Court and the Court of Justice are in principle free of charge. The unsuccessful party may be ordered to pay the costs if this has been applied for in the successful party's pleadings. Legal aid is available.

In relation to costs, there are no registration fees in France when contesting a decision before a civil or administrative court. In administrative litigation, representation by a lawyer is mandatory only in the case of a full litigation appeal. However, representation by a lawyer remains crucial even in the case of a judicial review. Costs can therefore be significant. In France, residents can benefit from legal aid, the amount of which is determined according to the applicant's income and assets.

In Germany, the costs of proceedings can be high, and there is no special cost regime for environmental matters.[26] This burden can be mitigated by the availability legal aid, although the requirements for NGOs to qualify are stringent.[27] The ACCC has decided that a system on legal aid which excludes small NGOs from receiving legal aid means that there a Party has not adopted appropriate assistance mechanisms to remove or reduce financial barriers to access to justice.[28]

[25] Aarhus Convention Implementation Guide, p. 203.

[26] In Germany, court and legal fees are based on the so-called amount in dispute (Streitwert). This is the value attributed to the legal dispute. It depends on various criteria, depending on whether the claim is quantifiable and/or the significance of the legal dispute for the general public and how complex the litigation is. On the other hand, there is no limit to the amount in dispute and the costs that may arise. In principle, the German legal system does not provide for any procedural cost relief per se for environmental protection associations. Hence, there is no special legal regime in terms of procedural costs for environmental protection actions.

[27] Germany has a well-established legal aid system, accessible to both individuals and legal entities. Under Section 114 of the Civil Procedure Act (Zivilprozessordnung) (applies by reference to administrative procedure as well- see Section 173 of the VwGO), the state covers court costs and the fees for the plaintiff's attorney if the plaintiff meets the requirements for granting legal aid. For individuals, the sole requirement for legal aid is proof of insufficient finances. For entities, including NGOs, the requirements are stricter. A – European/EEA - entity must prove that neither the entity itself nor other economically involved actors can pay the costs of the proceedings. Moreover, the entity must demonstrate that a failure to pursue or defend legal action would be contrary to public interests. It is also required that the failure to pursue the legal action would be contrary to 'general interests'. This makes it harder for NGOs to make use of legal aid.

[28] ACCC/C/2009/36 Spain, para. 66.

Other fees, such as preparation fees[29] and filing fees,[30] can be prohibitively expensive.

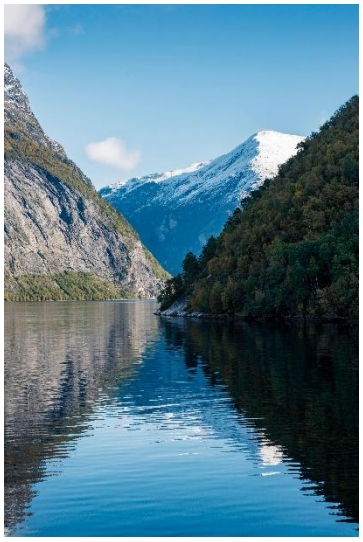
→ **Needs:**

Legal aid should be made available to all public interest litigants.

Member States should ensure that their laws allow for NGOs to recover court costs when they win a case.

CASE STUDY: THE FJORD LAWSUIT

In this infamous case, Friends of the Earth Norway and Young Friends of the Earth Norway sued the Norwegian government[31] over the granting of a permit for the dumping of mining waste into Førdefjorden. The Norwegian state won, as the Oslo District Court declared that the permits for dumping 170 million tons of waste into the pristine Førdefjorden were valid. Friends of the Earth/Young Friends of the Earth Norway were sentenced to cover most of the State's expenses – 1,4 million NOK (€125.000) – in violation of the Aarhus Convention. The case was appealed before the Borgarting Court of Appeal.



→ **Needs:**

Cost-capping measures should be introduced in all Member States, preferably at EU-level though a Directive on Access to Justice for Environmental Matters so that there are no cost differences between Member States that could still lead to a barrier to access courts.

[29] A basic case preparation allowance of 1.320€ could potentially represent a prohibitive financial barrier to access to justice in environmental matters for some members of the public, including some environmental NGOs taking into account the other costs typically involved in court proceedings, including own-side costs. (ACCC/C/2014/111 Belgium, para. 69 ff.)

[30] Filing fees of €650 at first instance and €950 at second instance for review procedures within the scope of article 9, paragraphs 2 and 3 render each of those procedures prohibitively expensive within the meaning of article 9, paragraph 4 (taking the economic situation in Italy as a basis). (ACCC/C/2015/130 Italy, para. 76)

[31] While Norway is not a member of the EU, it is a Party to the Aarhus Convention and of the European Economic Area (EEA) Agreement, and subject to the EFTA Court's jurisdiction. The European Commission also intervened in the case before the EFTA Court.

