



Statement by Margarida Martins (EEB), ECO Forum under agenda item 3. “Access to justice in energy-related cases”

Access to justice in the REpowerEU and Emergency Regulation

As many of you know, with the aim of urgently speeding up the transition to renewable energies and reducing the dependency on Russian fossil fuel imports, in May 2022, the European Commission issued a proposal for the REPowerEU Directive. This initiative aims to facilitate and shorten the permitting procedures for renewable energy plans. While we agree with the objective of this policy, we worry that it may miss its mark and endanger international obligations such as access to justice and public participation under the Aarhus Convention.

The simplification of the permitting procedures under this initiative creates general exemptions from environmental democracy obligations. This is done in the spirit of expediency but fails to be proportional.

The EEB has analysed the top 10 problems for renewables deployment in Europe a report I would be happy to share with you¹. Neither Nature protection nor court proceedings made it close to the top ten reasons for slow renewables development in Europe. This roll-back of environmental regulation is unjustifiable from any point of view and puts the European Green Deal at stake. The exemptions for renewable energy projects in already designated ‘renewables go-to areas’, from the requirement to be subject to environmental impact assessments under the EIA Directive are concerning. They would mean not only replacing an assessment focused on a single project (EIA) by a strategic assessment (SEA) related to the entire plan, but they would also exempt such individual projects from the requirement to obtain a dedicated environmental authorization. The EU SEA Directive (as opposed to the EIA Directive) does not include a requirement for access to justice, so this results in not granting access to justice to the public. This would deprive the public of the possibility of challenging the approval of a project and deny it its rights under the Convention. This means (under paragraph 20 of Annex 1 to the Aarhus Convention) that permitting renewable energy projects in already designated ‘renewables go-to areas’ would no longer be subject to the requirements regarding public participation under Article 6 nor to access to justice requirements under Article 9.2 of the Aarhus Convention.

Furthermore, the Emergency Regulation was added to the RePowerEU legislative package. This radical text meant to address high energy prices also greatly compromises environmental rights. In addition to using a legal basis that bypasses parliamentary scrutiny, it does not provide any opportunities for the judicial or administrative review of actions taken under its provisions.

¹ <https://eeb.org/repowereu-paves-the-way-for-renewables-but-also-undermines-environmental-legislation/>

All of you know that the myth that access to justice rights are a hurdle and are instrumentalised by those opposed to all development is not supported by the available data. We urge all Parties to the Convention to uphold their international law obligations and respect the pillar of access to justice. Access to justice is not a hindrance to the just, green energy transition but rather essential to achieve it, and cannot, in any case, be sidestepped.