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Access to justice as a viable compliance tool of the Polluter Pays Principle

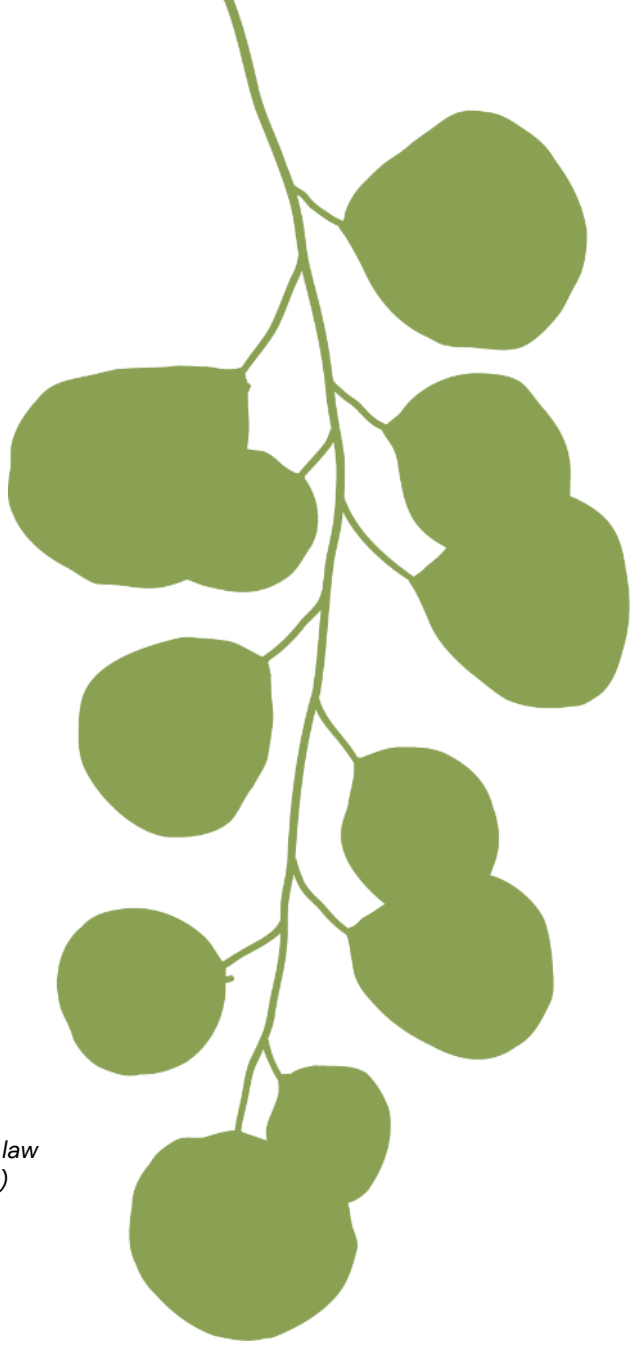


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Report on access to justice as a viable compliance tool of the polluter pays principle

I. Introduction

We live in a system of various ecological catastrophes: as Johann Rockström and his co-authors highlighted in 2009 and reinforced in 2023, humankind has exceeded its safe manoeuvring space in many aspects, but mainly concerning climate, biodiversity, freshwater availability and the quick and irreversible deterioration of a huge portion of arable land. A system is always more than a mere sum of its elements and it needs tools to be maintained. One of the tools to protect the fragile system we live in can be the polluter pays principle.

In this paper, which is a joint effort of the European Environmental Bureau, the Guta Association and the Environmental Management and Law Association, we try to reveal an important aspect of our possible responses to these systemic environmental threats. Without even mentioning the behavioural-cultural, economic and political aspects, we concentrate on certain parts of the possible legal answers, namely the polluter pays principle and access to justice. We have selected these two aspects because we see in them the possibilities of a systemic approach.

We have to underline first of all that both access to justice and the polluter pays principle are inherent parts of different systems of environmental law. Access to justice is the third pillar of the system of public participation at various levels of environmental decision-making procedures as created by the Aarhus Convention. The three pillars are strongly interrelated. It is difficult to imagine effective access to justice once the concerned local communities or environmental non-governmental organisations have no timely and substantive environmental information and have no opportunity to express their opinion on the matter at hand. Even if so, it might be the case that the civil participants wish to start their involvement in a case directly and exclusively at the level of legal remedies. We have to note that some legal systems raise procedural burdens or limitations ahead of such 'late comers'.

Similarly, the polluter pays principle is an organic part of the system of environmental (or in broader sense: sustainable development) principles, whereas the elements mutually support and reinforce each other: the integration principle (which mandates incorporating environmental protection into all other policy areas) spreads out the concept of polluter pays principle into a wide array of legal branches in our laws. Most prominently, the prevention and the precautionary principles try to shift the focus of the polluter pays principle into earlier stages of the risky activities they run. Therefore, the pollute pays principle might form the basis of the obligation of the operators (owners, land owners and other stakeholders) to perform preventive actions on their own expense or give financial guarantees in case the environmental (social, economic) harm would happen. As the Special Report puts it: "Application of the principle means that polluters bear the costs of their pollution including the cost of measures taken to prevent, control and remedy pollution and the costs it imposes on society."[1] (SR, p. 4.) In this report we are going to stress another very important interrelation between the principles of environmental law: active and effective implementation of the public participation principle is a primary guarantee of the effective operation of the polluter pays principle.

[1] European Court of Auditors Special Report, 2024, The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions. https://www.eca.europa.eu/lists/ecadocuments/sr21_12/sr_polluter_pays_principle_en.pdf

In Chapter II we examine the polluter pays principle from various angles of legal science and practice, including the European Court of Auditors' 2021 report. Chapter III deals with access to justice, the other key topic of this Report. In Chapter IV. we examine a line of European legal sources with strong relevance both in respect to the polluter pays principle and access to justice. Chapter V zooms in on the Environmental Liability Directive through a detailed account of a large research performed by 40 independent experts under the auspices of Justice and Environment.

II. UNDERSTANDING THE POLLUTER PAYS PRINCIPLE IN THE SYSTEM OF ENVIRONMENTAL LEGAL PRINCIPLES

1. The concept of environmental principles

Legal principles express the most important social goals and reflect the most relevant scientific findings concerning environmental protection – they might be called a special input from society into law. Conversely, from legal principles one can deduce and understand the structure, operation and aspirations of environmental law. Therefore, environmental principles represent a starting point for environmental legislation; they are the most important tools of legal interpretation in practice.

Emerging environmental legal principles indicate the growing social status and embeddedness of environmental law. Through the creation and solidification of its principles, environmental law is gaining in coherence and independence within national and international legal systems.

The whole system of principles of sustainable development, including several environmental legal norms and principles, was first elaborated on the global level by the 1992 Rio de Janeiro UN Conference on Environment and Development, especially through the Rio Declaration. These aspirational rules have become mandatory elements of international and domestic laws within a couple of years (as was established in 1996 by leading environmental lawyers of the world[2]). By now, hundreds of laws on both the international and national levels have encompassed the principles of environmental law, and they have become a key point in the arguments of international courts, especially of the European Court of Justice, as well as in domestic courts all over the world.

2. General features of environmental principles

Legal scholars have collected the most important traits of environmental legal principles. Legal principles in general express basic values of humanity and environmental protection, in order to save our civilisation and its natural and social bases. Their primary goal, therefore, is bolstering environmental justice. Environmental principles, perhaps more than other principles of our legal systems, are future-oriented and have a strong moral background. Furthermore, environmental legal principles reflect broad public consensus, which results in consistent wording, with no dramatic changes in their texts for long. It is important to call attention to the systemic nature of environmental principles, namely their rich connections with each other and with the neighbouring fields of the legal system. Environmental legal principles represent important elements of the rule of law. As such, they might legitimise certain legal solutions, while delegitimising others.

[2] Meeting on Debt for Sustainable Development Swaps, hosted on November 25–26, 1996, by the Government of the Netherlands.

There is a growing body of direct application of environmental principles in case law. Indeed, the European Court of Justice and national courts hold that legal texts frequently mirror compromises with the polluting economic sectors, rather than long-term social interests and values. Therefore, instead or beside the concrete text of environmental law, the Court uses the general principles to reflect more deeply the real social interests of the environmental law. Opponents of this solution refer to *lex specialis derogat legi generali*, namely that until we have a specific law for a certain legal problem, we should not fall back on the general principles. We think that this legal thinking is too formalistic, and we see no objection to using concrete, specific laws and principles together in solving cases. Moreover, we can refer to the concepts of *ius cogens* or *ius necessarium* that suggest the primacy of general principles above the special environmental legal provisions whenever they are not in full harmony.[3]

3. Introductory notes to the Polluter Pays Principle

The Polluter Pays Principle (PPP) is an economic efficiency measure that is aimed at creating the conditions for producers to internalise environmental costs and to reflect them in the pricing of products. One of the main ways in which the PPP works is by reducing or eliminating environmentally harmful subsidies that distort trade and markets.

"Free goods" have disappeared by now. In the early days of capitalism, air and, to a large extent, water were treated as freely accessible resources that anyone could exploit for economic purposes or use as sinks for pollution without having to pay for them. Pollution today qualifies in ecological economics as a negative externality, and the state takes action against it, but we are very far from making the users of the environment cover all the social and environmental costs connected with their activity. However, protection of a healthy environment and remediation of environmental damage go hand in hand with higher expenses, which should be borne not by general taxpayers, but by polluters through more just and effective legal measures.

In-house expenses will be lower if polluters are motivated to refrain from polluting the environment, because later clean-up costs are higher than those of prevention. In this way the polluter pays principle enhances prevention, too, but only with effective enough enforcement to convince polluters that sanctions are highly likely to be imposed.

Moreover, polluters, producers and other similar persons whose activity or inactivity caused environmental problems are best placed to prevent or clean up environmental pollution, because they know their technology and the environment in their vicinity better than state authorities or other actors. Therefore, polluters are best placed to bear these obligations.

An additional perspective from international policy suggests that if countries fail to apply the polluter pays principle, they give their companies an unfair competitive advantage over those operating in countries with more stringent environmental enforcement policies.

4. Development of the legal background of the polluter pays principle

An early instrument for the application of the PPP was the OECD Council Recommendation on Guiding Principles Concerning the International Economic Aspects of Environmental Policies, adopted in 1972, which focused on the elimination of subsidies.

[3] Fülöp, 2023, p. 89.

Other financial instruments such as charges, taxes, fines and liability can also be used to internalise environmental costs. The OECD elaborated on the application of the PPP, for example in 1974 when it affirmed that PPP is a fundamental principle for OECD member states.

In response to public pressure in the wake of the Sandoz chemical spill in 1986 that poisoned the Rhine River, the OECD adopted recommendations on the application of the PPP in the case of industrial accidents, which extended the principle to include measures such as cost recovery for response actions. These recommendations were among the first steps towards establishing legal standards for environmental liability based on the principle.

By the time of the 1992 UN Conference on Environment and Development in Rio de Janeiro, the PPP was well established, and it was expressed as one of the 27 principles in the Rio Declaration. Principle 16 states:

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Multilateral environmental agreements have commonly included relevant provisions related to the PPP from this time period forward to the present day. Nevertheless, the application of the principle has been incomplete, particularly with regard to the elimination of certain subsidies, which are sometimes justified on economic development grounds.[4]

5. Economic and social justice aspects of the polluter pays principle

The polluter pays principle is one of the oldest environmental protection principles, as we noted earlier, it was often referred to and codified in international[5] and European[6] law as early as the 1970's. Its starting point was fundamentally economic, it sought to internalize the social costs of environmental elements (externalities) that were previously treated as free goods and therefore used and polluted by anyone for free, onto the user, the polluter, although these costs are usually extremely difficult to calculate precisely. In addition, less stringent environmental protection systems, which allowed for more pollution and a freer use of natural resources compared to other countries, distorted market competition and ultimately represented implicit subsidies[7]. It should also not be forgotten that environmentally polluting behaviours impose significant burdens on the state and regulatory system, and thus on taxpayers, even if the cleanup itself is successfully forced from the polluter or other indirectly responsible party[8].

6. The polluter pays principle in substantive laws

The polluter pays principle goes far beyond the financial liability for environmental damage and hazards and the command and control instruments of administrative law, including the obligation of individual polluters or even a larger group of them to prepare joint plans, for example under European air protection law[9], extended producer

[4] Sands and Peel, Principles of International Environmental Law (2018), at 244.
[5] OECD, Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies (hivatkozzák egyebek között: Csák, 2011, Lindhout, 2014)
[6] "The burden of pollution control on polluters provides incentives to reduce pollution and to use less polluting products and technologies, which also enables the rational use of environmental resources." 75/436 EEC Euratom Council Recommendation; the polluter pays principle also appeared in the European Union's 3rd Environmental Action Programme in 1973
[7] Surtees, 2019, 2. old.
[8] de Sadeleer, 2015, 232. old.
[9] Air Quality Directive (AQD), Art. 23

responsibility and product fee-type burdens on manufacturers, importers of specific products[10], but also on consumers, to cover the full cost of a given environmental resource in water protection law[11]. Because of the latter, we also talk about the user pays principle[12]. In the following Chapter IV we are going to examine the manifestation of the polluter pays principle in the most relevant sectoral environmental laws of the European Union.

7. Liability without fault, with a presumption of causality, universally?

Main legal institutions created in the spirit of the polluter pays principle, both in the European Union and North America[13] (such as the Environmental Liability and the Superfund laws) allow environmental authorities to dispense with the need to prove fault under certain conditions when establishing liability for environmental damage. In some cases, they may even be exempted from proving causality beyond reasonable doubt if it is otherwise obvious from the circumstances that the polluting conduct contributed to the environmental and other damage. The presumption of causality must therefore not be an arbitrary decision ("empty shell"), but must be based on plausible evidence, for example, on the fact that the polluter's equipment is located close to the place where the pollution was found and is related to the very substances that the polluter otherwise works with[14]. For this reason, we can agree with those authors who believe that it is not actually a matter of the presumption of causality, but rather of the evidentiary technique typical of modern procedural law, the reasonable consideration of probabilities[15].

However, a trend has emerged in European case law that environmental users should be protected from the unrestricted application of the polluter pays principle. In certain circumstances, even in the case of joint causation, it would be unfair to hold only a few polluters liable, for example, some of the farmers in the case of nitrate pollution of surface waters in an area, or a few major suppliers in the case of a landfill. In such cases, the CJEU refers to the principle of proportionality, which goes beyond the scope of environmental protection principles[16]. In similar cases, the European Court of Justice has abandoned joint liability and has instead undertaken to determine the contribution of each polluter individually[17]. The German Constitutional Court has outright annulled the provisions of the German Soil Protection Act establishing the obligation of owners, citing a violation of the principle of proportionality[18]. European rules also provide for exceptions to the polluter pays principle, in particular in cases where state aid is introduced for the purpose of environmental protection. On the one hand, it is not always possible to internalise the full environmental costs, and on the other hand, in some cases, polluters can use the resources they have left in the most efficient way to implement their longer-term pollution prevention programs[19]. In connection with the detailed analysis of the Environmental Liability Directive, in chapter V, we will revisit these issues.

[10] Rodrigues, 2016, p. 1273
[11] WFD, Art. 9(1)
[12] Lindhout, 2013, p. 56
[13] Not only US, see for instance St. Lawrence case, Canada
[14] ERG case
[15] de Sadeleer, 2015, p. 235
[16] Standley case, Pontina Ambiente case
[17] Futura Immobiliare case
[18] Entscheidungen des Bundesverfassungsgerichts, 102, 1, (2003)
[19] Guidelines for state aid for environmental purposes (2001) OJ C 37 p.3

8. The polluter pays principle and social justice

The polluter pays principle has not yet been consistently implemented in any country, as it is common experience that environmentally friendly, healthy, or even more socially just goods are generally much more expensive. For this reason, poorer sections of the population cannot afford such goods, and thus the need for social justice is brought into conflict with environmental protection considerations. Similarly, if carbon taxes developed in the fight against climate change are imposed on certain fuels, this will put a relatively greater burden on poorer households[20]. Other authors call these phenomena of environmental injustice "environmental gentrification", i.e. environmental protection, and even sustainable development, are only available to those who can pay for it. Others have more modest homes, less insulation, perhaps lead-containing interior paint and long commutes, away from family[21]. The comprehensive, structural requirements of the principle of sustainable development therefore require a careful, complex socio-economic analysis during the implementation of the polluter pays principle.

9. Possible shortcomings of the polluter pays principle

Victims of pollution and environmental organisations generally ask the question: why should we wait until pollution takes place? It seems to be an "end-of-pipe" solution. Even if we acknowledge that making a significant proportion of polluters pay might work as a deterrent for the remaining companies, can we achieve this situation in reality?

The Justice and Environment research on the Environmental Liability Directive (ELD) in 27 European countries examined 120+ priority pollution cases where the stakes were high: large amounts of dangerous materials were emitted and left in the environment, potential remediation costs were huge, and achieving results took a long time. The Justice and Environment (J&E) findings were disheartening: no (0,00%) polluters paid the costs at all in such large ELD cases (see more details of this study in a later chapter). We will return to these findings in Chapter V in more detail.

Yet, several major environmental and water law treaties build upon the polluter pays principle, together with the prevention and even with the precautionary principles (such as the 1992 Helsinki Convention on transboundary waters and also the 1994 Sofia Convention on the use and protection of the Danube). We might conclude that **even if the polluter pays principle is not perfect, we cannot abandon it, because we have no better tools for holding polluters liable for their wrongdoing.**

10. The polluter pays principle and considerations of expediency

We note that in the long term and at a societal level, holding the direct polluter liable does not always lead to the most favourable and safest environmental results. In some cases, it is expedient to oblige the person who ultimately benefited from the polluting behaviour to clean up the contaminated sites (the profit principle[22]) or who is in a position to clean up the area most effectively and protect it from further contamination (the stewardship principle[23]). These principles can be useful complements to the polluter pays principle, as those directly responsible for the pollution can often no longer be identified or are simply unable to do so ("orphan sites"). Their common root is that it is essential to avoid leaving the burden of cleaning up contaminated sites and preventing further environmental damage entirely on the state (taxpayers) or on municipalities with very limited resources. A

[20] Pedersen, 2010, p. 40
[21] Krueger, 2011, p. 26.
[22] Lindhout, 2013, p. 58.
[23] Lees, 2012, p. 98.

typical and general example, quite identical with the J&E findings in Chapter V below, is that out of 149 heavily contaminated sites registered in Wales, only four were completely cleaned up during a multi-year state program[24]. The number of heavily contaminated sites across Europe is estimated at around 340,000, of which no more than 15% have been remediated so far[25]. According to Article 6.3 of the ELD, in Europe, authorities are only able to recover the costs of cleaning up contaminated sites from the polluter after the work has been completed, which, in addition to the scarcity of resources, acts as an additional negative incentive.

The stewardship principle developed in common law ultimately means a kind of indirect responsibility: the legal composition of the ownership rights above a real estate includes not only rights, but also obligations, among other things, that the owner (user) must supervise his property, must not allow, for example, other persons to deposit waste on it or to carry out activities hazardous to the environment there. It should also not be forgotten that cleaning up the area is ultimately in the fundamental interest of the owner, but also of the community concerned, the area will be usable and healthy again, which is also expressed in the market value of the property in question, as well as its neighbouring properties. However, the application of the stewardship principle as a subsidiary principle here, as with all basic principles, requires a complex balancing act; it is obvious that a solution that makes low-income residential property owners insolvent or makes their financial situation extremely difficult is also unacceptable[26].

11. The polluter pays principle in EU law

The polluter pays principle (PPP) was adopted as a principle in the EEC Treaty originally in 1986, which was carried over into the Maastricht Treaty and the EU Treaty, where it is now expressed in the above-cited Article 191. The European Union has typically sought to apply the PPP in environmental secondary legislation, including directives on waste, marine pollution, water, and environmental liability, among others.

The PPP is reinforced by the Union's primary law in force. Article 191(2) of the 2007 Treaty on the Functioning of the European Union (TFEU) states that: *"Union policy on the environment (…) shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay"*. However, as the Special Report underlines, EU legislators are not bound by the principle when enacting EU policy in areas other than the environment, even when those policies might have a significant environmental impact, e.g. transport, fisheries, or agriculture. This is – in our view – contrary to another principle of environmental law, namely the integration principle.

The European Commission is responsible for drafting proposals for environmental legislation that shall be based on the PPP, while Member States are responsible for transposing, applying and enforcing EU environmental directives and regulations. EU and national legislators have various instruments to apply the PPP, as over the past decades, the EU has adopted a broad range of environmental legislation in this spirit. Policies cover environmental issues that protect the elements of our environment, such as biodiversity, forestry, soil and land use, water and air. Other policies specifically target sources of pollution that burden our environment, such as chemicals, industrial pollution, and waste. We investigate several of these sectoral EU policies in Chapter IV. But firstly, we will give a brief overview of the two horizontal laws on civil and criminal liability in environmental matters.

11.1. The Environmental Liability Directive 2004/35/EC

[24] Lees, 2012, p. 106.
[25] de Sadeleer, 2015, p. 232.
[26] Lees, 2012, p. 102-3 and 106.

Recital (2) of the Preamble of the ELD stipulates: "The prevention and remedying of environmental damage should be implemented through the furtherance of the "polluter pays" principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced."