Effective remedies

Under Article 9(4) Aarhus Convention, the review procedures guaranteed by Article 9 AC shall provide adequate and effective remedies, including injunctive relief as appropriate. Review decisions shall be available in writing and be publicly accessible. According to the Aarhus Convention Implementation Guide, "adequacy" in terms of Article 9(4) AC requires the relief measures to ensure the intended effect of the review procedure. This may be compensation of damages, prevention measures in relation to future damages and restoration measures. According to ACCC, interim measures can be an adequate and effective remedy.[32] The requirement that the remedies should be effective means that they should be capable of real and efficient enforcement.[33] Article 19(1) of the Treaty on European Union (TEU), too, incorporates the principle of effective judicial protection into the Treaty: 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.'

In some national jurisdictions, such as France and Germany, public authorities can order environmental prevention and restoration measures in case environmental damage is either foreseeable or has already occurred. In this case, the costs of such measures will be borne by the polluter. Injunctive relief measures are also usually available in administrative and in civil judicial proceedings. They can be aimed at both preserving a certain status quo or preliminary relief to avoid irreparable damage. The granting of such relief measures depends primarily on the interest of the applicant in expedited relief. On obtaining a compensation for environmental damages, while this may be difficult depending on the concrete circumstances, including whether or not the claimant can claim an infringement of individual rights, preliminary relief measures can in theory be obtained in most jurisdictions.

CASE STUDY: CLIMATE CHANGE

In the Commune de Grande Synthe decisions, the Council of State twice ordered the French government to adopt additional measures - within a certain period of time - to ensure that its commitments to reduce greenhouse gases would be met.[34] However, it rejected the conclusions for the purpose of a penalty payment.

CASE STUDY: NATIONAL ENERGY AND CLIMATE PLANS (NECPS)

In *Greenpeace v. Spain I and II*,[35] environmental and human rights organisations argued that the Spanish NECP violated the Governance Regulation and fell short of the ambition required by the Paris Agreement, requesting the Supreme Court of Spain to declare the respective parts of the NECP null. The main grounds were that Spain's 2030 climate target of a 23% reduction in greenhouse gas emissions compared to 1990 levels enshrined in the NECP was

[32] The refusal of a court to impose interim measures can amount to non-compliance with article 9, paragraph 4. (ACCC/C/2007/22 France, para. 48).

[33] Aarhus Convention Implementation Guide, p. 200.

[34] 2 CE 1 July 2021, No 42731; CE 10 May 2023, No. 467982

[35] < https://climatecasechart.com/nonus-case/greenpeace-v-spain>. and < https://climatecasechart.com/nonus-case/greenpeace-v-spain-ii/>.

insufficient, the NECP had not yet been adopted a year after the deadline for the final submission in 2019, an impact assessment was carried out only after its approval, and public participation requirements of the Governance Regulation were not respected. In June 2023, the Supreme Court found that the Spanish Government had complied with both the Paris Agreement and EU legislation.[36] The Court concluded that although the multilevel climate and energy dialogue was not carried out as required by the Governance Regulation, the NECP could not be declared null given the complexity of creating a platform for the dialogue. It also pointed out that the Commission had already approved the NECP, and apparently even argued that if the Court would order the Spanish Government to modify it, it could be interpreted as disregarding the EU's authority.

CASE STUDY: AIR QUALITY

In the Les Amis de la Terre case, the Council of State had ordered the government to adopt plans within a given time limit relating to air quality in cities affected by legal concentrations of nitrogen dioxide and fine particles being exceeded. In this case, penalty payments were ordered and paid (for a total amount of 40 million euros) against the French State.[37]

CASE STUDY: ECOLOGICAL DAMAGE

In the Affaire du Siècle case, the Administrative Court of Paris recognised[38] that the French State was responsible for ecological damage to the extent of the climate commitments it had not met in its first carbon budget (2015-2018), 25 but nevertheless rejected the State's claim for compensation.26 This latest ruling is currently subject to appeal.

[36] S G Merinero and M A Tigre, 'Understanding Unsuccessful Climate Litigation: The Spanish Greenpeace Case' (11.9.2023).

[37] CE 8 November 2023, No. 428409.

[38] In this case, the provisions of the Civil Code that recognise ecological damage and set out the procedures for compensation were invoked.24 It establishes the principle that "compensation for ecological damage shall be provided in kind as a matter of priority". Only if this is legally or factually impossible, or if the restorative measures are insufficient, can the judge order the responsible party to pay the plaintiff or, if the plaintiff is unable to take the necessary measures, the State, the compensation allocated to restoring the environment.

