

ACCESS TO JUSTICE



LITIGATION RIGHTS

in the European Union on environmental protection

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Preface



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Environmental and climate protection is a complex task for society as a whole, which requires the interaction of various actors. Environmental pollution and the climate crisis do not stop at national borders. European environmental policy and legislation are becoming increasingly important. A saying used to be: »If you have a grandfather, send him to Europe«. But these times, when European Union policy was practically without influence and old men spent their last years of service in the European Parliament, are over. Nowadays, the EU Commission, Parliament and Council have far-reaching competences and powers. Most national environmental legislation is made in Brussels. Roadmaps such as the European Green Deal, presented in 2019, aim to set the course for a transnational, responsible environmental policy and sustainable transformation.

It is crucial to involve citizens and environmental organisations in the design and implementation of EU environmental policy at an early stage. They have a right to have their voices heard and be given serious participation opportunities. This is due to the fact that, in the Danish city of Aarhus on 25 June 1998, the European Union, as a founding member, signed the Aarhus Convention, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Ever since, the Aarhus Convention has set high standards for access to environmental information, transparency and public participation in European and national administrative procedures, as well as access to justice for the European Union and its current 27 Member States.

As the European Union – alongside its Member States – is a signatory Party in its own right to the Convention, by signing and ratifying the Convention it expressed its support for the Convention's objectives and contents at the Union and national level. At the time of signing, the Union proclaimed:



Fully supporting the objectives pursued by the Convention and considering that the European [Union] itself is being actively involved in the protection of the environment through a comprehensive and evolving set of legislation, it was felt important not only to sign up to the Convention at [Union] level but also to cover its own [European] institutions, alongside national public authorities.

Within the institutional and legal context of the [Union] and given also the provisions of the Treaty of Amsterdam [later the Treaties of Nica and Lisbon] with respect to future legislation on transparency, the [Union] also declares that the [Union] institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of [Union] law in the field covered by the Convention.«

In concrete terms, this means that the processes and decisions of the European environmental administration must be made transparent to the public. It means that the public should not only have access to environmental information held by European authorities upon request, but that European authorities must also actively disseminate environmental information. In the course of the broad digitalisation, the requirements for the active provision of environmental information also changed. The participation and judicial access rights of European citizens and environmental associations must not only be developed within the Member States, but also for European procedures.

With this brochure, which is part of the three-part series »The European Union and the Aarhus Convention«, we inform about the content of the Aarhus Convention and its legislative implementation at the Union level. We will show how to get informed at the European level, how to promote the protection of our livelihoods and how to take legal action, in case necessary. Because a Europe that takes responsibility in a globalised world needs the democratic participation of its citizens.

Michael Zschiesche

Dr. Michael Zschiesche
Managing Director, Chairman of the Board and Head of
Department Environmental Law & Participation at UfU

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Twenty years ago, the Aarhus Convention entered into force, bridging the gap between human and environmental rights. Today, as the devastating effects of climate change continue to ravage the world, the Convention’s core purpose – of allowing people to protect their well-being and that of future generations – has never been more critical.»

António Manuel de Oliveira Guterres, Secretary-General of the United Nations

With the Aarhus Convention (AC), the rights to information, participation and legal action, were enshrined in international law for the first time as the right to protect the environment for every person – including future generations.

Since the European Union (EU) also signed the Convention on the 25th June 1998 and approved it on the 17th February 2005, the union of states has been an official and independent Party to the Convention. This means that the provisions of

the Aarhus Convention apply not only to the 27 Member States of the European Union, but also to EU institutions, such as the European Parliament or the Council. The Union implemented the three pillars of the Aarhus Convention in the EU Treaties and with an independent regulation, the so-called Aarhus Regulation, as well as other legal acts.

On the following pages, we will introduce the environmentally relevant areas of activity of the



European Union. We then aim to give you an understanding of the rights of participation in environmental matters which stream from the Aarhus Convention. Furthermore, we present opportunities for citizens and environmental organisations to advocate for environmental, climate and nature protection at the European level. This brochure of the three-part series »**The European Union and the Aarhus Convention**« focuses on the complaint and litigation options available for European environmental protection. All brochures contain further information at the end.