The Preamble tries to address frequent criticism of the PPP, namely that it is a post-facto solution, with little actual effect on the prevention of environmental damage. Indeed, consistent, stringent implementation of environmental liability regimes would restructure the incentives for potential polluters. Unfortunately, this is generally not the case. Company management, driven by overriding profit goals, would do everything possible to save on waste management and other related technologies and, as a rule, underestimate the threats that administrative or civil law measures could pose to their companies.

The same ideas are repeated in Article 1, under the title „Subject matter" in a shorter form: „The purpose of this Directive is to establish a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage."

We will return to the ELD in Chapter V below, using the results of a research project covering 27 countries, conducted in 2021-22 by the Justice and Environment network of environmental lawyers.

11.2. Environmental Crime Directive 2024/1203

Directive (EU) 2024/1203 on the protection of the environment through criminal law (ECD) applies the polluter pays principle by establishing obligations to reinstate the environment (if restoration is possible) or payment of compensation for the damage to the environment (if restoration is not possible) as sanctions (article 7) for both natural (article 5) and legal persons (article 6) who commit offence(s) listed in article 3 of the Directive. We will discuss the ECD in detail in Chapter IV.1.

12. The polluter pays principle in the practice of the European Court of Justice

It is established under EU law that the PPP is not an absolutely strict regime but that the principle of proportionality should be considered in its application. For example, in Case T-158/25, while the case was dismissed on standing grounds (8 February 2026), the European Federation of Pharmaceutical Industries and Associations could argue before the General Court of the European Union that the European Parliament and the Council of the European Union had violated principles of proportionality, non-discrimination and the PPP itself by introducing extended producer responsibility in the 2024 Urban Wastewater Treatment Directive for pharmaceuticals and cosmetics. These substantive issues may be raised again in other proceedings where standing is established.

Analysing the practice of the European Court of Justice, Smith points out that the polluter pays principle is separate from the principle of internalisation of environmental costs, since in the latter case we are not necessarily talking about a polluter (an emitter of a pollutant above the limit value), but rather about an environmental user. At the same time, this latter group may also be obliged to carry out certain activities or modify activities, e.g. installing new equipment, making expenditures in the environmental management system, etc.[27]. According to Bándi, the polluting process could much rather be called "environmental use", since it is not necessarily illegal

[27] Smith, 2019, p. 9

behaviour in the practice of the principle. However, each step of environmental use can be associated with some kind of cost-related consequence, from preparation to aftercare[28].

The European Court of Justice – as we can see with other principles – also tries to limit the scope of the polluter pays principle. It is generally reluctant to establish the liability of those who, although they were included in a specific risk group (e.g. farmers near a water protection area), have proven not to have contributed or not significantly, to the pollution in question. In other words, the court sees that the rules of universality in relation to the polluter pays principle cannot be applied in cases where the financial strength of individual polluters is small or there is too great a difference between the financial situation and opportunities of farmers. In such cases, a return to proportional burden-sharing must be made[29]. However, this does not mean that small polluters can be completely exempted from their payment obligations simply because of their size. On the contrary, the court ruled in another case that the costs of waste management, with all its consequences, must be borne entirely by the waste producers or owners[30]. The responsibility for the environmental burden caused by packaging materials is even broader. This should include everyone who has used these materials, not just manufacturers, importers and distributors[31]. In doing so, the Court thus establishes a coherent system in which it draws the limits of the practical application of the polluter pays principle[32].

13. The European Court of Auditors Special Report on the Polluter Pays Principle

Following the references made above, let us examine the Special Report in detail. The subtitle of the Report reveals much about the results of its analysis of the implementation and effects of the polluter pays principle: "Inconsistent application across EU environmental policies and actions". The summary is simple but straightforward:

> "*IV. Overall, we found that the Polluter Pays Principle is reflected and applied to varying degrees in the different EU environmental policies and its coverage and application was incomplete. With regards to environmental liability, the Commission's actions to support Member States' implementation of the Environmental Liability Directive had not solved key weaknesses, such as unclear key concepts and definitions and the absence of financial security in cases of insolvency. The EU budget is sometimes used to fund clean-up actions, which should under the Polluter Pays Principle have been borne by polluters.*
>
> *V. We recommend the Commission to:*
>
> - *assess the scope for strengthening the integration of the Polluter Pays Principle into environmental legislation;*
> - *consider reinforcing the application of the Environmental Liability Directive; and*
> - *protect EU funds from being used to finance projects that should be funded by the polluter.*"[33]

Furthermore, the Report establishes that PPP is applied differently across different EU environmental policies. As regards *industrial emissions*, the auditors concluded that the PPP is applied to the most polluting industrial installations, which are covered by the Industrial Emissions Directive (IED). The owners of the installations have to bear the cost of complying with the conditions of their permits, including by taking measures to limit emissions below the emission limits. The IED does not apply to smaller installations and does not require installations to meet

[28] Bándi, 2008, p.112
[29] C-293/97 case, *The Queen v Secretary of State for the Environment and Ministry of Agriculture, Fisheries and Food, ex parte H.A. Standley and Others and D.G.D. Metson and Others*, [1999] ECR I-2603, para. 51
[30] C-172/08 case, *PontinaAmbiente*, [2010] ECR I-1175, para 37.
[31] C-104/17 case, *SC Cali Esprou SRL v. Administratia Fondului pentru Mediu*, para 22.
[32] Lindhout, 2014, 50. p.
[33] ECA Special report, p.5

the cost to society of residual pollution.[34] Even though the EU *waste legislation* requires Member States to apply the PPP fully, the funding gap remains wide and significant public investments are needed to meet recycling targets.[35] While progress had been made in addressing specific pollutants, for many enterprises the price of water does not cover the costs imposed by the pollutants they release into the water. The recovery of the cost of water services is difficult to apply to pollution originating from diffuse sources, for example from agriculture.[36] There is no overall EU framework to protect soil, although many pieces of legislation indirectly contribute to reduce environmental pressures.[37] This latter statement, as we have seen, has become outdated by 2025. However, the text of the new Soil Monitoring Directive does not refer directly to the polluter pays principle, only the Preamble names it that will undoubtedly influence the practical interpretation of the text in the practice.

Based on its findings, the Report recommends (Recommendation No. 1) to assess the scope for strengthening the integration of the Polluter Pays Principle into environmental legislation. The Commission should assess the regulatory and administrative changes and the overall cost-benefit of better applying the Polluter Pays Principle, in particular:

(a) lowering emissions limits to further reduce residual pollution;

(b) dealing with diffuse water pollution from all sources, including agriculture.

Then the Report goes on to examine the Environmental Liability Directive, its main focus. The ELD establishes the EU's framework for environmental liability, based on the PPP. The auditors found that the ELD provides for a partial application of the PPP in the event of environmental damage. The latest data available on the ELD implementation, although incomplete, indicate gaps in the implementation of the ELD across Member States.[38] The ELD does not clearly define some key concepts, resulting in different interpretations and applications at Member State level.[39] The absence of mandatory financial security at EU level means in practice that taxpayers pay for remediation costs when an operator causing environmental damage becomes insolvent.[40] We conclude that the Commission's actions to date have not been able to address the shortcomings of the ELD. Out of these findings ensues Recommendation 2 – Consider reinforcing the application of the Environmental Liability Directive. They also recommend that, through the evaluation of the Environmental Liability Directive due by April 2023, the Commission examine the scope to:

(a) improve criteria for defining the environmental damage to which the Directive should apply;

(b) make more use of instruments providing financial security.

The Report has found EU-funded projects that should have been paid for by the polluter. In cases of orphan pollution, when the entity responsible could not be identified or made liable, the use of public funding was justifiable and necessary to remedy the situation. They are also used when responsible authorities failed to enforce environmental legislation in due time. The absence of financial security to cover environmental liability also forced authorities to use public money to restore polluted areas, when the polluter was insolvent.[41]

[34] ECA Special report, paragraphs 20-25
[35] ECA Special report, paragraphs 26-31
[36] ECA Special report, paragraph 32-38
[37] ECA Special report, paragraphs 39-41
[38] ECA Special report, paragraphs 44-48
[39] ECA Special report, paragraphs 49-55
[40] ECA Special report, paragraphs 56-62
[41] ECA Special report, paragraphs 63-68

14. European Commission fitness check of the polluter pays principle

In July 2026, the European Commission published a fitness check of the Polluter Pays Principle application to the environment.[42] A process started in 2021 by an overall topical examination on the implementation of the polluter pays principle, the fitness check which was ultimately carried out is a first of its kind for any principle of EU law. No other EU law principle has, to our knowledge, ever undergone a similar structured reflection. The treaty-based polluter pays principle, in theory stipulates that the polluter should pay for the cost of measures taken to prevent, control and remedy pollution and also for the costs imposed on society, such as costs associated with impacts on health, the loss of ecosystem services, or impacts on the economy.

The fitness check reiterates the purpose and rationale of the principle, highlighting costs to society and the environment and its potential for correcting market failures. The fitness check considered how well the EU and its Member States apply the Polluter Pays Principle (Article 191(2) TFEU), having analysed 76 EU policies affecting the environment. It found that the PPP is partially implemented – which leaves scope for improvement – but where implemented, it is effective in improving the efficiency of environmental policy in addressing the costs of pollution prevention and control.

Three major barriers were identified. Firstly, the distributional impact of the principle must support a just transition and cannot overburden one part of society. Secondly, its effects on business and competitiveness should be taken into account. And, thirdly, administrative overheads in applying the principle need to be reduced. We note here that the first and third factors mentioned in 2026 are identical to those in the 2021 fitness check, while the second argument, concerning competitiveness, received greater attention in 2026.

As is frequently the case with EU instruments, the polluter pays principle was also found to be unevenly applied and implemented across EU Member States and different policy areas.

The analysis also considered that environmentally harmful subsidies (such as fossil fuel subsidies, which were calculated at EUR 123 billion per year) create the wrong incentives for polluters and conflict with the PPP because they reward the polluter and distort market prices. Not only are European governments unable to recover the costs associated with environmental pollution, but environmentally harmful subsidies also keep sending a contradictory price signal.

The fitness check concluded that more EU-level action is needed to achieve stronger implementation of the principle, greater market harmonisation and a stronger internal market, and that such action would contribute to achieving the EU's climate and environmental goals. As the EU favours market solutions, the PPP supports this approach by aiming to reduce pollution levels via price signals.

15. European Commission evaluation of the Environmental Liability Directive

Alongside the above-discussed fitness check, the Commission, after years of delay, published the evaluation of the Environmental Liability Directive (for the period of 2016-2026).

In its evaluation of the ELD, the Commission highlighted developments such as the 2021 guidelines that clarify the scope of the term 'environmental damage' under the ELD. It also highlighted the need to strengthen the ELD regime, since it is not evenly applied across Member States and is underused in some (in a period of almost 10 years, 5 Member States reported no ELD cases, and 14 reported few). We note that the independent evaluation of

[42] European Commission,SWD(2026) 402 final, https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2026)402

implementation was also commissioned by the Commission and is still available on the official ELD website. This will be discussed in more detail in Chapter V.

The evaluation found that the ELD has not always been effective in ensuring that the polluter pays, due in part to the fact that liable operators often lack the financial means to carry out remedial measures due to the lack of insurance and insolvency (since the ELD does not impose liability on whole capital groups or on executives of liable operators, nor does it impose mandatory insurance schemes). One positive trend highlighted, however, is that of financial security instruments in some Member States, both through mandatory and voluntary insurance schemes.

Another relevant finding is that the ELD's limited scope leads to a lack of efficiency in its application. Despite this and its limited uptake in most Member States, the ELD still contributes to a level playing field for operators and makes it easier to handle cases of transboundary damage in the EU.

This 2026 evaluation concludes that the ELD remains highly relevant for addressing the triple planetary crisis and the EU's actions to protect and restore natural resources, since the ELD contributes to the enforcement and implementation of other EU environmental legislation and fills a systemic gap in the EU's environmental acquis, complementing sectoral legislation related to the protection and preservation of biodiversity and water by adding a liability component.

It becomes clear from the evaluation that there is a need to expand the scope of the ELD, both in terms of the list of 'hazardous' activities in Annex III, and in terms of the scope of the damage covered under the ELD by lowering the threshold of 'significant' damage and including all damage to biodiversity, soil, water and air, as well as diffuse pollution.

III. ACCESS TO JUSTICE AND REMEDIES FOR ENVIRONMENTAL HARM

1 Historical background to the Aarhus Convention

The framework for access to justice in environmental matters is established pursuant to the requirements of the Aarhus Convention and relevant EU environmental and general law. The Aarhus Convention was negotiated at a historical moment when a large part of the region of the UN Economic Commission for Europe was undergoing significant political and economic restructuring due to the collapse of the socialist regimes in the former Soviet Union and Eastern Europe. The concern of the people over environmental security had played a large role in this collapse. Consequently, reforms focused on a few key issues, among them access to environmental information and compensation for environmental harm.

Only against this exceptional historical background, as many say, "in a moment of blessing", i.e. in a very enthusiastic and progressive era, was it possible for an environmental NGO activist and university professor, Josef Vavrousek, to be appointed minister of the environment in Czechoslovakia after the Velvet Revolution. Vavrousek took his position very seriously and used the established civil society method: networking. He organised regular meetings for his fellow ministers throughout Europe and more broadly in the Pan-European region, encompassing North America and the Central and Far Eastern countries of the former Soviet Union.

The ministers discussed major policy issues in the field of environmental protection. The third ministerial meeting was held in Sofia in 1995, resulting in a soft law document on environmental democracy, the Sofia Guidelines. At

the same time, a large coalition of more than 400 European environmental NGOs became aware that something important was taking place and wanted to achieve even more – the European Green Coalition pressed for a binding international instrument on the same topic. Fortunately – another historical coincidence – UN ECE (Economic Commission for Europe) undertook the secretariat role for drafting an international legal text. Quite exceptionally, the organisers allowed substantial civil society participation in the drafting procedure between 1996 and 1998. As early as 1998, in Aarhus, Denmark, representatives of the majority of the Pan-European States signed the Convention on public participation in environmental decision-making procedures.

The Aarhus Convention negotiations took place against this background. It was not created, though, without already existing strong international legal initiatives. Rio Declaration Principle 10, which defined the three pillars of access to information, public participation in decision-making and access to justice in environmental matters, had already set the stage for the elaboration of the third pillar, with the statement, "Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

2. The system nature of the Aarhus Convention

The Aarhus Convention on public participation in environmental decision-making has run an amazingly quick and high career in international law: early entry into force (2002), strong influence on EU and national laws, disciplined country reporting and a couple of active and effective task forces and working groups. An especially outstanding feature of the operation of the Convention was establishing the Compliance Committee with a special feature of allowing civil actors to initiate its cases – having 233 substantive cases so far[43], with plenty of precedent decisions and rough materials for national legislation and legal literature.

The secret of the Aarhus Convention is in one phrase: system approach.

While the three major components of the Aarhus Convention, commonly called pillars, existed in almost all of the constitutional systems of the world, they occurred separately. We had rights of access to certain administrative files or data, we could express our views under certain conditions, and if we could prove a significant infringement of our rights, we could seek legal remedies, too. However, within the Aarhus Convention these three separate sets of rights are included in one coherent system, where the elements reinforce each other. A system is always more than a mere sum of its elements.

A. Access to information	A.1 Passive form (upon request)	A.2 Conditions: format deadline expenses	A.3 Exemptions: State official 3. person
	A.4 Active form (upon the own initiative of the administrative body)		
B. Access to participation	B.1 Individual decisions	B.2 Plans, policies, programs	B.3 Legislation

[43] Data of 8th of June, 2026. Not counting submissions from parties, referrals, and requests from the Meeting of the Parties or from individual parties

C. Access to justice	C.1 as a remedy in A-cases	C.2 as a remedy in B-cases	C.3 independent remedy
	C.4 Quality of legal remedies: fair, equitable, timely and not prohibitively expensive		

Source: lecture at the University of Public Services (Budapest), Sandor Fulop

In the first two decades after its entry into force, this system of the Aarhus Convention provided an effective tool for environmental democracy. However, even an excellent system is worth nothing if no one is able and willing to apply it. The so-called "three-and-a-half" pillar of the Aarhus system is capacity building, which, unsurprisingly, forms a coherent system, too:

	With information	**With organisational help**	**Through prevention of hindering public participation**
General	Environmental legal (substantive), institutional and procedural information	NGO friendly operation rules, normative support (financial, technical, institutional etc.)	Prohibition of discrimination in participation procedures
Case specific	Environmental legal (substantive), institutional and procedural information in connection with a case	Ensuring participation rights for NGOs	Prohibition of harassment, prosecution or other forms of revenge for public participation

Source: lecture at the University of Public Services (Budapest), Sandor Fulop

3. Aarhus Convention Access to Justice Art. 9.3, 9.4

As discussed in this report, there are many ways in which national and international laws have been developed to apply the polluter pays principle. Traditional forms of regulation, economic instruments, and implementation and enforcement methods are some of the tools at the disposal of governments to internalise environmental costs. Pursuant to the foundations laid out in the Rio Declaration, the Parties to the Aarhus Convention recognised the role that all of society plays in the transition towards sustainability, and so, in its Articles 9.3 and 9.4, provided opportunities for the public to uphold and apply environmental laws. In the case of the polluter pays principle, these rights and opportunities help to maximise the extent to which the costs of pollution are borne by the polluter.

Article 9.3 of the Convention states:

"*In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have*

access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."

While the Convention does not prescribe in detail the types of procedures that must be available to members of the public, this article means more than merely giving members of the public an opportunity to make complaints to responsible authorities.[44] Generally speaking, the public could have a role to play in administrative, civil, and criminal proceedings, and both procedural and substantive regularity can be the subject.

One of the key mechanisms for operationalising the polluter pays principle is the establishment of legally enforceable actions for environmental liability and compensation. The Environmental Liability Directive, discussed further below, grants members of the public who meet certain criteria 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 that directive. This means, for example, that where a polluter has caused environmental damage and a member of the public with standing has brought it to the attention of the competent authorities, the complainant has further legal means to ensure that the public authorities follow through and apply the law. However, the public participation provisions of the ELD do not allow the public to seek financial remedies directly for persons or communities that suffered damage because of an environmentally harmful activity.

It is now well established in Aarhus Convention Compliance Committee cases that the right of the public to participate directly in the enforcement of environmental law applies to any law that directly or indirectly is related to the environment. Thus, certain tax schemes, planning laws, subsidies, or other mechanisms that might not be primarily thought of as environmental can be subject to Article 9.3 if they have an effect to counteract, frustrate or undermine the application of the polluter pays principle.

In some cases, states have given the public rights to bring actions in their own name, without relying on mobilising public authorities. Permit violations are one area where this is fairly common practice. And of course, the usual rules about torts, nuisance and other common claims would apply in cases where persons are actually harmed by a polluter.

But generally, states may impose reasonable restrictions on the persons who have standing to exercise rights under Article 9.3. The principle of broad standing has a long history with regard to environmental issues in recognition of the key role that the public plays in enforcing environmental law, and the strong interest that members of the public have in doing what they can to protect and maintain a healthy environment. Many states do indeed have liberal standing provisions, while some states with more restrictive standing were found to have not met their obligations under Article 9.3 by the Compliance Committee. Unfortunately, in recent years, there has been a gradual tightening of the rules on standing throughout many legal systems in Europe and the wider Aarhus Convention region. It is important to understand the applicable rules in each respective state, to identify the positive examples and case law among Aarhus Parties, and to make strong legal arguments in a particular case for the most liberal interpretation of the rules wherever the polluter is illegally imposing the costs of pollution on the public welfare.

Article 9.4 of the Convention establishes certain standards related to the access to justice guaranteed under Articles 9.1 through 9.3. These standards can be thought of in terms of the due process and effective remedies that are generally required in order to ensure that members of the public have real access to justice. Naturally, the standards relate to fairness, equity, timeliness, and costs, and these elements have been defined in great detail through many cases and long practice. The publicity of cases ensures that the law going forward will take them into account. Most importantly, and given first place in the text, is the requirement to provide adequate and effective remedies, including injunctive relief as appropriate. It is absolutely essential that there be an opportunity

[44] ACCC/C/2006/18 (Denmark).

for actual measures to be taken and that those responsible be clearly defined at the conclusion of the proceedings because there is no right without a remedy.

(*use of Article 9(3) of the Aarhus Convention*) Environmental NGOs will generally be motivated to make use of a range of mechanisms to enforce environmental law under Article 9.3 of the Convention. Certain laws can be used as a strategic enforcement tool by triggering administrative enforcement, generating scientific evidence, or forcing authorities to justify their inaction.

Article 9(4) of the Convention refers to "adequate and effective remedies, including injunctive relief, as appropriate." Compensation is a common remedy referring to monetary payments made to the claimant for losses or damages suffered. Access to justice includes just compensation for environmental harm.

Other remedies may include injunctive relief or restitution. Injunctive relief may be interim or final. Interim injunctive relief is merely a procedural measure; in general, it does not indicate the final outcome of the case to the parties. It is ordered simply because the contested action or omission might result in irreversible changes by the time the proceedings end.

Alongside injunctive relief, the Aarhus Convention provides that procedures for access to justice, including remedies, should be "fair, equitable, timely and not prohibitively expensive."

