



Commission Notice on Access to Justice in Environmental Matters – relevance for climate action ?

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Why an initiative on Access to Justice specifically for environmental matters ?

*A tool for **decentralised enforcement** of EU environmental legislation*

*Specific rules are necessary to **overcome basic barriers** that exist in many legal systems, in particular, if the right to go to court is very restricted.*

***Less complaints** to COM if access to justice works better at MS level*



Why a Notice ?

Access to Justice provisions are included in some EU secondary environmental law, but there are still gaps (e.g. in the area of nature, air, waste, water)

A Commission proposal of 2003 aimed at filling the missing gaps, but did not receive the necessary support by MS

Case law of the CJEU has considerably evolved since 2003 and now covers much of the subject matters of the initial proposal



Methodology

Creating no new legal obligation but drawing inferences from EU legal principles and case-law in case of gaps in EU secondary legislation

Covering all relevant aspects of access to justice in a comprehensive way -> length of document

Targeting legal practitioners such as judges, lawyers, administrations, civil society





Legal sources

1. *Article 19 TEU, Article 47 of the Charter of Fundamental rights*
2. *Article 11 EIA Directive 2011/92; Article 25 Industrial Emissions Directive; Article 23 Seveso Directive 2012/18/EU; Article 13 Environmental Liability Directive 2004/35/EEC*
3. *Convention on access to information, public participation in decision-making and access to justice in environmental matter (Aarhus Convention)*
4. **Case Law of the CJEU: around 30 judgments**



Which topics are addressed in the Notice ?

1. *Legal standing for NGOs and individuals*
2. *Scope of review*
3. *Effective Remedies*
4. *Costs*
5. *Timeliness*
6. *Practical information*



Legal Standing in EU secondary law (e.g. Article 11 of the EIA Directive)

- *public concerned*
- *decisions, acts or omissions subject to public participation.*
- *sufficient interest or impairment of rights*
- *environmental NGOs: legal standing de lege*
- *scope of review: procedural and substantive legality*

Special problems :

- *Prior participation*
- *Preclusion*



Legal Standing – Article 9(2) of the Aarhus Convention

Article 9 (2) of the Aarhus Convention

*Each Party shall (...) ensure that members of the public concerned having a sufficient interest or, alternatively, maintaining impairment of a right (...) have access to a review procedure before a court of law (...) to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of **article 6** (...)*

Article 6 (1) b of the Aarhus Convention

Each Party shall (...) also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;



C-243/15 - Lesoochránárske zoskupenie II

Article 6 I b of the Aarhus Convention applies to the procedure pursuant to Article 6 (3) of the Habitat Directive 92/43/EEC (appropriate assessments)

Article 9(2) applies to all decisions taken in the framework of Article 6(3) of the Habitat Directive

Arguments of the case can be applied to other sectors of EU environmental law (e.g. pending reference case before the CJEU on the Water Framework Directive C-663-664/15)



Legal Standing – Article 9(3) of the Aarhus Convention

Article 9(3): "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."

C-240/09 –Slovak Brown Bear: "it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law"



Legal Standing – Article 288 TFEU – Risks for public health

Air quality cases:

C-237/07: Janecek – air quality plan

C-404/13 – Client Earth – air quality plan

*C-165 to 169/09 – Stichting Milieu – national
emission ceiling*



Scope of Review

- Possible grounds for judicial review

- Intensity of scrutiny

- Preclusion



Effectiveness of Remedies

Minor procedural defects

Suspension, revocation, annulment

Compensation for pecuniary damage

Interim Measures



Costs

Principle: Court procedures must not be prohibitively expensive

Subjective and objective criteria

Cost allocation / Legal Aid



Legal Review of EU acts

Aarhus Regulation (EC) No 1367/2006

Two step approach

- *Request for an internal review*
- *Legal Review by the Court*

*Restricted to administrative acts: "administrative act" means any measure of **individual scope** under environmental law, taken by a Community institution or body, and having legally binding and external effects"*



Examples for EU administrative acts with general scope

Commission Decision 2010/135/EU concerning the placing on the market of a potato product genetically modified

Commission Implementing Regulation 1143/2011 concerning the placing of plant protection products on the market

Commission Decision 2014/746/EU determining, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019



Follow-up after adoption of the Notice

- 1. Outreach*
- 2. Training*
- 3. Assessment of Member States*



Thank you!