

**Public consultation as part of  
the study on EU  
implementation of the Aarhus  
Convention in the area of  
access to justice in  
environmental matters**

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## 1. Introduction

A 12-week open public consultation, in line with the Better Regulation Guidelines, was launched on 20 December 2018 to 14 March 2019, to support the *Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters*. It featured an online questionnaire in all EU languages and which was disseminated via the EU Survey tool<sup>1</sup>. The purpose of the questionnaire was to gather information and views from stakeholders and the wider public on the implementation and impacts of the Aarhus Convention (see Appendix 1 for the text of the questionnaire). The consultation questionnaire was publicised through the Commission's mailing lists, networks and a dedicated Member State expert group on access to justice, as well as relevant social media channels<sup>2</sup>.

The questionnaire consisted of two parts: the first part was aimed at all respondents and included general questions on the relevance of the Aarhus Convention and Regulation to individuals and others, as well as questions on its effective implementation. The second part of the questionnaire sought information on experience with existing mechanisms to review or challenge EU environmental acts, and targeted respondents directly involved with or affected by these mechanisms.

The questionnaire consisted of 33 questions in total. Of these, 26 were closed, multiple-choice questions and seven were open questions allowing free text responses. A total of 348 open responses were received across the seven open questions in 12 languages. A number of responses to the open questions were repetitions of closed questions or contained duplicate answers and/or very general or off-topic responses that did not relate to the question or were out of scope. Duplicate answers consisted of responses with identical wording from two or more respondents (e.g. different business associations or companies providing the same responses multiple times). Duplicate answers, repetitions of closed questions and very general or off-topic responses were excluded from the analysis.

In addition to answering questions, respondents had the opportunity to submit additional documentation by uploading files. Excluding duplicates, a total of 19 files were received, mostly position papers from environmental NGOs and business associations.

The views gathered from the consultation questionnaire have informed the above-mentioned study, in particular the mapping of experience with the existing redress mechanisms (Section 2) and the evaluation of social impacts (Section 3). Views from the consultation questionnaire were also used to inform the assessment of the environmental, economic and social impacts of proposed measures and options in Section 5.

## 2. Profile of respondents

### 2.1. Distribution by respondent type

Out of a total of 175 respondents who replied to the questionnaire, 123 (70%) replied on behalf of an organisation or institution and the remaining 52 (30%) replied in a personal capacity. Of the 123 organisations that replied, most were small, representing 10 to 49

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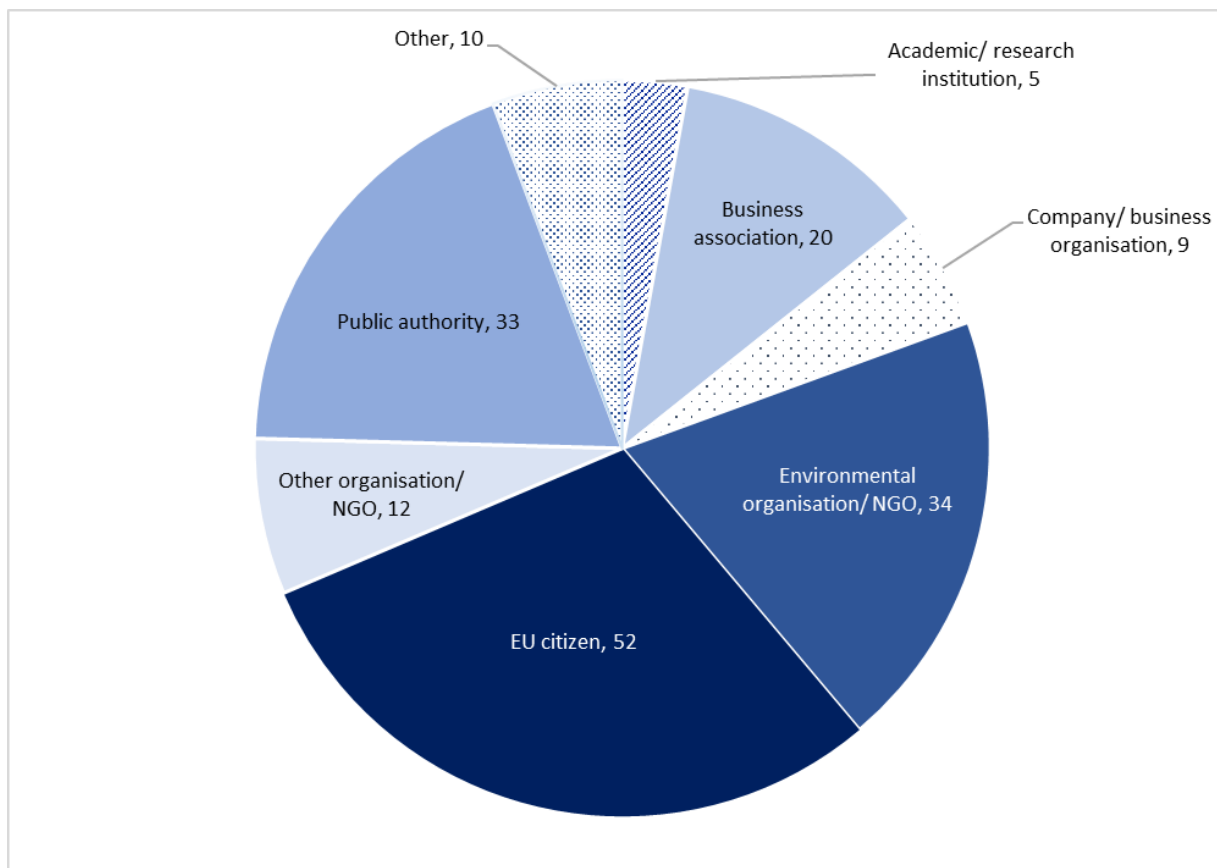
<sup>1</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2432060\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2432060_en)

<sup>2</sup>Launch and follow-up on the consultation via Twitter:  
[https://twitter.com/EU\\_ENV/status/1076050945388232704](https://twitter.com/EU_ENV/status/1076050945388232704)  
[https://twitter.com/EU\\_ENV/status/1081117053958975490](https://twitter.com/EU_ENV/status/1081117053958975490)

employees (47 responses). This was followed by 33 micro organisations representing 1 to 9 employees, 29 medium sized organisations representing 50 to 249 employees, and 14 large organisations representing 250 or more employees. Organisations were mostly local (14 responses), followed by national and regional (3 responses each) and international (2 responses)<sup>3</sup>.

The stakeholder distribution by type is presented in Figure 1. Respondents were asked to describe themselves as Academic or Research Institution, Business Association, Company or Business Organisation, Consumer Organisation, EU citizen, Environmental Organisations and Non-governmental Organisations (NGOs), Non-EU citizen, Other organisations and NGOs<sup>4</sup>, Public Authority, Trade Union or Other. A large portion of respondents identified as EU citizens (30%). The consultation also elicited contributions from environmental organisations and NGOs (19%) and public authorities (19%) and these account for a sizeable proportion of the total replies received. There were no respondents who identified as a non-EU citizen, or as belonging to a Trade Union or Consumer Organisation.

**Figure 1: Respondents by stakeholder type (all respondents, n=175)<sup>5</sup>**



<sup>3</sup> A large majority did not reply to this question (87%, 153 responses)

<sup>4</sup> Other organisations and NGOs are those who do not represent specific economic interests or promote environmental issues (e.g. social justice, empowerment of women, etc.)

<sup>5</sup> For the purposes of the analysis and to ensure consistency, stakeholder types were reclassified.

## 2.2. Distribution by Member State

Concerning the origin of the responses, 99% of the respondents were based in the European Union (EU 28). Within the EU, the main representation came from Germany (26%) and Romania (18%). These two countries represented almost half of the total sample (48.5%). Only one respondent is from a non-EU country (Cameroon). **Table 1** presents the distribution of respondents by country.

**Table 1: Distribution of respondents by country (all respondents)**

Country	Number of respondents	Country	Number of respondents
Austria	6	Italy	2
Belgium	16	Netherlands	1
Bulgaria	2	Poland	3
Croatia	1	Portugal	1
Cyprus	1	Romania	39
Czech Republic	3	Slovakia	1
Estonia	1	Slovenia	2
Finland	1	Spain	6
France	18	Sweden	9
Germany	46	United Kingdom	3
Hungary	2	Non-EU	1
Ireland	10	<b>Grand total</b>	<b>175</b>

The consultation received replies from stakeholders in 22 Member States. **Table 2** shows that most stakeholders who identified as EU citizens are from Germany (13 responses) and France (10 responses). Those who identified as an environmental organisation/ NGO are mostly from Belgium (8 responses) and Germany (7 responses), while for non-environmental NGOs responses are mostly from France (6 responses). In the case of Germany, over a third of the respondents identified as business or business association, reflecting strong networks of chambers of commerce that frequently respond to EU public consultations. A large share of public authorities also replied to the open consultation from Romania (29 responses). This is likely to have come from dissemination of the questionnaire through one or more networks in Romania, although the content of the responses from these stakeholders does not show signs of having been coordinated. The relatively high number of Environmental NGOs from Belgium reflects EU-level organisations based in Brussels.

**Table 2: Distribution of stakeholder type by country**

Type of respondent	Number	% of total
<b>EU citizen</b>	<b>52</b>	<b>30%</b>
Austria	2	1%
Belgium	2	1%
Bulgaria	1	1%
Czech Republic	1	1%
France	10	6%
Germany	13	7%
Ireland	6	3%
Italy	1	1%
Netherlands	1	1%
Poland	3	2%
Romania	4	2%
Slovakia	1	1%
Spain	3	2%

<b>Type of respondent</b>	<b>Number</b>	<b>% of total</b>
Sweden	3	2%
United Kingdom	1	1%
<b>Environmental organisation/ NGO</b>	<b>34</b>	<b>19%</b>
Austria	3	2%
Belgium	8	5%
Bulgaria	1	1%
Croatia	1	1%
Cyprus	1	1%
Czech Republic	2	1%
Estonia	1	1%
France	1	1%
Germany	7	4%
Hungary	1	1%
Ireland	1	1%
Portugal	1	1%
Slovenia	2	1%
Spain	2	1%
Sweden	1	1%
United Kingdom	1	1%
<b>Public authority</b>	<b>33</b>	<b>19%</b>
Belgium	1	1%
Germany	1	1%
Ireland	1	1%
Italy	1	1%
Romania	29	17%
<b>Business association</b>	<b>20</b>	<b>11%</b>
Austria	1	1%
Belgium	4	2%
Finland	1	1%
Germany	11	6%
Sweden	3	2%
<b>Other organisation/ NGO</b>	<b>12</b>	<b>7%</b>
Belgium	1	1%
Cameroon	1	1%
France	6	3%
Germany	1	1%
Hungary	1	1%
Ireland	1	1%
United Kingdom	1	1%
Belgium	1	1%
<b>Other</b>	<b>10</b>	<b>6%</b>
Germany	5	3%
Ireland	1	1%
Romania	3	2%
Spain	1	1%
Germany	5	3%
<b>Company/ business organisation</b>	<b>9</b>	<b>5%</b>
Germany	6	3%
Romania	1	1%
Sweden	2	1%
<b>Academic/ research institution</b>	<b>5</b>	<b>3%</b>
France	1	1%

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<b>Type of respondent</b>	<b>Number</b>	<b>% of total</b>
Germany	2	1%
Romania	2	1%
<b>Grand total</b>	<b>175</b>	<b>100%</b>

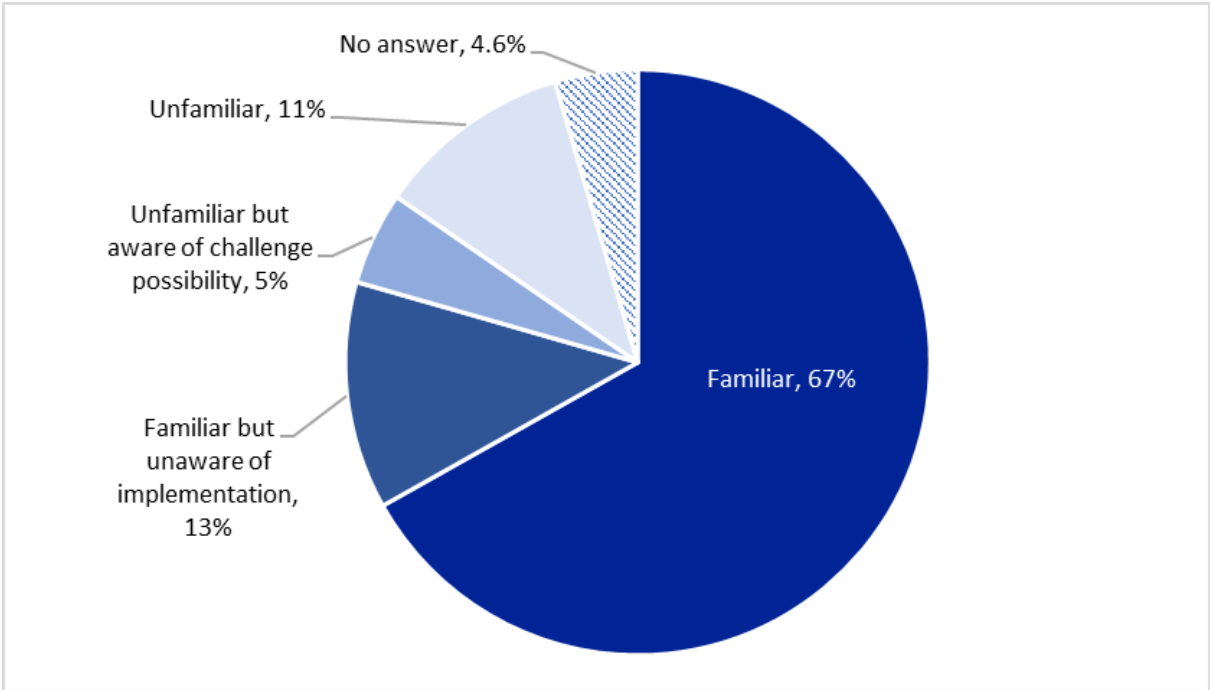


### 3. Part 1: General questions

#### 3.1. Familiarity with the Aarhus Regulation

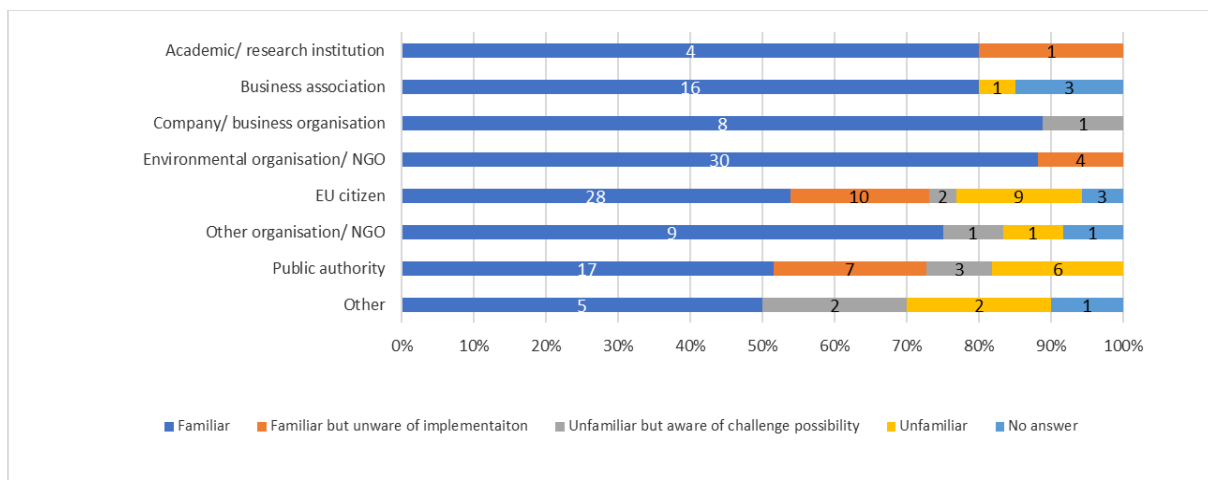
Most respondents (67%) to the public consultation questionnaire are familiar with the Aarhus Convention and/or the Aarhus Regulation. This was followed by 22 (13%) who specified that they have heard about the Aarhus Convention, but were not sure how it is implemented at national or EU level and therefore how it affects them, and 19 (11%) who never heard of the Aarhus Convention nor the Aarhus Regulation. Nine (5%) have never heard of the Aarhus Convention nor the Aarhus Regulation but are aware of the possibility to challenge non-legislative environmental acts of the EU and a further 8 (5%) did not answer (see **Figure 2**).

**Figure 2: Familiarity with the Aarhus Regulation and Aarhus Convention (all respondents, n=175)**



As shown in **Figure 3**, those most familiar with the Aarhus Convention and/or the Aarhus Regulation are environmental organisations/NGOs (88%), companies/business organisations (89%) and academic/research institutions and business associations (80%). This was closely followed by 75% of other organisations/NGOs. While a slightly larger share of EU citizens (54%) indicated they are familiar with the Aarhus Convention and/or the Aarhus Regulation, between 17% and 19% also indicated they are familiar with the Aarhus Convention, but were not sure how it is implemented at national or EU level and therefore how it affects them and that they never heard of the Aarhus Convention nor the Aarhus Regulation. The same can be said for public authorities. Other than EU citizens and public authorities, respondents who indicated they never heard of the Aarhus Convention nor the Aarhus Regulation included one other organisation/NGO, two respondents who identified as 'other' and one business association.