Use of the Convention in respect of civil law damages is limited, primarily because environmental risks and damages are difficult subjects to express in exact financial terms. As described in *Putting Rio Principle 10 Into Action* (UNEP, 2015):

Valuing environmental losses for compensation purposes is a difficult and controversial task. Some countries have vast experience in economic valuation of environmental damages. Others, like the UK, have developed methodologies for evaluating the severity of damages in connection with sentencing guidelines for criminal or administrative violations of environmental laws. International agreements such as the UN Convention on the Law of the Sea contain detailed legal provisions concerning compensation for environmental harm.

The practice of the Aarhus Compliance Committee in respect to Article 9(3)

In this sub-chapter we analyse the legal practice of access to justice, based on the 2014 Aarhus Implementation Guide from the official home page of UNECE[45], we attach some further comments, also in a few cases, expressing disagreement. To make our analysis fully up-to-date, we are using references from a 2026 European Environmental Bureau thematic collection of Aarhus Compliance Committee cases[46], too.

The Guide generally points out that Article 9, Paragraph 3 in addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, stipulates that each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. Therefore, Paragraph 3 creates a further class of cases where members of the public can appeal to administrative or judicial bodies (Guideline, p. 197).

[45] https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

[46] https://eeb.org/wp-content/uploads/2026/07/Case-Law-ACCC-2004-2025.pdf

1. Avenues of public law enforcement (legal branches used)

Our main observation concerning implementation of the access to justice pillar of the Convention relates to its inherent systemic nature, which is evident in various aspects.

While applicable to a far broader range of acts and omissions than paragraphs 1 and 2, Article 9(3) allows Parties more flexibility in its implementation. However wide this room for manoeuvre seems, we have to add that historical interpretation should be used to reveal the genuine will of legislators. The text of the Convention examined here builds upon the eighteenth preambular paragraph of the Convention and paragraph 26 of the Sofia Guidelines to provide standing to certain members of the public to enforce environmental law. Paragraph 3 envisages that members of the public may enforce environmental law either directly, i.e., by bringing the case to court to have the law enforced (rather than simply to redress personal harm), or indirectly, by triggering and participating in administrative procedures so as to have the law enforced. We note here that public participation in administrative procedures can be direct, too, when members and organisations of the public decide to use all the available procedural tools. If they request all the relevant information from the case, express views, make suggestions and take part in gathering and evaluating the evidence, their procedural position comes very close to standing: the fullest set of procedural entitlements, usually accorded to materially interested persons.

Public enforcement of the law, besides allowing the public to achieve the results it seeks, may also be a major help to understaffed environmental enforcement agencies. However, effective, useful participation depends on the level of factual, professional and also legal preparedness of the civil (laymen) participants. This is why we usually say that capacity building is the vested interest of the Government and especially of the environmental administration, not only of the members and associations of the public. As the Aarhus Guidelines established in respect to the Danish bird culling case:

> "*The Committee held that access to justice under paragraph 3 requires more than a right to address an administrative authority about an illegal activity. To conclude whether the Party concerned failed to comply with the Convention, the Committee paid attention to Danish law in general, in order to consider whether any other members of the public had the right to challenge the decision in question or whether national law effectively barred members of the public in general from challenging such acts.*" (Guideline, p. 197)

Indeed, the whole system of public participation has to be taken into consideration, with capacity building playing a decisive role. We have to add that this was an elegant way to avoid an explicitly negative opinion on Denmark while still helping to clarify the scope of Article 9(3). Systemic evaluation is needed in such cases to establish whether there is discrimination in the legal opportunities available to members of the public or a general rule that prevents their participation. Prohibition of discrimination is a specific but very important part of capacity building; we can call it the prohibition of capacity weakening.

Furthermore, amongst the general description of access to justice, as another facet of the systemic approach of access to justice i.e. the field of implementation of the general order of Article 9(3), the Guide refers to the sectoral laws of European environmental law, highlighting primarily the ELD (which will be discussed in a separate chapter below).

> *"Examples of enforcement rights can be found in EU Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, which sets out that natural or legal persons meeting the criteria for standing are entitled to request national authorities to take action in cases of environmental damage. The same persons are also to 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 that directive."* (Guideline, p. 197)

However, we have to add that European sectoral laws usually provide access to courts only in relation to administrative supervision matters. The ELD deserves separate mention because it might be an exception, however uncertain its scope.

Further highlighting the systemic way of implementation of the access to justice provision of the Convention (a system of administrative, civil, authority and court procedures) the newer ACCC cases from the EEB collection include a 2013 UK case whose main message is that at least one judicial procedure has to comply with Article 9(3) and (4).

> *"If the legal system of the Party concerned provides for more than one procedure through which members of the public can challenge a particular act or omission contravening national law related to the environment, it is sufficient that at least one of these procedures meets all the requirements of article 9, paragraphs 3 and 4."* (ACCC/C/2013/85, quoted by EEB on p. 100).

This can be read, indeed, as meaning that at least one of the procedures shall be a judicial one. Here we have to underline that judicial procedure is especially important because of its independence from the administrative bodies.

However, civil claim for environmental damage *alone* is no adequate remedy against a plan, according to the Committee.

> *"The possibility to bring a civil claim for environmental damage addressing the consequences of a forest management plan, such as logging in specific areas, is not enough to fulfil the requirement of article 9, paragraph 3, to be able to challenge the plan itself. The civil claim may result in damages or injunctive relief but does not examine, or affect, the legal validity of the forest management plan itself."* (ACCC/C/2017/154 Poland, para. 132, 133, quoted in EEB, p. 100)"

A civil claim, as we will see in a later chapter, is typically time-consuming, expensive and very complicated, especially procedurally. Furthermore, an expert heard by the court might not cover the full range of expertise and experience of an environmental or other related administrative body. In sum, we can describe this dilemma as follows: while an access to justice regime that fully responds to Article 9(3) is necessary because of a court's independent scrutiny and high level of legal expertise, it may be only an exceptional tool for members and organisations of the public. This is because of its complicated procedural arrangements (almost unmanageable without a private attorney, even if legal representation is not obligatory), high expenses (court fees, expert costs and the opposing parties' costs if the case is lost) and the usually much longer time it takes compared to an administrative remedy.

a. Access to justice in administrative cases

The EEB collection of ACCC cases contains a line of decisions where the members and associations of the public have the right to initiate certain administrative procedures, but they put the large part of the procedure and the decision in the hands of the authorities in charge. This does not generally qualify as a valid implementation of Article 9(3).

> *"The right to ask a public authority to take action does not amount to a "challenge" in the sense of article 9, paragraph 3, and especially not if the commencement of action is at the discretion of the authority. Rather, members of the public must be able to actively participate in the process of reviewing the acts or omissions, the legality of which they question."* (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 84, and similarly ACCC/C/2006/18 Denmark, para. 28, quoted in EEB, p. 101)

b. Civil law solutions

While civil law solutions, mostly involving court proceedings, cannot fulfil the requirements of Article 9(3) alone, as we have established above, they are indispensable parts of the set of remedies that must be available to members and organisations of the public. Civil law offers different levels of response to the environmental problems at hand. The claimants' main goal is naturally the elimination or cessation of the polluting activity. However, interim or final injunctive relief is not viable in every environmental conflict. Civil courts strive to find balanced solutions to the conflicts of interest at hand. If the user of the environment has invested considerable financial resources and/or has operated for a long time, courts may be hesitant to order an injunction, even for a short period. In such cases, financial compensation for those who suffered damage (e.g. a decrease in property value) because of the environmentally harmful activity might offer a compromise in the eyes of civil judges.

> *"The adequacy of effective remedies requires that the relief granted achieves the purpose of the review procedure. This may involve compensating for past harm, preventing future harm, and/or restoring the original state. While monetary compensation is often insufficient to fully address environmental harm, it may still offer some degree of satisfaction to those affected".* (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 99 – quoted by EEB on page with reference to the Aarhus Convention Implementation Guide, p. 200)

c. Access to justice in nuisance cases

Nuisance cases represent a branch of civil law with important features borrowed from administrative law to resolve local neighbourhood conflicts effectively. It is important to note, however, that nuisance can occur not only between neighbours *stricto sensu*, but also between landowners/users who live further apart, where the effects of the disturbing activity can still reach the complainant. This occurs mostly through the air (noise, chemicals or small particles), but nuisance cases concerning small waterflows happen in the practice, too.

Private nuisance proceedings in general fall under Article 9(3) in the practice of the Committee. Indeed, most of the nuisance cases rest upon facts that might form the basis for an environmental administrative procedure, too. The Committee gives in brackets the most frequent cases of overlap between nuisance and environmental laws.

> *"The fact that the law of private nuisance primarily relates to protecting the rights of individual property owners to enjoy their land does not exclude that it at the same time regularly concerns various components of the environment and aims to protect them. In practice, the principal criteria for assessing the Convention's applicability to a specific private nuisance case would be whether the nuisance complained of affects the "environment" in the broad meaning of this term (e.g. through noise, odours, smoke, dust, vibrations, chemicals, waste or other similar pollutants)."* (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 73, quoted in EEB, p. 101)

In practice, contrary to other civil law avenues, especially damages claims, nuisance cases offer cheap and quick solutions to smaller environmental conflicts. In certain cases, they may be handled not by courts but by municipal officials, who know the locality and the persons and activities involved in the conflict. We can conclude that, in such simple, though civil law-based cases, effective remedies can be ensured not only through financial compensation, but also by addressing the core problem quickly and effectively.

Municipal officials or courts can order a small-scale polluter to stop the activity immediately, or to transform it in a way that it would not cause nuisance anymore. However, we have to add that civil law remains civil law: it always seeks compromises between conflicting interests. In this spirit, in certain small-scale, local environmental

conflicts, a municipal official or local court might decide that a minimum level of noise, smell or other similar pollution must be tolerated in light of the circumstances and local customs of a village or city.

2. Objects of the cases

a. Cases that qualify as environmental ones

In close connection with the question 'what can be reviewed?', i.e. the possible objects of cases, the EEB collection examines the concept of environmental cases. We have to take into consideration that environmental law is a relatively new branch of law: many scholars date its birth to 1969 and the comprehensive US National Environmental Policy Act (NEPA), which created an institutional framework, procedures, impact assessment and, last but not least, strong public participation provisions. As a newcomer, environmental law had to use the institutions of other branches of administrative law that seemed closest to its goals, such as public health, mining, disaster prevention and a range of construction permitting and supervision laws. We collectively call these the 'neighbouring fields' of environmental law. In this way environmental law developed into a cross-cutting branch of law; that fact has major consequences for the definition of an environmental procedure or case.

> *"A review procedure that is only possible where a public authority has adopted an act under environmental law is too narrow and does not comply with the broad scope of article 9, paragraph 3."* (ACCC/C/2008/32 European Union part II, para. 99, quoted by EEB, p. 102)

The term "laws relating to the environment" is therefore broader than "environmental laws".

> *Article 9, paragraph 3, is not limited to "environmental laws", e.g., laws that explicitly include the term "environment" in their title or provisions. Rather, it covers any law that relates to the environment, i.e. a law under any policy, including and not limited to, chemicals control and waste management, planning, transport, mining and exploitation of natural resources, agriculture, energy, taxation or maritime affairs, which may relate in general to, or help to protect, or harm or otherwise impact on the environment."* (ACCC/C/2011/63 Austria, para. 52, 55, quoted by EEB, p. 102)

Further important decisions of the ACCC point out that Article 9 shall be implemented together with the whole system of the Convention, especially with an eye on the very broad definition of "environmental information" under article 2, paragraph 3.

Furthermore, not only substantive laws but also the procedural provisions that determine their actual implementation must be considered, even though article 9, paragraph 3, does not explicitly mention the substantive or procedural legality of an act or omission. The Committee drew an analogy with Article 9, paragraph 2, which explicitly mentions procedural provisions. There is no reason to suppose that omitting the same reference from paragraph 3 reflects the will of the Aarhus legislators to allow access to justice only in relation to the substantive aspects of cases. (This view was expressed in ACCC/C/2011/63 Austria, para. 54, and ACCC/C/2008/33 United Kingdom, para. 124, both quoted by EEB on pages 102-3.)

b. Cases of neighbouring legal fields

Construction cases are typically concerning the interests of a wide array of neighbours. Noise, air pollution traffic in general, loss of intimacy or decreased scope of view, just to mention a few. In the context of building permits, the Supreme Administrative Court of Sweden has held that

> *"Such decisions are deemed to concern — in addition to the applicant — the owners of properties immediately adjoining the property to which the building permit pertains, as well as the owners of nearby properties that are particularly affected, having regard to the nature and extent of the proposed measure, the natural conditions of the site, and other relevant factors*." (ACCC/C/2013/81, Sweden, para. 86, 87, quoted by EEB p. 106)

While construction laws try to decrease the number of clients in the various construction cases, which is understandable from their specific viewpoints, considering the huge amount of such cases the respective administrative bodies have to tackle with. One of the filtering factors for standing and other level of participation (e.g. information distribution) is the distance from the planned construction site. However, in environmental cases distance cannot be the sole exclusion criterion. In the Swedish wind turbine case referred to above, the Committee stipulated:

> *"It is not in compliance with article 9, paragraph 3, to exclude standing to challenge an act or omission concerning a wind turbine only with reference to distance. Rather, other criteria such as noise and vibration or shadow flicker, safety considerations or damage to the environment at large should also be taken into account. It follows that it would not be legitimate to exclude from standing everyone more than a certain distance, for example 1.5 kilometres away from a wind turbine, on the basis of distance alone."* (ACCC/C/2013/81 Sweden, para. 98–101, quoted by EEB, p. 107)

We can add that in the cases of windmills, not only the direct long-distance effects of noise and vibration should be taken into consideration, but in many such cases strong nature protection concerns emerge, too, especially in respect to the migration routes of birds. Environmental and nature protection NGOs should definitely have a say in such cases.

c. Spatial plans, local land use regulations

Spatial plans, whether part of construction law or, more broadly, plans that predetermine a wide array of concrete projects that might exert significant effects on the environment, are undoubtedly subject to Article 9(3). As the Bulgarian decision of 2011 states:

> *"The characteristics of the General Spatial Plans indicate that these plans are binding administrative acts, which determine future development of the area. They are mandatory for the preparation of the Detailed Spatial Plans, and thus also binding, although indirectly, for the specific investment activities, which must comply with them. Moreover, they are subject to obligatory SEA and are related to the environment since they can influence the environment of the regulated area."* (ACCC/C/2011/58 Bulgaria, para. 64, 69 and similarly ACCC/C/2010/50 Czech Republic, para. 85 quoted by EEB, p. 104)

d. Tiered procedures

Environmental authorities and investors/operators might have a range of strategies to limit the scope and time of public participation. One constraint on public participation is restriction of participation in more than one stage at lengthy procedures on the same subject that however stands of several layers of decisions. This is why ACCC had to establish that denying access to challenge both SEA statement and the general/detailed spatial plan at the same time is not in line with Article 9(3).

> *"The Spatial Development Act explicitly prevents any person from challenging the General Spatial Plans in court. As a result, members of the public, including environmental organizations, are also prevented*

from challenging the SEA statements for General Spatial Plans, as these statements are considered as "preliminary acts", which are not subject to judicial review in a separate procedure. Therefore, the Party concerned fails to comply with article 9, paragraph 3, of the Convention." (ACCC/C/2011/58 Bulgaria, para. 66, 70 quoted by EEB p. 107)

We note, however, that even this 'either or' approach might be dysfunctional from environmental democracy aspects, because, supposing that the members and organisations are only allowed to take part in the SEA procedure, the actual implementation of the findings and suggestions of the environmental assessment would remain without public control.

However, the mere fact of participation in a case does not always guarantee standing to challenge a decision. The Committee found in its 2015 French case that the right under the Convention to participate in decision-making in environmental matters is separate from the right to have access to justice in environmental matters.

> *"Participation by a member of the public in an administrative procedure does not automatically bestow upon that person a right of standing under article 9, paragraph 3, to challenge an act or omission related to that procedure, unless such a right would be in accordance with the criteria for standing laid down in the national law."* (ACCC/C/2015/135 France, para. 74, quoted by EEB, p. 106).

We have to note that it is an extreme situation; in the overwhelming majority of European administrative cases, clients in the phase before an administrative authority shall have the right to have remedies at an administrative court. So, in our opinion this differentiation between the second and third pillars of the Convention can be valid, but too formalistic.

Wide access to justice in administrative penal law and criminal law should be ensured – this is the broadest concept of tiered procedures. Criminal and administrative penal laws are currently of secondary importance for environmental law enforcement, yet these branches of law play a crucial supporting role in ensuring the correct and lawful operation of administrative bodies and other participants in environmental cases. It is natural, therefore, that whenever members or organisations of the public experience serious misconduct in these cases, they have free access to make criminal or petty offence complaints. In turn, those who report criminal cases to the authorities will have a role as participants in the criminal proceedings, even if not in all respects. This situation was described by the Committee in its 2011 Austrian case:

> *"Access to justice under article 9, paragraphs 3 and 4, requires more than a right of members of the public to address an administrative authority or the prosecution about an illegal activity. Members of the public should also have access to administrative or judicial procedures to challenge acts or omissions by private persons or public authorities when they consider that such acts or omissions amount to criminal acts or administrative offences. This may be pursued through avenues within or beyond penal/criminal law procedures."* (ACCC/C/2011/63 Austria, para. 64, quoted by EEB p. 103)

In large and long history cases, where several layers of various administrative decisions take place, some countries tend to ask patience from the members and associations of the public: they should not have a say in the planning procedure, which is said to be only a preliminary, political type, resource distribution decision, but they will have a right to participate in the individual decisions that follow the plan. The Committee's standpoint is that a mere right to challenge a subsequent permitting decision based on a plan is not enough either.

> *"If members of the public only have the possibility to challenge subsequent decisions permitting activities subject to EIA listed in a forest management plan, the requirement in article 9, paragraph 3, to provide access to an administrative or judicial procedure to challenge the forest management plan itself is not fulfilled (...) The fact that access to justice is available to challenge the environmental conditions of a subsequent activity subject to an EIA does not remove the separate and additional obligation to provide*

access to administrative or judicial procedures to challenge the forest management plan." (ACCC/C/2017/154 Poland, para. 125-128 quoted on EEB page 101)

Even if both sides might have convincing arguments, we strongly agree with this decision, because planning is not only a political or economic 'wish' to let things develop along a broadly determined path. It is rather an important legal precondition of individual decisions, and a basic reference point – if the plan supports an individual project, the permitting authorities generally have few reasons to decline the request. Thus, if members and organisations of the public had no opportunity to raise their voices in the planning phase, they are usually too late by the time of the administrative procedure.

e. Triggers and scope

In the subchapter about triggers and scope of review, the Guide stipulates that under the Convention, Parties must ensure that members of the public can directly enforce the law in the case of alleged violations by either private persons or public authorities. **[Guide p. 199]** This topic is closely related to the problem of tiered procedures discussed above, because monitoring and enforcement represent important additional stages in long-running cases, where members and associations of the public can seldom play a meaningful role. Furthermore, the Guide briefly surveys the most important but controversial issues concerning triggers and scope, such as participation in procedural matters and challenging omissions.

The Guide establishes that although no explicit reference to substantive or procedural legality is made in paragraph 3, a Party cannot limit the scope of review under this provision to either procedural or substantive legality. Rather, the review procedures for acts and omissions challenged must enable both the substantive as well as the procedural legality of the alleged violation to be challenged.

> *"For example, individuals and environmental organizations that meet the national criteria may challenge a violation by a facility of wastewater discharge limitations in its permit. One means of challenging such a violation would be to take the owner or operator of the facility to court, claiming a violation of the law, and receive a remedy such as a court order to stop the illegal wastewater discharges. Another would be to trigger an administrative procedure against the operator, where the claimant is given a status as a party in the procedure* (see also the commentary to article 9, paragraph 4, below, concerning injunctive relief)." [Guide p. 199]

Members of the public should also be able to challenge acts or omissions of public authorities that transgress national environmental law. "Omissions" in this case includes a public authority's failure to implement or enforce environmental law with respect to other public authorities or private entities. [Guide p. 199] No discretion is possible legally as to acts or omissions that may be excluded. Article 9, paragraph 3, does not allow Parties any discretion as to the acts or omissions that may be excluded from implementing laws. Furthermore,

> *"(...) the restriction to regulatory acts that do not entail implementing measures does not comply with article 9, paragraph 3. With regard to administrative acts, it is not in compliance with the Convention to bar measures that have no legally binding and external effects from review."* (ACCC/C/2008/32 European Union part II, para. 52, 68, 69, 76-78, 102, 103) [EEB p. 103]

f. Strategic and internal decisions

It is important to underline that Article 9 covers all the previous articles in the Convention, therefore, not only acts of individual scope are covered thereof. There is no reason to construe the concept of 'acts' in article 9, paragraph 3, as covering only acts of individual scope. Furthermore,

> *"There is no correlation between measures of general application and measures taken by a public authority acting in a judicial or legislative capacity. It follows that a provision on access to justice that covers only acts of individual scope fails to correctly implement article 9, paragraph 3."* (ACCC/C/2008/32 European Union part II, para. 51) [EEB p. 103]

On the other hand, access to justice shall not be limited to "general" acts either. An act in the sense of article 9, paragraph 3, is not limited to those with the legal nature of a general act.