The official title of the Aarhus Convention is: »Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.«

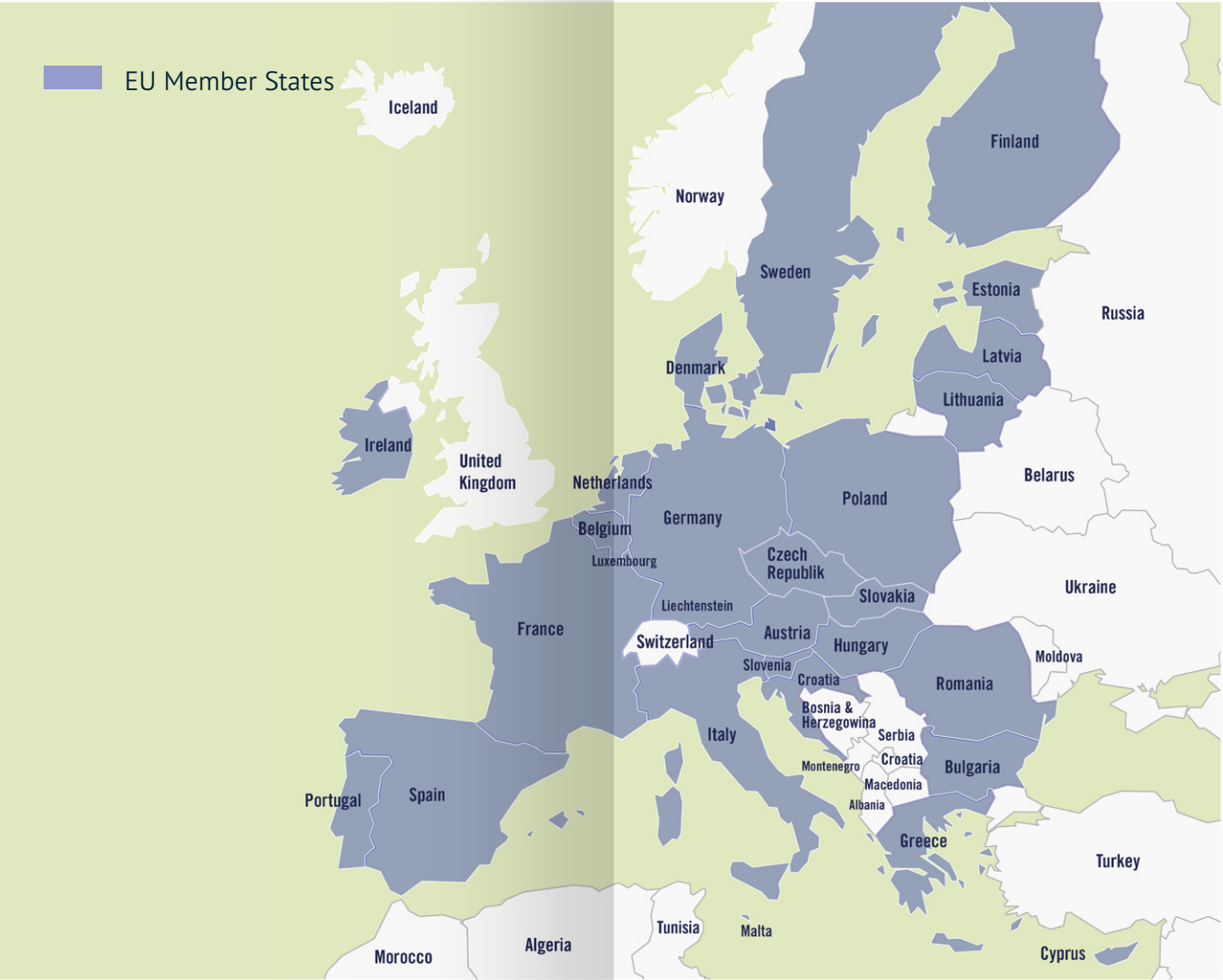
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The European Union

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The European Union is a unique economic and political union consisting of 27 states on the European continent. The basis of the Union is the Treaty on European Union¹, abbreviated as TEU, the Treaty on the Functioning of the European Union², abbreviated as TFEU, (hereinafter »the Treaties«) and the Charter of Fundamental Rights of the European Union³. The Treaties enjoy equal legal status.

