



European
Commission



Overview on EU activities on access to justice at MS level, with a particular focus on legislative acts and case-law

4-5 April 2023

**Access to Justice Task Force
Aarhus Convention**

European Commission
Directorate General for Environment
Unit E.4 – Environmental Rule Of Law And
Governance



- Political framework
- Sectoral initiatives
 - Closed
 - On-going
 - Upcoming
- new case-law CJEU
- Other initiatives/projects



The Green Deal Communication



(ii) The Commission will also take action to 'improve access to justice before national courts in all Member States'.

Adopted renewable energy related initiatives (1)



- Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate **the deployment of renewable energy** ([EUR-Lex - 32022R2577 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2022/2577/oj))
- Adopted on 22 December 2022, entered into force on 30 December 2022 and will apply for 18 months – thus allowing Member States **to accelerate the permitting of renewable projects** from the adoption of the Regulation till the adoption of the revised RED.
- Objectives:
 - New, temporary and targeted measures to accelerate the deployment of certain renewable energy projects,
 - to phase out EU's dependence on Russian fossil fuels.
- **Aarhus recital (20):** The provisions of the Aarhus Convention (...) and in particular, the obligations of Member States relating to public participation and to access to justice, remain applicable.

Adopted renewable energy-related initiatives (2)



Proposal for a DIRECTIVE on the promotion of the use of energy from renewable sources ([EUR-Lex - 52022PC0222 - EN - EUR-Lex \(europa.eu\)](#))

- The proposal for amending the Renewable Energy Directive (RED) adopted as part of the REPowerEU Plan in May 2022 aims to balance two of the **core objectives** of the **European Green Deal** - **shift towards clean energy sources** and **protection of the environment**.
- It maintains the two-stage approach applicable to environmental assessments: a plan level and project level assessment. A **strategic environmental assessment** (SEA) and if applicable an **appropriate Assessment** under the Habitats Directive will need to be carried out **for all plans that identify renewables 'go to areas'**.
- Final trilogue took place on 29 March 2023 – final text expected. [Council and Parliament reach provisional deal on renewable energy directive - Consilium \(europa.eu\)](#)
- **Recital 12:** The provisions of the Aarhus Convention (...), in particular the provisions relating to public participation and to access to justice remain applicable, where relevant.

5 initiatives tabled and on-going



- IED (Revision on industrial emissions Directive) proposal tabled on 5 April 2022
- AQ (Air Quality revision) – proposal tabled on **26 October 2022**
- Urban Waste Water Treatment – proposal tabled on **26 October 2022**
- Nature restoration law – proposal by Commission June 2022 – on-going negotiations
- Green Claims Regulation – proposal tabled in March 2023

On-going energy-related initiatives



Adopted by the Commission on 16 March 2023:

[European Critical Raw Materials Act \(europa.eu\) Article 13](#)

[Net Zero Industry Act \(europa.eu\) Article 9](#)

Dedicated Articles related to Espoo/Aarhus Conventions:

- Applicability of UNECE Conventions:

The provisions set out in this Regulation are without prejudice to the obligations under the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998, and under the UNECE Convention on environmental impact assessment in a transboundary context, signed at Espoo on 25 February 1991.



- **NEC** – upcoming evaluation
- **REACH** – on-going evaluation and drafting process

Sectoral initiatives: a good example



For the moment the one provision that has passed successfully:

ACCESS TO JUSTICE IN THE DEFORESTATION REGULATION

Article 30

1. Any natural or legal person having a sufficient interest, as determined in line with their existing national systems of legal remedies, including those having submitted a substantiated concern in accordance with Article 29, where they meet the criteria, if any, laid down in its national law, shall have access to administrative or judicial procedures to review the legality of the decisions, acts or failure to act of the competent authorities under this Regulation.

2. This Regulation shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.



Common provisions in the IED/AQ/UWWT proposal

Broader definition of ‘the public concerned’

Enhanced access to Justice and redress mechanisms (injunctive relief, compensation for damages)

New Article on compensation:

damage to human health has occurred, the individuals affected have the right to claim and obtain compensation for that damage from relevant natural or legal persons or competent authorities responsible;

collective action possible to be represented by NGOs;

casualty between damage and the violation of the Directive;

the onus is on the person responsible for the violation to prove that the violation did not cause or contribute to the damage;

limitation periods for bringing actions for compensation referred to in paragraph 1 are not shorter than 5 years

Case-law



'The Brown Bear (also) learns to drive'

(C-873/19)

(as explained by justice Matthias Keller recently)

1) C-873/19 – type approval decision

- NGO challenges a type approval decision for a specific vehicle model.
- National law explicitly does not provide legal standing for NGOs to challenge product authorisations.
- National court seeks clarification on whether 'criteria laid down in ... national law', within the meaning of Article 9(3) of the Aarhus Convention, allows the parties to set criteria regarding the persons and the subject matter of the action?
- CJEU: **Legal standing to be granted to an NGO** authorised to bring legal proceedings on the basis of Article 9(3) in conjunction with Art. 47 ECFR.
- The **Court applies a broad interpretation of Art. 9(3) that aims to ensure broad A2J for recognised environmental NGOs**, covering both public authorities and private persons' acts and omissions (para 67).

2) C-100/21: Dieselgate/compensation

- Purchaser of car equipped with allegedly **illegal defeat device** (temperature window) seeks for returning the car to the manufacturer in return of price paid
- The national court intends to apply a provision of national tort law which requires at least negligence, and a breach of a law **which also intends to protect the specific interests of the individual**
- CJEU: Provisions on defeat device (Art.5(2) Reg.715/2007 in conjunction with EU provisions on certificate of conformity (Dir.2007/46) protect the specific interests of the individual purchaser of a car vis-à-vis the manufacturer.
- No reference to the Aarhus Convention in the judgment.



3) C-432/21 - Forest plans/Article 6(3) Habitats Directive

- Commission *inter alia* called into question that NGOs cannot ask for judicial review of forest management plans, which are subject to Article 6(3) of the Habitats Directive.
- CJEU: **Legal standing to be granted to environmental NGOs** on the basis of Art. 9(2) AC in conjunction with the Habitats Directive.
- CJEU: Legislation providing for access to a court must satisfy the requirements of **legal certainty, clarity and precision**.
- **Ad-hoc national court rulings** or practice of national authorities are not an acceptable way of implementing the Aarhus requirements.
- Aarhus Implementation Guide can serve as guidance in interpretation.

Other projects for 2023



- **Study** contract launched early 2023: "Collecting and updating information on public participation and access to justice in environmental matters in the EU MS in case MS adopt decisions on **state aid**".
- **Update of 2017 Commission Notice** on access to justice in environmental matters – see updates available online
- **LIFE projects: new cycle** on-going – several governance related themes including on participatory rights