> *"This can be deduced from the fact that article 9, paragraph 3, also provides for access to justice to challenge acts of private persons, which will never have the legal character of "general acts".* (ACCC/C/2017/154 Poland, para. 100) [EEB p. 103]

Following the same line of logics, internal acts are covered, too.

> *"There is nothing in the wording of article 9, paragraph 3, that would exclude acts of an "internal" nature from its scope."* (ACCC/C/2017/154 Poland, para. 99) [EEB p. 103]

Notably, the mistake on the Polish side follows from applying the narrower logic of the temporary or technical exemptions in Article 4. However, as the Polish case clearly showed, the Committee is of the opinion that a structural, systemic interpretation may have no place here if it would result in a restrictive definition of the scope of general access to justice under Article 9(3).

Air quality protection programmes (AQPs under the "Cleaner Air for Europe" Directive) are a contentious subject under Article 9(3). In several European countries, they are considered as part of the discretion of the state bodies and any kinds of public participation can concern only those decisions that are based on the plans. However, in another Polish case the Committee stipulated:

> "(…) Environmental NGOs, where they meet the criteria, if any, laid down in national law, need to have access to administrative or judicial procedures to challenge air quality protection programmes and short-term action plans which contravene national law relating to the environment. (ACCC/C/2016/151 Poland, para. 111) [EEB p. 104]

The same opinion was expressed in the 2017 Bulgarian case, too (ACCC/C/2017/161 Bulgaria, [EEB p. 104] para.138).

g. Private persons' decisions

Acts and omissions by private persons might be covered by the whole Convention in exceptional situations, where they have the nature of a quasi-administrative decision. However, access to justice according to Article 9, paragraph 3, applies to acts and omissions by both public authorities and private persons quite naturally, as a main rule, rather than an exemption.

> "For example, a forest management plan prepared by a private forest owner, whether a natural or legal person, will fall within the scope of 9, paragraph 3, and may therefore be challenged". (ACCC/C/2017/154 [EEB p. 103] Poland, para. 107)

Exceedances of noise limits must be challengeable, regardless of whether those responsible are legal or natural persons, using administrative or other legal tools selected by the persons suffering the consequences.

> *"The national standing criteria are too strict in the sense of article 9, paragraph 3, if an operator exceeds some noise limits set by law, and no member of the public can be granted standing to challenge the act of the operator (private person) or the omission of the authority to enforce the law."* (ACCC/C/2010/50 Czech Republic, para. 85) [EEB p. 104]

h. Law enforcement acts

Environmental cases may be formally closed and the files archived, but the underlying environmental conflicts continue to exist until the decisions of the authorities or courts are fully implemented by the responsible party and/or enforced by the relevant authority.

> *"Failure to enforce national law constitutes an omission, too. A general failure by public authorities to implement and / or enforce environmental law would constitute an omission in the meaning of article 9, paragraph 3."* (ACCC/C/2004/6 Kazakhstan, para. 30) [EEB p. 103]

Failure to provide effective remedies in a review procedure might qualify as an omission by the authorities and, as such, definitely falls within the scope of Article 9(3), where the term 'omission' is explicitly mentioned. Acts and omissions by authorities that fail to enforce nature conservation decisions properly belong to this category, too.

> *"Article 9, paragraph 3, entails the obligation for Parties to ensure that, in cases where administrative agencies fail to act in accordance with national law relating to nature conservation, members of the public have access to administrative or judicial procedures to challenge such acts and omissions."* (ACCC/C/2006/18 Denmark, para. 28) [EEB p. 104]

3. Subjects of the cases

a. Clients in the Article 9(3) cases

Standing is a simple issue in respect to Paragraph (1) and (2) of Article 9 of the Convention, while Paragraph 3 gives a wide scope of discretion to the Parties, but does not give a wild card for arbitrary regulations: "Members of the public, where they meet the criteria, if any, laid down in national law."

The next question in the Guide is therefore: who can ask for review? In other words, this is the issue of standing. There is a theoretical question in the background that might have important practical ramifications: public participation in general is not equivalent to standing; rather, it comprises certain elements of standing. This is true for the first and second pillars (information and participation, i.e. having a say in the decision, submitting suggestions, protests etc.), but not for the third. In the case of access to justice, the right to participate usually means full standing. Anything less ensured by the national laws will be very controversial and could have hardships ahead of the Compliance Committee. This is how to read the very *demanding phrases of the Aarhus Implementation Guide*.

> *"The Convention requires Parties to ensure standing to enforce environmental law for members of the public meeting the criteria, if any, that may exist in national law. The Convention allows Parties to set criteria for standing and access to environmental enforcement proceedings under paragraph 3, but any such criteria should be consistent with the objectives of the Convention regarding ensuring access to justice",* [Guide p. 198 (PDF p. 199)]

Unfortunately, there are not yet any decisions that stipulated this concept with the same wording. The two decisions that might be the closest are ACCC/C/2005/11 (Belgium), ACCC/C/2006/18 (Denmark) and ACCC/C/2011/58 (Bulgaria). Even if so, the Guide's assertion stands on solid bases first, concerning the general principles of international law in connection with bona fide implementation of any international legal commitments; second, the implementation of Article 9(3) shall be in harmony with the intentions and legal orders expressed in the Preamble and in Article 2 of the Convention.

The requirement of "impairment of subjective rights" in environmental cases was found a too restrictive approaches of the subjects, taking into consideration of the ubiquitous effects of the majority of the environmental legal cases. It can contravene the wide access to justice as an objective of the Convention, as the Committee established in the 2008 German case.

> *"This would be the case if legislative guarantees are absent that require for members of the public, including environmental NGOs, to have access to review procedures to challenge acts and omissions of private persons and public authorities in areas of national environmental law regardless of the invocation of subjective rights. Only if a broad interpretation of the term "impairment of subjective right" was to become a general practice of national courts in all areas of national law relevant to the Convention, compliance could be assured."* (ACCC/C/2008/31 Germany, para. 99) [EEB pp. 105–106]

b. Standing for NGOs

Standing for environmental NGOs if they have "support from the public" is a relatively old requirement of certain European laws, that in essence casts doubts to the independent rights of NGOs to participate in environmental decision-making procedures. Critics seldom raise the so-called "legitimacy trap" of associations and foundations, claiming that they lack or have lost connections with their constituencies and work mainly for their organisational interests. From organisational sociology it is indeed a familiar concept, while it is quite rare if existing at all in cases of environmental NGOs. Their constituency is usually twofold: their membership or funders, on the one hand, and the environment itself, on the other, encompassing a broad range of living organisms and non-living elements and, indirectly at least, large amount of people in present and future generations. Even so, the Compliance Committee leaned towards a compromise with some old procedural legal provisions in the 2013 Swedish case:

> *"However, if there is the general standing criteria for associations to have at least 100 members, but if associations with less than 100 members are entitled to standing so long as they can show they have the "support from the public" and have been active at least three years, this complies with article 9, paragraph 3."* (ACCC/C/2013/81 Sweden, para. 85) [EEB p. 106]

We note that decision might not be fully in harmony with the social mandate of the environmental NGOs, especially local grassroots ones. Therefore, we might doubt that it is in line with Article 2(5) of the Convention.

c. Direct concern requirements

The EU Plaumann test is a very old (based on a 1963 case), extremely conservative approach to standing, demanding indirect and personal concerns from the individuals who wish to participate in an administrative case. Nowadays several environmental decisions of the ECHR (notably the Climate Senioren case) overlooked this approach that is to influence the ECJ practice soon. The Aarhus Compliance Committee itself held that the Plaumann test as it is applied by the European Courts and the jurisprudence that has followed the Plaumann case

is too restrictive to meet the criteria of the Convention. Here the ACCC also started out from the broad object of environmental cases, bringing public health cases on the same platform:

> *"The consequences of applying the Plaumann test to environmental and health issues is that in effect no member of the public is ever able to challenge a decision or a regulation in such cases before the European Court of Justice."* (ACCC/C/2008/32 European Union part I, para. 86, 87) [EEB p. 106]

Similarly to that on the NGO level, the direct concern requirement is deemed too narrow by ACCC.

> *"A direct concern criterion requiring that an NGO is only directly concerned with a contested measure unless the measure in question directly affects the organization's legal position is too restrictive. Standing to such an organisation would always be denied when it acted purely for the purposes of promoting environmental protection. While Parties have a margin of discretion when establishing criteria for the purposes of article 9, paragraph 3, that margin of discretion does not allow them to exclude all NGOs acting solely for the purposes of promoting environmental protection from redress."* (ACCC/C/2008/32 European Union part II, para. 73) [EEB p. 106]

d. Standing for affected individuals

A provision on standing for individuals in environmental cases that states "A person whom the decision concerns may appeal against it, provided that the decision affects him adversely and is subject to appeal." is in line with article 9, paragraph 3. Naturally, it should not stand alone, but should be read alongside all provisions ensuring broad participation in environmental matters. Such provisions would not exclude this basic form of standing, especially when national courts interpret it so that, in principle, any individual who may suffer harm or other disadvantage as a result of an environmentally detrimental activity authorised by a permit decision is regarded as a concerned party. Unfortunately, the ACCC is not currently ready to accept the broad time horizon and inherent role of probability in environmental cases.

> *"However, the mere existence of a purely theoretical or wholly negligible risk of harm or inconvenience shall not suffice. In the context of building permits, the Supreme Administrative Court of Sweden has held that such decisions are deemed to concern — in addition to the applicant — the owners of properties immediately adjoining the property to which the building permit pertains, as well as the owners of nearby properties that are particularly affected, having regard to the nature and extent of the proposed measure, the natural conditions of the site, and other relevant factors."* [EEB p. 106] (ACCC/C/2013/81Sweden, para. 86, 87)

We are afraid that in line with the opinion of the Swedish Supreme Administrative Court some indirect, but still quite significant environmental effects, such as noise, heightened traffic even in further but frequently used streets etc. might fall out of the scope.

e. Participation does not guarantee standing to challenge decision?

As we noted above, the right under the Convention to participate in decision-making in environmental matters is much broader for the first and second pillars of the system of public participation. Therefore, logically

> *"Participation by a member of the public in an administrative procedure does not automatically bestow upon that person a right of standing under article 9, paragraph 3, to challenge an act or omission related*

to that procedure, unless such a right would be in accordance with the criteria for standing laid down in the national law." (ACCC/C/2015/135 France, para. 74) [EEB p. 106]

This is again too conservative an approach in our opinion. We would argue for the right to defend their standpoint in court for those who spent money, time and effort to represent environmental interests at the administrative level of the case. However, a certain level of discretion might be withheld: futile, poorly based participation at the administrative level of decision-making shall not establish a right to legal remedy. But this should be the exemption, not the main rule, naturally.

4. The bodies that carry out the review

a. The body to proceed the request

Who carries out the review? This is the next logical question in the system of access to justice. Article 9, paragraph 3, gives the public access to administrative or judicial procedures. The Guide sees in this provision potential for so-called "citizen enforcement", which is mainly known from North American public interest environmental law practice. The first element is granting members and organisations of the public legal avenues to enforce environmental law directly in court. The second element – which sporadic European experiments with this legal institution tend to forget about – is that the civil litigants can have fair remuneration of their efforts whenever the environmental problem in the cases they raise is significant and they manage the case at a proper professional and legal manner.

> *"The obligation can also be met, for example, by ensuring a right for members of the public to initiate administrative or criminal procedures. Parties retain considerable discretion in designating which forums (court or administrative body) and forms of procedure (e.g., civil law, administrative law or criminal law) should be available to challenge the acts and omissions in question. While bearing in mind the general obligation in article 3, paragraph 1, to establish and maintain a clear, transparent and consistent framework, Parties are not prevented from providing different review procedures for different kinds of acts and omissions."* [Guide p. 198 (PDF p. 199)]

In most countries, criminal enforcement remains in the hands of the government. The contrary solution is rather typical for common law legal systems, such as the United Kingdom where "private prosecutions" are possible.

> *"The right to bring private prosecutions is preserved by the United Kingdom's Prosecution of Offences Act, 1985. There are, however, some restrictions, including that the Director of Public Prosecutions has power to take over private prosecutions, and in some cases, the private prosecutor must seek the consent of the Attorney General or of the Director of Public Prosecutions before the commencement of proceedings."* [Guide pp. 198–199 (PDF pp. 199–200)]

b. A complaint to the Commission

According to the ACCC 2015 EU case, a complaint under Article 1 (h) of EU's Regulation 659/1999 does not meet Article 9(3) standards, because it does not ensure an active, substantive participant position in the procedure. From the onset of the case, i.e. from the moment the complaint is issued to the Commission, the whole case is under the discretionary power of the Commission: to start it or not, how to handle or stop it etc.

> *"Even if an environmental NGO is indeed recognized to be an "interested party" under article 1 (h) of EU Regulation 659/1999, a mere right to ask for a formal investigative procedure by the Commission under*

article 108, paragraph 2, of the Treaty on the Functioning of the European Union does not meet the requirements of article 9, paragraph 3." (ACCC/C/2015/128 European Union, para. [EEB p. 100] 117-118)

c. Amicus curae position

Amicus curae letters are sometimes deemed a good procedural option for environmental groups, mainly with proper legal-scientific bases, who wish to influence of the outcome of a case but cannot (or does not wish) to take part in the procedure with full set of rights and responsibilities. Even is so, a mere possibility to intervene in an ongoing annulment procedure does not sufficiently respond to the requirements of Article 9(3). In a case, where the European Union, as a Party to the Aarhus Convention was the defence party at the ACCC, the Commission's representative, as a defence for not having fully implemented of the third pillar of the Convention referred to the possibility for NGOs to intervene in judicial proceedings before the Court of Justice of the European Union in support of one of the parties to the case in accordance with article 40(2) of the Statute of the Court of Justice of the European Union.

> *"The Committee notes, however, that this possibility can under no circumstances replace an NGO's right to independently initiate a challenge to an act or omission that contravenes European Union law relating to the environment, since it is entirely dependent on a third party deciding to bring proceedings under article 263, paragraph 4, of the Treaty on the Functioning of the European Union."* (ACCC/C/2015/128 European Union, para. 121) [EEB p. 100]

d. Ombudsman

Non-governmental state bodies, such as state auditors, non-criminal prosecutors or parliamentary commissioners for the environment or the protection of future generations' interests, represent an important avenue for members and associations of the public to raise complicated environmental problems for consideration. However, these bodies have no right to oblige administrative bodies to undertake particular procedures or measures; the influence of their findings and suggestions lies only in their high professional standing. Nor can the complainant take an active part in the procedure; here again the whole case (its start and continuation, the evidence and legal arguments to be considered, etc.) depends on the discretion of the non-governmental state bodies.

> *"A complaint to the ombudsman, does not provide for adequate alternatives to private nuisance proceedings. These possibilities are not connected with any procedural rights enabling members of the public to effectively commence a procedure to review the act or omission allegedly causing the nuisance, to actively participate in such proceedings, or to enforce adequate remedies. Furthermore, the ombudsman cannot deal with the alleged nuisance as such, but may only review the actions of the regulator and provide recommendations."* (ACCC/C/2013/85 and ACCC/C/2013/86 United Kingdom, para. 79, 85, 88, 102, 103) [EEB p. 102]

5. Compliance Committee practice on the quality of remedies (Article 9(4))

The quality requirements under article 9(4) stipulate that the procedures under paragraphs 1, 2 and 3 of Article 9 shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

Article 9(4) is about general minimum standards for all relevant review procedures, which are mutually interdependent with the requirements of Article 9(3): any insufficiency in connection with the latter excludes the fulfilment of the former:

> *"In connection with failure to provide review procedure leads to non-compliance with Article 9(4) the Committee finds that, by failing to provide any procedure under article 9, paragraph 3, through which members of the public are able to challenge decisions on state aid measures taken by the European Commission under article 108, paragraph 2, of the Treaty on the Functioning of the European Union that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9, paragraph 4."* (ACCC/C/2015/128 European Union, para. 128) [EEB p. 107]

a. Adequate and effective remedies

Under paragraph 4, Parties must ensure that review bodies provide "adequate and effective" remedies, including injunctive relief as appropriate. Adequacy means the ecological validity of the remedies provided: a true reflection of the facts, their correct professional and legal evaluation and, on that basis, a decision with effective measures appropriate to remedy or compensate for past damage, prevent future damage and/or provide for restoration. Furthermore, effective remedies have a subjective side, too: both the communities and environmental organisations concerned, on one side, and the users/polluters of the environment, on the other, should accept the decision and be able and willing to implement it. In other words, an effective decision can be implemented fully and in due time. This is why, as we pointed out earlier, members and associations of the public must have the right to participate throughout environmental procedures, including their monitoring, implementation and enforcement phases.

> *"When initial or additional damage may still happen and the violation is continuing, or where prior damage can be reversed or mitigated, civil and administrative courts and administrative review bodies must be able to issue an order to stop or to undertake certain action. This order is called an "injunction" and the remedy achieved by it is called "injunctive relief"."* [Guide p. 200 (PDF p. 201)]

In some cases there are no possibilities anymore to prevent environmental deterioration or restore the destroyed or irreversibly polluted environmental elements (such as underground water with incalculable direction of its currents and unrevealed size and extensions). In such cases, compensatory measures, e.g., to improve the quality of the environment elsewhere, may be the most adequate remedy possible. In the spirit of the polluter pays principle, monetary compensation might send a message to other users of the environment in similar situation in order to make the prevention measures to avoid a similar, economically painful situation. Such monetary compensations are usually paid for the state budget, out of which the relevant public authorities or at least the relevant branches of the state administration might receive an earmarked part, so as to compensate for the public money spent in vain to protect an area or a species that was adversely affected by an act or omission by the operator in question.

> *"Yet another related form of remedy available in some countries, for example in France, enables a member of the public to bring civil proceedings to challenge a breach of environmental law (as contemplated in article 9, paragraph 3) to recover civil monetary penalties from the owner or operator of a facility transgressing environmental law in place of the appropriate government agency. Such proceedings are sometimes known as "citizen enforcer" proceedings and are discussed above."* [Guide p. 200 (PDF p. 201)]

b. Injunctive relief in more details

There are interim (transitional) injunctive reliefs that serve procedural purposes only in cases where the party that challenges a plan of activity can make it probable for the decision-making body that during the revision procedure the project might continue and would reach a stage where irreversible damages might happen. The other form of injunctive relief, which is a substantive rather than procedural remedy, is the final prohibition or suspension of a project to prevent serious environmental damage. We note that most environmental cases contain serious irreversible elements, so without an interim injunction the case might have little purpose: by the time the final decision is made, it may no longer meaningfully affect the project or its environmental consequences. However, in case of successful application for an interim relief the plaintiffs my be obliged to pay guarantees in case they claims are not well-founded. The guarantees should depend on the benignity of the claim, namely that the plaintiffs behaved in bona fide and performed all the actions to ascertain their claims before raising them.

> *"Generally, tribunals require the party seeking preliminary injunctive relief to show that: (a) irreparable injury is immediately threatened or may occur before the case can be heard in full; and (b) the remedy sought is likely to be awarded in the final hearing on the merits. In environmental cases, it may be sufficient to show that a statute or regulation is being or may be violated. In emergency or other serious cases, the tribunal sometimes will award preliminary relief ex parte, without a hearing, on the basis of the pleadings and evidence."* [Guide p. 200 (PDF p. 201)]

Both interim and final kinds of injunction decisions are based on the precautionary principle. This principle usually entails with a post examination phase, as well. This means revisiting the case after a time in order to make sure that the presumptions involved in the decisions turned out true or some adjustments might be necessary.

> *"The findings of the Compliance Committee with respect to communication ACCC/C/2006/17 (European Community), referred to above with respect to article 9, paragraph 2, are also relevant regarding adequate and effective remedies. In its findings, the Committee stated that it would definitely be incompatible with paragraph 2 to grant access to a review procedure concerning a permit only after the construction had started, since access to justice must be provided when it is effectively possible to challenge a permit decision. Lacking such a possibility would also imply lacking an adequate and effective remedy."* [Guide pp. 200–201 (PDF pp. 201–202)]

We note that this case is unfortunately not uncommon in practice. It might even be called the opposite of injunctive relief, where the allegedly low probability of harm works in favour of investors or operators of environmentally dangerous or harmful activities. Planning procedures are a particularly difficult setting for obtaining injunctive relief, because authorities may argue that, given the supposedly long period before concrete activities take place under the plan, there will be ample opportunity to adjust it to reality. Unfortunately, we see in practice that certain plans (physical planning, preliminary mining or forestry plans etc.) put investment and subsequent permitting procedures on a path from which it is extremely difficult to depart. This arrangement emerged in the Compliance Committee's 2008 Spanish case as a "too early, too late" dilemma:

> *"In communication ACCC/C/2008/24 (Spain), the communicant had first approached the Spanish court to request the suspension of a land allotment plan and modification. The court held that the request was too early and reversed the application on the ground that there would be no irreversible impact on the environment because the construction could not start without additional decisions. Yet, when the Urbanization Project was approved and the communicant requested suspension of the decision until the court hearing was completed, the court held that it was too late, because this decision was subject to consideration and the subject of preceding decisions, namely the land allotment plan and modification which had not been suspended. On appeal, the court endorsed this judgement and did not suspend the decision. In its findings, the Compliance Committee held that this kind of reasoning creates a system*

where citizens cannot actually obtain injunctive relief early or late; it indicates that while injunctive relief is theoretically available, it is not available in practice. As a result, the Committee found that the Party concerned was in non-compliance with article 9, paragraph 4, of the Convention, which requires Parties to provide adequate and effective remedies, including injunctive relief." [Guide p. 201 (PDF p. 202) | EEB p. 109]

Let us see a national procedural legal regime of the conditions of injunction relief. Options for when to use injunctive relief include can be seen in the Hungarian civil procedural law as follows. Preliminary injunctive relief may be ordered:

(a) if it is "indispensable" to avert damage;

(b) to avoid a change in the factual basis of the legal proceedings; or

(c) if necessary in other instances deserving special attention.