They set out the common goals and values of the Member States. The objectives of the union of states are sustainable development, the protection of the environment and the promotion of European values. These include respect for human rights and dignity, freedom, democracy and the rule of law.



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The Union's objectives are to be achieved through various legal acts. The institutions, bodies, offices and agencies of the European Union (hereinafter »EU institutions«) adopt regulations, directives, decisions, recommendations and opinions. The legal acts differ in the extent to which they are legally binding.

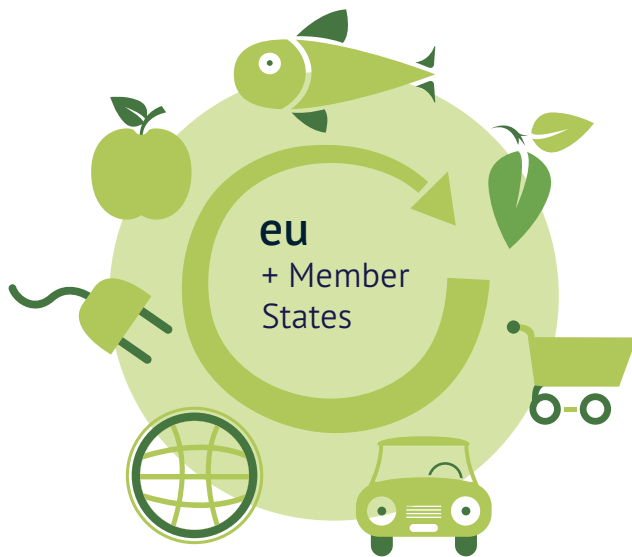
The EU institutions are required to take their decisions as openly and accessibly for the citizens as possible. All citizens have the right to participate in the democratic life of the Union.

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olicy areas of the European Union

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The European Union is responsible for individual policy areas. In the vast majority of environmentally relevant policy areas, the European Union shares competence with its Member States, with the conservation of marine biological resources (within the framework of the Common Fisheries Policy) being an exception. Here, the European Union has **exclusive competence**.



The list of shared environmental competences is long:

- Common agricultural and fisheries policy
- Environmental policy
- Consumer protection
- Transport policy
- Trans-European networks in the areas of transport, telecommunications and energy infrastructure
- Energy policy
- Public health safety concerns

Initially, in the first years of European integration after the Second World War, the economy and prosperity were the main focus of European policy. With the intensification of European co-operation and the increasing ecological crises, environmental protection and the promotion of a sustainable European development came onto the political agenda. The EU Member States agreed that a clean, healthy and diverse environment can only be achieved with a common, cross-border environmental policy.



The European environmental policy now pursues the following objectives:



Preservation and protection of the environment and improvement of its quality

Protection of human health

Prudent and rational utilisation of natural resources

Promoting measures at international level to address regional or global environmental problems and in particular to combat climate change

The list shows that Union policies and their objectives are closely linked. Therefore, environmental protection requirements must be integrated into the definition and implementation of Union policies and activities as a general principle, and in particular, with respect to promoting a sustainable development. Consumer protection requirements must also be taken into account in all European policies and activities. Thus, by ensuring a high level of consumer protection, the European Union shall contribute to the protection of health at the same time.

