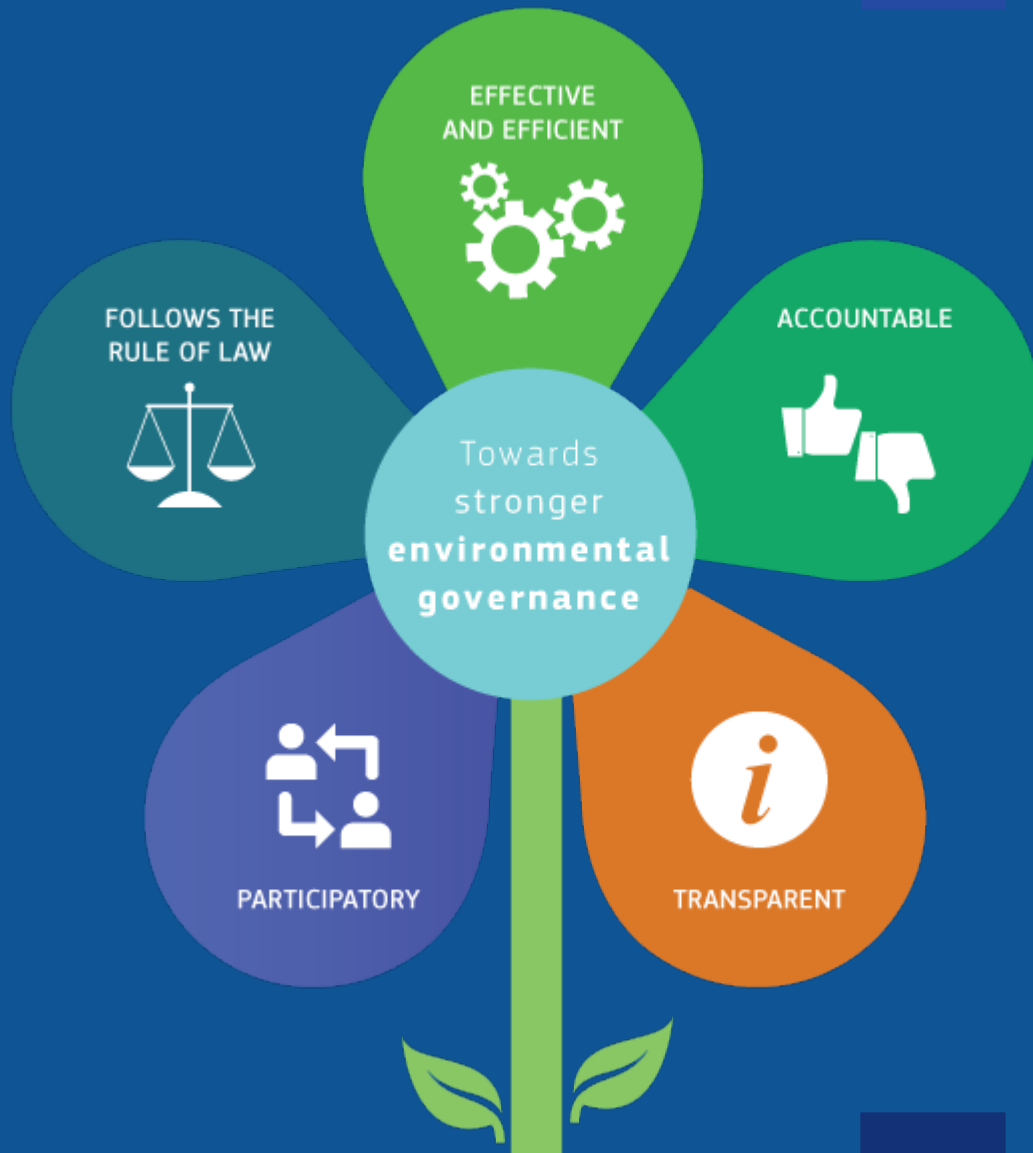




European
Commission



*Task Force on Access
to Justice
Aarhus Convention
Geneva
27-28 April 2022*

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



- Political framework
- EU level developments
- MS level: Follow-up to the Communication on access to justice
- Sectoral evaluations - initiatives/ access to justice
- Environmental defenders



The Green Deal Communication



(i) revising the Aarhus Regulation ...

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



EU level access to justice (1)

Amendment of the Aarhus Regulation

Entered into force on 28 October 2021 - next steps:

1. Main changes:
 - a. Material scope
 - b. Personal scope of standing
 - c. New deadlines applicable (8 weeks for applicants, 16 weeks for Commission (+ max 6 weeks of extension – total: 22 weeks)
2. Standing for individuals and groups will apply as of 29 April 2023
3. IT tool for registration of review requests (optional, but under development)



EU level access to justice (2) - ACCC/C/2015/128 on state aid

- Statement** on state aid case was adopted during the adoption process of Aarhus Regulation amendment.
- Commission** currently **assessing** the implications of the findings and assessing the options available taking into account the rules of Union Law regarding State aid.
- Commission will complete and publish this assessment **by the end of 2022.**

Next steps:

- plan of action published;
- launch a four-weeks call for evidence;
- 12-weeks open public consultation questionnaire on the initiative.