[Article 103 of the Hungarian Civil Procedural Code]

If the court finds that any of these conditions is satisfied, it must further find that the harm caused by the injunction will not exceed the advantage gained by its issuance. This legal test allows the court to decide whether an injunction is appropriate in a given case.

c. Fair, equitable

In addition to specifying kinds of remedies, article 9, paragraph 4, requires Parties to ensure that review procedures under paragraphs 1, 2 and 3 are "fair, equitable, timely and not prohibitively expensive". Both fairness and equity has substantial and procedural side, as well. A fair procedure or decision (interim decision) should be even-handed, free from any biases or any economic or political influences. Fairness, amongst others, is bolstered by the procedural rules of exclusion: any official or judge shall announce (or be announced) if there is a chance that he would have any reason that prevents him for being impartial and unbiased. Naturally, any kinds of material or professional self-interest shall lead to exclusion, especially when the judge or official had already taken part in earlier parts of the case (as a lower level decision-maker, expert, witness etc.) or any one of his closer relatives had done so. Fairness is underpinned not only from the side of the decision-makers, but also from the side of clients and other participants. In this respect, prohibition of discrimination in harmony with article 3(9) in respect to race, gender, religion, etc.) belongs to the category of fairness. We note that even-handedness is expressed by the term weapons' equality, too, which concerns both the procedural and substantive legal side, as well.

Equitable procedures are those which avoid the application of the law in an unnecessarily harsh and technical manner. **[Guide p. 201 (PDF p. 202)]** We would rather say that the term equity can be best interpreted in pair of fairness: while fairness is basically equal to even-handedness, equity is purposefully and consequentially supports the weaker party in the case. Equity is necessary whenever our social feelings of justice would be hurt to leave both sides on the even playing field and watch one party hopelessly fight for his case. In our view, in environmental matters equity shall especially come to the forefront, because of the striking imbalance of power between the side of pollution and the side of protection. Large companies that use the environment for their extra profit, have multiple times more possibilities in financial, professional and legal terms. The victims' side shall enjoy as much support as possible, also in harmony with the capacity building provisions of Article 3 of the Convention. We note that Article 4, 5, 6 and 9 have their respective capacity building provisions that add to the general capacity building system drawn in Article 3.

> *"In its findings on communication ACCC/C/2004/6, (Kazakhstan), the Compliance Committee held that allowing a court hearing to start without proper notification did not meet the requirement of a fair procedure under article 9, paragraph 4. It also held that the failure to communicate the court decision to the parties implied a lack of fairness and timeliness as required by the Convention."* [Guide pp. 201–202 (PDF pp. 202–203)]

The standpoint of the Committee in this early case is clear: the authorities will naturally make the investors or project managers inform about the schedule and all the details of the cases (if they fail to do so, the investor side has enough experience and specialised employees to reveal the necessary information for themselves). However, the concerned members and associations of the public in the overwhelming majority of the cases fail to have such resources and skills, they need extra efforts from the side of the authorities to bring them in an equitable position compared to the other party, at least in principle.

Naturally, fairness and equity are required of authorities at all levels of legal remedies and in tiered procedures:

> *"In its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee emphasized that article 9, paragraph 4, of the Convention applies also to situations where a member of the public seeks to appeal an unfavourable court decision that involves a public authority and matters covered by the Aarhus Convention."* [Guide p. 202 (PDF p. 203)]

Moreover, fairness and equity are not only requirements concerning individual cases. These requirements can be infringed on a large scale through rules, regulations or established legal practices relating to general situations, for instance concerning particular groups or categories of parties.

> *"In its findings on communication ACCC/C/2009/36 (Spain), the Compliance Committee considered that, by instituting a system on legal aid which excluded small NGOs from receiving legal aid, the Party concerned had failed to provide for fair and equitable remedies, as required by article 9, paragraph 4, of the Convention, and had not taken into consideration the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, as required by article 9, paragraph 5, of the Convention."* [Guide p. 202 (PDF p. 203) | EEB p. 117]

d. Timely

According to the Guide, the timeliness requirement reinforces the requirement of article 9, paragraph 1, that Parties ensure an "expeditious" review process [Guide p. 201 (PDF p. 202)]. We see there, however, two categories that differ from each other significantly in a couple of features: Article 9(1) is about legal remedy in cases when access to information requests were declined or not properly fulfilled. This is quite special, because any unnecessary delay in information servicing could make the whole system of public participation futile. No wonder that authorities and investors/operators who do not wish to have public participation in their cases focus on restricting access to information. One of the most effective and least sanctionable form of this is delaying the information. As we see, the timeliness requirement of Article 9(1) has a focused, one-stage scope, while the similar provision of Article 9(4) is about the whole procedure, which might be quite lengthy and have quite different stages where timeliness (and hindrances thereof) will present itself in various ways. In connection with all said here, expeditious timeliness is very strictly formulated; even an "as early as possible" phrase would be unacceptably slow.

Timeliness according to Article 9(4), therefore, can be supported by several deadlines or timespans. For example, in Belarus, Hungary and other countries, appeals and complaints regarding environmental administrative decisions must be considered within one month, with a possible extension of an additional two months. An even more client-friendly method is used in Ireland, where courts have the discretion to pull certain cases from the docket queue

and deal with them immediately when the case involves issues of an urgent and time-sensitive nature. Such regulations are difficult to follow, because they are to be found in lower level laws, sometimes only in internal bylaws or circulars. This requirement, according to the Committee should be made general in the Pan-European region. Moreover, the whole timeliness regime should be transparent:

> *"With respect to fairness regarding the time frames for filing a judicial review procedure, in its findings on communication ACCC/C/2008/33 (United Kingdom), the Committee emphasized that the Party concerned could not rely on the judicial discretion of the courts to ensure that the rules for timing of judicial review applications meet the requirements of article 9, paragraph 4. The Committee held that in the interest of fairness and legal certainty it is necessary to (a) set a clear minimum time limit within which a claim should be brought; and (b) time limits should start to run from the date on which a claimant knew, or ought to have known of the act, or omission, at stake."* [Guide p. 202 (PDF p. 203) | EEB p. 113]

A combination of timeliness requirements and injunctive relief can be found in the 2008 Spanish decision:

> *"With regard to the requirement for timely remedies, in its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee held that a decision on whether to grant suspension as a preventive measure should be issued before the project is executed.444 In that case, it took eight months for the court to issue a decision on whether to grant the suspension sought for the project, ultimately rejecting the application for the suspension. Even if it had been granted, the suspension would have been meaningless, as construction works were already in progress."* [Guide p. 202]

e. Not prohibitively expensive

Finally, the Guide closes its description of Article 9(4), the Convention requires Parties to provide review procedures that are "not prohibitively expensive". The cost of bringing a challenge under the Convention or to enforce national environmental law must not be so expensive that it prevents the public, whether individuals or NGOs, from doing so. [Guide p. 203 (PDF p. 204)]. Our opinion is that the term 'not prohibitively expensive' is one grade more severe than that of "prevents from practicing access to justice rights". Actually, Article 9(4) uses a very subtle term that is very much in harmony with the goals sentenced in the Preamble and with the spirit of the whole Convention. We know that only a very little part of public participation cases, supposedly not more than 1-2% reaches the third pillar, because of the complicated, time-consuming and, last but not least, expensive nature of that. While in our opinion, the first two pillars should be handled, too (by the rest of the requirements of Article 9(4), the factor of expenses should be accommodated smoothly in an even system of conditions. Therefore, the procedure should not be so expensive that it causes an extra problem in addition to the first two factors. Naturally, this is a very difficult task for the Parties to the Convention, especially in respect to the court procedures. In the major (administrative, civil and criminal) procedural laws the legislators and the judges shall harmonise a lot of other constitutional and procedural principal requirements, guarantees for all the parties. Such viewpoints and measures are often time in contradiction with each other, unavoidably. In such cases, however, the national administrative and justice systems are obliged to raise specific capacity-building measures in respect to the members and organisations of the public who engage in access to justice matters, representing the interests of their own, their offspring and the environment in general.

As the Guide points out, too, various mechanisms, including waivers and cost-recovery mechanisms, are available to Parties to meet this obligation. In practice, alongside too strict criteria for standing, too high costs are the main barriers to access to justice in many countries. While the Convention does not define the means for keeping the costs, if any, at an acceptable level, it imposes a very clear obligation on the Parties to ensure that the procedures

are not prohibitively expensive. This was formulated by the Committee in the 2008 Spanish case, and in the UK case of the same year, too:

> *"As noted above in the commentary on "fair, equitable, timely", in its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee emphasized that the Party concerned is obliged to implement the Convention in an appropriate way so as to prevent prohibitively expensive cost orders being imposed on a member of the public that seeks to appeal an unfavourable court decision involving a public authority and matters covered by the Aarhus Convention."* [Guide p. 203 (PDF p. 204)]

> *"In its findings on communication ACCC/C/2008/27 (United Kingdom), the Compliance Committee held that the quantum of costs awarded in that case was prohibitively expensive within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance."* [Guide p. 203 (PDF p. 204) | EEB p. 115]

The loser pays policy (and that the winner might get free from it) is of secondary importance for the members and organisations of the public, when they consider entering or not into the access to justice phase of their public interest environmental cases. Once the stake is too high and there is no support from the state, they will think it twice to live with their rights, even if they feel that they are absolutely right and their evidences are invincible. The reasonable decision will be: no to the prohibitively expensive legal remedies. And that is not enough; in some cases European procedural laws and courts behave as if they wish to punish the civils who 'brazenly' challenged some decisions and this way caused 'superfluous' extra work for the authorities and the courts.

> *"In communication ACCC/C/2008/23 (United Kingdom), the communicants alleged that a court order requiring them to pay the public authorities' legal costs was unfair and inequitable under article 9, paragraph 4. The Compliance Committee held that it was the defendant operator's refusal to cooperate in naming an expert that led to the public authorities having to attend the hearing, incurring the legal costs as a result. In the circumstances, the Committee considered that the subsequent court order that the communicants pay the whole of the public authorities' legal costs (without the operator being ordered to contribute at all) was unfair and inequitable and constituted stricto sensu non-compliance with article 9, paragraph 4, of the Convention."* [Guide p. 202 (PDF p. 203) | EEB p. 112]

As the Aarhus Implementation Guide aptly points out, the costs of legal remedy proceedings are multifactorial, so a systemic approach is needed, as the Committee explained in the 2008 UK case:

> *"In its findings on communication ACCC/C/2008/33 (United Kingdom), the Committee considered whether the effects of the "costs follow the event rule" could be softened by the Party concerned's system of legal aid, conditional fee agreements and protective costs orders, as well as by the considerable discretionary powers that the courts had in interpreting and applying the relevant law."* [Guide p. 203 (PDF p. 204) | EEB p. 112]

We have to note that the system of costs discussed here consists of visible and hidden items. The latter would never be claimed in formal proceedings, even if the local community or environmental NGO won the case. Returning to the 2008 British case, the Compliance Committee found at least four potential problems in the Party concerned's legal system:

> (a) first, the strict criteria applied by the courts when considering the granting of protective cost orders;
>
> (b) second, the limiting effects of (i) the cost of applying for the order if it was then not granted and (ii) "reciprocal" protective cost orders that capped the costs of both parties; the Committee found that it

was essential that, where costs are concerned, the equality of arms between parties to a case should be secured, including that claimants should in practice not have to rely on pro bono or junior legal counsel;

(c) third, the potential effect of cross undertakings in damages on the costs incurred by a claimant;

(d) fourth, the fact that in determining the allocation of costs in a given case, the public interest nature of the environmental claims under consideration was not in and of itself given sufficient consideration. [Guide p. 203]

In the spirit of the system approach cited above, the Committee concluded in the British case that, despite the various measures available to address prohibitive costs in the Party concerned, taken together they did not ensure that the costs remained at a level which met the requirements under the Convention. In other words, the UK legal system contains quite a couple of refined legal tools that could make the financial burden fair and equitable, at least in principle. However, this nicely elaborated, historic system is worth nothing if it is mated with a very conservative, punishing attitude towards the civil 'laymen' who took the bravado to enter into a legal remedy procedure.

Many countries regulate at least the visible part of the costs of legal remedies in a favourable manner in case of local communities or NGOs, as well as in such public interest cases as environmental protection ones.

> *"In its findings on ACCC/C/2011/57 (Denmark), the Committee held that the Committee has been provided information by the Party concerned regarding the cost to appeal administrative decisions before other similar quasi-judicial bodies in the Party concerned, including those concerned with patients' rights (health), consumer issues, energy supply and tax matters. The Committee notes that such appeals are either free of charge or have fees of considerably less than DKK 3,000, whereas higher fees are charged for appeals concerning matters regarding primarily commercial interests, such as competition, patent and trademark rights. The Committee also notes that NGO appeals before [the Nature and Environmental Appeal Board (NEAB)] have more the nature of appeals to the first group of bodies than appeals regarding primarily commercial interests. Based on the above three considerations, the Committee finds that the fee of DKK 3,000 for NGOs to appeal to NEAB is in breach of the requirement in article 9, paragraph 4, that access to justice procedures not be prohibitively expensive."* [Guide p. 204 (PDF p. 205)]

In all public interest environmental cases seeking legal remedies, we have to consider the following main visible costs (only the first item is fully visible and foreseeable for public interest litigants):

- court fees,
- attorney's fees,
- witness transport costs,
- expert fees.

These types of costs represent a substantial financial barrier for the public. Some countries have taken steps to control them, e.g., by exempting NGOs from paying court fees, by making appeals free of charge and by not requiring a lawyer to launch the appeal. The Guide has collected a line of good practices from Aarhus party countries:

In Sweden, members of the public may appeal acts and decisions by public authorities in environmental matters to a superior administrative authority or to a court free of charge. Moreover, the person seeking administrative or judicial review of the case does not risk paying the costs for the public authority or the operator of the activity in case the appeal is lost. This applies, for instance, when requests for environmental information have been denied, when neighbours find a decision by a public authority on precautionary measures for a hazardous activity too

weak and when permits for a hazardous activity have been appealed. In addition there is no requirement for persons appealing such acts and decisions to be accompanied by a lawyer

- In Slovakia, NGOs and other parties or participants are exempt from paying court fees for judicial review of the lawfulness of decisions by administrative bodies.
- In Austria, an appeal of a refusal of access to information is free of charge and the plaintiff does not need a lawyer to launch an appeal.
- In Georgia, court appeals brought by disabled persons, their unions, educational unions and foreigners are free of charge.

In several jurisdictions of the United States, Canada and Australia members of the public bringing a case to enforce the law in the public interest may not be required to pay the defendant's costs, even if the case is unsuccessful or dismissed. This practice is sometimes referred to as "reverse cost shifting". [Guide p. 204 (PDF p. 205)]

6. System approach in respect to Article 9(3) and 9(4)

In sum, we have to remind to the greatest advantage in effectiveness factors of the Aarhus Convention that we mentioned in the introduction part of this chapter: system approach. We could see that on the best pages of the decisions of the Aarhus Compliance Committee this systemic way of thinking appears with full strength: the necessity to interpret Article 9(3) and 9(4) within the context of the whole article (e.g. taking into consideration of the expedited nature of legal remedies in case of infringement of access to information right), the whole Convention (e.g. together with the definitions of environmental case and of environmental authority in Article 2 and capacity building provisions of Article 3 and elsewhere) and with the Preamble (goals of the whole Convention, legislative will). Moreover, in the last topic we have examined here, concerning the costs of access to justice, in harmony with the spirit and the legal context of the whole Aarhus Convention, we have to take into consideration all the visible and hidden costs, because they together will determine the ability and willingness of the concerned persons, communities and civic organisations to raise their voices in an administrative appeal procedure or in a court litigation.

IV. SECTORAL LAWS CONTAINING ACCESS TO JUSTICE AND POLLUTER PAYS PRINCIPLE ELEMENTS

Reiterating and appealing to the Polluter Pays Principle is one thing, but actually including legal mechanisms and minimum guarantees which help enforce it is much more difficult. The EU legislative landscape on the Polluter Pays Principle is heavily fragmented and not harmonised. An attempt to introduce a horizontal directive on access to justice in environmental matters back in 2003, which could have included mechanisms implementing the Polluter Pays Principle, failed.

In principle. access to justice elements should be ensured both in general crosscutting laws such as the Aarhus Convention and its European and national level implementation, as well as in sectoral laws protecting certain elements or aspects of the environment. Otherwise, the rights of the members and organisations in concrete cases would remain formal at best. Sectoral administration would for example, tend to overlook the essential provisions of public participation as a rule, unless they are specifically instructed otherwise in the laws they use on a daily basis and are most familiar with. Direct access to justice mechanisms which oblige EU member states to ensure private individuals and NGOs can take companies to court for failing to pay for the pollution they caused

are rare and the main tool remains the less than perfect Environmental Liability Directive. There are, however, several indirect routes which hold polluters to account and which may create avenues for legal enforcement. In the sub-chapters below, we highlight a selection of the most important EU sectoral laws which have the potential to hold polluters legally to account. Besides these nine specific policy areas explained below, there are also several EU laws which do not include legal polluter pays mechanisms but which may open up avenues to hold governments to account for failing to implement the polluter pays principle. The Soil Monitoring Law, for example, includes an access to justice provision against failure of the authorities to fulfil the minimum soil health standards and the Ambient Air Quality Directive includes access to justice in case countries fail to fulfil their air quality plans and roadmap obligations.

1. Environmental Crime Directive (ECD)

The 2024 ECD, as we have already referred to above in chapter II.11 when discussing the polluter pays principle in detail, applies the principle by establishing obligations to reinstate the environment (if restoration is possible) or payment of compensation for the damage to the environment (if restoration is not possible) as sanctions (article 7) for both natural (article 5) and legal persons (article 6) who commit offence(s) listed in article 3 of the Directive.

The ECD establishes criminal liability of natural persons (article 5) which encompasses criminal penalties such as imprisonment and other accessory criminal or non-criminal penalties such as fines, in harmony with the criminal law regimes in the respective Member States. In addition to that, the ECD focuses on the obligation to reinstate the environment (if restoration is possible) or payment of compensation for the damage to the environment (if the damage is irreversible or the offender is not in a capacity to carry out such restoration). As a mixed punitive and precautionary measure, the perpetrators might be excluded temporarily or permanently from access to public funding, or temporarily banned from running for elected or public office. In this line of legislative goals fits the withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence, as well as disqualifications from directing establishments of the type used for committing the offence. A relatively new measure in criminal law, the perpetrators of environmental crime can be subject to a national or Union-wide publication of the judicial decision relating to the crime established and the sanctions or measures applied (where in the public interest).

Historically, criminal law is tailored to natural persons as wrongdoers, who are the usual subject of punishment and deterrence from committing further crimes. However, in the modern age, physical persons are often hidden behind a corporate veil, which should either be removed or the corporation as a whole should be the subject of criminal law. As for the criminal liability of legal persons (Article 6), the ECD also establishes it for offences referred to in Articles 3 and 4 where such offences have been committed for its benefit by any person who has a leading position within the legal person concerned. Legal persons can be held accountable for a lack of supervision and control that has made the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person possible. Furthermore, the liability of the legal person should not exclude criminal proceedings against natural persons, so it cannot be an excuse for the latter. The sanctions for legal persons (article 7) envisaged in this Directive are criminal or non-criminal penalties or measures, including some similar ones which we have seen in the case of natural persons: criminal or non-criminal fines; an obligation to restore the environment within a given period, if the damage is reversible, or pay compensation for the damage to the environment, if the damage is irreversible or the offender is not in a capacity to carry out such restoration; exclusion from entitlement to public benefits or aid; exclusion from access to public funding, including tender procedures, grants, concessions and licenses; temporary or permanent disqualification from the practice of business activities; withdrawal of permits and authorisations to pursue activities that resulted in the relevant criminal offence; being placed under judicial supervision; closure of establishments used for committing the offence; an obligation to establish due

diligence schemes for enhancing compliance with environmental standards; when there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed. We note that financial sanctions might and usually are bearable for legal persons (and indirectly can punish their consumers and business partners, too), but lack of their goodwill might seriously undermine their market positions.

The Directive also foresees aggravating (Article 8) and mitigating circumstances (Article 9). On the aggravating circumstances, the Directive lists, among standard aggravating circumstances in criminal regimes, *"(…)the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem."* The same is true for the list of mitigating circumstances, which includes when "the offender restores the environment to its previous condition, where such restoration is not an obligation under Directive 2004/35/EC, or, before the start of a criminal investigation, takes steps to minimise the impact and extent of the damage or remediates the damage." (Article 9(a)).

In its Article 15, the ECD establishes procedural rights for third parties (including, expressly, environmental NGOs) to access justice and information. Article 15 deals with the publication of information in the public interest and access to justice for the public concerned – potentially as a civil party to the criminal proceedings – and foresees environmental NGOs and persons affected or likely to be affected by the criminal offences referred to in the Directive as having sufficient concern. At national level, other persons, such as ombudsman institutions, can also be part of the procedure and can have an eye on the proper application of public interest concerns in the procedures and decisions.