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Article 1

Objective of the Aarhus Convention

»In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.«

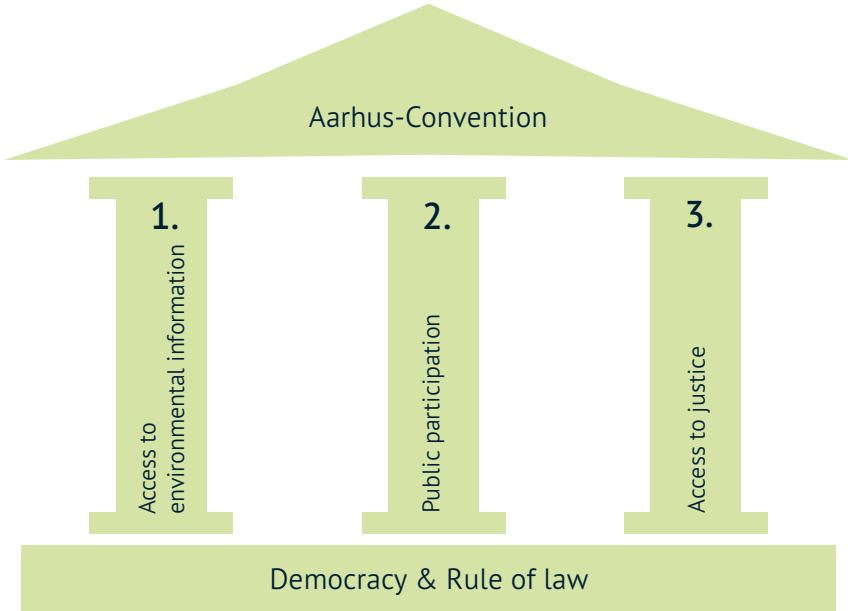
Die Aarhus-Convention

The Aarhus Convention is a unique democracy-promoting environmental agreement that, alongside the Escazú Convention - its counterpart for Latin America and the Caribbean - links environmental protection with human rights. The Convention recognises that we owe future generations to protect the environment. It links the protection of the environment to the accountability of (democratic) governments.

On the one hand, the Convention grants the public certain procedural rights. On the other hand, it imposes obligations on the Parties and their authorities regarding access to information, public participation and access to justice. The Convention also recognises that environmental protection and nature conservation often require groups, initiatives and organisations that are independent of the state. Non-governmental organisations (NGOs) or civil society initiatives act as representa-

tives or trustees for the environment and nature in decision-making and court proceedings.

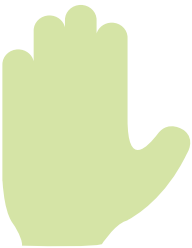
The Convention sets minimum standards for public participation in environmental protection. It contains three areas or »pillars«:





Your rights under the Aarhus Convention

The Aarhus Convention describes the three central environmental procedural rights in articles 4 to 9 and sets minimum standards for them:



1.

Access to environmental information

Information about the environment helps citizens understand how they are being affected. It is fundamental for the participation of citizens and associations. Only by being knowledgeable of the state of the environment as well as government measures and regulations for environmental protection can citizens and environmental associations meaningfully and effectively advocate for environmental protection and nature conservation. On the one hand, individuals or organisations can actively request environmental information from public authorities. On the other hand, public authorities are required to collect and disseminate environmental information. The authorities should make relevant data available, including in electronic form.

2.

Public participation

In order to enable citizens and organisations to integrate environmental, nature conservation and climate change concerns into decision-making processes, the second Aarhus pillar provides for public participation in three different constellations: 1) in concrete decisions on specific environmentally relevant activities, 2) in environment-related plans, programmes and policies, and 3) during the preparation of executive regulations and/or generally applicable, legally binding normative instruments. The goal of participation is helping public authorities to identify environmental impacts and to adequately take them into account in their decisions.

3.

Access to justice

The third pillar relates to wide access to legal proceedings or other review procedures. Citizens and environmental associations should be able to claim their right to environmental information or their right to participate in environmental decision-making processes, if necessary, also in court or before other bodies like an ombuds(wo)man. Citizens and environmental associations can have compliance with environmental law be checked in court.



The European Union as a Party to the Aarhus Convention

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The European Union aims at contributing to global sustainable development and the protection of human rights. It also wants to contribute to the strict observance and development of international law in the world.

To promote these goals, the European Union, among others in the UNECE region, has been responsible for the adoption of the Aarhus Convention as an international environmental agreement. The Aarhus Convention is the first legally binding instrument to promote environmental democracy, putting into practice Principle 10 of the Rio Declaration on Environment and Development.⁴

Principle 10

»Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate **access to information concerning the environment** that is held by public authorities, including information on hazardous materials and activities in their communities, and the **opportunity to participate** in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective **access to judicial and administrative proceedings**, including redress and remedy, shall be provided.«