**Figure 3: Familiarity with the Aarhus Regulation and Aarhus Convention (type of stakeholder, n=175)**

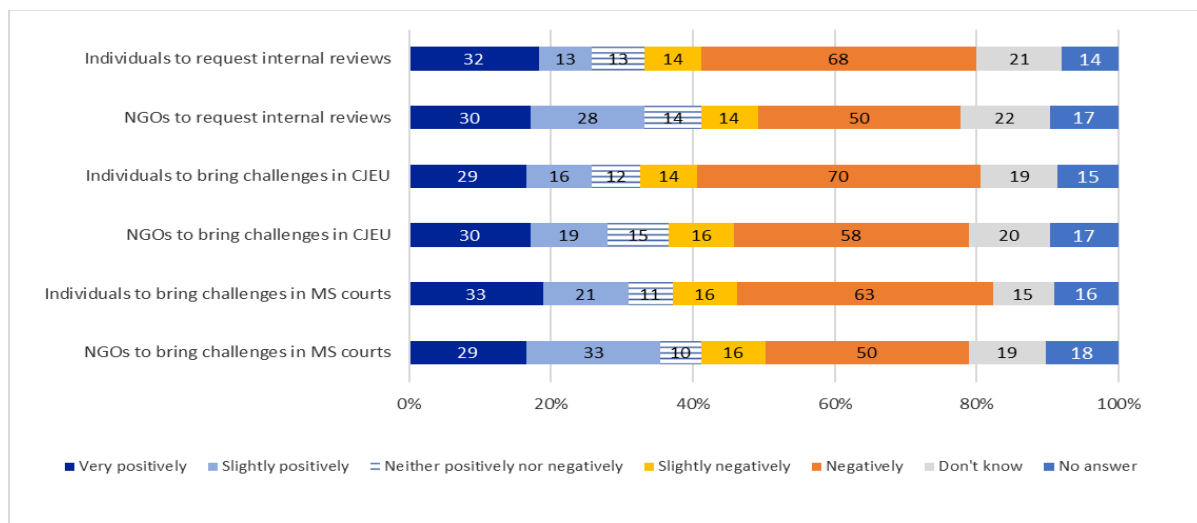


### 3.2. Perceptions of the current mechanisms for access to justice access

Respondents were asked to rate the accessibility of existing redress mechanisms for individuals and NGOs to challenge EU environmental acts. As **Figure 4** shows, the possibilities for individuals to bring challenges before the CJEU was the option with the highest negative score, meaning respondents found accessibility impossible or excessively difficult using this mechanism. Almost half of all respondents (48%) rated this option as 'negatively' or 'slightly negatively', compared to only 26% who selected 'very positively' or 'positively'. The current possibilities for individuals to request an internal review and to bring challenges before a national court also received high negative scores. Between 42% and 47% of respondents rated these options 'negatively' or 'slightly negatively' compared to 26% and 31% who indicated 'very positively' or 'positively'.

The current possibilities for NGOs to bring challenges before the CJEU was perceived by 42% of respondents as 'slightly negatively' or 'negatively', compared to 28% who rated this 'very positively' or 'positively'. Respondents tended to have mixed views on the possibilities for NGOs to request an internal review and to bring challenges before a national court. Between 36.5% and 38% of respondents considered the accessibility of these mechanisms for NGOs as 'slightly negatively' or 'negatively', while at the same time between 33% and 35% also rated these options 'very positively' or 'positively'.

**Figure 4: How would you rate the availability of each of these means for individuals or NGOs? (all respondents, n=175)**



### 3.2.1. Stakeholder perceptions on access to justice using the internal review procedure

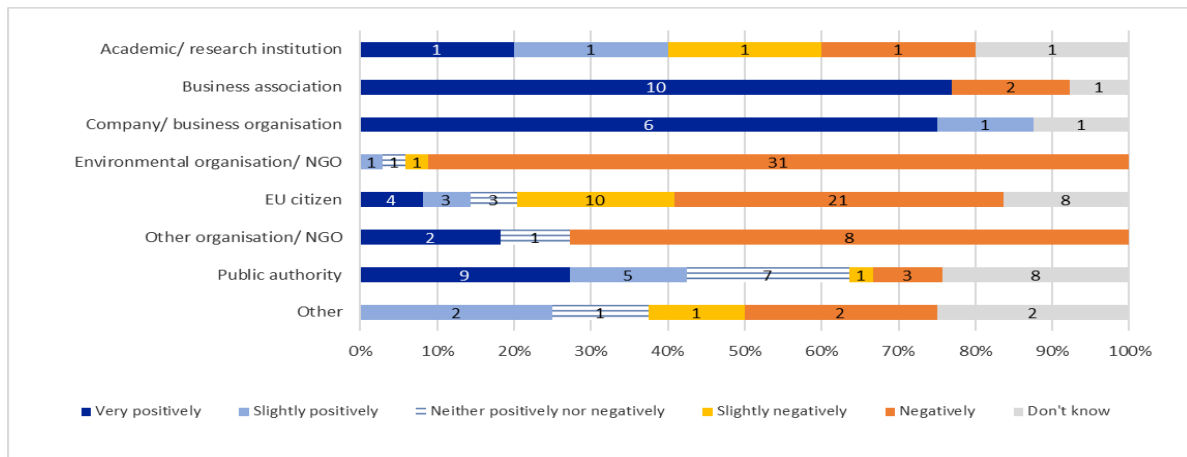
The views expressed varied considerably according to the different categories of stakeholders. Excluding those who did not reply, **Figure 5** shows that 94% of environmental organisations/NGOs, 73% of other organisations/NGOs and 63% of EU citizens considered the current possibilities for individuals to access an internal review mechanism as either 'slightly negatively' or 'negatively'.

In contrast, 87.5% of companies/business organisations and 77% of business associations rated this option either 'very positively' or 'slightly positively'. A notable share of business associations (35%) also did not select an answer. While a slightly larger share of public authorities (42%) provided positive assessments, 24% also indicated they did not know or that they were indifferent (21%). Meanwhile, academic/research institutions and other stakeholders provided mixed responses (see **Figure 5**).

The answers show two clear streams, with environmental organisations, EU citizens and other organisations/NGOs holding a largely negative perception, while business associations, company/business organisations and public authorities have a mainly positive perception of the possibility for individuals to access an internal review mechanism.

**Figure 5: How would you rate the current possibilities for individuals to request the EU to carry out an internal review of a decision it has made that impacts the environment? (type of stakeholder, n=161)<sup>6</sup>**

<sup>6</sup> Overall count excludes those who did not answer (n=14)

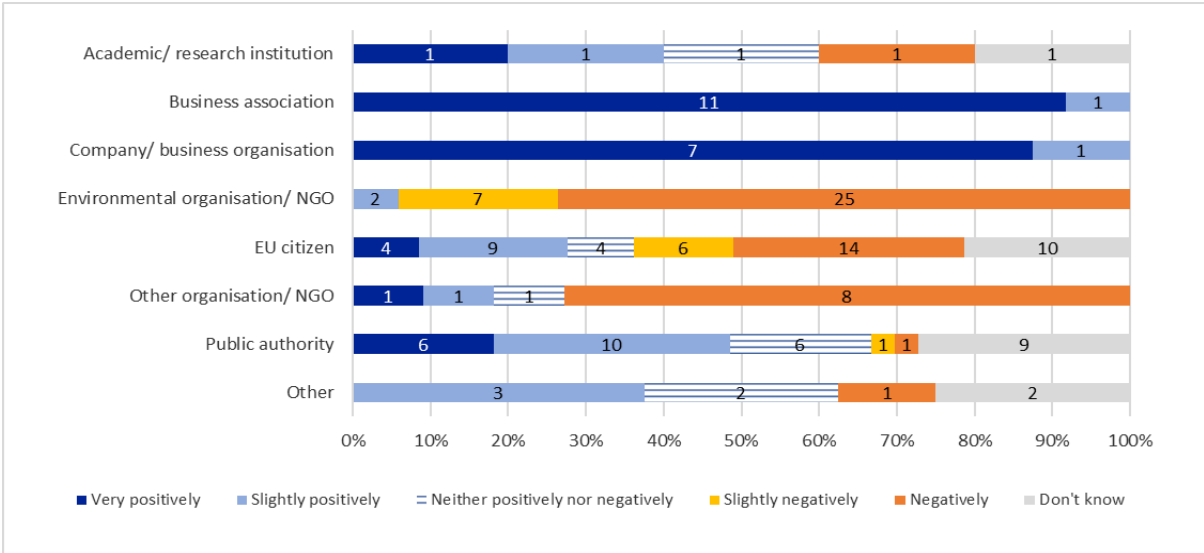


Respondents were also divided in their perceptions on the current possibilities for NGOs to request an internal review. Excluding those who did not reply, **Figure 6** shows 94% of environmental organisations/NGOs and 73% of other organisations/NGOs rated this option 'slightly negatively' or 'negatively'. By contrast, all companies/business organisations and business associations as well as almost half of all public authorities (48%) indicated NGOs' accessibility in this regard as 'very positively' or 'positively'. A notable share of public authorities were also indifferent (18%) or did not know (27%).

Views among EU citizens were mixed, with a slightly larger share (42.5%) indicating 'slightly negatively' or 'negatively' for this option and 28% indicating 'very positively' or 'slightly positively'. A notable share (21%) also indicated they did not know. Academic/research institutions and other stakeholders provided mixed responses (see **Figure 6**).

The answers show two clear streams, with environmental organisations, other organisations/NGOs and EU citizens holding a largely negative perception, while business associations, company/business organisations and public authorities have a mainly positive perception of the possibility for NGOs to access an internal review mechanism.

**Figure 6: How would you rate the current possibilities for NGOs to request the EU to carry out an internal review of a decision it has made that impacts the environment? (type of stakeholder, n=158)<sup>7</sup>**



**3.2.2. Stakeholder perceptions on access to justice under Article 263(4) TFEU**

EU citizens, environmental organisations/NGOs and other organisations/NGOs responded with largely negative perceptions when asked about the possibilities for individuals and NGOs in bringing challenges before the CJEU. Excluding those who did not reply, **Figures 7 and 8** show all environmental organisations/NGOs and 80% of other organisations/NGOs perceived the possibilities in this regard ‘slightly negatively’ or ‘negatively’. A slightly lower share of EU citizens (between 47% and 57%) considered the possibilities in this regard ‘slightly negatively’ or ‘negatively’.

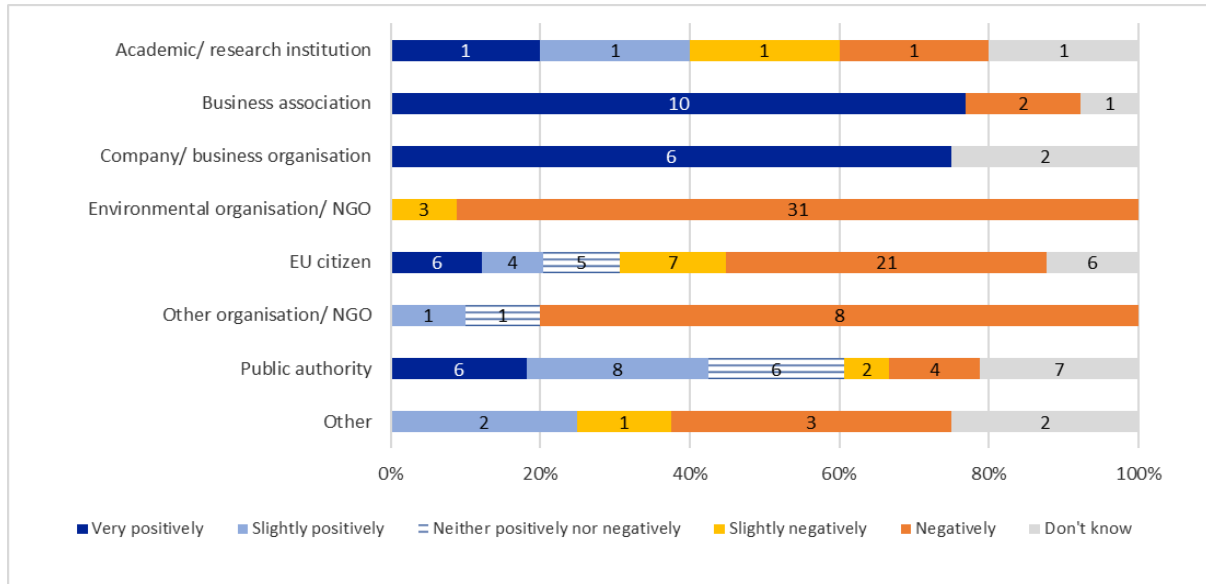
In contrast, between 75% and 87.5% of companies/business organisations and between 77% and 85% of business associations considered the possibilities in this regard for both individuals and NGOs ‘very positively’. A notable share of public authorities also provided positive assessments on the accessibility of the Article 263(4) mechanism for NGOs and individuals. Between 42% and 45.5% indicated ‘slightly positively’ or ‘very positively’ compared to between 12% and 18% who responded with ‘slightly negatively’ or ‘negatively’.

Academic/research institutions and other stakeholders provided mixed responses. However, a slightly larger share of other stakeholders provided a negative assessment on the accessibility of the Article 263(4) mechanism for individuals, with 50% considering the possibility in this regard ‘slightly negatively’ or ‘negatively’ compared to 25% who responded with ‘slightly positively’ (see **Figures 7 and 8**).

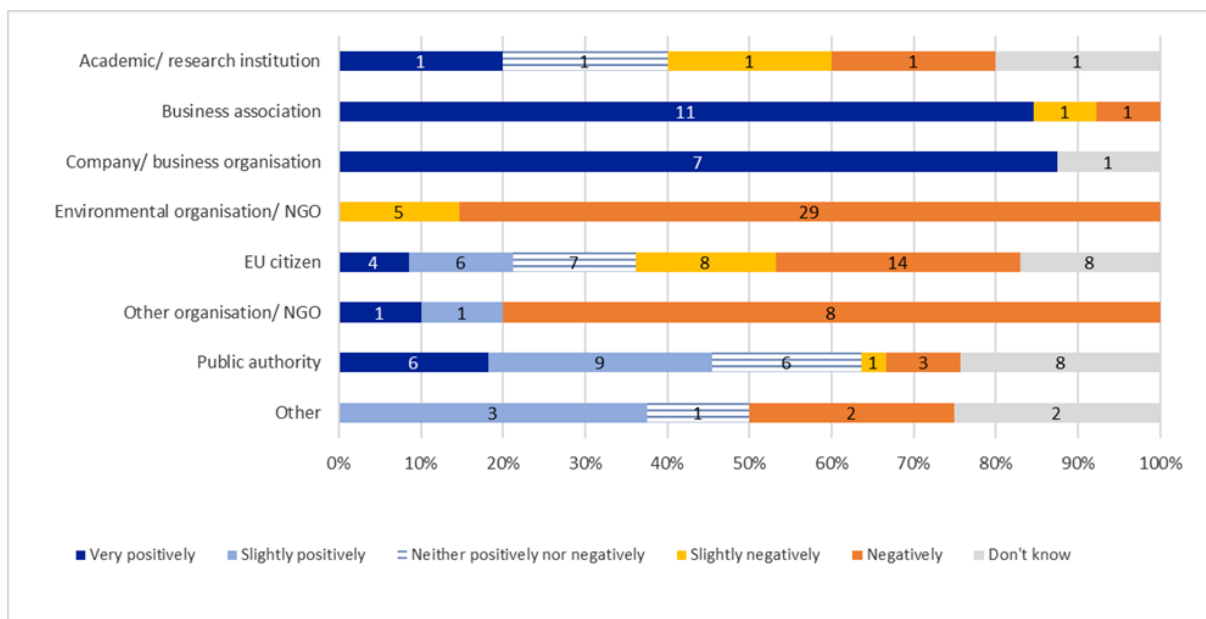
The answers show two clear streams, with environmental organisations, other organisations/NGOs and EU citizens holding a largely negative perception, while business associations, company/business organisations and public authorities have a mainly positive perception of the possibility for NGOs and individuals to access the 263(4) TFEU mechanism.

<sup>7</sup> Overall count excludes those who did not answer (n=17)

**Figure 7: How would you rate the current possibilities for *individuals* to bring an EU decision that impacts the environment before the EU Court of Justice (CJEU)? (type of stakeholder, n=160)<sup>8</sup>**



**Figure 8: How would you rate the current possibilities for *NGOs* to bring an EU decision that impacts the environment before the EU Court of Justice? Presented by type of stakeholder (type of stakeholder, n=158)<sup>9</sup>**



<sup>8</sup> Overall count excludes those who did not answer (n=15)

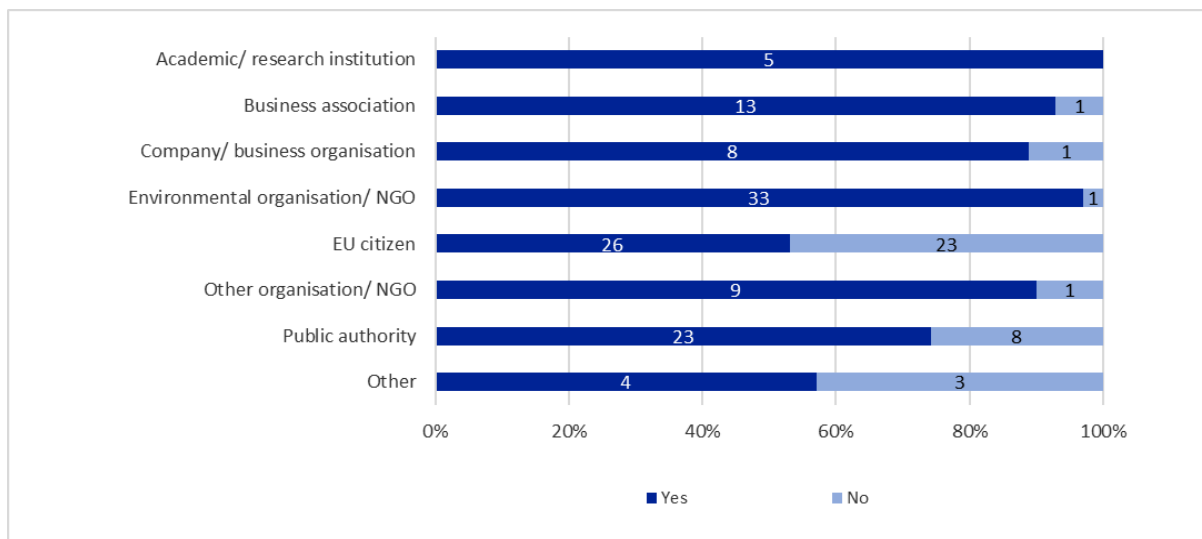
<sup>9</sup> Overall count excludes those who did not answer (n=17)

### 3.2.3. Perceptions of challenging EU acts before the CJEU (via Article 263(4) TFEU)

The Article 263(4) TFEU mechanism provides individuals and NGOs with a broader opportunity to challenge EU acts by directly requesting the CJEU to rule on the legality of the act if the act is of direct and individual concern to the individual or NGO bringing the request. Respondents were asked if they were aware of the possibility to challenge EU acts in this way. Of those who replied, 69% indicated 'yes' while 22% indicated 'no'.