CASE STUDY: NATURE RESTORATION

The administrative court of Toulouse cancelled an environmental authorisation (authorisation to destroy protected species) issued for a motorway project on which work had already started and was nearing completion.[39] If this cancellation is confirmed on appeal, the State and the concession holder will be exposed to significant restoration costs.

Conclusion

Aarhus' access to justice provisions need to be correctly and fully implemented so that procedural rights can truly serve the public in its quest to prevent substantive environmental harm. However, national courts interpret the Aarhus Convention and all law according to their national legislation, tradition, and legal culture. As a result, it is difficult to reach uniform application of access to justice in the Member States.[40]

The threats to the full implementation and effectiveness of the AC are not to be sought in case law, but in the Government and legislator's reaction to these disputes. In France, since 2018, a series of laws and decrees have restricted public participation procedures and restricted appeals against projects relating to the energy transition (e.g. removal of the double degree of jurisdiction), under the guise of the necessary acceleration of the transition. They thus introduce a risk of regression in environmental protection.

According to Article 9(2) and (3) AC, the sufficient interest and the assertion of a violation of rights (these criteria also apply within the realm of Article 9(3) AC) should be determined by the applicable national law, but at the same time, broad access to justice should be granted, so that the national regulations must not be interpreted too strict with regard to their requirements. And yet, based on the assessment of the reviewed case law, the biggest obstacles for environmental NGOs are: (i) a lack of standing, (ii) the exclusion of certain environmental decisions from judicial review, (iii) court costs and legal expenses and (iv) substantial preclusion rules.

Barriers to access justice are widespread across the EU: the main barriers identified are limitations to who can challenge decisions, which decisions can be challenged, the amount of time it takes for courts to decide on a case, the financial burden for NGOs to do public interest litigations, and remedies which are not always effective and adequate. Member States need to prioritise more training and resources to the Judiciary so that environmental

[39] Administrative Court of Toulouse, 27 February 2025, No 2303830.

[40] L Krämer, 'Comment on Case C-240/09 Lesoochranárske Zoskupenie VLK: Access to Justice in Environmental Matters: New Perspectives' (2011) 8(4) Journal for European Environmental and Planning Law 445, 448 and M Eliantonio, 'The Role of NGOs in Environmental Implementation Conflicts: 'stuck in the middle' between infringement proceedings and preliminary rulings?' (2018) 40(6) Journal of European Integration 753, 760.

cases are handled in a more efficient way, and so that courts are enabled to reach a just outcome for the environment. Furthermore, judges need to appreciate the nature of environmental claims and the importance of giving injunctive relief to on-going environmental cases. Legal aid should be provided to public interest litigation in all Member States. The EU institutions should revive the Directive on Access to Justice for Environmental Matters to guarantee that all of civil society and individuals have equal rights in all Member States. A lack of legal reform could mean a continuation of a state of legal uncertainty, where access to justice is provided for in some Member States but not in others.[41]

→ **Needs:**

Revival of an Access to Justice Directive in the EU to ensure that all citizens in the EU have equal rights to go to court.

Recommendations

STANDING

Standing is still restrictive across the EU.[42] Obstacle such as the "impairment of rights" principle remain, which can affect access to justice and the role of non-governmental organizations in challenging environmental decisions. The interpretation of the direct and individual concern requirement as set out in Article 263(4) TFEU, which has not changed significantly since the Court first clarified the criterion in the 1963 *Plaumann* judgment,[43] means, in practice, that no member of the public is ever able to challenge EU acts on environmental matters before the CJEU.

All environmental NGOs must be able to challenge any and all environmental decisions potentially violating EU environmental laws, even without individual rights being affected. The Court of Justice of the European Union (CJEU) ruled in a case in 2022 that environmental organisations, like Deutsche Umwelthilfe, must be allowed to challenge administrative

[41] J Darpö, 'Effective Justice? Synthesis Report of the Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Seventeen of the Member States of the European Union' (2013),

[42] Another illustrtative example is the Commission's reasoned opinion against Austria because it has allegedly failed to grant ENGOs and individuals standing before a court to challenge all relevant decisions or omissions violating EU environmental law as required by the Aarhus Convention (see infringement case INFR(2014)4111, where a reasoned opinion was issued in November 2023).