Naturally, public participation will not take place in practice unless the members and organisations receive information about the cases in due time and in proper detail. As for access to information, the article refers to the sharing of information on the progress of the proceedings with the public concerned, in accordance with national law. Environmental NGOs, in harmony with Article 2(5) of the Aarhus Convention, are automatically considered part of the "public concerned" and may, in theory, take part in proceedings as civil parties. However, there are some limitations to the application of the procedural rights contained in Article 15: Member States are not required to introduce new procedural rights in their penal systems. In practice, this makes access to justice conditional on existing national rules. Countries are only obliged to extend third-party rights in criminal proceedings for environmental offences where national criminal law already provides that right. Even so, the victims of crimes and those who suffered secondary harms have participation rights in criminal procedures in each European country. Therefore, the issue is ultimately one of legal interpretation: whose rights or interests are sufficiently affected to confer standing to participate in the criminal proceedings?. Furthermore, criminal authorities and courts should take into account the specific characteristics of the environment as the subject of environmental crimes. A conclusion that crimes harming the environment have no victims at all is unacceptable.

That being said, in the few jurisdictions where that is possible (such as France, Italy, Romania, and Spain), the participation of defenders of the environment as third parties in criminal proceedings can contribute to a better application of the polluter pays principle, especially given that environmental organisations are often crucial in identifying, denouncing and documenting environmental harm. In addition, the linked transparency obligations for those jurisdictions could also contribute to public awareness and accountability for perpetrators of environmental crime.

Article 15 of the ECD builds directly on the provisions contained in the Aarhus Convention, with a specific focus on procedural rights in proceedings and access to information about the progress of these proceedings. The practice of the Aarhus Convention is helpful here too in realising that the existence of these procedural rights does not always guarantee their effective implementation in practice. Restrictive definitions or criteria, filing fees, access to legal aid, or other adverse costs can prevent the full application of these rights. See, for

example, ACCC/C/2015/130 concerning compliance by Italy with the Aarhus Convention – the main issue was the cost of access to justice for an environmental NGO. One of the issues was that the national legislator did not differentiate between economic entities and non-profit organisations.

Taking all of these above points into consideration, as the ECD is enforced at national level, and given the specificity of environmental crime, Member States should provide procedural rights to the public concerned for all the offences covered by the Directive, regardless of whether such rights already exist in other areas of the law. While access to justice and information can be regulated, the conditions should not be so restrictive as to undermine the effective application of these rights in line with the Aarhus Convention.

2. The Industrial Emissions Directive (IED)

The Industrial Emissions Directive covers about 40 industrial sectors (Annex 1) and with that some 50 000 industrial installations, which account for 20% of the EU's overall pollutant emissions into the air, 20% of emissions into wate, and approximately 40% of greenhouse gas emissions[47]. According to a European Environment Agency (EEA) 2024 briefing, industrial air emissions generated estimated external costs of EUR 2.7–4.3 trillion over the period 2012–2021, equivalent to EUR 268–428 billion annually[48]. Since the revision of the law in 2024, large livestock rearing businesses are also covered by the same system.

Under the IED, each industrial installation needs to hold a unique permit provided by Member States' competent authorities. The permit must include conditions aligned with some general principles and must be aligned with the so-called BAT Conclusions, which are part of the Best Available Techniques (BAT) reference documents (EU BREFs). BAT conclusions are essentially legally binding documents which set minimum environmental standards that installations have to adhere to. Member States' permitting and oversight authorities are responsible for updating existing permits to ensure compliance with new BAT environmental standards, for monitoring and inspecting sites' compliance, and where necessary enforcing the law through penalties, or forced closure.

As highlighted by the evaluation of the ELD, emissions from large industrial sites have steadily declined over the last decades[49], but the annual costs of industrial air emissions alone are still in the hundreds of billions EUR per year. A cost that is, for the most part, not paid for by the emitters as they only cover the costs of adhering to their specific permits. A majority of Member States do not hold companies legally liable when environmental damage resulted directly from emissions that were within the allowed restrictions of their permits. This means, that there is a huge left-over cost not covered by the polluters.

Where damage is indirect and pollution residual, no regime exists to enable the polluter pays principle. The IED covers the most polluting industrial installations, while it does not require installations to meet the cost to society of the impact of residual pollution. This means that large industrial firms which create the highest societal costs due to residual pollution are in a privileged position. Naturally, the other means and tools in connection with the polluter pays principle might be effective in respect to the residual pollution, too, but special efforts would be needed from the respective societies in general, especially from the governments and non-governmental state bodies. Last, but not least, the civil sector should be the engine of these changes of attitude towards the largest polluters of our societies.

[47] EEB, 2024, https://eeb.org/wp-content/uploads/2024/08/IED-and-IEP-R-assessement.pdf

[48] EEA, The cost to health and the environment from industrial air pollution in Europe – 2024 Update, https://www.eea.europa.eu/en/analysis/publications/the-costs-to-health-and-the-environment-from-industrial-air-pollution-in-europe-2024-update

[49] European Commission, Staff working document, evaluation, SWD(2026) 400 final, 2026, https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2026)400

The IED includes some basic enforcement provisions (inspections, monitoring, penalties and sanctions, etc.) as well as requirements in relation to the pillars of the Aarhus Convention (public participation, access to information and justice). Under the updated regime, access to pollution data should be easier for the public to obtain, but opportunities for wider public scrutiny and participation in the formulation of BAT reference documents remains limited.

Although the previous and current IED were designed as regulatory instruments and not enforcement tools, in practice the IED has frequently served as an easier route to hold polluters accountable than the less concrete Environmental Liability Directive. The revised IED includes two articles on access to justice. The previously existing article 25 which extends access to justice linked to article 24 on public participation and access to information. Arguably, linking access to justice on the exercise of another environmental democracy right is not fulfilling the spirit of the broader access to justice requirements of the Aarhus Convention. A second provisions article 70h grants access to justice specifically in the Chapter on poultry and pig rearing without a required link to access to information or public participation. The IED's access to justice guarantees are a far cry from enabling the public to hold large industrial polluters to account for breaching their obligations under the law, but even in their limited format, they can be valuable avenues to seek judicial review.

The new reporting elements of the directive will apply in 2027 and the first data reporting due under the updated IED will be in 2028. The installation-specific data might inform the future debate about polluting industries in the EU.

The Industrial Emissions Directive is supplemented by the Industrial Emissions Portal which also serves the function of the European Pollutant Release and Transfer Register. As such the information within the portal is directly linked to the type of environmental information covered by the Aarhus Convention, which itself has a protocol on Pollutant Release and Transfer Registers. Information within the Industrial Emissions Directive may be of use to those seeking access to justice against large industrial sites that may be unlawfully polluting the environment.

The portal covers 60,000 industrial sites across 65 economic activities, such as energy, metals, chemicals, waste management, intensive livestock and food production. It shows each site's location and administrative data, its releases and transfers of pollutants to air, water and land, and its waste transfers, with more detailed energy and emissions data for large combustion plants[50]. The portal provides free, standardised, site-level data on pollution, which lets individuals and NGOs spot possible violations, build evidence and decide whether to seek review. The E-PRTR Regulation will be replaced by a new Regulation from 2028, with additional reporting requirements and installation-level reporting, which should make it easier to match data to specific permits.

3. EU waste management law

There are numerous pieces of legislation at the EU level that regulate waste management, shipment and treatment. There are several laws dedicated to specific types of waste or specific steps in waste treatment. However, none of the EU's waste-related laws include any direct access to justice or binding polluter-pays responsibility schemes[51]. The closest to it are specific taxes and levies and the Extended Producer Responsibility Schemes (EPR) in the revised Waste Framework Directive.

[50] Industrial Emissions Portal site https://industry.eea.europa.eu/industrial-emissions

[51] The packaging and packing waste directive almost included an access to justice article but it ultimately failed to make it into the final Regulation (EU) 2025/40.

The sectors with the largest generation of waste in the EU are Construction, Mining and Quarrying, followed by Manufacturing, wastewater (covered in the following sub-chapter), and household waste[52]. For products used by end-producers food waste as well as textile waste have the largest impacts on the environment. The EU generates 12.6 million tonnes of textile waste per year equating to around 12kg per person. Only a minority of that waste is collected separately for re-use or recycling. For food, the numbers are even worse. An estimated 40% of food globally is simply wasted, contributing close to 10% to global emissions[53]. The amount of goods which are produced and never ever worn or consumed have a devastating impact on the environment without anyone reliably held to account for it.

The Waste Framework Directive recognises the polluter pays principle and demands that producers take responsibility for end-of-life management and extend product lifetimes by making used textiles, textile-related products and footwear deemed fit for re-use available for re-use[54]. It partially implements this through mandatory Extended Polluter Responsibility, which try to shift the environmental and financial costs of the last step in a product's life-cycle away from the state and onto the manufacturers or importers of that product. The idea is to internalise the environmental externalities into the costs of production, import and ultimately the selling price. Laws and policies include different mechanisms that avoid Extended Polluter Responsibility from turning into a flat-out environmental tax. Ideally these would make re-use, recycling, and circularity ultimately cheaper than environmentally damaging disposal.

EPR can be a powerful tool to implement the polluter pays principle but the current EU-level mechanisms fall significantly short of that ambition. The emphasis should be on upstream waste prevention, repair, and reuse rather than on downstream waste management[55]. Taking electronic waste as an example, the current EPR scheme focuses on financing collection and recycling of wate rather than on preventing electronics to turn into wate to begin with by incentivising prevention, repair, and reuse[56].

Another indirect way to make polluters pay is to try to hold governments to account for failing to adequately implement the polluter pays principle. However, as with all indirect routes of access to justice, the road is long and uncertain. For what it is worth, there are public participation obligations for the development of Waste Management Plans and Waste Prevention Programmes which potentially can include both political and legal ways to push governments to enforce the Polluter Pays Principle.

4. EU Water legislation

Water policy at EU level is regulated by the EU Water Framework Directive, the Urban Waste Water Treatment Directive, the Groundwater Directive, the Environmental Quality Standards Directive, and several smaller sectoral legislations (on e.g. Bathing water, drinking water, Nitrates, Floods, and Marine Environment).

Europe's groundwater is subjected to numerous polluting sources and the burden of treating and paying for that environmental damage is unequally divided. While water usage is not always equal to water pollution, usage data can give an indication of which sectors put the most amount of stress on water systems. Agriculture is by far the

[52] Eurostat, 2022, https://ec.europa.eu/eurostat/statistics-explained/SEPDF/cache/1183.pdf?v=6945944304836461
[5353] Policy Briefing: EU food waste recommendations for trilogues, EEB and others, 2024, https://eeb.org/wp-content/uploads/2024/05/Prevent-Waste-Coalition-Policy-Briefing-EU-food-waste-targets.pdf
[54] Recital 22, DIRECTIVE (EU) 2025/1892
[55] Reforming Extended Producer Responsibility to Promote Repair, Right to Repair coalition, 2024, https://eeb.org/en/library/reforming-extended-producer-responsibility-to-promote-repair/
[56] Policy Brief: Rewiring Producer Responsibility for E-Waste, EEB, 2026, https://eeb.org/wp-content/uploads/2026/08/Policy-brief_Rewiring-Producer-Responsibility-for-E-Waste_2026.pdf

biggest consumer of water in the EU and the main source of diffuse pollution into our water systems. Identifying individual polluters is challenging, and farmers are often not charged for wastewater treatment as their used water does not pass through canalisation. Yet agricultural nitrates and pesticides are the main cause of groundwater failing to achieve good chemical status in the EU. According to an OECD study, households pay for the majority of the cost of water supply and treatment, although they only account for around 10% of the volume of water consumed[57].

As highlighted by the Court of Auditors' special report, and maintained still in the partially revised Water Framework Directive, the law's article 9 specifically highlights the need to take into account the principle of recovery of costs in accordance with the polluter pays principle when demanding payment for water services. The 2020 fitness check of the Directive concluded that environmental costs were not adequately priced in[58]. The upcoming broader revision of the Directive will show whether this point receives adequate attention by the legislators.

Although cost recovery is difficult to calculate for diffuse pollution, it is overwhelmingly clear that industries do not pay their fair share of water usage and pollution costs. This discrepancy becomes all the more striking when considering that access to water is more than an economic necessity. For individuals, access to safe drinking water is a right under the EU's drinking water directive. Further strain is being put on, specifically, fresh- and groundwater abstraction as an increasingly important source of cooling.

The fully revised Urban Waste Water Treatment Directive and the partially revised Water Framework Directive both include articles on access to justice which are limited to governmental obligations and do not grant access vis a vis a private polluter. Limited guarantees for public participation in the establishment of river basin management plans are implementing parts of the Aarhus Convention but in the current regime do not grant adequate rights for the public to ensure that water polluters foot the bill.

The Water Framework Directive is currently under review with a call for evidence published by the European Commission to kick-start the process. The original Directive from 2000 includes a 2027 deadline which is often misunderstood as a sunset clause. In fact, the WFD itself does not expire in 2027. All core obligations continue to apply unless and until the Directive is formally repealed or replaced[59].

5. Corporate Sustainability Due Diligence Directive

EU Directive 2024/1760 on corporate sustainability due diligence (CSDDD) entered into force in January 2024 but has subsequently been amended by the Commission's Omnibus I 'simplification' initiative, delaying its implementation. The Directive is meant to ensure that companies in scope (which is restricted to very large companies according to its Article 2) identify and address adverse human rights and environmental impacts of their actions inside and outside Europe, across their value chains. Therefore, this Directive is not so much about the polluter pays principle, but rather the prevention and precautionary principles. These three principles, however, are strongly interrelated.

The CSDDD targets global value chains in pollution-intensive sectors such as mining and metals, textiles, agriculture and palm oil, chemicals, and fossil fuels. In these and other sectors, production is often outsourced to

[57] OECD, Financing Water Supply, Sanitation and Flood Protection, 2020, https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/05/financing-water-supply-sanitation-and-flood-protection_90d96726/6893cdac-en.pdf

[58] European Commission, Staff Working Document, Fitness Check, SWD(2019) 439 final, 2020, https://commission.europa.eu/publications/fitness-check-water-framework-directive-and-floods-directive_en

[59] The EU Water Framework Directive: A modern and powerful tool to provide clean, healthy flowing waters, Living Rivers Europe 2025, https://eeb.org/wp-content/uploads/2025/07/LRE-EU-Water-Framework-Directive_web.pdf

places with weak governance and enforcement, so the harm (water and soil contamination, air emissions, deforestation, etc) occurs far from the EU companies that profit from it. Besides, long, multi-tier supply and value chains dilute responsibility, and affected communities rarely have the resources or legal standing to sue foreign parent companies.

The CSDDD establishes a corporate prevention duty for the very large companies (Article 2), which obliges them to identify and address actual and potential adverse human rights and environmental impacts in their own operations, those of their subsidiaries and in their chains of activities, supported by complaints and notification procedures, and monitoring.

The rules on corporate sustainability due diligence will be enforced through administrative supervision and civil liability (limited to existing national laws). Administrative sanctions may be injunctive orders or sanctions, for example, but pecuniary penalties are capped at 3% of the company's net worldwide turnover for the most serious violations, bringing into question the effectiveness of the dissuasive effect these sanction can have on such large corporations that often stand to profit much more from environmental destruction and human labour exploitation.

So, the CSDDD does not have mechanisms to directly hold polluters into account, since It only requires large companies to run a due diligence process (that is, identify, prevent, mitigate and remedy environmental harm in their value chains), it doesn't make them liable for the pollution itself. Fines (capped at 3% of worldwide turnover, as mentioned above) punish failures of process, not pollution, and most actual polluters, such as local operators and smaller suppliers, sit outside the scope of the Directive.

There is one route for members of the public to flag concerns about a company's operations: anyone with reason to believe an in-scope company is breaching its due diligence duties can submit a substantiated concern to the national supervisory authority (Articles 25–26). The authority must assess it within an appropriate period, may investigate and use its enforcement powers, must tell the submitter the outcome with reasons, and can protect their identity on request. Judicial review is available. The concern, however, has to allege a due diligence failure, for example ignoring a known pollution risk, not simply that pollution occurred.

In conclusion, the CSDDD offers no direct accountability for pollution, and the substantiated concerns procedure is the best indirect lever, but it covers only the few companies still in scope and only for due diligence failures.

6. Seveso III Directive

Chemicals are essential to modern life and underpin nearly every manufactured product, but large quantities of dangerous substances can cause major industrial accidents that threaten lives, health and the environment, and cause heavy economic losses. The Commission's 2025 implementation report found that major accidents averaged about 22 per year between 2019 and 2022.

The Seveso III Directive from 2012 covers more than 11,000 EU installations, including chemical, petrochemical and fuel storage sites, and sets out mandatory safety regimes for them in different tiers. It mandates risk management measures and minimum standards for coordinated emergency response.

As concerns public participation, the Seveso III Directive covers all three pillars of the Aarhus Convention with equivalent provisions. Access to information is dealt with in Article 14, according to which the public has a right to clear, permanently available online information regarding Seveso establishments, including the hazardous substances present and their potential risks. Apart from the electronic information service, other forms of it are

kept by the Directive too. Furthermore, the quality of information shall be maintained by regular updating, too (Article 14(1)).

The special events need enhanced access to information, although in a more focused manner. Therefore, information about safety measures and how to behave in the event of an accident must be actively provided to people living near high-risk sites.

Involvement in decision-making is regulated in the following Article 15, according to which, citizens and public stakeholders have to be given opportunities by the competent authorities to express their opinions on specific individual projects, site expansions, or modifications of existing upper-tier installations. Furthermore, public engagement is to be integrated into regional and local land-use planning procedures surrounding hazardous industrial sites in harmony with Article 13 of the Directive. We note that public participation in the spatial planning procedure and/or in the strategic environmental assessment accompanied to that is ensured by the domestic laws in EU anyway. Double guarantees, however, might be useful.

Details of information to be given to the public before their involvement into the decision-making procedure, as well as the time schedule thereof, shall be given in due time (Article 15(2) and (3)).

Finally, Article 23 is about access to justice: members of the public affected or having a sufficient interest have access to a review procedure before a court of law or another independent body to challenge acts or omissions by competent authorities regarding the prevention of major accidents. This is a concretisation of Article 9(3) of the Aarhus Convention, which is again highly desirable, considering the imbalanced and insecure administrative practice of the Member States as we have seen above from the widespread practice of the Aarhus Compliance Committee. In practice, however, we are not aware of any past successful cases which directly rely on Article 23 for standing.

The Seveso III directive is aided by the MINERVA portal, which provides scientific information, technical resources and publications on major chemical hazards that can help individuals and communities evaluate the environmental and health risks posed by industrial installations. This information can support people seeking access to justice through national mechanisms by helping them understand the impacts of industrial accidents and formulate concerns about inadequate prevention or protection measures. While incomplete, the information available in the portal can help develop an evidence base.

7. Collective redress mechanisms/class actions

Collective redress on behalf of the environment is not currently guaranteed through EU-level laws. There are several instruments which touch upon the matter but as of, the time of writing, no attempts at EU level have been successful at creating binding obligations for Member States to allow for legal collective redress mechanisms.

The possibility to bring collective claims is especially important in environmental cases where the anthropocentric nature of our legal systems makes it difficult to obtain standing in front of court for environmental damage caused. Where environmental deterioration damages a human or their individual rights, collective redress could facilitate reaching the necessary legal thresholds, especially in cases concerning diffuse pollution and in cases where an injunction order is needed to cease a harmful activity immediately while legal proceedings are ongoing.

At the EU level, an opportunity for collective redress was missed when the 2003 proposal for a horizontal directive on access to justice failed. Subsequently, there have been the 2013 Recommendation on collective redress and Directive 2020/1828 on representative action. The recommendation is non-binding but promotes collective redress procedures which allow claimants to seek injunctive relief to stop violations of rights granted by EU law

and compensatory relief for harm caused by unlawful practices affecting large numbers of people. It echoes Aarhus Convention Article 9(4) on the quality of the review available and recommends that mechanisms should be based on the opt-in principle, meaning that individuals must explicitly consent to join the group to benefit directly from a favourable outcome. Directive 2020/1828 on representative actions for the protection of the collective interests of consumers is limited to consumer claims with certain links to the environment but it falls far short of a substitute for a general environmental collective redress mechanism. (*pilot case strategy*) In practice, collective redress mechanisms under national civil and administrative procedural codes are very sophisticated procedures. No wonder that groups of individuals who undertake to use such mechanisms are confronted with various hindrances in typically lengthy and expensive procedures.

Where collective redress in environmental cases is possible in national systems, the financial questions of who the polluter has to pay and who covers the legal costs are common challenges. We note that in many national civil laws, those who took risks on behalf of other concrete persons who were not willing to take part in a case, but 'unavoidably' collected financial or other types of advantages, might be made responsible for an unfair portion of the legal expenses.

- There should be Europe-wide procedural safeguards to avoid abuse of collective redress systems in environmental cases such as:
- a ban on punitive (i.e. excessively high) damages and interest;
- entities representing claimants should not be profit-making;
- a ban on the payment of contingency fees to lawyers.