The level of awareness of this mechanism is highest among environmental organisations/NGOs (97%), companies/ business organisations (89%) and academic/research institutes (100%). However, the level of awareness of this mechanism among EU citizens is mixed, with 53% indicating 'yes' and 47% indicating 'no'. This is also true for other stakeholders (see **Figure 9**).

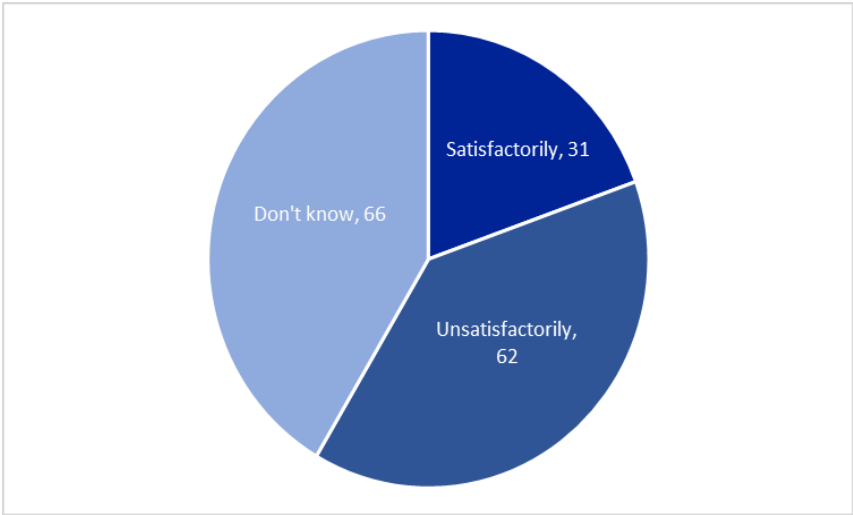
**Figure 9: Article 263(4) TFEU - Are you aware of this possibility as a way of challenging the EU acts? (type of stakeholder, n=159)<sup>10</sup>**



Respondents are generally dissatisfied with how the mechanism to challenge EU acts through the CJEU under Article 263(4) functions. Excluding those who did not reply, **Figure 10** shows 39% of respondents in the public consultation indicated they were dissatisfied compared to 19% who indicated they were satisfied. Just over a third of respondents also indicated they did not know (41.5%).

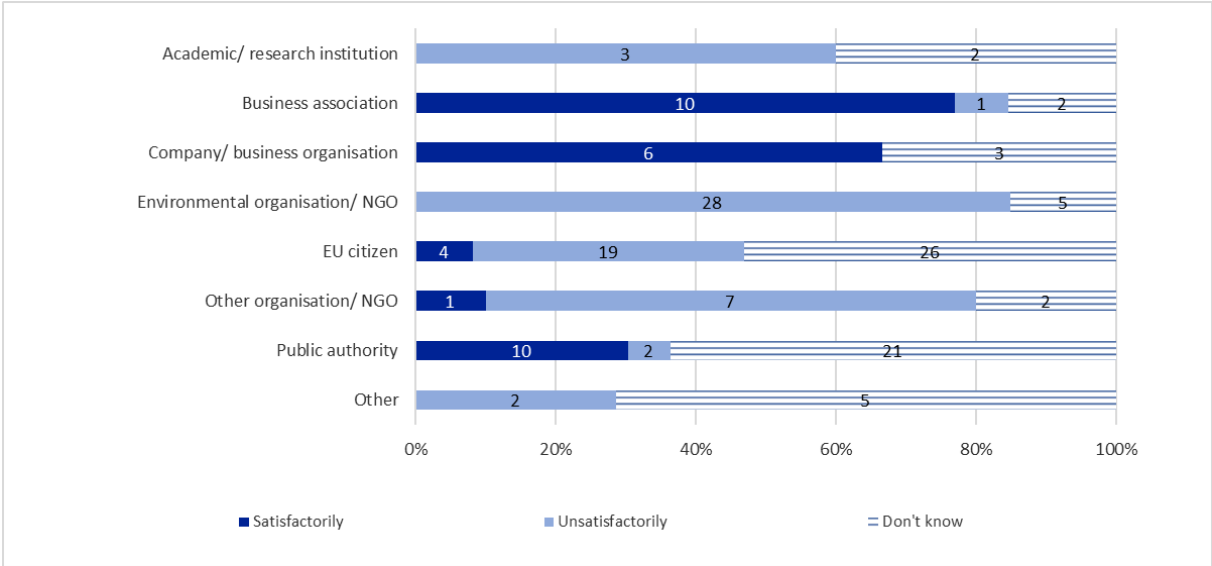
<sup>10</sup> Overall count excludes those who did not answer (n=16)

**Figure 10: In your opinion, how does the established mechanism to challenge EU acts through the Court of Justice of the European Union (Article 263(4) TFEU) function? (all respondents, n=159)<sup>11</sup>**



A large portion of environmental organisations/NGOs (85%) indicated they were dissatisfied with the functioning of Article 263(4) TFEU. The opposite was true for companies/business organisations, 67% of whom indicated they were satisfied (see **Figure 11**).

**Figure 11: In your opinion, how does the established mechanism to challenge EU acts through the Court of Justice of the European Union (Article 263(4) TFEU) function? (types of stakeholder, n=159)<sup>12</sup>**



In a free-text follow-up question, respondents were invited to explain why they thought the established mechanism for challenging EU acts through the CJEU is functioning

<sup>11</sup> Overall count excludes those who did not answer (n=16)

<sup>12</sup> Overall count excludes those who did not answer (n=16)



satisfactorily or unsatisfactorily. A total of 68 respondents provided replies, 20 of which were excluded because they were not directly relevant to the question, were clearly coordinated or referred to position papers submitted at the end of the questionnaire.

The vast majority of comments (35 responses) were made by environmental organisations/NGOs, EU citizens and other organisations/NGOs who perceived the mechanism as ineffective in guaranteeing access to justice. In particular, 29 of these stakeholders criticised the CJEU for maintaining its interpretation of Article 263(4) TFEU according to the Plaumann doctrine, arguing that the requirement for the impact of the measure to be limited to the individual or NGO challenging it under 'individual concern' and 'direct concern', effectively prevents individuals and NGOs from accessing the court and challenging acts of EU institutions that violate environmental law<sup>13</sup>.

Six environmental organisations/NGOs and EU citizens also questioned the compatibility of Article 263(4) TFEU with Article 9 of the Aarhus Convention and Article 47 of the European Charter on Fundamental Rights, suggesting that Article 263(4) does not guarantee the right to access to justice when it should, and that the public interest is deprived of protection as a result. Other comments by these stakeholders argued for a change in the CJEU's interpretation of 'individual concern' and 'direct concern', to allow for the possibility to challenge acts in the public interest, which they believed would serve to legitimise the participation of individuals and NGOs and avoid lengthy and costly procedures before national courts. Some of these stakeholders also claimed the mechanism is skewed in favour of authorities and economic interests because the Article 263(4) requirements that the act be of individual concern and direct concern effectively excludes most environmental claims. Consequently, they argue that restrictions on the nature of the act that can be challenged has resulted in a situation where no case brought to the CJEU by NGOs or individuals on environmental matters has been ruled as admissible.

Ten comments made by companies, business associations and public authorities were not directly relevant to this question. While four responses made by academic/research institutes and other stakeholders criticised the CJEU for maintaining its interpretation of Article 263(4) TFEU according to the Plaumann doctrine, as emphasised by environmental organisations/ NGOs, EU citizens and other organisations/NGOs.

#### **3.2.4. Stakeholder perceptions on access to justice via national courts (Article 267 TFEU)**

Respondents were also divided in their perceptions on the current possibilities for NGOs and individuals in bringing challenges before a national court. Excluding those who did not reply, between 82% to 94% of environmental organisations/NGOs and 90% of other organisations/NGOs considered the possibilities in this regard as 'slightly negatively' or

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<sup>13</sup> For more information see Case 25/62 Plaumann & Co v Commission, 15 July 1963 which can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61962CJ0025&from=EN>

The Plaumann ruling defines the requirements for legal standing of a natural and legal person to initiate proceedings against an act under Article 263 TFEU and in particular the notions of individual and direct concern. Natural or legal persons are individually concerned by a decision if it 'affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed' - only persons affected by a decision by reason of their individuality or of their special position may be considered as individually concerned. An EU measure of general application would be regarded of direct concern to a natural or legal person 'if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him.'

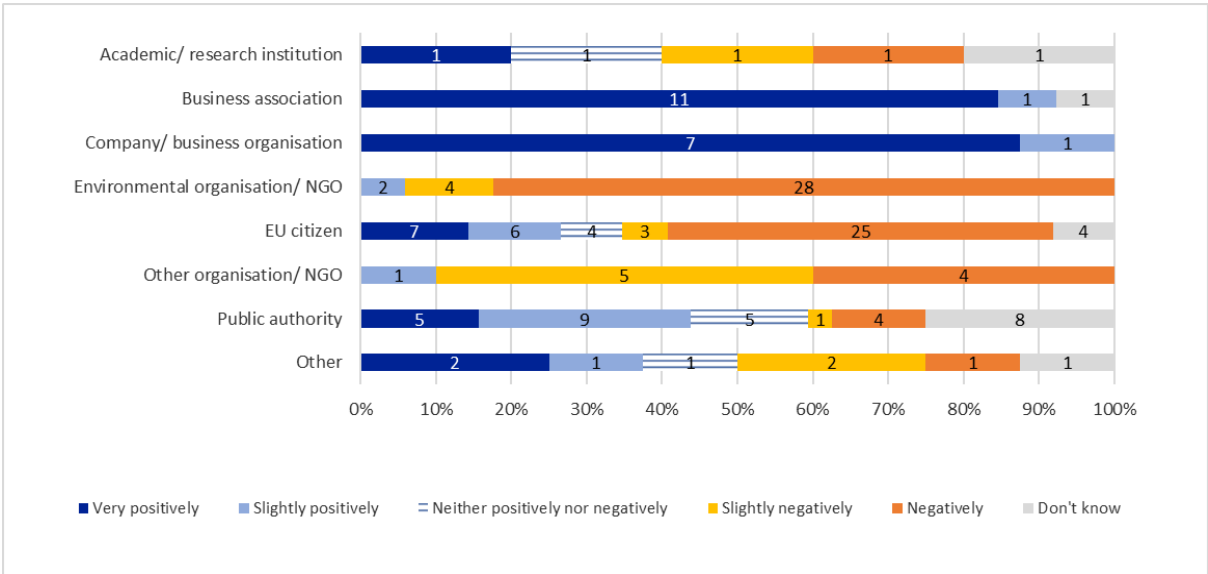
'negatively'. A slightly lower share of EU citizens (between 49% and 57%) also considered the possibilities in this regard 'slightly negatively' or 'negatively' (see **Figures 12 and 13**).

In contrast, all companies/business organisations perceived the possibilities for individuals and NGOs in accessing this mechanism as either 'slightly positively' or 'very positively'. Business associations also provided positive assessments with 92% considering the possibilities for individuals accessing this mechanism as either 'slightly positively' or 'very positively', while all business associations considered the possibilities for NGOs in this regard as either 'slightly positively' or 'very positively'. A slightly smaller share of public authorities also provided positive assessments (44% in both cases compared to between 12.5% and 16% who indicated 'slightly negatively' or 'negatively', see **Figures 12 and 13**).

Academic/research institutions provided mixed responses, while a larger share of other stakeholders (75%) perceived the possibility for NGOs in bringing challenges before a national court as either 'slightly positively' or 'very positively'. However, other stakeholders were equally split in their perceptions on the possibilities for individuals in this regard. An equal share of respondents (37.5%) rated this aspect as 'slightly positively' or 'very positively' and 'slightly negatively' or 'negatively' (see **Figure 13**).

The answers show two clear streams, with environmental organisations, other organisations/NGOs and EU citizens holding a largely negative perception, while business associations, company/business organisations and public authorities have a mainly positive perception of the possibility for NGOs and individuals to access national courts via the Article 267 mechanism.

**Figure 12: How would you rate the current possibilities for *individuals* to bring before the court in your country an EU decision that impacts the environment? (type of stakeholder, n=159)<sup>14</sup>**



<sup>14</sup> Overall count excludes those who did not answer (n=16)

**Figure 13: How would you rate the current possibilities for NGOs to bring before the court in your country an EU decision that impacts the environment? (type of stakeholder, n=157)<sup>15</sup>**



### 3.2.5. Perceptions of challenging EU acts before a national court (via Article 267 TFEU)

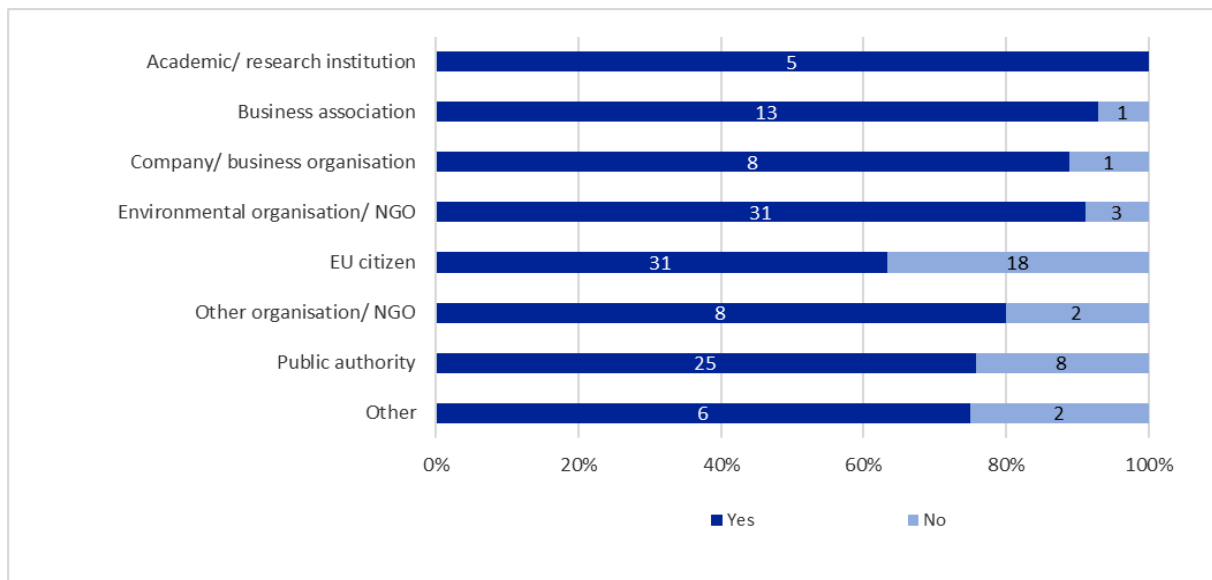
Respondents were asked if they were aware of the possibility to challenge EU acts before a national court which can and sometimes must refer the case to the EU Court of Justice for a preliminary ruling (via the Article 267 TFEU procedure). Of those who replied, 72.5% indicated 'yes' while only a small portion indicated 'no' (20%). A small number of respondents did not answer (7.4%, 13 responses).

The level of awareness of this mechanism is highest among environmental organisations/NGOs (91%), companies/ business organisations (89%) and

<sup>15</sup> Overall count excludes those who did not answer (n=17)

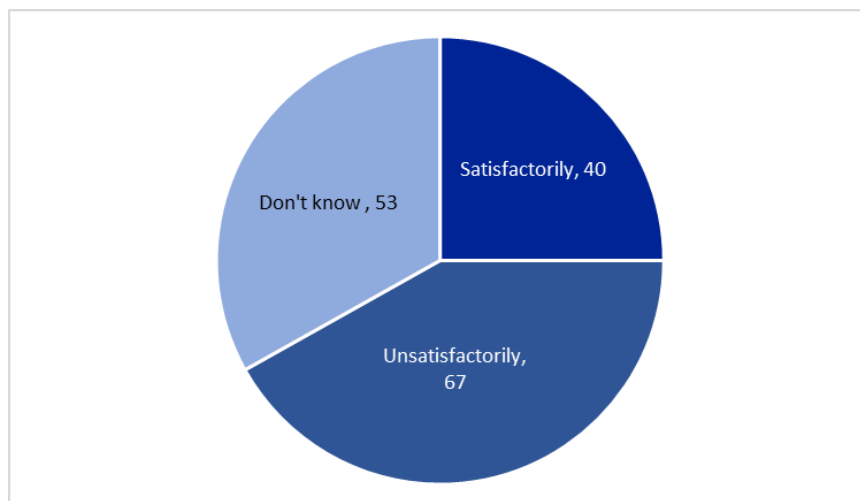
academic/research institutes (100%). However, the level of awareness is lower among EU citizens (63%) (see **Figure 14**).