[43] In the *Plaumann* case, the Court ruled that: '*... persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision 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 and by virtue of these factors distinguishes them individually just as in the case of the person addressed*'. Evidence shows that this interpretation, known as the 'Plaumann test', has led to the inadmissibility of all of the direct actions challenging EU acts on environmental grounds brought by environmental NGOs (defending general, not individual, interests).

decisions that may violate EU environmental laws, even if these laws do not confer individual rights.[44]

COSTS

The "loser pays" principle can, in some cases, help lift the financial burden, as the losing party must cover both court fees and legal representation costs. The cost of legal representation, in Germany, is capped to certain 'standard' amounts and will not cover e.g. big law rates. Should the NGO be the losing party, however, the financial burden can be ruinous. Therefore, the application of the 'losing pays principle' to NGOs in environmental protection matters, or making them pay costs of intervening third parties, can be an obstacle to their access to justice, by acting as a deterrent.[45] To respect obligations under the Aarhus Convention and generally ensure environmental organisations' access to judicial review, ENGOs and members of the public that seek legal action with the goal of environmental protection should be exempt from covering the costs of other parties to the case, if they should lose.[46] This is also because the fact that the public interest is at stake should be accounted for in allocating cost.[47]

KNOWLEDGE

The public availability of all decisions in environmental matters, both administrative and judicial, must be ensured. The rights of members of the public and ENGOs to access administrative and judicial review to ensure compliance with environmental law, as well as any tools and legal aid available, should be widely and clearly communicated by all Parties.

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[44] CJEU, 8 November 2022, Deutsche Umwelthilfe eV v Bundesrepublik Deutschland, ECLI:EU:C:2022:857.

[45] The ACCC has interpreted Article 9(4) in this way, when it decided a court's order that the communicants pay the whole of the added parties legal costs (without the operator, respondent in the case, being ordered to contribute at all) was unfair and inequitable and constitutes stricto sensu non-compliance with article 9, paragraph 4, of the Convention. (ACCC/C/2008/23 United Kingdom, para. 52); also, ordering claimants that are members of the public to pay substantial costs to third parties that choose of their own accord to intervene in a proceeding could allow third parties to effectively prevent the public from mounting court challenges to permits, thus making the procedure unfair. (ACCC/C/2013/98 Lithuania, para. 148).

[46] The European Court of Justice's judgment of 11.01.2024 in case C252/22, stated that the assessment on costs cannot be made solely on the basis of the plaintiff organizations' financial situation, but must be based on an objective assessment of the costs for any potential plaintiff who has a legal interest in bringing fundamental environmental actions. Paragraph 74 states: "In that context, account must be taken of both the interest of the person wishing to defend his or her rights and the public interest in the protection of the environment. Consequently, that assessment cannot be carried out solely on the basis of the financial situation of the person concerned but must also be based on an objective analysis of the amount of the costs, particularly since members of the public and associations are naturally required to play an active role in defending the environment. Thus, the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable (see, by analogy, judgment of 11 April 2013, Edwards and Pallikaropoulos, C260/11, EU:C:2013:221, paragraphs 39 and 40)."

[47] Fairness in cases of judicial review where a member of the public is pursuing environmental concerns that involve the public interest and loses the case, the fact that the public interest is at stake should be accounted for in allocating costs. The Committee accordingly finds that the manner in which the costs were allocated in this case was unfair within the meaning of article 9, paragraph 4, of the Convention and thus, amounted to non-compliance. (ACCC/C/2008/27 United Kingdom, para. 45)

EFFECTIVE REMEDIES

Adequate and effective remedies must achieve the intended effect of the review procedure, of preventing or stopping, and restoration of environmental harm, and be capable of real and efficient enforcement. This includes, as appropriate: injunctive relief, interim measures, compensation of damages, prevention measures in relation to future damages and restoration measures.

TIME

Both judicial and administrative review procedures must be timely in accordance with the goal of avoiding irreparable environmental harm. While there is not a prescriptive window of time that can be recommended to process and adjudicate all cases, which can be of varying complexity, the public interest aspect and environmental protection goal of the cases should be taken into account. Remedies are only adequate and effective if they are not too late to prevent or prevent environmental harm from occurring or continuing.

NEEDS

→ Member States should allow wide legal standing to NGOs in environmental matters, in line with established EU law and case law, given the important role that NGOs play in supporting the implementation of laws.

→ Revival of an Access to Justice Directive in the EU to ensure that all citizens in the EU have equal rights to go to court.

→ Training for judges and other officials on environmental law and environmental processes. Judges need to appreciate the nature of environmental claims and the importance of giving injunctive relief to on-going environmental cases.

→ Cost-capping measures should be introduced in all Member States, preferably at EU-level though a Directive on Access to Justice for Environmental Matters so that there are no cost differences between Member States that could still lead to a barrier to access courts

→ Legal aid should be made available to all public interest litigants

→ Member States should ensure that their laws allow for NGOs to recover court costs when they win a case.