Public interest law firms interested in attempting collective redress claims might use a special methodology with several existing simple legal tools in a structured, goal-oriented manner. The first step is usually to gauge the reasonableness of the claim of the community we represent. This happens with a *preliminary expert* opinion in the majority of the cases, as well as with collection of all available administrative and professional background materials. Preliminary is the opinion of the expert, because it might not respond to the formal procedural legal requirements of evidence in a court case and usually focuses only on the major issue of the case. Furthermore, it doesn't have to be developed in all details; at the beginning of a pilot case we might fall back on rough estimates within 'from – up to" frames.

Based on these first steps, we might be able to decide together with the community we represent that the case is worth bringing to a court or not. We have to take into consideration that the court expenses mounting ahead of us might far exceed the financial capacities of certain individuals or small groups of them, concerned in the cases. However, if the whole community that has a stake in the case can organise themselves, they might undertake to support a small number (2-3) of plaintiffs. At that stage, some local grassroots or regional and national mainstream NGOs might join the case, too. All the supporters conclude a simple civil law *companionship contract* that ensures the persons who undertake the litigation that their expenses will be reimbursed in due course in the procedure. For instance, the lawyers of the Hungarian Environmental Management and Law Association (EMLA) use the pilot case technology for several decades quite effectively.

We have to note, as already touched upon, that those persons who stay out of the companionship contract and simply wish to enjoy the results of the efforts of the rest of the community, in principle, at least, can be sued for their enrichment that they gained. In practice, such cases very seldom happen. This is so primarily because the number of free riders cannot be too high, otherwise, the pilot case cannot be started. Second, the winning community is usually fatigued by court cases, and frequently has no appetite for more litigation, let alone the conflict they would create and maintain within their community.

8. Deforestation Regulation

The EU Deforestation Regulation (EUDR) is supposed to limit environmental damage caused by deforestation, forest degradation through industry, damage caused through the import of illegally harvested woods, and limit carbon emissions. The ambition of the regulation is to cut carbon emissions related to deforestation by some 32 million tonnes per year[60]. A major contributor to deforestation is the demand for new agricultural land which drives the destruction of forests in favour of growing cash crops or cattle. Reducing the forest cover of the planet impacts biodiversity, increases greenhouse gas emissions, disrupts and pollutes water and soil, and impacts local communities' way of life[61].

The EUDR seeks to make companies importing, producing and trading relevant commodities accountable for the deforestation risks associated with their supply chains. Similarly to the corporate sustainability system, the deforestation regulation fits conceptually within the Polluter Pays Principle by acknowledging the environmentally damaging impacts EU-based companies can have across the globe. However, the laws effectiveness depends entirely on the capacity and willingness of Member States to conduct adequate checks and impose fines. The regulation provides a basic framework for traceability and enforcement, but it does not guarantee a compensation mechanism for environmental damage or which would make industry pay for the societal costs of deforestation. The regulation includes a complaints mechanism available to individuals for the submission of so-called "substantiated concerns" to national supervisory authorities, but such complaints do not substitute a comprehensive mechanism for litigation comparable to the access-to-justice provisions found in some other EU environmental legislation.

The new EUDR was subject to a simplification revision in 2026 which significantly weakened its potential impact and postponed its application[62]. While not part of the same legislative Omnibus procedure that weakened the corporate sustainability laws, the deforestation regulation's targeted revision fell within the same political timeline and context of alleviating pressure on heavily polluting industries. The contribution of the regulation to reducing the polluting effects of deforestation will depend almost entirely on the effectiveness of and political appetite for national enforcement.

[60] European Commission, Regulation on Deforestation-free Products, accessed 2026, https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en?utm_source=chatgpt.com

[61] WWF, Deforestation and forest degradation, accessed 2026, https://www.worldwildlife.org/our-work/forests/deforestation-and-forest-degradation/

[62] NGO statement, Hands off the EU Deforestation Regulation, 2024, https://www.clientearth.org/latest/documents/cso-statement-eu-deforestation-regulation-delay-eudr/

V. ENVIRONMENTAL LIABILITY DIRECTIVE (ELD) AND ACCESS TO JUSTICE

1. Short history of the ELD and recent monitoring efforts of its effectiveness

The Environmental Liability Directive (ELD) is one of the main legal mechanisms for the application of the polluter pays principle. It creates an EU-wide system of liability for environmental damage based on the principle, requiring operators whose activities cause environmental harm to prevent and remediate the damage, especially to biodiversity, water, and land. Regimes for strict liability and fault-based liability are constructed depending upon the activities involved.

The Directive (Directive 2004/35/EC) was adopted in 2004 and has been amended several times. Three significant amendments extended the directive to mining wastes, carbon capture and storage, and offshore oil and gas operations.

While the ELD has its limitations and has come under criticism for various reasons, discussed below, it must be made clear that certain expectations in connection with the Directive are not well-founded. The Directive does not represent a framework for the possible adjudication of claims based on access to justice from members of the public. Individuals generally cannot use the ELD to claim compensation for personal injury, property damage, economic loss, or other types of harm[63]. The Directive explicitly refers to national civil liability systems for those claims in its Article 3.3, which states that the ELD does not give private parties a right to compensation for traditional private damages.

However, it is one of the pieces of European environmental legislation that NGOs can use strategically to enforce environmental law. The ELD allows persons or organisations with a "sufficient interest" or rights impairment to submit observations and request action from competent authorities. We have seen in the analyses of abundant Aarhus Compliance Committee cases that the condition of sufficient interest should be interpreted in harmony with public interest and for the broadest possible public participation in environmental cases. Environmental NGOs are usually presumed to have sufficient interest under national law implementing the directive, also having an eye to Article 2(5) of the Aarhus Convention. Thus, they can report suspected environmental damage, provide scientific evidence, request preventive measures, and demand remedial action.

The Directive is also the subject of periodic reviews. The European Court of Auditors Special Report 12/2021 entitled "The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions" determined that there was inconsistent interpretation of "significant environmental damage," divergent national enforcement practices, weak implementation among Member States, and insufficient financial security mechanisms when operators become insolvent. One of the report's most cited findings was that key ELD concepts remain undefined. Another key finding was that EU funds were sometimes being used for remediation that should have been financed by polluters. The issue of financial guarantees was identified as a major area of reform to come.

The Special Report led to a call by the European Parliament for reform of the Directive. The European Commission launched a public consultation on 12 May 2022 to evaluate the directive and consider possible reforms. The consultation collected views from industry, NGOs, public authorities, and citizens until 4 August 2022. The documentation from this process is available in the Commission's "Have Your Say" consultation portal and

[63] See Recital (14) of the ELD: "This Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages." Similarly Article 3.3: "Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage."

evaluation pages and includes stakeholder questionnaires and a summary report of responses. The ELD has undergone official evaluation but revision is, as of the time of writing, not planned.

2. The Justice and Environment Project

Partly parallel to these efforts, in 2020-2021 the coalition of the European public interest environmental lawyers, Justice and Environment was commissioned by the EU (indirectly by the European Parliament) to run an overall review of the implementation of the ELD. Therefore, the main goals of this project were to broaden the evidence base for the national-level implementation of the Environmental Liability Directive (ELD) and find the key entry points where improving the effectiveness of the implementation might be possible. The researchers of the project in the 27 EU countries have collected more than 700 electronically available sources of literature, and 190 hard-copy books and articles dealing with the ELD and with related environmental liability issues. They also undertook more than 120 interviews within this project.

The problems analysed in the study included the availability of ELD-specific information in the Member States, the scarce use of the ELD laws in practice, and also the time-consuming and costly nature of these procedures. The researchers found an almost totally lacking ability and willingness of the operators to pay the related costs in connection with their outright dangerous, not seldom reckless operations.

The project participants also looked for solutions in terms of examining the institutional conditions of implementation of the ELD, the substantive legal tools (definitions, liable persons, strict liability, causal chain, defences) and the procedures (reporting of pollution events, inception of cases, evidence gathering, measures, implementation/enforcement and follow-up). They have pointed out the great need for raising awareness and shaping positive social attitudes in connection with the ELD, as well as encouraging the participation of the communities and the environmental NGOs thereby concerned. Nevertheless, ELD laws and practical implementation thereof are so complicated that the members and associations of the public need targeted, planned, systemic capacity building efforts from the side of the government, in the form of information, procedural and organisational help in harmony with Article 3 and other related provisions of the Aarhus Convention (see the chart about CB above).

3. Description and critique of the ELD/suggestions

Let us first have a quick survey of the main problems with the text and implementation of national ELD laws within the territory of the EU. The 40 researchers in the J&E study raised the following concerns:

Abandoned waste sites are associated with a multi-faceted, systemic set of environmental problems. Limited scope of damages restricts the effectiveness of the fight against them.

Strict liability in itself is not a panacea, unless a reasonably described and applied presumption of causation is used, the practical cases will be difficult to solve.

ELD laws should cover more industrial activities.

Wider definition of environmental damage, including ecosystem services or climate-related impacts would be necessary. Stronger biodiversity protection was a recurrent claim from our researchers.

Mandatory financial security is rather an exemption than a rule in the European ELD laws – without such guarantees the majority of the large and longstanding cases will remain unsolved.

Insurance or funds for environmental remediation should be additional, rather than alternative solutions.

Better data collection and reporting is a key element of the ELD systems. Without them, decision-makers and the general public both domestically and in the EU institutions cannot gauge the problem and decide/lobby for better organisation of work.

Addressing the lack of reliable implementation statistics should not be forgotten either, because the problem is not simply the poor data collection system, but oftentimes the false data, too.

Stronger public participation rights would help almost all of the elements of the above listed problems. Notably, capacity building is a main responsibility of the environmental authorities in Europe.

In the following sub-titles we are going to analyse the problems with the weak and poorly implemented ELD regimes in Europe.

a. More stress on the problem of use of laws other than national ELD laws for potential ELD cases – overlooking the comparative advantages of the ELD

One of the main problems of the weak implementation of the national ELD laws is that authorities insist on using the even older national laws concerning environmental liability, rather than the ELD, whose provisions are weakly harmonised with the body of their environmental laws. A number of related legal-sociological phenomena were revealed by our national researchers:

- habits: in the case of the old sectoral laws, ample practical and technical examples are available, thus jurisprudence is well known by the public authorities and other stakeholders;
- inertia: in the system of environmental liability, the old rules are more familiar, perceived as less complex and the delivery of results is more calculable;
- lack of needs: there is a large overlap between the older rules of environmental liability and the new ones, thus the latter ones seem superfluous;
- an alien system: the ELD is based on a different legislative philosophy, which is not perceived as being in harmony with 'tradition' and not organic;
- slow and hesitant introduction: in the years immediately after the ELD laws entered into force, we lost historical momentum that was initially attached to social expectations and higher-level expert attention to the brand new rules;
- scarce practice: owing to the above reasons, ELD rules are not cultivated deeply in our legal systems, thus the former reasons are reproduced in a vicious circle.
- lack of flexibility: critics say the ELD lacks some due diligence and avoidance of danger provisions, as well as general clauses authorising the competent authority to take the necessary measures to prevent environmental damage;
- weakness in prevention: in the old system preventive measures are foreseen and regularly prescribed much earlier in permitting procedures and environmental and spatial planning procedures;
- blind spots: a failure to handle small but overall meaningful sources of pollution, as well as incremental damage;
- overly high standards of proof: on the procedural side, environmental damage is especially difficult to prove, especially because the authorities usually do not have baseline data – it is easier to prove breaches of specific legal obligations set out in the relevant operating permits based on sectoral laws or IPPC laws.

The J&E project summary suggests the formulation of guidance and education of civil servants about the comparative advantages of the ELD regime and that when it is mandatory to use it instead of the old sectoral laws.

Furthermore, higher-level authorities should monitor the practice and react if any malpractice is detected. Targeted attention to the ELD from non-governmental state organisations, such as ombudspersons and prosecutors, would be a valuable contribution to a more consequential development of ELD practice in many countries. A stronger means could be a general legal provision according to which the application of ELD laws should exclude national sectoral rules.

ELD practice-related capacity building is needed for professional environmental NGOs, too, while grassroots NGOs and local communities can be educated further by those large organisations. Even these large NGOs are not aware of the national ELD provisions or how they work, and that's why they rely on the older procedures that they used before, too.

The negligible presence of the topic of ELD in the media and the level of understanding of it are not adequate for impacting society and raising awareness about environmental liability matters. This topic seems too bureaucratic and dull, with many complicated legal conditions and exceptions, while the public cannot see any spectacular results. Major socio-economic stakeholders, universities, and research institutions, too, should be dealt with targeted awareness-raising and capacity-building programs.

b. Definition of responsible persons

One of the first things the authorities and other participants in the ELD cases have to identify is the person who can be made liable for the environmental damage. The term 'operator' is basically a factual one that in most countries refers to the person who actually used the land where (or from where) the pollution happened. Some countries use a more legalistic approach and look after the holder of a permit or authorisation for a relevant activity. The owner of the affected land can be a liable person, too, in several countries. Even if not liable for the pollution, the owners have some responsibilities stemming from the owners' general responsibility to have an eye on the status of their land. The liability of the owners for the pollution could be subsidiary, secondary, or could be joint and several with the operator(s) and other concerned owners and users of the land.

When operators cannot be held liable, their legal successors might step into their place. Parent companies, company owners, shareholders, and executive officers might also be liable under certain conditions. In contrast to all of this, national legislators are overly cautious in declaring the liability of the State or dedicating state funds for the prevention and remedy of environmental pollution.

The J&E study suggested the introduction of the ELD-relevant data into the real estate cadastres, in order to make it difficult to sell land without due clean-up. Further suggestions were the harmonisation of administrative, civil and criminal law provisions, especially in respect to handling bankruptcy cases, and the all too frequently experienced other manoeuvres of the potentially liable persons to escape from paying the full costs, or any of them. Also, there are several other legal techniques that have not yet been harnessed in Europe, contrary to US CERCLA system: enhanced solidarity from branches of industry for their pollution, and the wide range of financial guarantees that avoid putting the full burden on taxpayers. Incentives that encourage or rather enforce a higher level of cooperation of liable persons with each other, with the authorities, and with the communities concerned might spare further social resources.

c. Forms of liability

The objective form of liability for environmental pollution or endangerment is called strict liability, unconditional liability, or liability without fault in several national laws, or not called liability, but simply a legal technique for

distributing social harm. This form of liability or legal technique makes it possible to enforce the liability of a polluter more easily than with a full responsibility of proving the fault or negligence of it., However, this is still not easy, because of the other element in such cases, namely the *causational connection* between the activity and the harm or danger. When balancing between the wider social interests expressed by the polluter pays principle and the requirements of legal and procedural fairness towards the individual operators, some countries vote for stringent proving requirements, while others lean towards the *presumption* of causality if the correlations in the cases are deemed realistic. The presumption is rebuttable, naturally. The national researchers in the J&E ELD project established that the application of the ELD was usually accompanied with other legal measures – first of all, administrative ones, based on a permit that was previously issued to the operator, according to which control measures might take place, as well as decisions might be made to modify, suspend, or halting the operation, with or without further administrative sanctions (fines primarily). In the most grievous cases, personal responsibility is initiated according to the relevant petty offence or criminal law provision. Depending on the decision of the materially interested persons, civil law litigation may be initiated, too. Such legal actions form a system and influence each other. Criminal law measures are, for instance, frequently used to bolster the effectiveness of certain administrative legal obligations, inter alia, in connection with the self-monitoring and reporting responsibilities of the operators, or could be used to support the fact-finding in civil law (damage) cases.

The J&E project participants raised some suggestions in order to enhance the effectiveness of the ELD systems. Primarily, as a principal starting point, in such a process those who have better abilities and resources to provide evidence should bear more of the burden, and the local communities and the victims of pollution should bear less. The latter parties should be in the position of starting ELD procedures with less evidence, but at the same time trigger off the responsibilities of other participants to produce more evidence. In other terms, once an ELD procedure was successfully initiated, the burden of proof should shift to the operator (investor, landowner etc.), and to a certain extent the relevant authorities should play a more active role in collecting the evidence, too.

A further suggestion (originating from the European Parliament's Resolution quoted in the J&E study) is to revise Annex III of the ELD from time to time, and to adjust to the new developments in social and economic sectors, as well as to our growing knowledge of the social-ecological effects of the relevant technical methods. The EP also suggested that national legislation should overcome the controversial omission of including air pollution from the ELD system.

d. Measures to be taken in the ELD procedures

Article 6 of ELD describes the procedure of taking remedial actions:

„1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

(a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and

(b) the necessary remedial measures, in accordance with Article 7.

2. The competent authority may, at any time:

(a) require the operator to provide supplementary information on any damage that has occurred;

(b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage

factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;

(c) require the operator to take the necessary remedial measures;

(d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or

(e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort."

The latter paragraph of Article 6 unfolds one of the largest shortcomings of the ELD compared to the American Superfund system: in cases when the remedy actions are not done by an operator or by other liable persons, the authorities have no mandatory responsibilities to act in order to handle the dangerous social and environmental situations.

The operator is in the position to undertake the quickest and best measures to prevent further damage to the environment and to avoid a domino effect. They also will have to refrain from any activity which would deteriorate the situation or hinder administrative procedures that follow. Any measures, however, except urgent ones, need careful planning and close monitoring by relevant authorities and they might also be supervised by a committee formed from the representatives of the participating authorities and other stakeholders. While the responsibility of the State for the status of the polluted sites is not fully clarified in the quoted text of the ELD, in certain cases, such as a fire at an industrial plant, the urgency and the special safety requirements would prevent the operators from doing the works themselves, and it is taken as natural in such cases that the relevant state organisation shall undertake the urgent task of saving society from further, escalating damage. Generally, however, with a few exemptions in a couple of countries, the competent authority is not bound to take measures on its own if the operator fails to do so. However, the competent authorities have a series of important tasks in supervising the remedial or preventive measures.

Orphan sites that are not only abandoned by the operators and/or owners, but where it is not possible to apply the polluter pays and liability principles, are totally left to the State. The State programs for cleaning up the most dangerous sites start with putting together a *national priority list* (NPL). Such NPLs consider the capacity of the pollutants to spread out and cause major environmental and public health problems, but other socio-economic and political aspects cannot be excluded either. As we see, in a couple of countries the task of conscripting abandoned sites with significant environmental problems is decentralised to the regional or even the local municipality level. While in the majority of the Member States NPLs are up-to-date and serve as a good basis for continuous, systematic work on abandoned sites, unfortunately, in some countries there are no more NPLs prepared or updated, which is almost an overt acknowledgement that the State has no resources for them at the time being. Creative legal techniques which may help in these difficult situations include the use of the land registers to control the change of ownership of the NPL lands and create incentives for clean-up, and also State policies targeting brownfield development. As concerns the latter, the very wide range of experiences collected after CERCLA amendments can be used in Europe, too, in order to better handle brownfields.

As the J&E researchers pointed out, the speciality of the ELD implementation and enforcement is that the professional work of planning, supervising, and in certain cases, undertaking the measures on the polluted sites demands highly trained personnel in the relevant authorities. Their training should cover not only technical details, but the substantive and procedural legal ramifications, too. The focus on the prevention of environmental pollution or further pollution should have bigger stress in this training, as well as in their practical implementation.

Monitoring of the implementation of ELD decisions is a stage of the administrative procedure that involves a couple of special rules. Inter alia, conflict of interest rules emerge, due to several aspects: those who issued the permit and designed the monitoring plan should be different and independent from those who implement and control it. Monitoring is an open-ended procedure in most environmental liability cases and shall continue until the full recovery of the environment or elimination of threats occurs. In some countries, the competent authorities make a formal decision about the monitoring stage of cases – this is important, because such a decision might be subject to the participation of the parties concerned and legal remedies might take place, too. A part of monitoring activities might be decentralised, and local municipalities and the communities concerned can play an important role in them. In those instances where actual follow-up and enforcement actions are taken, their non-confrontational forms include fact-clarification correspondence, official warning letters, personal meetings, and also technical and methodological support for the liable person. Confrontational tools might include imposing new or stricter measures or fines. In principle, the authority could undertake the necessary measures on its own or through a proxy at the risk and expense of the obliged person, but in practice this is rare.

The *cost* of the procedure and the remedy or prevention measures in principle can be recovered by civil law or fiscal law tools. Civil law tools that involve collection of the money that is owed to the State include exacting the costs from the responsible party through real estate lien, mortgages, or other civil law court processes. Fiscal law in most countries allows the State to deduct the sum from the bank account of the company in debt, under certain circumstances. Even if the available legal tools seem to be numerous and quite effective, in practice they may trigger off newer and lengthy legal remedy procedures in the long term in the most typical ELD cases, or the defendant might escape through bankruptcy or liquidation. While the State debtor enjoys preferential satisfaction under bankruptcy laws, any money remaining at the company might not be enough to cover the full expenses of an ELD case. The owners and managers might be subject to criminal proceedings in cases when their malign behaviour is proven, especially when they have a history of similar bankruptcy manoeuvres. The J&E project researchers added, however, that it is not always easy to handle such cases using criminal law as environmental liability matters might be too complicated for this. However, when criminal liability of the persons in control of the polluting activity is established, legal ways are opening to extend the recovery of the State expenses to their personal estates.