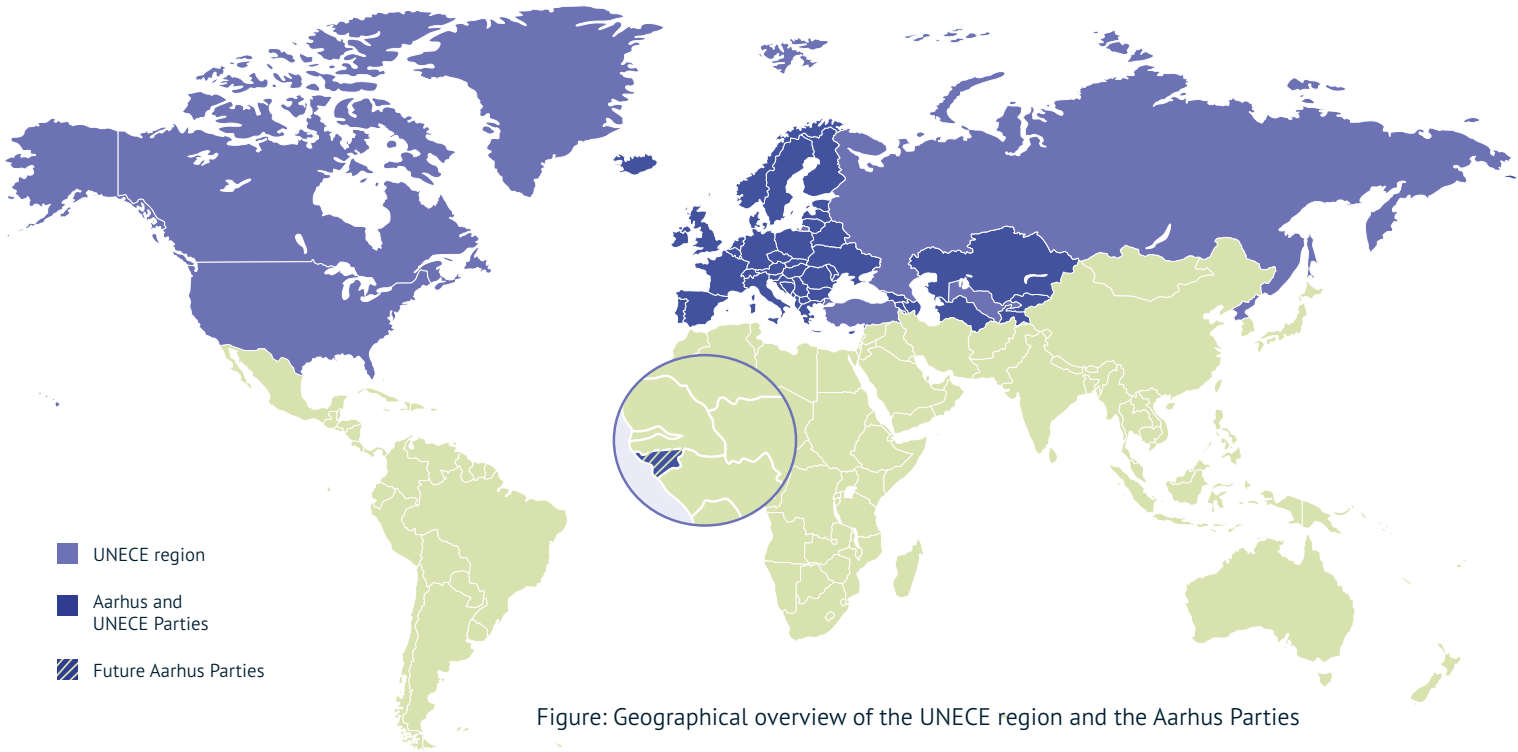


Figure: Geographical overview of the UNECE region and the Aarhus Parties

The Aarhus Convention counts a total of 46 states (including all 27 EU Member States) and the European Union as a supranational union of states as contracting Parties. The Parties have to transpose the Aarhus Convention into union and national law. Soon, the West African country of Guinea-Bissau will also sign the Aarhus Convention.



Your participation rights in the European Union

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As a Party to the Aarhus Convention, the European Union has implemented the three pillars of the Convention in the EU treaties and with secondary legal acts, such as directives and regulations. The integration of Aarhus law is intended to guarantee that you can also make use of your rights to information, participation and action at Union level.



This means that any person or organisation has the right to obtain **environmental information** held by European institutions, bodies or agencies. In the brochure »Information – Access to environmental information of the European Union« on the first pillar of the Aarhus Convention we explain how and when you can obtain the requested environmental information, which costs applicants should expect and in which cases an institution can refuse a request for information.



