The EU’s 9th legislature (2019 – 2024) has stood out thanks to the European Green Deal, a package of environmental and climate policies that also provided a chance to implement the right of access to justice in environmental matters, stemming from article 9 of the Aarhus Convention. Since a horizontal instrument guaranteeing access to justice is missing from the EU environmental acquis, this was attempted via introducing access to justice provisions in sectoral legislation.

We have been paying close attention to access to justice provisions in all environmental and climate files, and were dismayed to see access to justice fail to feature in big, overarching files such as the EU Climate Law, the Effort Sharing Regulation, and the Social Climate Fund, to more sector specific files such as the Energy Performance of Buildings Directive, Emissions Trading Systems, Regulation on land, land use change and forestry (LULUCF) and the RePowerEU (as already highlighted by the ECO Forum at the last Task Force on Access to Justice).

The EEB has published a report highlighting the current challenges to access to justice across the EU, which are still many, and it is clear that the EU needs to take more unequivocal steps to properly implement access to justice, in order to comply with its Aarhus Convention obligations, foster environmental democracy, and improve environmental legislation and its enforcement.

Despite commitments to include access to justice provisions in sectoral legislation, this has only happened so far in the Deforestation Regulation, published on June 9 of this year. This small step towards implementing article 9 of the Convention, however unsatisfactory the resulting provision might be, is a clear sign that improving environmental democracy is still possible in the EU. We call on the EU and all Member States to build on this achievement and support the negotiations to include such provisions in the Ambient Air Quality Directive, the Urban Wastewater Treatment Directive, etc.

In order to properly implement the Aarhus Convention (article 9), and to ensure that access to justice rights are not hopelessly fragmented, but rather effectively
guaranteed at the national level in all EU member states, a horizontal Directive on access to justice (such as already exists for the other two pillars of the Aarhus Convention), should be adopted. After the compliance difficulties of the EU during the last two MOPs, all EU state parties would do well reminding the EU institutions and their own national ministers that access to justice is not a nice to have but a must have in environmental files. It is high time to address the access to justice issue in the EU once and for all and show tangible results and good will by the next MOP.