



Access to Justice in Environmental Matters

**Recent developments in the case law
of the European Court of Justice**

The role of CJEU case law for access to national courts

***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*

Access to Justice provisions in EU secondary law

Article 11 of Directive 2011/92/EU (environmental impact assessment);

Article 25 of Directive 2010/75/EU (Industrial Emissions Directive)

Article 23 of Directive 2012/18/EU (Seveso)

Article 13 of Directive 2004/35/EEC (Environmental Liability Directive)

Examples of cases falling outside the scope of A2J provisions in EU secondary law

- *Hunting derogations under the Birds and the Habitat Directive*
- *Omission to adopt air quality plans*
- *Certain projects in Natura 2000 sites*

Relevant topics for A2J

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

Legal Standing for NGOs

C-243/15: *An environmental NGO is entitled to challenge a decision not to carry out an appropriate assessment for a project in a Natura 2000 site, as well as an assessment which is carried out.*

*Other important judgements: **C-240/09, C-404/13***

Scope of review

C-72/14 – East Sussex

A system of judicial review complies with the principle of effectiveness if “ *it enables the court or tribunal hearing an application for annulment of such a decision to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of the decision*”

Conclusion: Even if standard of review is not specified in EU law, the review has to be effective in ensuring that objectives of the relevant EU legislation are achieved.

Costs

Not prohibitively expensive procedures: *the legal costs incurred by the parties to the proceedings should not be set a level that effectively deters or bars citizens and their associations from bringing legal challenges.*

C-530/11: *The CJEU specifies criteria which the national judge has to apply in order to avoid that costs for procedure become prohibitively high*



Commission initiative on access to justice in 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*

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*

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



European
Commission

Thank you!