**Figure 14: Were you aware of this possibility as a way of challenging EU acts? (type of stakeholder, n=162)<sup>16</sup>**



Respondents are split on how the preliminary reference mechanism functions in their country of residence. **Figure 15** shows 23% of respondents in the public consultation indicated they were satisfied compared to 38% who indicated they were dissatisfied. A third of respondents also indicated they did not know (30%).

**Figure 15: In your opinion, how does the mechanism enabling national courts to request the Court of Justice of the European Union to rule on an EU act (Article 267 TFEU) function in your country of residence? (all respondents, n=160)<sup>17</sup>**

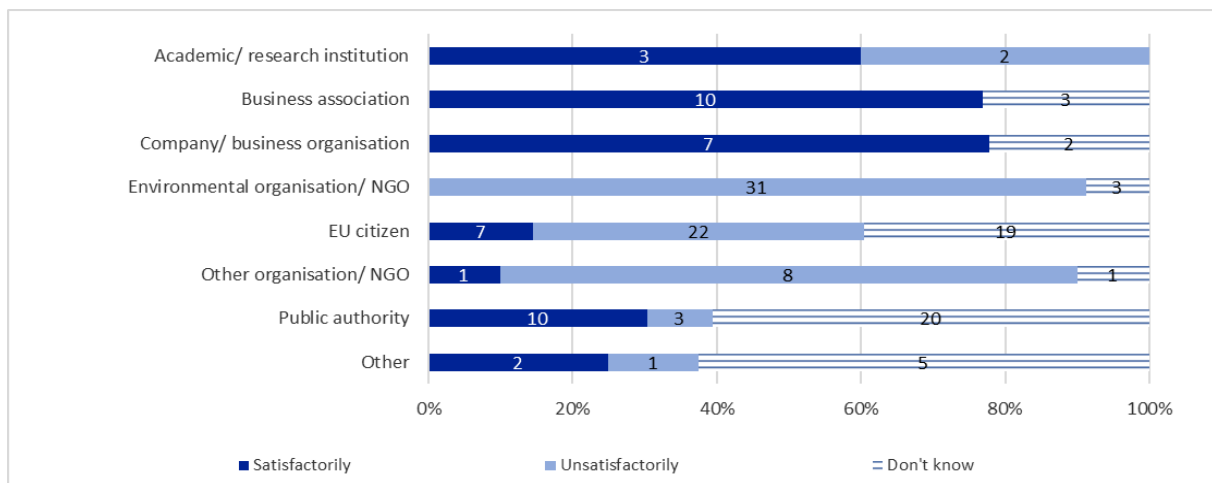


<sup>16</sup> Overall count excludes those who did not answer (n=13)

<sup>17</sup> Overall count excludes those who did not answer (n=15)

Environmental organisations/NGOs (91%) and other organisations/NGOs (80%) tended to indicate dissatisfaction with how the preliminary reference mechanism functions in their country of residence. The opposite was true for companies/business organisations, 78% of whom indicated they were satisfied (see **Figure 16**).

**Figure 16: In your opinion, how does the mechanism enabling national courts to request the Court of Justice of the European Union to rule on an EU act (Article 267 TFEU) function in your country of residence? (type of stakeholder, n=160)<sup>18</sup>**



In a free text follow-up question, respondents were invited to explain why they thought the preliminary ruling mechanism under Article 267 TFEU in their country of residence is functioning satisfactorily or unsatisfactorily. A total of 89 responses were received, 29 of which were excluded because they were not directly relevant to the question, were clearly coordinated or referred to position papers submitted at the end of the questionnaire.

The vast majority of comments (44 responses) were made by environmental organisations/NGOs, EU citizens and other organisations/NGOs. Almost one-third of these stakeholders criticised the request for a preliminary ruling mechanism as failing to provide effective access to justice for the public. Some highlighted that many EU acts relating to the environment do not require national implementing measures, thus preventing a case from being challenged before the national courts in the first place. Other criticisms pointed to the ways in which national courts approached Article 267 TFEU. Chief among these were:

- Standing requirements are too restrictive, with direct access not granted to NGOs and citizens, making it difficult to challenge national implementing measures and obtain a preliminary reference.
- National courts are often hesitant or wrongfully refuse to refer preliminary questions to the CJEU, or ignore the Aarhus Regulation and Convention, preferring instead to rely on the interpretation of their own national laws. Opportunities for appealing these decisions are often limited or non-existent for environmental matters.
- Excessive costs and length of referral proceedings (averaging almost two years) were also mentioned. The excessive length of referral proceedings was highlighted as a deterrent to both judges and parties, as well as being an ineffective means of resolving environmental legal disputes.
- Judges lack awareness of preliminary ruling mechanisms or are not inclined to request preliminary rulings because they consider them to be burdensome.

<sup>18</sup> Overall count excludes those who did not answer (n=15)

On the other hand, 16 responses from public authorities, business associations and some EU citizens and academics/research institutions viewed the mechanism as effective due to perceptions of a growing number of preliminary ruling procedures being used at national level. Concerns on where it does fall short were mainly to do with a lack of public awareness on rights to challenges EU decisions using this mechanism.

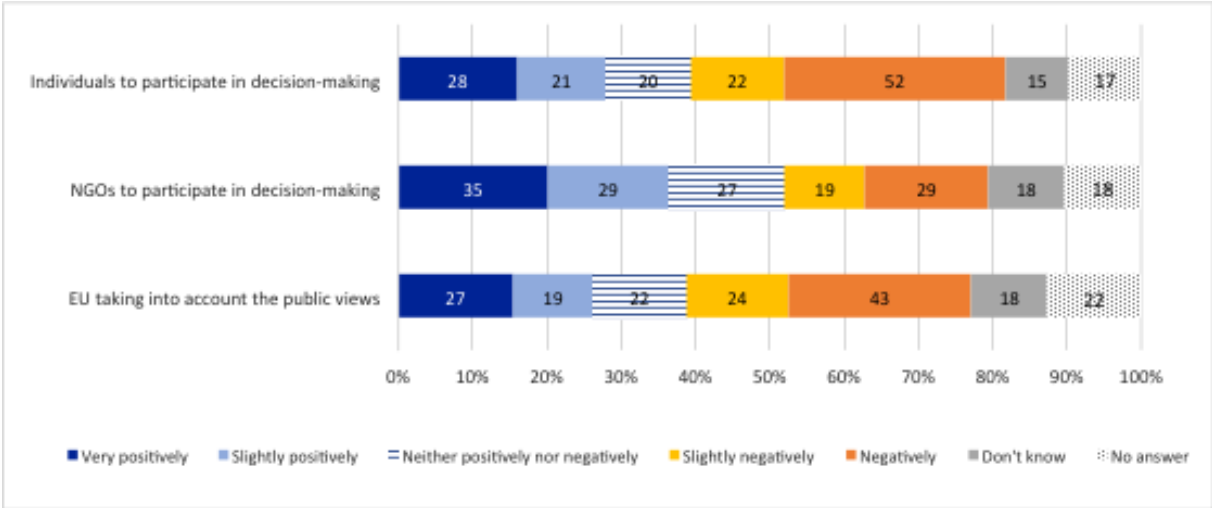
**3.3. Perceptions on participation in decision-making**

Public participation is also a possible way for the public to have a say in legally binding general acts and decisions relating to the environment before these are adopted at EU level. For example, public participation can occur in the context of a public consultation preceding new legislative initiatives. Respondents were thus asked to rate the current possibilities for individuals and NGOs to participate in EU-level decision-making on environmental matters as well as the way such views are taken into account in decision-making.

Overall, respondents perceived these possibilities negatively for individuals but more positively for NGOs. As **Figure 17** shows, 43% of respondents considered the possibility for individuals to participate in decision-making on environmental matters at EU level 'negatively' or 'slightly negatively', compared to only 28% who selected 'very positively' or 'slightly positively'. However, slightly more respondents considered the possibilities for NGOs in this regard as positively (37% selected 'slightly positively' or 'very positively' compared to 27% who rated this 'slightly negatively' or 'negatively').

When asked about the extent to which the EU takes into account public views affecting the environment, a slightly larger share of respondents provided a negative rather than positive assessment - 38% selected 'slightly negatively' or 'negatively' compared to 26% who answered with 'slightly positively' or 'very positively'.

**Figure 17: How would you rate opportunities for individuals and NGOs to participate in decision-making processes at EU level and the extent to which the EU takes into account public views? (all respondents, n=175)**

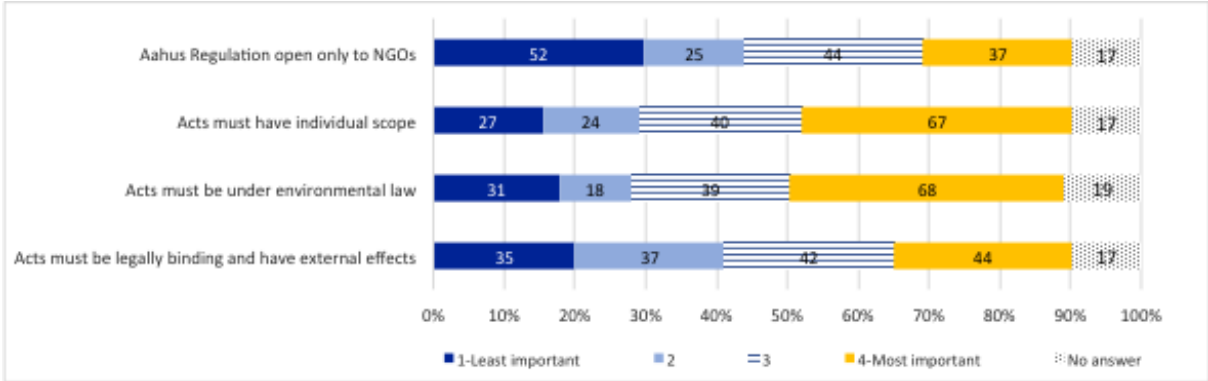


**3.4. Perceptions of the key issues raised by the ACCC**

Respondents were asked to allocate a level of importance to four key issues raised by the Aarhus Convention Compliance Committee (ACCC) on the EU's implementation of the Aarhus Convention in Part I and Part II of its findings in case ACCC/C/2008/32.

As **Figure 18** shows, the issues accorded the highest degree of importance<sup>19</sup>, by respondents who gave a rating of 3 and 4 are the fact that the Aarhus Regulation limits challenges to acts or omissions under environmental law (61%) and that the act or omission to be challenged must be of individual scope (61%). The requirement limiting challenges to acts that have legally binding and external effects and the availability of the internal review mechanism only to NGOs and not members of the general public were considered less important issues. The importance of all these issues was considered low by the majority of company/business organisations and business associations. In contrast, environmental organisations/NGOs were more inclined to give all issues a rating of 3 or 4, suggesting they considered these issues as having a high degree of importance overall.

**Figure 18: The Aarhus Convention Compliance Committee noted several problems listed below. How would you rate the importance of each of these problems? (all respondents, n=175)**

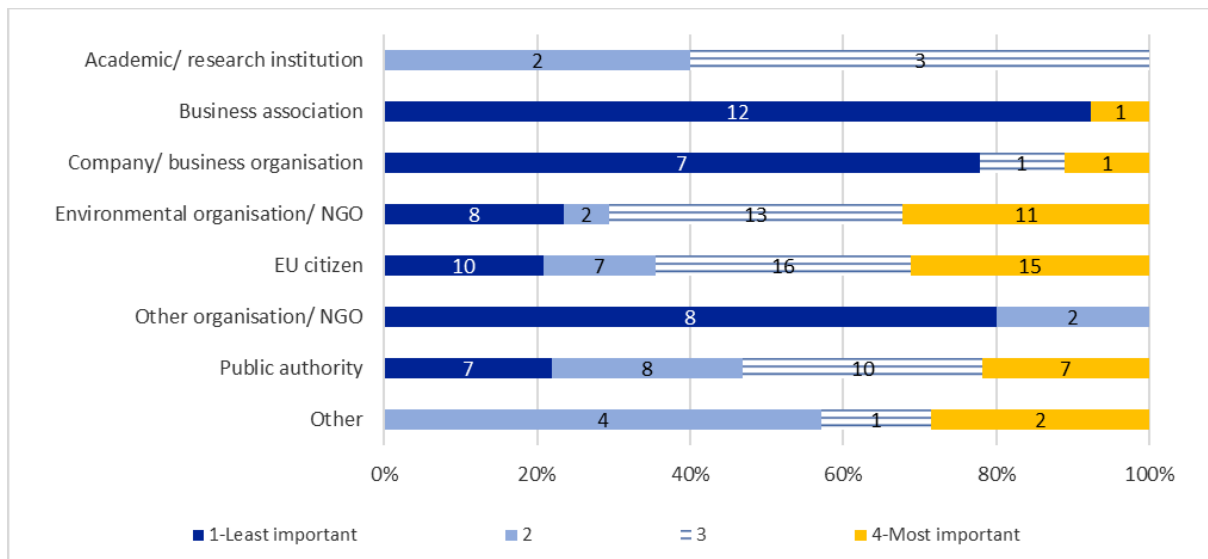


Excluding those who did not reply, **Figure 19** shows 78% of companies/business organisations, 83% of other organisations/NGOs, 65% of business associations and 57% of other stakeholders considered the Aarhus Regulation being only open to NGOs as having a low degree of importance. On the other hand, a higher share of environmental organisations/NGOs (70.5%) gave this issue a rating of 3 and 4, suggesting a high degree of importance.

Other stakeholders in the public consultation were more divided. For example, an equal share of public authorities gave this issue a rating of 1 and 4 (22%), suggesting they considered this aspect as having a low and high degree of importance, respectively. This was also evident among EU citizens, although slightly more gave this issue a 4 rating (31%), suggesting a high degree of importance. Meanwhile, academic/research institutes were more inclined to provide mixed responses, suggesting they consider this aspect as having neither low or high importance.

<sup>19</sup> Respondents rated each issue separately from 1 to 4; they were not asked to rank the issues.

**Figure 19: The Aarhus Regulation’s internal review mechanism is open only to NGOs and not to members of the general public (types of stakeholder, n=158)<sup>20</sup>**

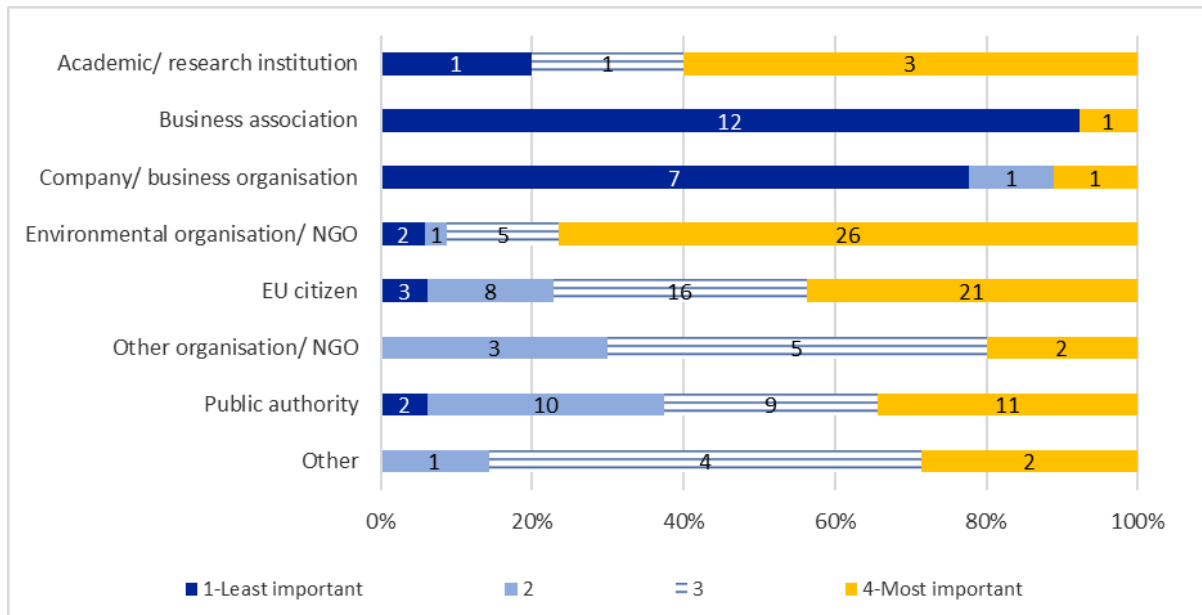


Excluding those who did not reply, **Figure 20** shows the issue of individual scope was considered as having a high degree of importance by environmental organisations/NGOs (91%), academic/research institutes (80%), EU citizens (71%) and public authorities (62.5%). In contrast, 89% of companies/business organisations and 92% of business associations gave this issue a rating of 1 or 2, suggesting they consider this issue as having a low degree of importance. Meanwhile, other organisations/NGOs and other stakeholders were more inclined to provide mixed responses, suggesting they consider this aspect as having neither low or high importance.