In order to advocate for European climate, environmental and nature protection, individuals or organisations can also participate in numerous formal and informal **participation procedures and processes** of the European Union (second pillar of the Aarhus Convention). These are described in more detail in the brochure »Participation – Participation rights in the European Union on environmental protection«.



The **review** of democratic decisions is an important part of European public participation in environmental matters. Every person and organisation has the right to have environmental decisions, acts or omissions reviewed by European institutions, bodies or agencies. Judicial review of Union decisions is a task assigned to the European Court of Justice. In addition, there are numerous non-judicial and non-European bodies to which citizens and environmental organisations can complain. This brochure focuses on the third pillar of the Aarhus Convention and explains opportunities for environmental complaints and legal actions: Who can appeal to whom, how, when and at what cost? These questions will be answered on the following pages.

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This short film by UfU explains how the Aarhus Convention grants rights to information, public participation and legal action at EU level (German with English subtitles):



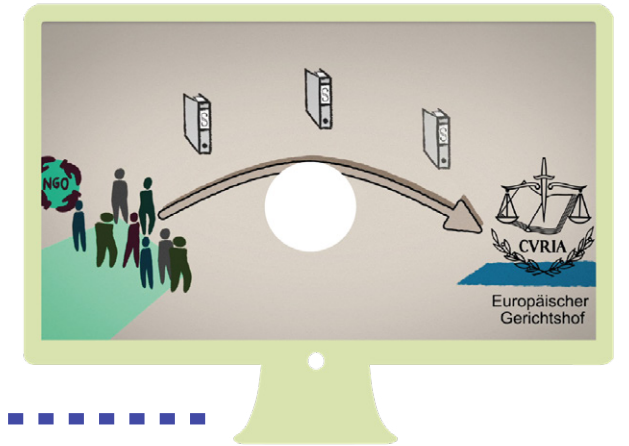
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nvironmental complaints in the European Union

» The European Union needs to ensure access to justice in environmental matters. The European Union is on the way to lift the main obstacles preventing people and NGOs from challenging unlawful Union decisions that affect people's health and the environment. This is crucial to empower people and civil society to enforce environmental laws and ensure EU decisions do not contradict the European Green Deal.«

Sebastian Bechtel, Advocate for environmental democracy at ClientEarth Brussels ⁵

This short film by UfU explains what legal steps you can take to protect the environment in Europe (German with English subtitles):



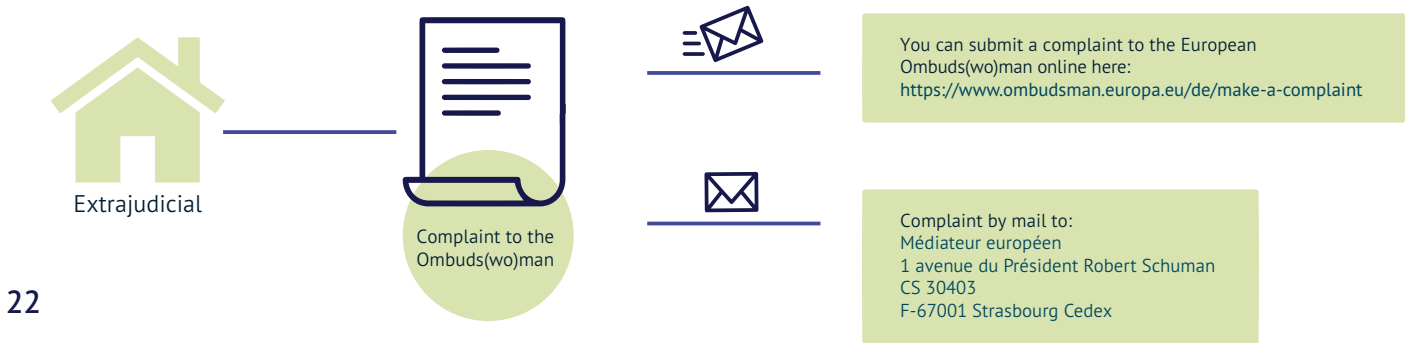
Your right to sue for environmental protection

Citizens and environmental associations have a wide range of options to complain and sue for environmental protection. They can initiate administrative, complaint or judicial proceedings to let decisions, acts or omissions of European institutions be reviewed, which may affect the environment and its components.