The main suggestion of the J&E project was that the scarce resources of the competent authorities should be focussed on priority cases. Another promising way of raising the effectiveness of follow-up steps is to use the watchdog activity of the environmental NGOs and local communities that are interested in the given ELD cases.

f. Public participation in the ELD cases

Recital (25) and (26) of the ELD sounds:

> *„Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organisations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive. (…)*
>
> *The relevant natural or legal persons concerned should have access to procedures for the review of the competent authority's decisions, acts or failure to act."*

These statements from the European legislator encompass the legal policy considerations behind allowing and rather encouraging public participation in the environmental liability cases, moreover, the enhanced role of non-governmental organisations specialised on environmental protection. We would like to highlight that there is a

series of differences and additional elements here compared to the Aarhus Convention. The Convention is basically focussing on administrative decision-making procedures, while the ELD has a mixed, administrative-civil legal regime. Furthermore, the Convention offers partial rights, that seldom reach the level of full standing, while the ELD handles participation as a package, quite close, if not identical with standing.

Article 12 of the ELD encompasses the scope of possible activities from the members and organisations of the public, in cases where they encounter serious environmental damages falling under the scope of the Directive, under the title „Request for action":

> *„1. Natural 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,*
>
> *shall be entitled to submit to the competent authority 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).*
>
> *2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.*
>
> *Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.*
>
> *4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.*
>
> *5. Member States may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage."*

The request for action therefore is a uniquely strong right of the civil side to make the machinery of the environmental administrative system move in an obligatory manner. However, the ELD requires proper cooperation from the members or associations of the public, while, on the other hand the competent authority would inform the requester about its decision on the case, therefore opening the avenues of legal remedies in such cases that were initiated by the public.

Let us quote again here Article 9.3 and 9.4 of the Aarhus Convention for the sake of immediate comparison:

"In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

(...) 4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible."

We see clearly here the said administrative focus of the Aarhus Convention, even at a place where it opens the scope of legal remedies available for the public the widest. We should not forget, however, the revolutionary features of the Convention either. It interconnects the members and associations of the public, though indirectly, therefore the public can address environmental wrongdoings committed by private persons, too, as a strong measure of highlighting the failures or omissions of the public authorities in their work in the field of monitoring, legal implementation and enforcement. A further very strong provision of the Convention is the four features determining the quality of legal remedies. In this respect, legal systems and especially court practice in Europe are lagging behind the goals and aims of the Pan-European legislator.

In the following points, we consider the practice of public participation in the ELD cases in Europe according to the three pillars of the Aarhus Convention structure.

g. Access to information

Considering threats to human health and property, in ELD cases the authorities shall actively approach the communities concerned with basic information about the environmental emergency situation and be ready to respond to requests for explanation and serve the requesters with more concrete data and information. Nonetheless, proactive information supply from the authorities about individual cases is found to be very rare in some countries, except when there is exceptionally significant public, national and/or international media or political interest in a case. In the practice of the European countries, environmental liability information can be requested on several strong legal bases: (i) general constitutional right to public information; (ii) administrative procedural rights of clients and other interested persons; (iii) access to environment-specific information based on the Environmental Code and/or the Aarhus Convention and its national-level implementation; and, finally, (iv) by the application of national ELD laws. The conditions of access to information might be slightly different in respect to these legal opportunities, however.

Even if this strong legal background exists in all EU countries, passive (upon request) information servicing, that is based on Article 4 of the Aarhus Convention and its respective domestic versions, is not always serving well enough the underlying public participation purposes, and even if the authorities are willing and able to give out the requested information, circumstances – such as timeliness, cost, and format of the served information – might make difficult an effective access to information in environmental liability matters. The attitudes of the environmental and non-environmental but otherwise involved authorities might be quite different towards communication with the local communities and NGOs. Environmental authorities are usually more experienced in, accustomed to and willing to communicate with the public, while other related authorities are more inclined to find excuses for not serving or not the full set of information. While requests for environmental information are usually almost totally unconditional, there are several groups of exemptions based on state, administrative, and third persons' interests that could open up legal disputes instead of quick serving the requested information.

Researchers in the J&E project have pointed out that while active and passive information servicing in ELD matters might be formally in place, the *quality of information* should be amended. Ensuring the proper quality starts with the reliable and professionally high-level collection and processing of data and continues with creating a balance between rough data and plausibly well explained information, which should also contain details about the quantities and qualities of pollutants and specification per month and per locality. Moreover, ELD-specific data shall not be kept insulated from the rest of the environmental information related to the same site or the same operation. Interconnectivity and the integration of different databases and information services represent key quality attributes here.

h. Access to participation (having a say) in the ELD cases

In respect to the second pillar of public participation, the ELD paper established that, similarly to the first pillar, there are plenty of procedural hindrances about effective participation of the concerned communities and organisations. Stringent rules and narrow interpretation of standing is the basic barrier we see here, but in certain instances courts demand a more sophisticated condition, too, namely *legitimatio ad causa* (a direct connection of the civil litigant to each and every aspects of the case). However, even if in some cases members and organisations are not allowed to initiate a court procedure, or to address certain issues within the cases, they still can issue their opinion for official consideration by judges as a letter of *amicus curiae* (see Chapter III). A similar, but stronger procedural position for the civil participants can be a supporter of a party. Upon certain conditions, certain persons can join the court case after it is started, with an announcement and supporting arguments on the side of one of the parties. As a main rule, the person concerned is entitled to and bound by the same rights and obligations as the party and is entitled to take any legal action without prejudice to the parties' right of disposal, which shall also be effective if it is contrary to the parties' acts. Such interferer can be:

- any person whose rights or lawful interests are directly affected by the disputed administrative activity or might be directly affected by the judgment;
- any person who took part in the preceding proceedings as a client – one who did not bring the action to the court – may join the action as a concerned person.

A further, more remote way to participate in an ELD court case for an environmental NGO is if the court or the administrative body is willing and able to use pieces of *citizen science* as evidence. Civil society in general and non-governmental organisations in several European countries (e.g. Greece, Denmark) have become very active in a wide variety of sectors, ranging from human rights to poverty reduction, and from environmental protection to cultural heritage. Additionally, NGOs participate in policy dialogue in a structured manner and collaborate with the research and academic community to further enhance the science-policy interface.

Researchers of the J&E project suggested that it would be useful if more articles on ELD cases and general topics were published in relevant journals, magazines, newsletters, etc., and likewise if conferences and similar events were conducted. It was also noted that NGO experts can contribute to the results of the authorities: in several ELD cases, citizen science might mean significant support to the enforcement of environmental liability.

i. Effectiveness of the court decisions in ELD cases

Access to court procedures on the one hand and the strength of the tools in the hand of the court on the other determine the effectiveness of access to justice in ELD cases. According to the Czech Code of the Administrative Judiciary, for instance, only one who claims that their rights have been curtailed directly or as a result of an infringement of their rights in a previous proceeding by an act of an administrative body establishing, amending,

revoking or binding their rights or obligations, may bring an action demanding annulment of such a decision, or a declaration of its nullity. Such and similar restrictions on the circle of persons that might initiate the court revision of an ELD administrative decision are contrary to the public interest nature of the ELD cases. Instances where abandoned waste endangers nature and public health should be considered as a case of all. Furthermore, under some legislation, initiation of a court procedure has another condition, namely that the complainant had to actively take part in the preceding administrative procedure (see Chapter III). It is easy to understand, however, that environmental NGOs and local communities cannot take part in too many environmental administrative procedures, expecting that the decision might or might not be unacceptable for them. They simply do not have resources and time for that.

Long and sophisticated ELD procedures are not seldom tiered, wherein public participation is allowed only at certain stages. Having taken into consideration that facts, evidence, and legal considerations, and even participants might significantly change throughout such several-year-long procedures, public participation in a single stage would not serve legislative aims nor serve the goals of enhancing the effectiveness and general acceptance of ELD procedures and decisions (see more about the tiered procedures in Chapter III).

As concerns the other segment of the effectiveness of access to justice, if courts can issue *injunctive relief* in a preliminary procedure, during or at the end of the court procedure that ensures the most important effect of the court on the ELD cases, which are usually very urgent (see injunctive relief in greater detail in Chapter III.). Furthermore, considering this urgent nature of the ELD cases (because of constantly leaking poisons, threatening environmental and public health disasters etc.) the usual *cassation power* of the courts might not be effective enough, because it simply postpones the substantive solutions of the social-environmental conflict in a revisited procedure (or even procedures in several rounds after several court annulments). In some countries, courts can have stronger control of administrative decisions by changing them, with the help of independent experts ordered by the courts themselves. In most countries, however, in the framework of public law, only an *annulment request* can be submitted by the persons who take part in the administrative procedure.

In practice, the public participation element of the ELD system, *request for action* represents a relatively small portion of the cases of initiation of ELD procedures; less formal notifications from the public in many countries represent the majority of the instances in which the competent authorities become aware of pollution cases. Local communities, however, might not wish to turn directly to the authority with their complaints or observations, but rather use a much simpler path, such as through a nearby environmental association or a larger mainstream NGO that is specialised in environmental liability matters. This *mediation role* of NGOs works in the other direction, too: they may send messages to local communities and the general public through the media or directly about the importance of the proper handling of polluted sites near their settlements. In some countries, the competent authorities also count on the work of NGOs – they consult with them in ELD matters and support them with professional advice and with information. Even if this is so, generally in the EU countries environmental liability matters, especially ELD, are not the focus of interest and activity for environmental NGOs. They perceive the legal and institutional background as too complicated and find too few actual cases to which they could contribute.

Authors in the J&E ELD research acknowledge that public participation in ELD cases might entail additional costs and losing some time in urgent cases. Naturally, from these considerations one should not conclude that public participation should be restricted in environmental liability cases, but just the opposite: members and organisations should be given the most appropriate support from the authority to help them to contribute in the most effective way and in a timely manner. Amongst other ways, the early and full provision of information to civil participants about the onset of procedures might serve these goals eminently.

While ELD Article 12 prescribes that the persons requesting the actions of the competent authorities should attach supporting data that underpin the existence of the alleged environmental damage in a plausible manner, neither

the administrative bodies nor the courts should claim a full, beyond-reasonable-doubt level of proof from the civil participants in ELD cases. It might be useful to offer guidelines or training about this issue within the frames of wider issues concerning how to handle ELD complaints raised by local communities and NGOs.

j. Capacity building in ELD cases (CB)

We have seen that there are strong legal tools in environmental liability procedures that ensure access to information, access to participation, and access to legal remedies. However, we also found that these legal tools cannot always be used to their full capacity, and there might be hurdles to really effective public participation that could support the competent authorities and other stakeholders in their work. Safeguarding the basic procedural rights of the parties in administrative cases is primarily the responsibility of the administrative bodies. Environmental protection cases are generally difficult ones for clients and other participants because of their intertwined legal and technical elements. Within this category, environmental liability and especially ELD cases represent especially difficult types of cases.

ELD units in the chief environmental authorities in several countries regularly organise training and seminars for the officials who deal with such cases, and they allow interested environmental NGOs to participate, too. Such training, which entails spontaneous exchanges between officials and civil representatives, is a great opportunity for mutual, active learning. Similarly, ELD handbooks and manuals are available to the wider public, not only the primary addressees in the regional ELD units of the environmental authorities.

In many European countries, environmental authorities give institutional support to environmental NGOs which are committed to dealing with environmental liability matters, including core funding, project-based prizes, and legal-technical advice. As we have seen above, capacity-building activities are divided between individual help for participants in concrete cases, and general support for local communities and NGOs. Both the individual and the general capacity-building efforts encompass information servicing about the legal background, the system of relevant authorities, procedures to follow, as well as the main professional issues that emerge in environmental liability cases.

An effective means of capacity building is when mainstream environmental NGOs or their networks undertake this task for their constituencies or for a wider circle, not seldom including the relevant officials at the environmental authorities or municipalities. While capacity building is a condition for effective public participation, consequential prohibition and the extinction of capacity-destroying manoeuvres, such as threats, harassment, discrimination, etc. against those persons and organisations that wish to participate in certain ELD cases is a must.

In the view of the in-depth researchers of the project, active information distribution about key elements of ELD procedures would trigger greater public attention and awareness in these matters. Official ELD websites should especially contain a list of operator companies that undertake activities according to ELD, Annex No. III, with some details, such as the basic characteristics and documentation of their activities. Apart from this, actual information about ongoing ELD proceedings, imposed preventive and remedial measures, follow up activities, and the results achieved by remediation measures, would make the websites more substantial for the communities concerned and for interested environmental NGOs. Educational materials, which might be irrelevant to the public in themselves, might gain importance in these surroundings. Authors also signalled some elements of these materials not yet fully implemented in the present capacity-building efforts, such as the interrelationships between the ELD laws, the other sectoral laws on environmental liability, and their broader legal connections, including underused civil and criminal law tools. These capacity-building measures might make public participation more systemic and more effective in general.

VI. SUMMARY OF FINDINGS AND RECOMMENDATIONS

In this study, researchers from EEB, EMLA and GA surveyed a long list of resources connected with our topic, namely the interrelations between the polluter pays principle and public participation, especially access to justice. Accordingly, our main focus points were the scope of Article 9(3) of the Aarhus Convention, which covers acts and omissions by private persons, and its potential use to drive progress in the more effective application of the polluter pays principle. Keeping effectiveness in mind, Article 9(4) and its requirement for fair, equitable, timely, and not prohibitively expensive remedy procedures also had to be explored, especially in terms of ways to shift costs to polluters. While a range of European environmental legislation contains important provisions on the polluter pays principle, the Environmental Liability Directive specifically targets the actual implementation of this principle. Therefore, the ELD was the other main subject of our research. The effectiveness of the ELD and problems with its implementation were the subject of a report from the European Court of Auditors, as well as two fitness checks (2021 and 2026) performed by the European Commission. Furthermore, we were fortunate to have a comprehensive study at hand, conducted by Justice and Environment for the Commission in 2021-2022. Apart from these two main issues of our study, we extended our research to such topics as collective redress mechanisms and the potential use of the Industrial Emissions Portal and national PRTR portals in civil liability cases.

We have analysed the polluter pays principle within the context of the system of environmental legal principles. The principles play a key role in contemporary environmental law, which is a relatively young and low-prestige branch of law, where the long-term social-environmental goals are too frequently sacrificed for the short-term, narrow interests of some economic groups. Courts at national and EU level can use (and do use) the principles of environmental law to keep sustainability considerations to the forefront and overcome the detailed provisions of environmental laws that are deemed to be a result of bad compromises with the relevant branches of the economy.

The polluter pays principle is one of the most difficult sustainable development principles to apply: the largest polluters can and do commit everything to prevent authorities and the members and associations of the public from making them pay for the cleanup and compensation of their polluting activities. At the same time, civil experts criticise this principle because of its 'end of pipe' approach, saying that it is too late for the polluted natural elements and also for the corroded help of the concerned public to interfere, and the pecuniary compensation cannot heal all the damages at all. That is why it is important to consider the polluter pays principle in the context of the whole system of environmental legal principles, especially the precautionary and the prevention principle.

From our study, we draw the following conclusions and make the following observations and suggestions accordingly:

i) (*factors that might balance environmental protectionism*) The J&E study's main conclusion overlaps with the other analyses of the Justice and Environment network, in the field of nature protection (e.g. the handling of the appropriateness assessment), protection of city air (e.g. the Air Quality Plans lagging behind the actual numbers of pollution), water management (e.g. handling Article 7(4) exemptions) or generally in the case of environmental impact assessment in the planning phase of investments of major environmental significance (e.g. the mere fact that the environmental effects are assessed primarily by the experts whom the investor herself selected and contracted, let alone the extreme rarity of denying the environmental permit or seriously modifying the projects). Our experiences tell us that European environmental laws and the practice of our environmental authorities, based on these laws, are feeble when the protection of the environment should confront the interests of the market

positions of the European industry. That might be called environmental protectionism. In Environmental matters, equality of arms should be prioritised because of the striking imbalance of power between the polluting side and the protection side. Large companies that rely on the use and exploitation of the environment for their profits, can rely on financial, professional, and legal resources which are multiples greater than civil society tasked with protecting the environment. The Aarhus Convention can be one mechanism to shift the balance of the equality of arms more fairly to the victim's side by supporting NGOs in their role of representing the environment.

Public participation can be one of the key factors that might counterbalance environmental protectionism, together with other institutional guarantees, such as court activism, activity of non-governmental institutions (such as ombudsmen or state auditors), all using some constitutional provisions (e.g. protection of the interests of future generations) and the principles of sustainable development, including the polluter pays principle.

ii) (*capacity building*) Environmental decision-making procedures, however, are very sophisticated, burdened with extremely complex professional and legal questions. In order to guarantee an acceptable level of the above-mentioned control functions of the members and associations of the public (with a special stress on the local communities), they need organised, well budgeted, institutionalised capacity building efforts from the states and from the European Union. Capacity building, as we have pointed out in at least a dozen places in various contexts during this study and described with the help of the table in Chapter III.2. above, shall be systemic in itself, as part of the whole system of rules, institutions, procedures, role players etc. of public participation.

iii) (*dilemmas in connection with ACCC*) The Aarhus Convention Compliance Committee (ACCC) is a great success story of international environmental law, as well as of environmental democracy. According to the UNECE home page, the Committee has handled more than 233 cases and issued more than 100 findings concerning 35 countries since it started its work in 2004, based on Decision I/7 of the very first meeting of the parties in Lucca, Italy. The range and breadth of the topics it has covered so far, as we collected and analysed in Chapter III, subchapters 4 and 5, are really spectacular, too:

> "*avenues of public law enforcement*, *nuisance cases*, *damage cases, administrative complaints*, *what can be reviewed?*, *cases that qualify as environmental ones*, *clients in the Article 9(3) cases*, *too restrictive approaches*, standing for NGOs, *participation in neighbouring legal fields*, *direct concern requirements*, *tiered procedures*, *the body to proceed the request*, *triggers and scope*, *strategic decisions, private persons' decisions*, *law enforcement acts, quality requirements under article 9*, *adequate and effective remedies*, *injunctive relief in more details*, *fair, equitable, timely*, *not prohibitively expensive*"

We can establish, without exaggeration, that the work of the Committee raised the legal practice and the scholarly wisdom of public participation to a higher level. These decisions resulted in significant amelioration in the legal systems, especially in administrative procedural laws of a line of countries, starting from Kazakhstan, Turkmenistan, ending at Belgium or Sweden. The importance of this innovative element of the Aarhus Convention implementation system is beyond question. The major success factor, no surprise, is public participation. Members and organisations of the public, quite exceptionally in international law, were endowed with the right to initiate ACCC cases, and they were not hesitating to live with this opportunity.

However, being complaint-driven, the work and the results of the Compliance Committee are far from systematic. The legal scholars sitting on the committee can deal only with cases which are submitted to them. Important topics, such as capacity building, have been left out of their portfolio so far.

iv) (*sectoral rules vs. general principles*) In Chapter IV, we surveyed the most relevant European legislation from the viewpoint of supporting the polluter pays principle. Notably, these laws contain important public participation provisions, too. At first glance, they seem repetitive, almost superfluous, compared to the general, overarching rule

embodied in the polluter pays principle and, on the participation side, the Aarhus Convention and its European and domestic implementation. We noted, however, that sectoral administrative bodies tend to favour their own sectoral laws and are hesitant to apply general principles and overarching rules such as those enshrined in the Convention. Moreover, it seems to be an asset that the specific features of both the PPP and public participation are elaborated according to the needs and possibilities of waste, water, disaster prevention and chemical safety laws, respectively, as well as criminal law.

Nevertheless, we gathered rich experiences in connection with the ELD, about the shortsighted, limited view of the sectoral administrative bodies. Indeed, we could bring a lot of practical examples (here in Chapter V.3.a.) where national authorities simply overlooked the surplus legal opportunities of the general rules of the ELD. Naturally, until the general and specific rules are not harmonized, not using the same terminology and principles, with similar or at least compatible procedural rules, the legal practice of these fields of environmental protection will remain imbalanced and fails to harness their full capacities.

v) (*official reports vs. independent surveys*) In Chapter II. we have analysed the European Court of Auditors Special Report on the Polluter Pays Principle, as well as two European Commission fitness checks of the polluter pays principle. They establish that even if there are some shortcomings, because of administrative and mainly financial reasons, application of the principle is on right track.

In the same period, basically as a follow up of an initiative from the European Parliament, a widespread independent analysis of the Environmental Liability Directive took place. Considering that ELD is the flagship of the polluter pays principle in the European environmental law, the results of this study could be comparable, at least content wise, to the official reports in the same topic. It might raise some eyebrows, though, that this latter study arrived at totally different conclusions about the non-problematic implementation of the ELD. Some would say, yes, this was an NGO research, with the typical negative attitude of the civil experts and the usual exaggeration of the negative traits. But we have to note that the majority of the 40 researchers who worked on this latter project were not NGO persons, but university teachers, retired judges and administrators and freelancer private attorneys. The difference was not the persons having performed the research but rather the methodology to acquire information about the practical implementation of the Directive. The ECA and the Commission reports, what else, gathered their data from their national focal points. These focal points are the employees of basically the same environmental authorities who were (would have been) responsible for the effective implementation of the ELD. No wonder that they saw and shown a much rosier picture than the independent researchers, who used a wide range of information sources, such as various statistics, company reports, literature sources and the inexhaustible depth of the Big Data on the Internet.

The authors of this study would suggest diversifying the sources of information in similar ways, whenever the European decision-makers need realistic feedback from the actual implementation of the European environmental laws.

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