<sup>20</sup> Overall count excludes those who did not answer (n=17)



**Figure 20: To be admissible for a review request, the act or omission to be challenged must have an individual scope or impact on the organisation/individual bringing the request (types of stakeholder, n=158)<sup>21</sup>**

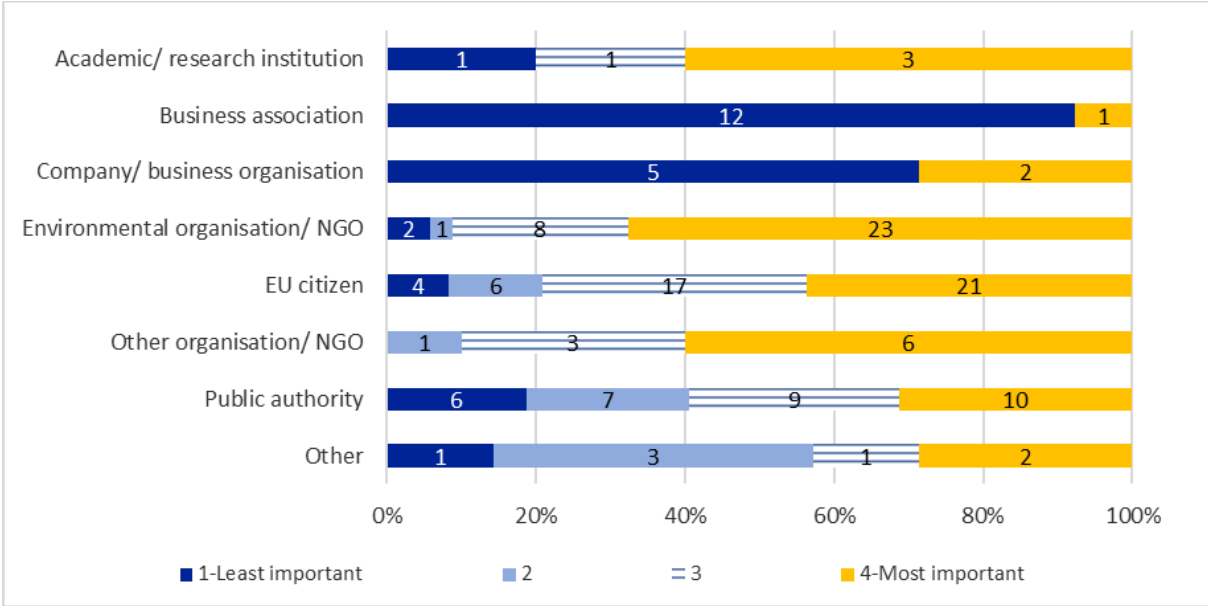


Excluding those who did not reply, **Figure 21** shows environmental organisations/NGOs (91%), academic/research institutes (80%), other organisations/NGOs (90%) and EU citizens (79%) gave the issue on the requirement that acts must be adopted under environmental law a rating of 3 and 4, suggesting a high degree of importance. This was also true for public authorities albeit to a lesser extent – only 59% considered this aspect as having a high degree of importance.

By contrast, 71% of companies/business organisations and 92% of business associations gave this issue a rating of 1, suggesting they consider this issue as having a low degree of importance. A notable share of companies/business organisations (28.5%) also considered this aspect as having a high degree of importance. Meanwhile, other types of stakeholders were more inclined to provide mixed responses, suggesting they consider this aspect as having neither low or high importance.

<sup>21</sup> Overall count excludes those who did not answer (n=17)

**Figure 21: The Regulation limits challenges to acts or omissions under environmental law (types of stakeholder, n=156)<sup>22</sup>**

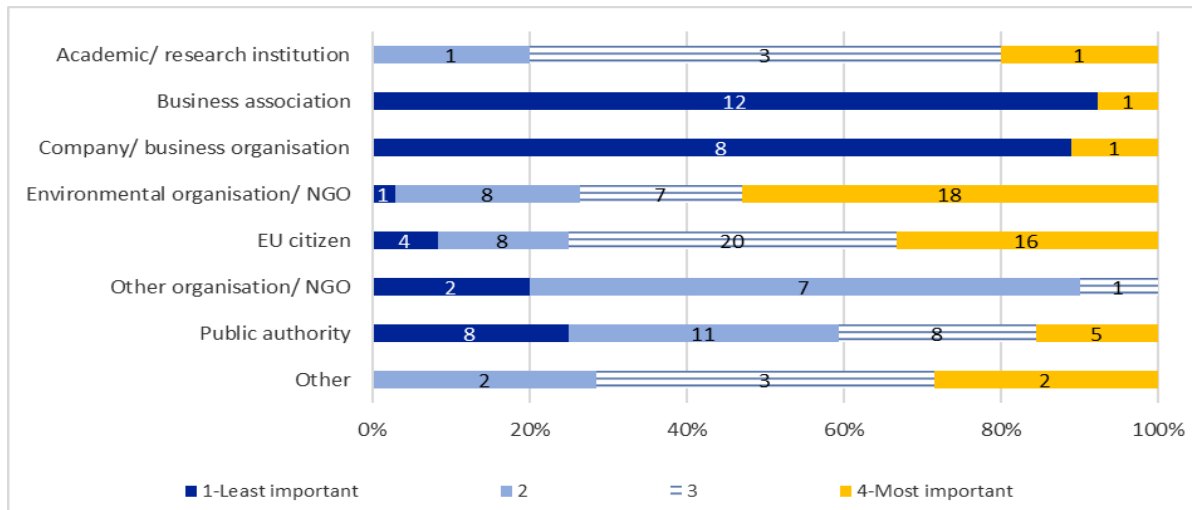


Excluding those who did not reply, **Figure 22** shows companies/business organisations (89%) and business associations (92%) considered the requirement that Acts must be legally binding and have external effects as being of low importance. Not far behind were 90% of other organisations/NGOs who gave this issue a rating of 1 and 2, suggesting they considered the issue as having a low degree of importance. This was also true for public authorities albeit to a lesser extent – only 59% considered this aspect as having a low degree of importance.

Respondents from environmental organisations/NGOs (73.5%) and EU citizens (75%) all considered the issue as having a high degree of importance. Meanwhile, responses from other types of stakeholders and academic/research institutes provided mixed responses, suggesting they consider this aspect as having neither low or high importance.

<sup>22</sup> Overall count excludes those who did not answer (n=19)

**Figure 22: Only acts that are legally binding and have external effects (i.e. effects outside the administration taking the decision) can be open for review under the Regulation (types of stakeholder, n=158)<sup>23</sup>**



In a free-text follow up question, respondents were invited to explain whether the issues raised by the Aarhus Convention Compliance Committee (ACCC) impact them and how. A total of 63 responses were received, 16 of which were excluded because they were not directly relevant to the question, were clearly coordinated or referred to position papers submitted at the end of the questionnaire. A further 23 respondents replied stating that the issue raised by the ACCC had 'no impact'.

The remaining comments (24 responses) were made by environmental organisations/NGOs, EU citizens, one other stakeholder and one academic/research institution, all of whom perceived the Aarhus Regulation as ineffective in guaranteeing access to justice.

These stakeholders highlighted the following issues:

- The admissibility criterion relating to the individual scope of the measure is difficult to satisfy and prevents access to justice for citizens, SMEs and NGOs who are impacted by environmental decisions or are advocating on environmental matters in the public interest.
- Conditions for access to justice tend to vary under national courts and/or tend to be costly, lengthy and complex to navigate and only actors with means can afford to initiate proceedings, meaning that the overly strict requirements under the Aarhus Regulation are not alleviated by the existence of other mechanisms.
- Strict admissibility criteria have resulted in most requests for internal review submitted by NGOs being rejected.
- Strict admissibility criteria effectively exclude NGOs from challenging some EU acts impacting the environment even though some EU acts can affect more than one person and carry important environmental impacts (e.g. pesticides and chemical substances, fracking, GMOs etc).

<sup>23</sup> Overall count excludes those who did not answer (n=17)

- The limitation of challenges under the Regulation to acts 'under environmental law' ignores the impact that other acts under other types of law can have on the environment.
- Strict admissibility criteria create an unfair system where decision makers are not held to account and/or privilege certain actors over others (e.g. big corporations vs. EU citizens) creating an un-even playing field.
- One comment from a public authority argued that public authorities should be given legal standing to challenge any EU acts that prevent them from implementing projects and policies at the local level.

## 4. Part 2: Specific questions

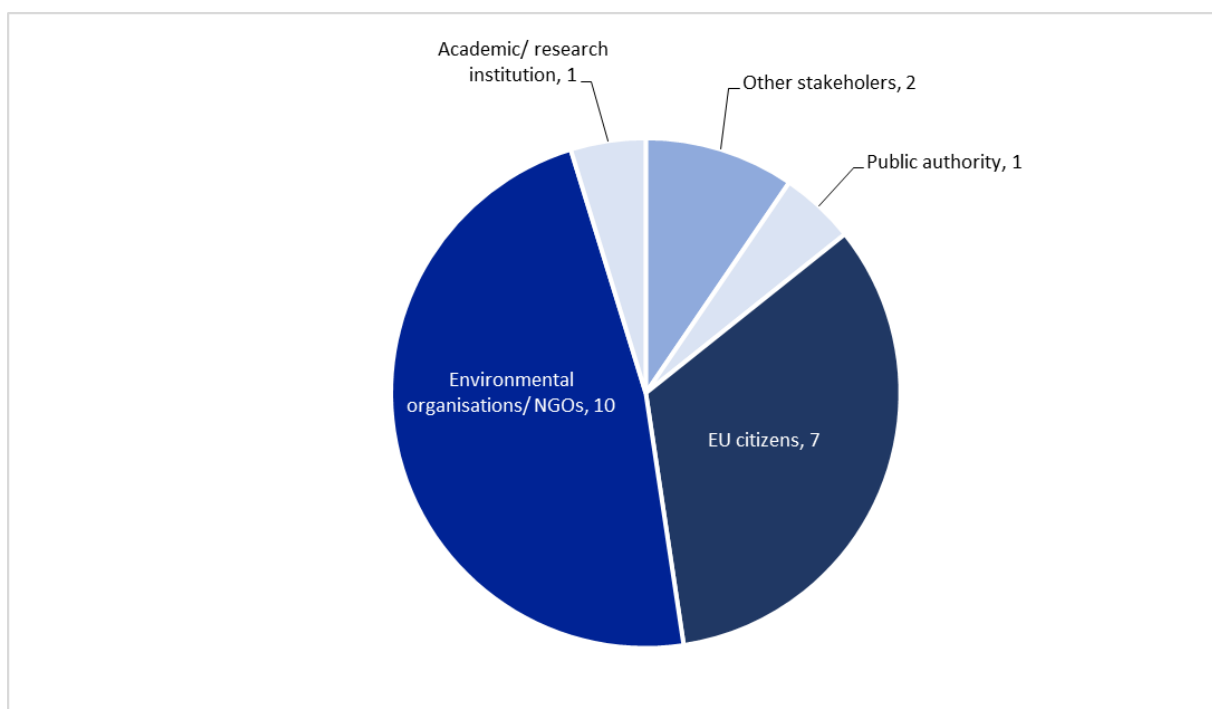
Part 2 of the questionnaire was aimed at respondents with specific experience with the existing redress mechanisms against EU environmental acts. Only those with such experience were requested to respond to the detailed questions concerning the review mechanisms.

### 4.1. Experience with the administrative review mechanism

Respondents were asked whether they had ever been involved in or affected by a request for internal review of an EU decision or act under environmental law. A total of 21 or 12% of respondents indicated that they had such experience.

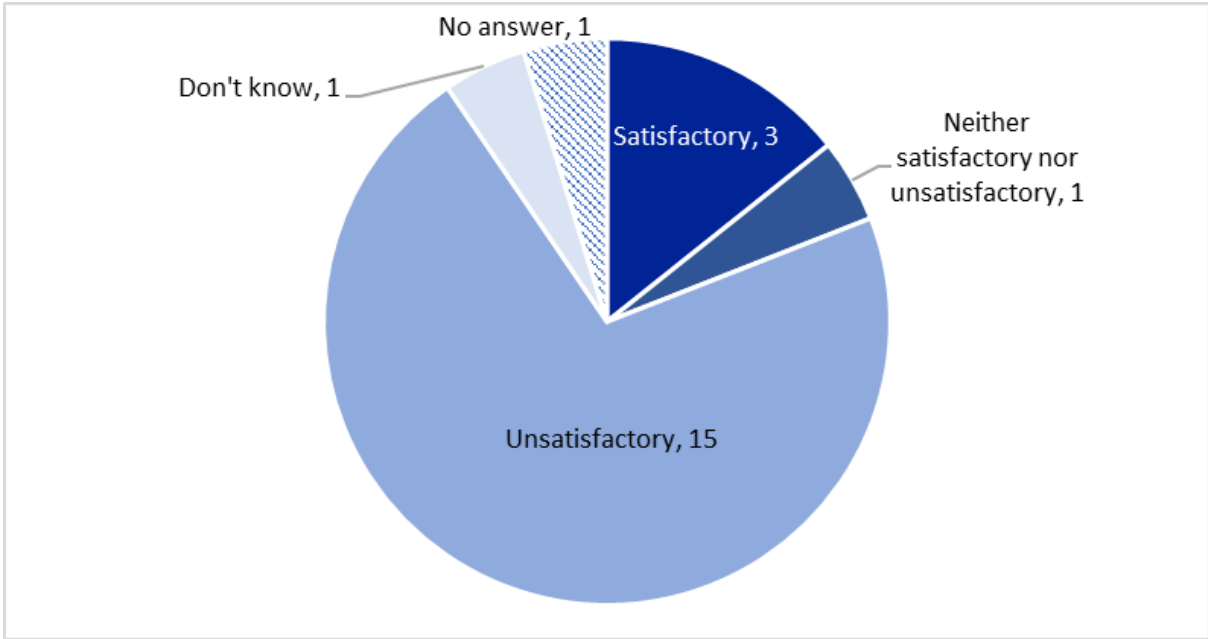
Those who were involved in or affected by in a request for internal review were mainly environmental organisations/NGOs and EU citizens. **Figure 23** shows ten environmental organisations/NGOs, seven EU citizens, one academic/research institute, two other stakeholders and one public authority participated in a request for an internal review. The Aarhus Regulation provides the possibility for NGOs alone to request an internal review of EU administrative acts directly with the EU institutions. Individuals can also request an internal review by lodging their complaint directly with an NGO. It is likely for this reason that most of the replies in the public consultation related to this mechanism were from environmental organisations/NGOs and EU citizens.

**Figure 23: Have you ever been involved in or affected by a request/request(s) for internal review of a EU decision or act under environmental law? (types of stakeholder who indicated 'yes', n=21)**



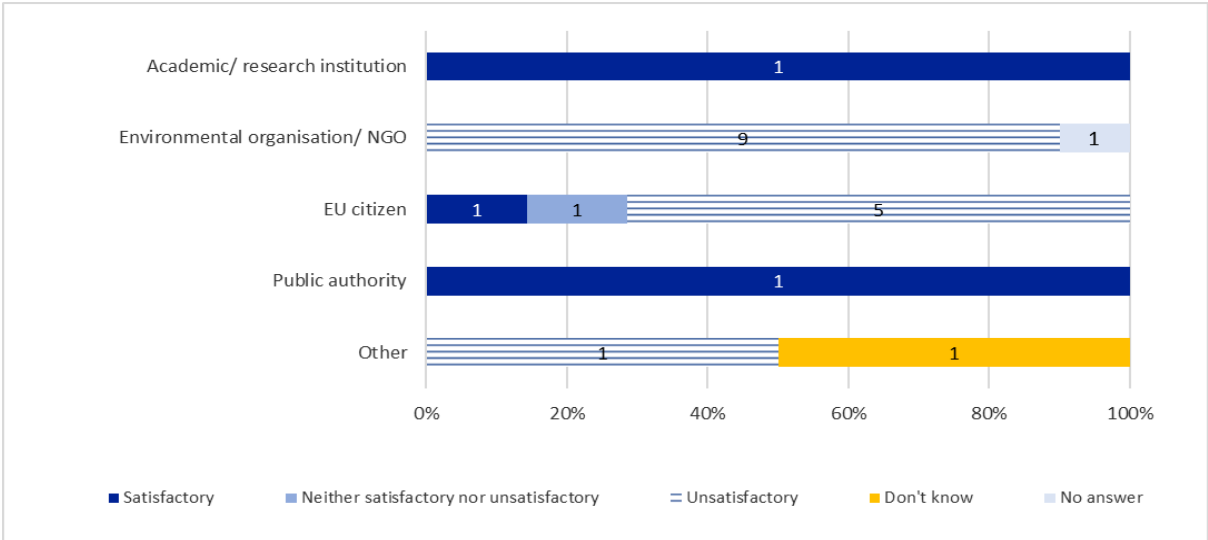
Those respondents who indicated experience with the internal review procedure were asked to rate the process. Most of these respondents (71%) indicated they were unsatisfied. Only 14% indicated they were satisfied and 5% indicated they were neither satisfied nor dissatisfied. Two respondents did not reply or indicated they did not know (see **Figure 24**).

**Figure 24: How would you rate the process? (all respondents, n=21)**



Out of the 21 respondents who participated in an internal review procedure, almost all environmental organisations/NGOs (9 out of 10 respondents) and five out of seven EU citizens indicated they were dissatisfied. One other stakeholder also indicated they were dissatisfied. The three 'satisfactory' responses came from an academic/research institution, a public authority and an EU citizen (see **Figure 25**).

**Figure 25: How would you rate the process? (types of stakeholder, n=21)**



In a free text follow-up question, respondents were invited to explain why they rated the internal review procedure as satisfactory or unsatisfactory, with 15 replies received from environmental organisations/NGOs and EU citizens. Of those 15 replies, five were excluded because they were not directly relevant to the question, were clearly coordinated or referred to position papers submitted at the end of the questionnaire.