The priority areas of action under the **Communication on access to justice**

1. **Member States to secure correct transposition of EU secondary law**
2. **Co-legislators to include provisions on access to justice in EU legislation for new or revised EU law concerning environmental matters**
3. **The review by the Member States of their own national legislative and regulatory provisions to remove barriers (EU jurisprudential and statutory access to justice)**
4. **The obligation of national courts to guarantee the right of individuals and NGOs to an effective remedy under EU law.**





The Commission support



1. Improving access to information and monitoring (para 41)



2. Engaging with stakeholders, continuing cooperation with judges (para 40)



3. Legislative proposals – legal certainty (para 33)



4. Guardian of the Treaties (para 38)





Legislative action – priority area 2 - existing provisions (1)

A number of examples from the past

❑ For the EU: Regulation 1367/2006

For the Member States:

❑ Pillar I + Art. 9(1): Directive 2003/4/EC

❑ Pillar II + Art. 9(2), 9 (4):

Environmental Impact assessment,

Industrial emissions Directive,

SEVESO (major accident hazards) III (also for plans),

Drinking Water Directive.

❑ Pillar III - Art. 9(3) & 9(4): Environmental liability Directive
and to be continued...



Legislative action – priority area 2 – existing provisions (2)

- ❑ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the quality of water intended for human consumption (recast)
COM/2017/0753 final - 2017/0332
- ❑ Started off rather well:
- ❑ Explanatory memo:
'It should be possible for citizens and NGOs to legally review the decisions taken by Member States under this Directive.'
- ❑ Mirroring EIA/IED/SEVESO provisions on access to justice
- ❑ However, finally a compromise outcome...



Legislative action – priority area 2 - existing provisions (3)

‘(47) The effectiveness of this Directive and its aim of protecting human health in the context of the Union’s environment policy require that natural or legal persons, or where appropriate their duly constituted organisations, be able to rely on it in legal proceedings and that the national courts be able to take this Directive into consideration as an element of Union law in order, inter alia, to review decisions of a national authority where appropriate. In addition, according to settled case law of the Court of Justice, under the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union (TEU), it is for the courts of the Member States to ensure judicial protection of a person’s rights under Union law. Furthermore, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law.

This applies particularly in respect of a Directive which has the objective of protecting human health from the adverse effects of any contamination of water intended for human consumption. In addition, in accordance with the Aarhus Convention, members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being. By **Council Decision (EU) 2018/881 (23)**, the Commission was requested to carry out a study by 30 September 2019 and, if appropriate in light of the study, to submit by 30 September 2020 a proposal to amend **Regulation (EC) No 1367/2006** of the European Parliament and of the Council (24), in order to address the findings of the Aarhus Convention Compliance Committee in **case ACCC/C/2008/32**. The Commission submitted the study by that deadline and stated, in its Communication of 11 December 2019 on the European Green Deal, that it ‘will consider revising the Aarhus Regulation to improve access to administrative and judicial review at EU level for citizens and NGOs who have concerns about the legality of decisions with effects on the environment’. **It is important that the Commission also take action to improve access to justice by citizens and NGOs before national courts in all Member States.’**



Legislative action – priority area 2 - existing provisions (4)

- ❑ Climate law proposed by Commission
- ❑ EP amendment proposed on access to justice
- ❑ Finally Commission having adopted a statement attached to the legislative proposal:

'The EU and its Member States are parties to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the 'Aarhus Convention').

When performing their obligations under Regulation (EU) 2018/1999 concerning the involvement of the public in the preparation of the national energy and climate plans and the consultations on the long-term strategies, Member States should ensure that the public concerned is granted access to justice in case of breach of such obligations. This shall be in line with the relevant case law of the Court of Justice of the European Union related to access to justice in environmental matters and in full respect of the obligations Member States have undertaken as parties to the Aarhus Convention(1).'

(1) See also Communication on 'Improving access to justice in environmental matters in the EU and its Member States' (COM(2020)0643).



- Sources of inspiration when considering access to justice
- Notice on access to justice (2017 and updates since). SEE also recent update posted on website.
- General principles of EU law (Art 19 TEU) and Charter
- Case-law of the Court of Justice

- Communication on Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil'
- Several references to access to justice
- On-going initiatives also linked to justice under the Zero Pollution domain
 - IED (Revision on industrial emissions Directive) proposal tabled on 5 April 2022
 - AQ (Air Quality revision)



- Green Claims Regulation – proposal to be tabled: 2Q2022
- Deforestation Regulation (tabled in November 2021)
- Revised new Guidelines on State aid for climate, environmental protection and energy ('CEEAG') including Aarhus references
- Urban Waste Water Treatment – on-going evaluation
- NEC – upcoming evaluation



1) Anti-Slapp initiative of the Commission

- Commission study of 2020
- Roadmap envisages proposal for 2Q 2022

2) Proposal for a new Environmental Crime Directive: protection for whistle-blowers and environmental defenders.

- Proposal tabled in December 2021.
- Article 13 and recitals 24 and 25 of the Directive will ensure that persons who report environmental criminal offences benefit from the whistle-blower protection set out in Directive (EU) 2019/1937
- whistle-blowers or other environmental defenders who cooperate in the context of these criminal proceedings are provided 'the necessary support and assistance'.