Comments from these stakeholders were mostly critical, arguing the mechanism has limited utility and that most requests for internal reviews are rejected as only acts of

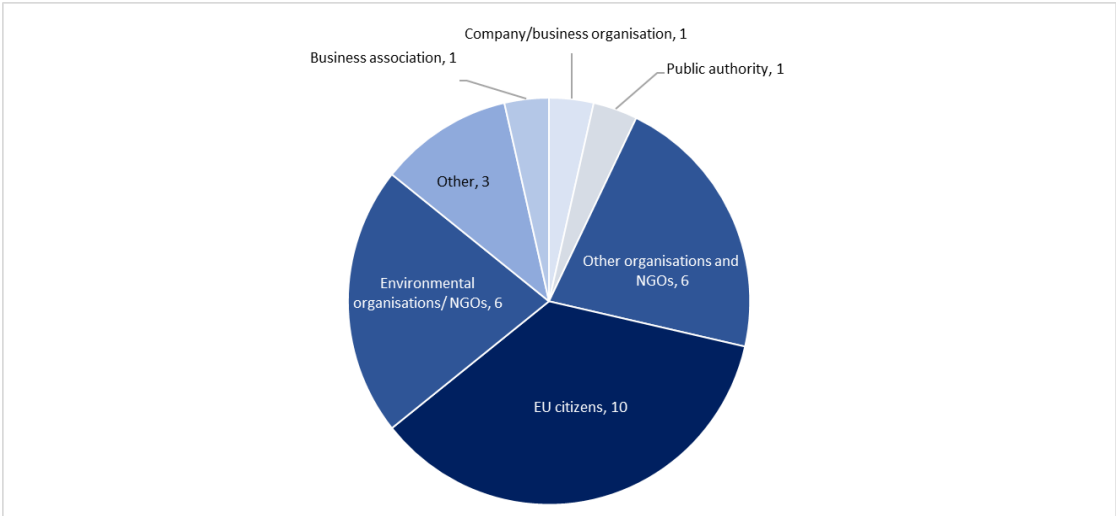
'individual scope' or that have 'legally binding and external effects' can be challenged. While other comments emphasised that even when requests are considered admissible, such as in the case of GMOs and authorisation of substances, they are usually dismissed on the merits by the Commission. In response to these issues, they called for extending the scope of the Aarhus Regulation to general acts and all acts having legal effects and that all acts that contravene EU law related to the environment are open to challenge. One comment from an environmental organisation/NGO also suggested replies from the Commission were insufficient or lacked justification, as the response usually only consists of a few pages that do not address the underlying problem.

#### 4.2. Experience with the judicial review mechanisms

Respondents were asked whether they have ever been involved in, or affected by, the judicial review of legality of an EU act in the area of environment. A total of 28 or 16% of respondents indicated that they had such experience.

Out of the 28 respondents who participated in a judicial review, 10 were EU citizens, six were environmental organisations/NGOs, six were other organisations/NGOs, three were other stakeholders, and one was a company/business organisation, business association, and public authority (see **Figure 26**).

**Figure 26: Have you ever been involved in or affected by the judicial review of legality of an EU act in the area of environment? (types of stakeholder who indicated 'yes', n=28)**



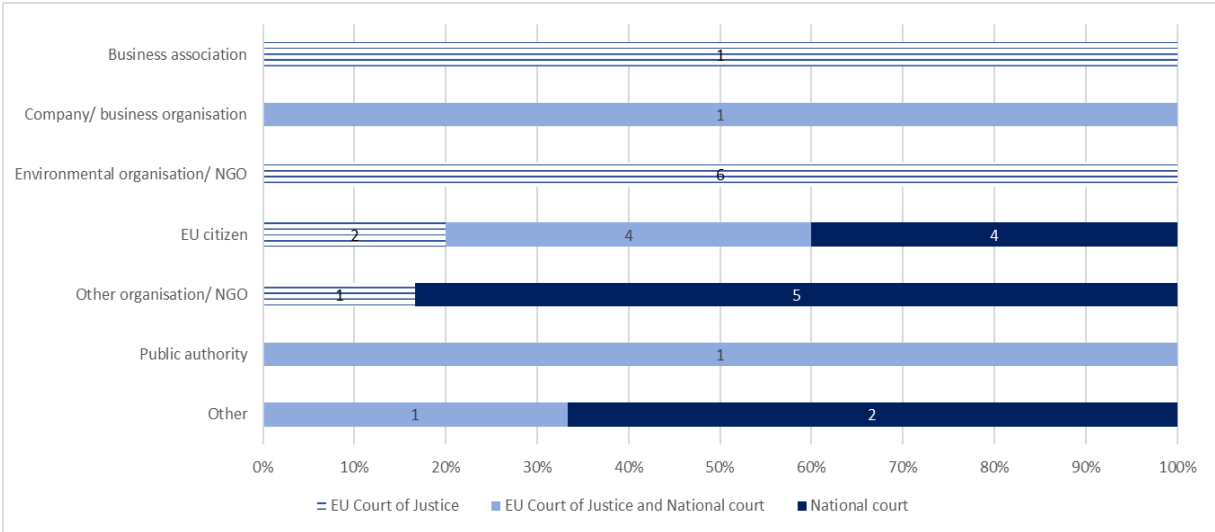
Respondents were asked where the request for a judicial review was lodged. Excluding those who did not reply, most indicated a national court (39%), followed by the EU Court of Justice (36%) and 25% for both (see **Figure 27**).

**Figure 27: Where was/were the request(s) lodged? (all respondents, n=28)**



Out of the 28 respondents who participated in a judicial review, all environmental organisations/NGOs and one business association reported that they had lodged a request before the EU Court of Justice. Five other organisations/NGOs and two other stakeholders reported that they had lodged a request for a judicial review before a national court. Meanwhile, an equal share of EU citizens lodged a request both ways, in addition to one company/business organisation, public authority and other stakeholder (see **Figure 28**).

**Figure 28: Where was/were the request(s) lodged? (types of stakeholder, n=28)**

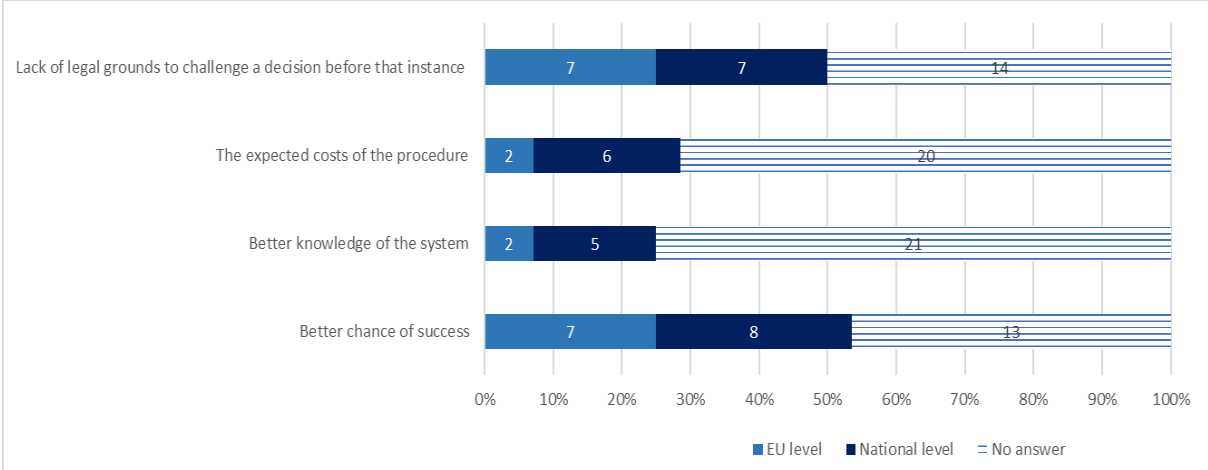


Respondents were asked to indicate the reason for lodging their request at the EU or national level. Out of the 28 respondents who participated in a judicial review, eight indicated there was a better chance of success at national level compared with seven at EU level. An equal share of seven respondents indicated both ways in cases where there is a lack of legal grounds to challenge a decision before that instance. Six indicated they lodged their request at the national level compared with only two at EU level due to the expected costs of the procedure. Five indicated better knowledge of the system at national level compared with only two at EU level or did not select the options, implying that the reason given was not a factor in their decision on where to lodge the request (see **Figure**



29).

**Figure 29: Was the reason for lodging the request at EU Court of Justice or national court, or both based on any of the following? (all respondents, n=28)**

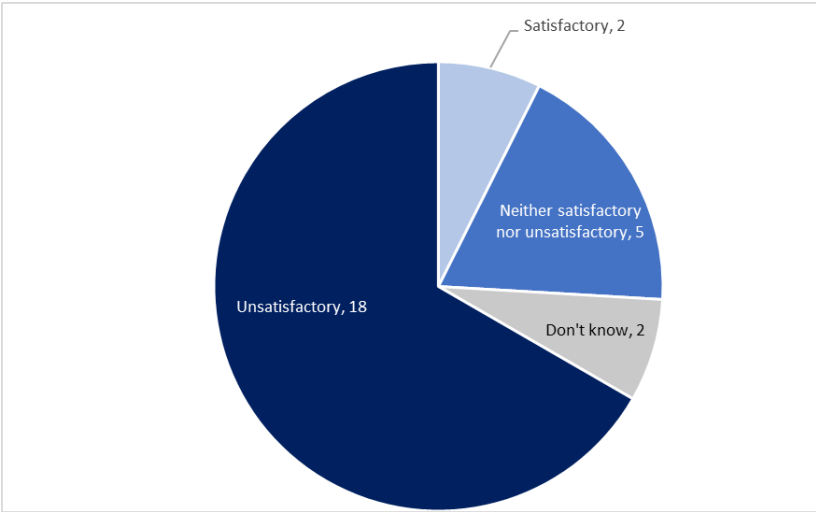


In a follow-up free text question, respondents were invited to explain their answers, of whom 16 replied. Of those 16 replies, seven were excluded because they were not directly relevant to the question or were clearly coordinated. The remaining comments were made by environmental organisations/NGOs, other organisations/NGOs, one public authority and one other stakeholder. Comments by environmental organisations and NGOs focused on a lack of legal grounds to challenge a decision due to the absence of implementing measures at national level. In other cases, the CJEU was perceived as the most appropriate route as the challenge concerned a decision by an EU institution concerning EU legal act(s), not a national body concerning national law(s).

Other organisations/NGOs and public authorities highlighted that the choice of court depends on the likelihood of success, or and in some cases the cost or complexity of national systems. A comment made by one other organisation/NGO also criticised the lack of sanctions when national courts do not refer matters to the CJEU in unjustified cases.

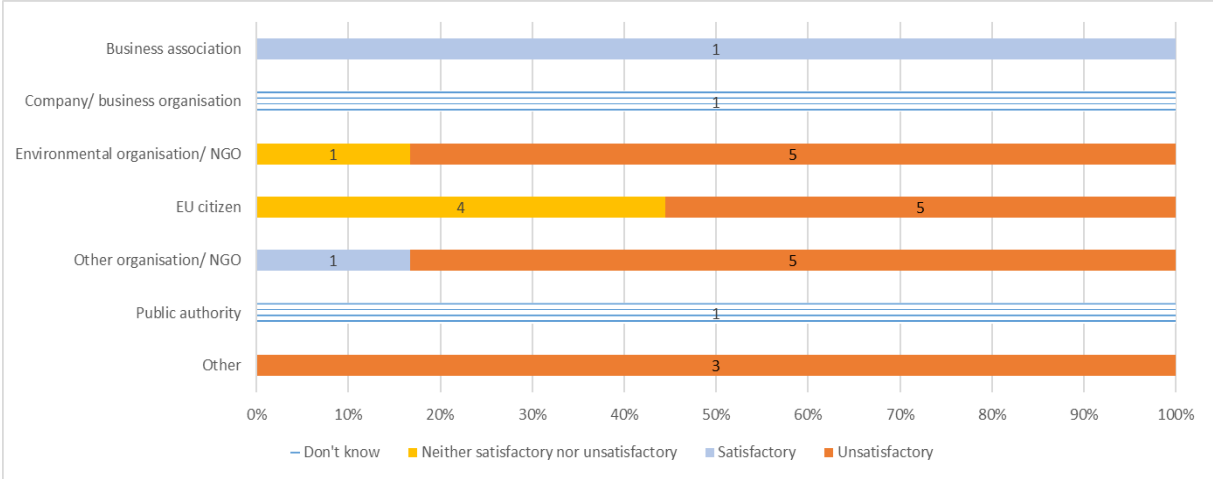
The respondents who indicated they participated in a judicial review were asked to rate their experience. Overall, 72% rated the process as unsatisfactory in contrast to 8% who gave a satisfactory rating. A notable share (20%) assessed the process as being neither satisfactory nor unsatisfactory (see **Figure 30**).

**Figure 30: How would you rate the process(es)? (all respondents, n=27)<sup>24</sup>**



**Figure 31** shows out of the 28 respondents who were involved in a judicial review, all other stakeholders and almost all environmental organisations/NGOs and other organisations/NGOs rated the process as unsatisfactory. Five EU citizens were also dissatisfied, with the remaining four indifferent. In contrast, one business association was satisfied in addition to one other organisation/NGO. Meanwhile, one company/business organisation and one public authority indicated they did not know.

**Figure 31: How would you rate the process(s)? (types of stakeholder, n=27)<sup>25</sup>**



In a follow-up free text question, respondents were invited to justify their responses with 19 replies received. Of those 19 replies, seven were excluded because they were not directly relevant to the question, were clearly coordinated or referred to position papers submitted at the end of the questionnaire. The remaining comments were made by environmental organisations/NGOs, EU citizens, one other organisation/NGO, one public authority and one other stakeholder.

<sup>24</sup> One respondent out of the 28 who indicated they participated in a judicial review did not answer

<sup>25</sup> One respondent out of the 28 who indicated they participated in a judicial review did not answer

Environmental organisations/NGOs criticised standing requirements under Article 263(4) of the TFEU as preventing NGOs from bringing direct actions before the General Court. The requirement for the impact of the measure to be of 'individual concern' and 'direct concern' to the NGO or individual challenging it is perceived as restricting access to the CJEU for challenging acts of EU institutions that violate environmental law. While standing and the scope of acts that can be challenged were generally perceived to be the key obstacles, other, more practical concerns were also raised. Such concerns included:

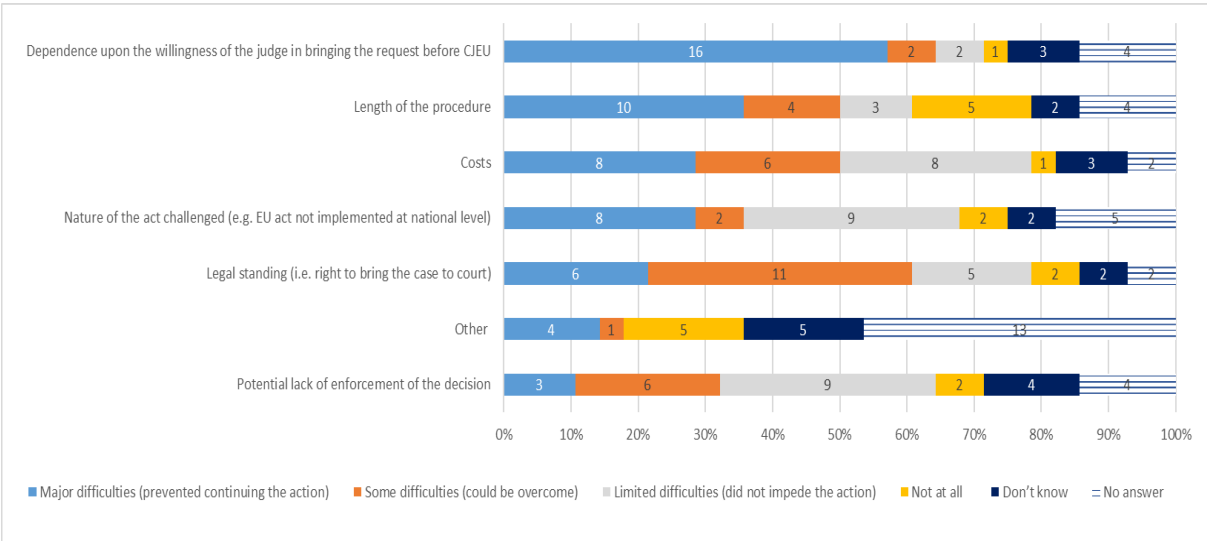
- Excessive costs and length of referral proceedings can have a deterrent effect to using the mechanism.
- The requirement that lawyers need to be independent from their clients in order to present cases before the CJEU means that NGOs must externally contract legal representation rather than use their in-house lawyers, which can be a barrier due to the costs involved.

**4.2.1. Challenges with procedure under Article 267 TFEU (preliminary ruling or validity reference)**

Respondents were asked to indicate any challenges or difficulties when initiating proceedings before a national court under the preliminary ruling procedure (Article 267 TFEU). Just over half of all respondents (57%) considered 'dependence upon the willingness of the judge in bringing the request before CJEU' as posing major difficulties. This was followed by the length of procedure with 36% of all respondents indicating this aspect as creating major difficulties.

Respondents were divided on the issue of costs with equal shares (28.5%) considering this aspect as creating both major and limited difficulties, in addition to 21% who indicated this aspect as posing some difficulties. The same can be said for the issue concerning a lack of national implementing measures. For example, 28.5% of respondents considered this aspect as creating major difficulties, in addition to 32% who also considered this aspect as creating limited difficulties. A slightly larger share of respondents (32%) rated potential lack of enforcement of the decision as creating limited difficulties compared to only 11% who indicated this issue as creating major difficulties (see **Figure 32**).

**Figure 32: Please consider your overall experience with regards to challenges before national courts, via preliminary ruling (Art. 267 TFEU). Did you experience/observe difficulties in relation to the following steps of the procedures? (all respondents, n=28)**



When looking at the responses by stakeholder type, environmental organisations/NGOs

considered dependence upon the willingness of the judge in bringing the request before CJEU, length of proceedings and the lack of national implementing measures as creating major difficulties. Costs, legal standing and potential lack of enforcement of the decision was considered as creating some difficulties. EU citizens also considered these issues as creating major difficulties, in addition to legal standing, but placed more emphasis on costs. Other organisations/NGOs were more likely to indicate dependence upon the willingness of the judge in bringing the request before CJEU as creating major difficulties, while legal standing, costs and the lack of national implementing measures were rated as creating some or limited difficulties. Length of proceedings and the potential lack of enforcement of the decision was considered as creating no difficulties among other organisations/NGOs. Meanwhile, public authorities were more likely to see all of these issues as creating no difficulties, while business associations considered these issues as creating only limited difficulties.

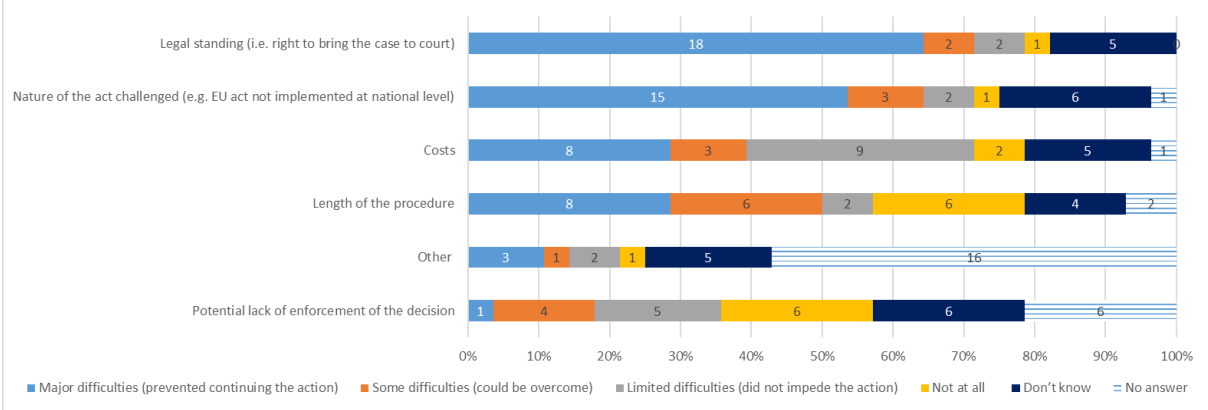
In a follow-up free text question, respondents were invited to specify the nature of any difficulties they experienced with using the preliminary ruling procedure under Article 267 TFEU. A total of 10 replies were received, of which five were excluded because they were clearly coordinated. The remaining comments were from two environmental organisations/NGOs, one other organisation/NGO, one EU citizen, and one company/business organisation. In addition to a lack of willingness by the judge to refer preliminary questions to the CJEU, environmental organisations/NGOs raised the absence of reasons or justification for the refusal to refer preliminary rulings as a specific difficulty in bringing challenges before national courts. Comments made by other stakeholders focused on challenging national-level acts and were excluded from the analysis as they are out of scope of this review.

#### **4.2.2. Challenges with procedure under Article 263(4) TFEU**

Respondents were asked to indicate any challenges or difficulties when initiating proceedings before the EU court under Article 263(4) TFEU. A large share (64%) considered the issue of legal standing as creating major difficulties. This was closely followed by just over half of respondents (53.5%) who considered the nature of the act challenged as posing major difficulties. Respondents were divided on the issue of costs with a slightly larger share (32%) considering this aspect as creating limited difficulties, while at the same time, a similar share (28.5%) also considered the issue as posing major difficulties.

The length of the procedure was considered by 28.5% of respondents as creating major difficulties, while an equal share (21%) also considered this issue as creating some or no difficulties. Respondents provided mixed responses for the issue on the potential lack of enforcement of the decision; 21% indicated this issue as posing no difficulties, while a further 18% indicated the issue as posing limited difficulties in addition to some difficulties (14%). A small portion of respondents (8%) indicated there were 'other' difficulties not included in the list of options presented (see **Figure 33**).

**Figure 33: Please consider your overall experience with regards to direct challenge to the EU court (Art.263(4)) TFEU and Aarhus Regulation). Did you experience/observe difficulties in relation to the following steps of the procedures? (all respondents, n=28)**



Environmental organisations/NGOs, EU citizens and other organisations/NGOs were more likely to consider legal standing and the lack of EU acts implemented at national level as creating major difficulties. EU citizens also considered costs and length of proceedings as issues creating major difficulties, while environmental organisations/NGOs were more likely to rate these issues as creating some difficulties. For other organisations/NGOs, costs and length of proceedings were considered as creating limited or no difficulties. The potential lack of enforcement of the decision was considered among these stakeholders as creating some or limited difficulties, except for other organisations/NGOs who rated this aspect as creating no difficulties. Meanwhile, business associations considered all of these issues as creating limited difficulties.

In a follow-up free text question, respondents were invited to specify the nature of any difficulties associated with bringing a challenge before the CJEU, with four replies received from three EU citizens and one public authority. Here, EU citizens echoed the comments of environmental NGOs and raised issues to do with the need for using contracted lawyers under this mechanism whose fees are considerably higher than those of NGO in-house lawyers. Additional comments made by EU citizens and one other public authority focused on challenging acts at national level and were excluded from the analysis as they are out of scope of this review.

## **5. Further information and additional contributions**

Respondents had the opportunity to submit additional contributions through both a final open question (1000 characters maximum) and by uploading separate documentation at the end of the questionnaire. A total of 65 replies to the final open question were received. Regarding the separate documentation, a total of 19 files have been received, excluding duplicates.

These submissions were mostly position papers from environmental NGOs and industry associations. Two other submissions were received from other stakeholders. Contributions were grouped according to stakeholder groups and analysed to identify key messages and suggestions.

### **5.1. Final open question**

The final question allowed respondents space to provide additional ideas and opinions linked to this initiative, with 65 respondents choosing to do so. Of those 65 responses, 30 were excluded as they were off-topic, clearly coordinated or referred to position papers submitted at the end of the questionnaire. Many of the remaining comments touched on earlier statements provided throughout the questionnaire. For example, environmental organisations/NGOs, other organisations/NGOs and EU citizens identified strict admissibility criteria and the requirement that the acts be of individual scope as being the most significant barriers in access to justice in environmental matters. These stakeholders argued that proving an act or omission to be challenged has an individual scope, or impact on the organisation or individual bringing the request, is very difficult.

Comments by EU citizens, environmental organisations/NGOs and other organisations/NGOs also perceived the EU as not complying with the Aarhus Convention and advocated for amendments to the Aarhus Regulation. Among those proposed were eliminating requirements of 'individual scope' and 'legally binding and external effects' and referencing acts which 'contravene EU environmental law' rather than acts adopted 'under environmental law' within the Aarhus Regulation. Stakeholders considered that these amendments would likely have no significant impact on the workload and capacity of EU institutions, and any increase in litigation would be likely immaterial when compared to lawsuits on State aid or intellectual property.

A number of environmental organisations/NGOs also pointed to the obstacles in accessing administrative and judicial proceedings such as restrictive admissibility and/or standing requirements, varying willingness of national courts to refer preliminary questions to the CJEU, and overly lengthy, ineffective and/or costly remedies provided by judicial procedures in Member States. One environmental organisation/NGO in particular pointed to the inappropriateness of challenging the validity or content of EU acts in judicial proceedings, given that, in their experience, national courts prefer to refer cases to the CJEU mainly to interpret the compatibility of national law with EU law rather than question the EU acts themselves (i.e. requesting a validity reference). One respondent from the "other organisation and NGO" category also emphasised that environmental justice cannot be achieved without sufficient access to the information that is needed to fully assess decisions, yet EU institutions are failing to comply with requests for access to decisions by abusing exception provisions. For this reason, they advocated for the introduction of sanctions ranging from disciplinary proceedings to administrative monetary penalties in cases of unjustified refusals to requests for access to information.

Almost all companies/business organisations and business associations commented against extending the scope of review as they believe it would expose the system to endless objections. These stakeholders argued that the mechanisms available under the Aarhus Regulation or Article 263(4) TFEU and Article 267 TFEU are perfectly sufficient and do not require any extension. They argued if the scope for access was broadened it would

overburden the system as a whole with environmental cases of low significance. They also considered that broadening the scope for access would go beyond the minimum requirements of the Aarhus Convention and indirectly alter the system of remedies provided under EU primary law.

## 5.2. Additional contributions from industry stakeholders

**Table 3** shows a total of eight position papers were submitted by industry stakeholders. A summary of their contributions is presented below.

**Table 3: List of position papers submitted by industry stakeholders**

Organisation name	Stakeholder type	Language of submission paper
Cefic and Fuels Europe	Company/business organisation	English
Association of German Chambers of Industry and Commerce (DIHK)	Business Association	German
Chamber of Industry and Commerce for East Frisia and Papenburg (IHK)	Business Association	German
Chamber of Industry and Commerce of Rostock	Business Association	German
Anonymous respondent	Business Association	German
Federation of Swedish Family Forest Owners	Business Association	English
Anonymous respondent	Company/business organisation	English
Swedish Forest Industry Federation	Business Association	English

### Administrative review under Aarhus Regulation

Industry stakeholders argue that NGOs have privileged access to both administrative and judicial review mechanisms under Articles 10 and 12 of the Aarhus Regulation, which exceeds the requirements of the Aarhus Convention. Under Article 10 of the Aarhus Regulation, NGOs are granted exclusive rights, while Article 12 allows NGOs to challenge before the CJEU the legality of the EU written reply or failure to reply within the time limit or in due form.

Two business and trade associations in their submission paper stressed the importance of the individual scope requirement of the Aarhus Regulation and the need for ensuring a level playing field for all types of applicants in access to EU courts under Article 263 TFEU, as it limits the possibilities to challenge acts by NGOs. In their view, this is fair as currently only environmental NGOs can use the mechanisms under the Aarhus Regulation. They argue that any changes to this requirement could alter the current level playing field and violate the principle of equal treatment.

### Judicial review under Art. 263(4)

Business and trade associations believe that the TFEU legal framework (Articles 263, 267 and 277) establishes a complete system of remedies and procedures to ensure the judicial review of EU acts. These rules are based on equal treatment and provide the same rules on admissibility for all natural and legal persons – environmental NGOs, trade federations, regional and local authorities, companies or citizens.

However, industry stakeholders believe these mechanisms can work to prevent companies and trade associations from bringing actions against EU acts of general application. It is particularly difficult to demonstrate individual concern under the first limb of Article 263(4) where an act is not directly addressed to them, and they point to a number of cases where the CJEU dismissed cases brought by business associations because they were considered as 'representatives of a category of operators and not individually concerned by a measure affecting the general interests of that category'.

Business associations also report facing difficulties when challenging regulatory acts with regards to meeting the direct concern test and the interpretation given to the concept of act which does not entail implementing measures. Due to these hurdles in challenging EU acts of general application, business associations consider that, similarly to environmental NGOs, the only option open to them is to initiate proceedings before national courts against national acts implementing an EU decision by pleading the invalidity of the EU act.

### **Application at national level**

Industry stakeholders in Germany argue that individuals can challenge laws when they are individually affected, and environmental NGOs can challenge certain acts without having to show that their interests are affected. For this reason, the rights of action by the general public on environmental protection are considered to be sufficiently covered in applicable law and do not require extension.

### **Identification of potential consequences**

Industry stakeholders are against extending the scope of review under the EU Aarhus Regulation as they believe it would violate the principle of equal treatment and indirectly alter the system of remedies established in EU primary law. There were also strong views expressed by business associations against granting every individual the right to sue, as doing so could contribute to an increase in individual lawsuits and prompt resubmissions on the admissibility of projects. This could in turn add to legal complexity and further delay of permitting and approval proceedings for projects. It could also hamper the ability of national governments to enforce decisions in favour of the economy. The effects of this are likely to stifle economic development as affected companies and planning bodies would be reluctant to invest in infrastructure, industrial or construction projects. The example of the Elbe River project in Germany was highlighted to demonstrate how infrastructure projects are already too slow and would be further delayed if the possibilities for appeal were expanded. It was also argued that the EU nature and species protection legislation has significantly prolonged the duration of permitting procedures and has led to considerable uncertainty in the decision-making process of permitting authorities.

One business association rejected the Aarhus Convention Compliance Committee's (ACCC) views on broadening the scope for review, arguing that this interpretation is not in line with the minimum standards and original intentions of the Convention. They argue that broadening the scope for review beyond what is required in the Convention could result in unforeseeable delays and large costs in lawsuits for individuals and small enterprises.

Further, they argue there is a risk that individuals will become opponents of environmental NGOs at the local level and that legal proceedings will be initiated on matters with negligible environmental impact or that support nefarious and vexatious claims. They also point to a risk in the 'judicialisation of politics', which describes an increasing reliance on using courts and judicial means for addressing policy issues. All these developments are considered as ultimately undermining the goals of managing climate change, shifting towards a bio-economy and creating sustainable jobs.



## **Recommendations**

Some stakeholders took the opportunity to suggest recommendations that could be taken by the EU to improve the situation. Key among these are:

- Preclusion requirements should be maintained or reintroduced so as to provide greater legal certainty for planning authorities. Likewise, instead of expanding the possibilities for appeal, the focus should be directed on standardizing decision-making procedures and optimizing coordination processes before a decision is taken, so that any environmental concerns on projects are identified at the early stage of planning and dealt with in advance.
- It should be examined whether the right to bring actions under the Aarhus Convention can be limited to compliance with procedural environmental law requirements from a certain point in time in the proceedings. Likewise, proceedings against infrastructure projects should be accelerated through the introduction of procedural deadlines within which court decisions must be made.
- Limitations should be placed on who is permitted to represent and speak for the public and the environment.
- Care should be taken to ensure a balanced approach that clarifies the wide possibilities for Member States to implement the standards of the Convention adjusted to their national systems.

### 5.3. Additional contributions from environmental organisations/NGO stakeholders

**Table 4** shows a total of nine position papers were submitted by environmental organisations and NGOs. A summary of their contributions is presented below.

**Table 4: List of position papers submitted by environmental organisations/NGOs**

Organisation name	Stakeholder type	Language of submission paper
BirdLife International	Environmental organisation/NGO	English
BUND	Environmental organisation/NGO	English
Client Earth	Environmental organisation/NGO	English
European Environmental Bureau	Environmental organisation/NGO	English
Environment Links UK,	Environmental organisation/NGO	English
Fons de Defensa Ambiental	Environmental organisation/NGO	Spanish
Fédération Environnement Durable and Vent de Colère! Fédération nationale	Environmental organisation/NGO	French
European Network of Environmental Law Organizations (Association of Justice and Environment)	Environmental organisation/NGO	English
Anonymous respondent	Environmental organisation/NGO	English

#### Aarhus Regulation

Environmental organisations/NGOs express concern about the restrictiveness of admissibility requirements under the Aarhus Regulation, namely that the challenged act be of 'individual scope', have 'legally binding and external effects' and be 'adopted under environmental law'. The requirement of 'individual scope' is perceived as the major hurdle, as more than half out of the 40 requests for review have been rejected on this ground. They also consider that these requirements in effect restrict the review procedure to certain limited categories of acts, for example, those that are addressed specifically to one economic operator or association of operators.

Criticism is also directed at the exemption under Article 2(2) of the Aarhus Regulation for acts taken by bodies acting as an "administrative review body", as this exemption is not present in the Aarhus Convention, and such acts may contravene provisions of environmental law.

Environmental organisations/NGOs also argue that the possibility offered under Article 12 of the Aarhus Regulation for NGOs to have access to a judicial review of the decision on the request for an administrative review is of limited use. Under the CJEU's current interpretation of the Article 263(4) TFEU requirements, it cannot lead to a substantive review of the legality of the act for which the request for review was made. This mechanism therefore does not allow for judicial review of acts contravening environmental law as required by Article 9(3) of the Aarhus Convention.

### **Review of legality (Article 263 TFEU)**

The standing requirements under Article 263(4) TFEU, in their current interpretation by the CJEU, are perceived as overly restrictive by environmental organisations and NGOs. They highlight that the requirement for the impact of the measure to be limited to the individual or NGO challenging it – under ‘individual concern’ – or for the measure to affect the subjective legal situation of the applicant – under ‘direct concern’ – effectively rule out most environmental claims, as they aim to defend the public interest in the environment.

### **Preliminary reference (Article 267 TFEU)**

Environmental organisations and NGOs raise a number of difficulties in using the preliminary reference mechanism to obtain judicial review of EU acts with environmental effects.

Some highlight that many EU acts relating to the environment do not require national implementing measures, and that there is in this case no act to challenge before the national courts. Where this is the case, it would be necessary to contravene the EU act in order to challenge its validity before the national courts.

The lack of harmonised conditions for access to justice at national level is also mentioned. Standing requirements vary across Member States, sometimes making it difficult to challenge national implementing measures, and therefore to obtain a preliminary reference. Such restrictions include requiring impairment of a subjective right or limiting challenges by NGOs to certain types of environmental acts. Environmental organisations and NGOs report that other barriers such as cost of proceedings can also hinder access in some Member States, for example in Ireland, the United Kingdom or Bulgaria. Where access to court is possible, concern is expressed regarding the varying willingness of national courts to refer preliminary questions to the CJEU. Environmental organisations and NGOs argue that some courts wrongfully refuse to refer preliminary questions, citing examples from Poland, Bulgaria and France, and point to the lack of a possibility to compel them to do so. Lastly, the preliminary reference procedure is also considered to be overly lengthy, taking on average 16 months in environmental matters.

### **Identification of potential consequences**

The current system of access to justice provided under the Aarhus Regulation, Article 263(4) TFEU and 267 TFEU is perceived as insufficient by environmental organisations and NGOs to ensure adequate opportunities for individuals and NGOs for challenging EU measures that contravene environmental law.

### **Recommendations**

In the absence of a change of jurisprudence in the interpretation of the standing requirements of Article 263 TFEU, environmental organisations/NGOs call for the Aarhus Regulation to be amended in order to broaden its scope and admissibility requirements. In particular, they suggest that the requirements of ‘individual scope’ and ‘external effects’ be eliminated, and that instead of acts adopted ‘under environmental law’ reference be made to acts which ‘contravene environmental law’.

In support of the suggestion in relation to ‘individual scope’, environmental organisations and NGOs also point to the fact that the Commission’s proposal for the Regulation did not refer to this requirement, instead defining ‘administrative act’ as ‘any administrative measure taken under environmental law by a Community institution or body having legally binding and external effect’.

#### 5.4. Additional contributions from other stakeholders

**Table 5** shows two position papers were submitted by other stakeholders. A summary of their contributions is presented below.

**Table 5: List of position papers submitted by other stakeholders**

Organisation name	Stakeholder type	Language of submission paper
The Council of Bars and Law Societies of Europe	Other stakeholder	English
Aix-Marseille University	Academic/Research Institute	French

Both respondents expressed views similar to those of the environmental organisations/NGOs. In addition, both respondents provided some specific proposals for amending the Aarhus Regulation all of which corresponded with suggested amendments by environmental organisations/NGOs in their position papers. Aix-Marseille University also suggested:

- amending Article 12 to allow organisations that submitted a request for internal review under Article 10 to bring an action before the CJEU 'on the legality of the reply to the request for review and on the measure subject to review'. They suggest that this would not undermine Article 263(4) TFEU due to the specific conditions attached to the possibility to bring such an action before the CJEU.
- revising Article 10(1) to allow any NGO meeting the criteria in Article 11 and any member of the public to submit a request for internal review to the relevant EU institution or body, suggesting that this would be more in line with the intentions of Article 9(4) of the Aarhus Convention.

## APPENDIX 1 - Questionnaire

The questionnaire consists of two parts. The first part is aimed at all respondents and includes general questions on the relevance of the Aarhus Convention and Regulation to individuals and others, as well as questions on its effective implementation and the impacts of possible changes that would ensure the EU's compliance with the Aarhus Convention. The second part of the questionnaire seeks information about the experience with existing mechanisms to review environmental acts as provided for by Regulation (EC) No 1367/2006 (the Aarhus Regulation). This second part is particularly aimed at respondents directly involved with or affected by the Aarhus Regulation and its requirements.

It should take approximately 20 to 40 minutes to fill in the questionnaire, depending if you respond only to Part 1 or to both Parts 1 and 2. You may interrupt your session at any time and continue answering at a later stage. If you do so, please remember to keep the link to your saved answers as this is the only way to access them. Only questions marked with a red asterisk are mandatory. Once you have submitted your answers online, you will be able to download a copy of the completed questionnaire.

### ABOUT YOU

#### Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- Finnish
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

#### I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen

- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

**First name**

**Surname**

**Email (this won't be published)**

**Scope**

- International
- Local
- National
- Regional

**Organisation name**

**Organisation size**

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

**Transparency register number**

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision making.

**Country of origin**

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| <input type="checkbox"/> Afghanistan         | <input type="checkbox"/> Djibouti           | <input type="checkbox"/> Lithuania        | <input type="checkbox"/> San Marino            |
| <input type="checkbox"/> Åland Islands       | <input type="checkbox"/> Dominica           | <input type="checkbox"/> Luxembourg       | <input type="checkbox"/> São Tomé and Príncipe |
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| <input type="checkbox"/> Algeria             | <input type="checkbox"/> Ecuador            | <input type="checkbox"/> Madagascar       | <input type="checkbox"/> Senegal               |
| <input type="checkbox"/> American Samoa      | <input type="checkbox"/> Egypt              | <input type="checkbox"/> Malawi           | <input type="checkbox"/> Serbia                |
| <input type="checkbox"/> Andorra             | <input type="checkbox"/> El Salvador        | <input type="checkbox"/> Malaysia         | <input type="checkbox"/> Seychelles            |
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| <input type="checkbox"/> Anguilla            | <input type="checkbox"/> Eritrea            | <input type="checkbox"/> Mali             | <input type="checkbox"/> Singapore             |
| <input type="checkbox"/> Antarctica          | <input type="checkbox"/> Estonia            | <input type="checkbox"/> Malta            | <input type="checkbox"/> Sint Maarten          |
| <input type="checkbox"/> Antigua and Barbuda | <input type="checkbox"/> Ethiopia           | <input type="checkbox"/> Marshall Islands | <input type="checkbox"/> Slovakia              |

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| <input type="checkbox"/> Australia                        | <input type="checkbox"/> Former Yugoslav Republic of Macedonia | <input type="checkbox"/> Mayotte                  | <input type="checkbox"/> South Africa                                 |
| <input type="checkbox"/> Austria                          | <input type="checkbox"/> France                                | <input type="checkbox"/> Mexico                   | <input type="checkbox"/> South Georgia and the South Sandwich Islands |
| <input type="checkbox"/> Azerbaijan                       | <input type="checkbox"/> French Guiana                         | <input type="checkbox"/> Micronesia               | <input type="checkbox"/> South Korea                                  |
| <input type="checkbox"/> Bahamas                          | <input type="checkbox"/> French Polynesia                      | <input type="checkbox"/> Moldova                  | <input type="checkbox"/> South Sudan                                  |
| <input type="checkbox"/> Bahrain                          | <input type="checkbox"/> French Southern and Antarctic Lands   | <input type="checkbox"/> Monaco                   | <input type="checkbox"/> Spain  |
| <input type="checkbox"/> Bangladesh                       | <input type="checkbox"/> Gabon                                 | <input type="checkbox"/> Mongolia                 | <input type="checkbox"/> Sri Lanka                                    |
| <input type="checkbox"/> Barbados                         | <input type="checkbox"/> Georgia                               | <input type="checkbox"/> Montenegro               | <input type="checkbox"/> Sudan  |
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| <input type="checkbox"/> Belgium                          | <input type="checkbox"/> Ghana                                 | <input type="checkbox"/> Morocco                  | <input type="checkbox"/> Svalbard and Jan Mayen                       |
| <input type="checkbox"/> Belize                           | <input type="checkbox"/> Gibraltar                             | <input type="checkbox"/> Mozambique               | <input type="checkbox"/> Swaziland                                    |
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| <input type="checkbox"/> Chad                             | <input type="checkbox"/> Isle of Man   | <input type="checkbox"/> Paraguay  | <input type="checkbox"/> United Kingdom                       |
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| <input type="checkbox"/> China                            | <input type="checkbox"/> Italy         | <input type="checkbox"/> Philippines                                       | <input type="checkbox"/> United States Minor Outlying Islands |
| <input type="checkbox"/> Christmas Island                 | <input type="checkbox"/> Jamaica       | <input type="checkbox"/> Pitcairn Islands                                  | <input type="checkbox"/> Uruguay                              |
| <input type="checkbox"/> Clipperton                       | <input type="checkbox"/> Japan         | <input type="checkbox"/> Poland  | <input type="checkbox"/> US Virgin Islands                    |
| <input type="checkbox"/> Cocos (Keeling) Islands          | <input type="checkbox"/> Jersey        | <input type="checkbox"/> Portugal  | <input type="checkbox"/> Uzbekistan                           |
| <input type="checkbox"/> Colombia                         | <input type="checkbox"/> Jordan        | <input type="checkbox"/> Puerto Rico                                       | <input type="checkbox"/> Vanuatu                              |
| <input type="checkbox"/> Comoros                          | <input type="checkbox"/> Kazakhstan    | <input type="checkbox"/> Qatar   | <input type="checkbox"/> Vatican City                         |
| <input type="checkbox"/> Congo                            | <input type="checkbox"/> Kenya         | <input type="checkbox"/> Réunion   | <input type="checkbox"/> Venezuela                            |
| <input type="checkbox"/> Cook Islands                     | <input type="checkbox"/> Kiribati      | <input type="checkbox"/> Romania   | <input type="checkbox"/> Vietnam                              |
| <input type="checkbox"/> Costa Rica                       | <input type="checkbox"/> Kosovo        | <input type="checkbox"/> Russia  | <input type="checkbox"/> Wallis and Futuna                    |
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| <input type="checkbox"/> Croatia                          | <input type="checkbox"/> Kyrgyzstan    | <input type="checkbox"/> Saint Barthélemy                                  | <input type="checkbox"/> Yemen                                |
| <input type="checkbox"/> Cuba                             | <input type="checkbox"/> Laos          | <input type="checkbox"/> Saint Helena<br>Ascension and<br>Tristan da Cunha | <input type="checkbox"/> Zambia                               |
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| <input type="checkbox"/> Curaçao                          | <input type="checkbox"/> Lebanon       | <input type="checkbox"/> Saint Lucia                                       |   |
| <input type="checkbox"/> Cyprus                           | <input type="checkbox"/> Lesotho       | <input type="checkbox"/> Saint Martin                                      |   |
| <input type="checkbox"/> Czech Republic                   | <input type="checkbox"/> Liberia       | <input type="checkbox"/> Saint Pierre and Miquelon                         |   |
| <input type="checkbox"/> Democratic Republic of the Congo | <input type="checkbox"/> Libya         | <input type="checkbox"/> Saint Vincent and the Grenadines                  |   |
| <input type="checkbox"/> Denmark                          | <input type="checkbox"/> Liechtenstein | <input type="checkbox"/> Samoa   |   |

### Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

**Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)



## PART 1 – GENERAL QUESTIONS

**10. The European Union is a party to the Aarhus Convention, which amongst other things seeks to promote access to justice in environmental matters. ‘Access to justice’ in environmental matters means that the public is offered the possibility to initiate procedures for the review of acts and decisions taken by authorities, or review procedures in cases where the authorities should have adopted acts and decisions but failed to do so. To help fulfil its obligations under the Convention, the EU adopted Regulation (EC) No 1367/2006 (the Aarhus Regulation).**

**Which of the following statements best describes your situation?**

- I have never heard of the Aarhus Convention nor the Aarhus Regulation.
- I have never heard of the Aarhus Convention nor the Aarhus Regulation but I am aware of the possibility to challenge non legislative environmental acts of the EU.
- I have heard about the Aarhus Convention, but I am not sure how it is implemented at national or EU level and therefore how it affects me.
- I am familiar with the Aarhus Convention and/or the Aarhus Regulation.

**11. The available mechanisms to review EU acts, decisions or omissions (all referred to as "decisions" only in the table below for the sake of brevity) include requests for internal review through administrative procedures or actions brought to the EU Court of Justice according to different judicial procedures. How would you rate the availability of each these means for individuals or NGOs?**

	Very positively	Slightly positively	Neither positively nor negatively	Slightly negatively	Negatively	Don't know
a) How would you rate the current possibilities for <u>individuals</u> to request the EU to carry out an <u>internal review</u> of a decision it has made that impacts the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) How would you rate the current possibilities for <u>NGOs</u> to request the EU to carry out an <u>internal review</u> of a decision it has made that impacts the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) How would you rate the current possibilities for <u>individuals</u> to bring an EU decision that impacts the environment <u>before the EU Court of Justice</u> ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) How would you rate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

the current possibilities for <u>NGOs</u> to bring an EU decision that impacts the environment before the <u>EU Court of Justice</u> ?						
e) How would you rate the current possibilities for <u>individuals</u> to bring, <u>before the court in your country</u> , an EU decision that impacts the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) How would you rate the current possibilities for <u>NGOs</u> to bring, <u>before the court in your country</u> , an EU decision that impacts the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**12. Public participation in decision-making is also a possible way for the public to have a say in legally binding general acts and decisions relating to the environment before these are actually adopted. To what extent do you agree or disagree with the following statements concerning EU decision-making on environmental matters?**

	Very positively	Slightly positively	Neither positively nor negatively	Slightly negatively	Negatively	Don't know
a) How would you rate the current possibilities for individuals to participate in the decision-making processes at EU level regarding environmental matters?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) How would you rate the current possibilities for NGOs to participate in the decision-making processes at EU level regarding environmental matters?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) How would you rate the way the EU takes into account the views expressed by the public when taking decisions that affect the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**13. Individuals and non governmental organisations (NGOs) can challenge EU acts before a national court, which can – and sometimes must - refer the case to the EU Court of Justice for a preliminary ruling (Article 267 TFEU).**

**Were you aware of this possibility as a way of challenging EU acts?**

- Yes
- No

**14. Have you ever been involved in or affected by a procedure under Article 267 TFEU (reference for a preliminary ruling)? If yes, please provide a reference to the relevant case if possible (add a link or attach a pdf of the judgment).**

- Yes
- No

Please add a link

**15. In your opinion, how does the mechanism enabling national courts to request the Court of Justice of the European Union to rule on an EU act (Article 267 TFEU) function in your country of residence?**

- Satisfactorily
- Unsatisfactorily
- Don't know

**16. Can you please explain your answer? Why do you think the established mechanism to challenge EU acts through national court (Article 267 TFEU) in your country of residence is functioning in a satisfactory or unsatisfactory manner?**

**(500 characters maximum)**

**17. Any person can also challenge EU acts by directly requesting the EU Court of Justice to rule on the legality of the act if that act is of direct and individual concern to that person (Article 263(4) TFEU).**

**Are you aware of this possibility as a way of challenging the EU acts?**

- Yes
- No

**18. In your opinion, how does the established mechanism to challenge EU acts through the Court of Justice of the European Union (Article 263(4) TFEU) function?**

- Satisfactorily
- Unsatisfactorily
- Don't know

**19. Can you please explain your answer? Why do you think the established mechanism to challenge EU acts through the Court of Justice of the European Union (Article 263(4) TFEU) is functioning in a satisfactory or unsatisfactory manner?**

**(500 characters maximum)**

**20. The Aarhus Convention Compliance Committee noted several problems with respect to the EU's implementation of the Convention (for further information, please see <https://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html>). These problems are listed below. How would you rate the importance of each of these problems?**

	1-Least Important	2	3	4-Most important
a) The Aarhus Regulation's internal review mechanism is open only to NGOs and not to members of the general public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) To be admissible for a review request, the act or omission to be challenged must have an individual scope or impact on the organization/individual bringing the request	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) The Regulation limits challenges to acts or omissions under environmental law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Only acts that are legally binding and have external effects (i.e. effects outside the administration taking the decision) can be open for review under the Regulation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**21. Do the problems mentioned in Question 20 impact you, and if so, how?**

**(500 characters maximum)**

## **PART 2 – SPECIFIC QUESTIONS**

**This part of the questionnaire seeks input on your experience with existing mechanisms to review EU environmental acts.**

### **Administrative Review**

**Regulation (EC) No 1367/2006 (the Aarhus Regulation) provides for the possibility an individual or an NGO to request reviews of EU administrative acts directly with the EU institutions (e.g. the Commission services) (internal review).**

**22. Have you ever been involved in or affected by a request/request(s) for internal review of a EU decision or act under environmental law?**

- Yes  
 No

**23. How would you rate the process?**

- Satisfactory  
 Unsatisfactory  
 Neither satisfactory nor unsatisfactory  
 Don't know

**24. Please further explain your answer to Question 23 with additional information including concrete examples if possible.**

**(500 characters maximum)**

### **Judicial Review**

**There are several ways to challenge the legality of an EU act before a Court of law (judicial review). A case can be brought before the EU Court of Justice, either through the judicial review mechanism set up by Regulation (EC) No 1367/2006 (the Aarhus Regulation), or independently from the Regulation, directly in application of EU law (Article 263(4) TFEU). A case can also be brought before a National Court, which would in turn bring the case to the EU Court of Justice for a preliminary ruling (Article 267 TFEU).**

**25. Have you ever been involved in or affected by the judicial review of legality of an EU act in the area of environment?**

- Yes  
 No

**26. Where was/were the request(s) lodged?**

- EU Court of Justice  
 National Court  
 EU Court of Justice and National Court

**27. Was the reason for lodging the request at EU Court of Justice or National Court, or both based on any of the following?**

	EU Level	National Level
a) Better chance of success	<input type="checkbox"/>	<input type="checkbox"/>
b) Better knowledge of the system	<input type="checkbox"/>	<input type="checkbox"/>
c) The expected costs of the procedure	<input type="checkbox"/>	<input type="checkbox"/>
d) Lack of legal grounds to challenge a decision before that instance (e.g. absence of challengeable act at national level, legal standing, etc.)	<input type="checkbox"/>	<input type="checkbox"/>

**28. Please further explain your answer to Question 27.**

**(500 characters maximum)**

**29. Please consider your overall experience with challenges before national courts, via preliminary ruling (Art. 267). Did you experience/observe difficulties in relation to the following steps of the procedures:**

	Major difficulties (prevented continuing the action)	Some difficulties (could be overcome)	Limited difficulties (did not impede the action)	Not at all	Don't know
a) Legal standing (i.e., right to bring the case to court)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Nature of the act challenged (e.g. EU act not implemented at national level)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Length of the procedure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Dependence upon the willingness of the judge in bringing the request before CJEU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Potential lack of enforcement of the decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Other (please specify- limited number of characters)					

Please specify the nature of any difficulty

**(200 characters maximum)**

**30. Please consider your overall experience with direct challenges to the EU court (Art. 263(4) and Aarhus Regulation). Did you experience/observe difficulties in relation to the following steps of the procedures:**

	Major difficulties (prevented continuing the action)	Some difficulties (could be overcome)	Limited difficulties (did not impede the action)	Not at all	Don't know
a) Legal standing (i.e., right to bring the case to court)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Nature of the act challenged (EU non-legislative act 'under environmental law')	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Length of the procedure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Potential lack of enforcement of the decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Other (please specify- limited number of characters)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please specify the nature of any difficulty

**(200 characters maximum)**

**31. How would you rate the process?**

- Satisfactory
- Unsatisfactory
- Neither satisfactory nor unsatisfactory
- Don't know

**32. Please further explain your answer to Question 31 with additional information including concrete examples if possible.**

**(500 characters maximum)**

**If you wish to add further information relevant to the scope of this questionnaire or expand on any of your answers, you can do so in the box below.**

**(1000 characters maximum)**

**If you wish to submit additional documentation within the scope of this questionnaire, you can upload your file here. Please note that all uploaded documents will be published together with your contribution, and that you should not include personal data in the document, if you opted for anonymous publication.**