There is a distinction between **judicial and non-judicial remedies**. Non-judicial remedies are often internal administrative procedures to review administrative decisions. They are usually less expensive and lead to a review of the contested decision more quickly. Due to the large number of different remedies, it is not always clear for citizens and environmental associations which remedies are available at EU level and how to choose the right one.

What to do in case of the final rejection of an environmental information request?

When an EU institution finally rejects an environmental information request, there are two options for persons who requested the information at EU level:



Here is a list of the most important legal remedies, i.e. the authorised procedural means for environmental protection:

1. Appeals against rejected environmental information requests
2. Remedies for European administrative acts
3. Remedies for lack of or inadequate public participation
4. Direct and indirect actions before national and European courts
5. Public communication before the Aarhus Committee of the United Nations

On the following pages, we will introduce you to the legal remedies and provide valuable tips and advice on what to consider in each case.

Find out more about access to justice in environmental matters in the European Union [here](#).

What is European environmental information and how to request it can be found [here](#) and in the brochure »Information – Access to Environmental Information of the European Union« by UfU.

Further information on the legal basis for active and passive access to information at EU level can be found [here](#).



Emily O'Reilly,
EU Ombudswoman

Complaint to the European Ombuds(wo)man

On the one hand, information seekers can submit a complaint to the **European Ombuds(wo)man**. The Ombuds(wo)man investigates **complaints from citizens and associations** residing or having their registered office in a Member State about maladministration in the activities of the Union institutions, bodies, offices or agencies.

Citizens and associations requesting access to environmental information (see [here](#)) can turn to the European Ombuds(wo)man if the institution has rejected their confirmatory application in whole or in part. You may argue that the reasons given by the institution for the refusal are not applicable or that there is an

overriding public interest in the dissemination of the environmental information. You may also contact the Ombuds(wo)man if the institution does not respond to your request(s) within the specified time limits. The Ombuds(wo)man is committed to processing your complaint as quickly as possible and has established an **expedited procedure** to do so.

For more information on how to submit a complaint to the European Ombuds(wo)man, click [here](#).

Action before the European Court of Justice

Persons or associations who have submitted a request for environmental information to an EU institution, which has finally rejected it in whole or in part, may sue for the **re-release of the environmental information**. They may bring an **action for annulment**. If the institution does not respond to their request within the time limit, an **action for failure to act** can be brought. The Court of First Instance for all individual claims is the European Court of Justice (ECJ).

For **actions for annulment**, the Commission, the Council or the Parliament are often considered (as) defendants. The right of action exists only for those who have filed the request for information, i.e. who are directly and individually affected. The action must be filed within two months of the announcement or notification of the legal act to the plaintiff or of his/her knowledge.

The defendant in an **action for failure to act** can be the Commission, the European Council or the Parliament. Before the action is brought, the EU institution must be requested to take action. Only if the institution has not taken up a position within two months of the request, an action can be brought within the following two months.

A lawyer who is entitled to appear before a court of a Member State or another state Party to the Agreement of the European Economic Area must represent the person seeking information in court. University lecturers who are nationals of Member States, whose legal system permits them to appear as a representative of a party before court, are treated in the same way as lawyers.



Public communication to the Aarhus Committee

In parallel to or following a complaint or lawsuit within the Union legal system, a public communication can also be filed to the Aarhus Convention Compliance Committee (or Aarhus Committee for short) in Geneva.

You can find out more about this in the chapter »International remedy before the Aarhus Committee«.

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What to do in case of potentially environmentally harmful European administrative acts?

Environmental associations and individuals may, under certain conditions, initiate an **internal review of an administrative act** by the EU institution.

What are administrative acts of the European Union?

An **administrative act** is any non-legislative act adopted by a Union institution that has legal and external effects, and contains provisions that may contravene environmental law.

For example, this definition includes the following European decisions with an impact on the environment, health or the use of resources:

- Approval of active substances at EU level that can be used in pesticides, such as glyphosate, which has been classified as »probably carcinogenic« by the International Agency for Research on Cancer (IARC).
- Approval of the list of new fossil fuel energy infrastructure projects
- Decisions to regulate real driving emissions tests for motor vehicles; and
- Decisions setting total allowable catches (TACs) for certain fish stocks in the Northeast Atlantic and Baltic Seas.

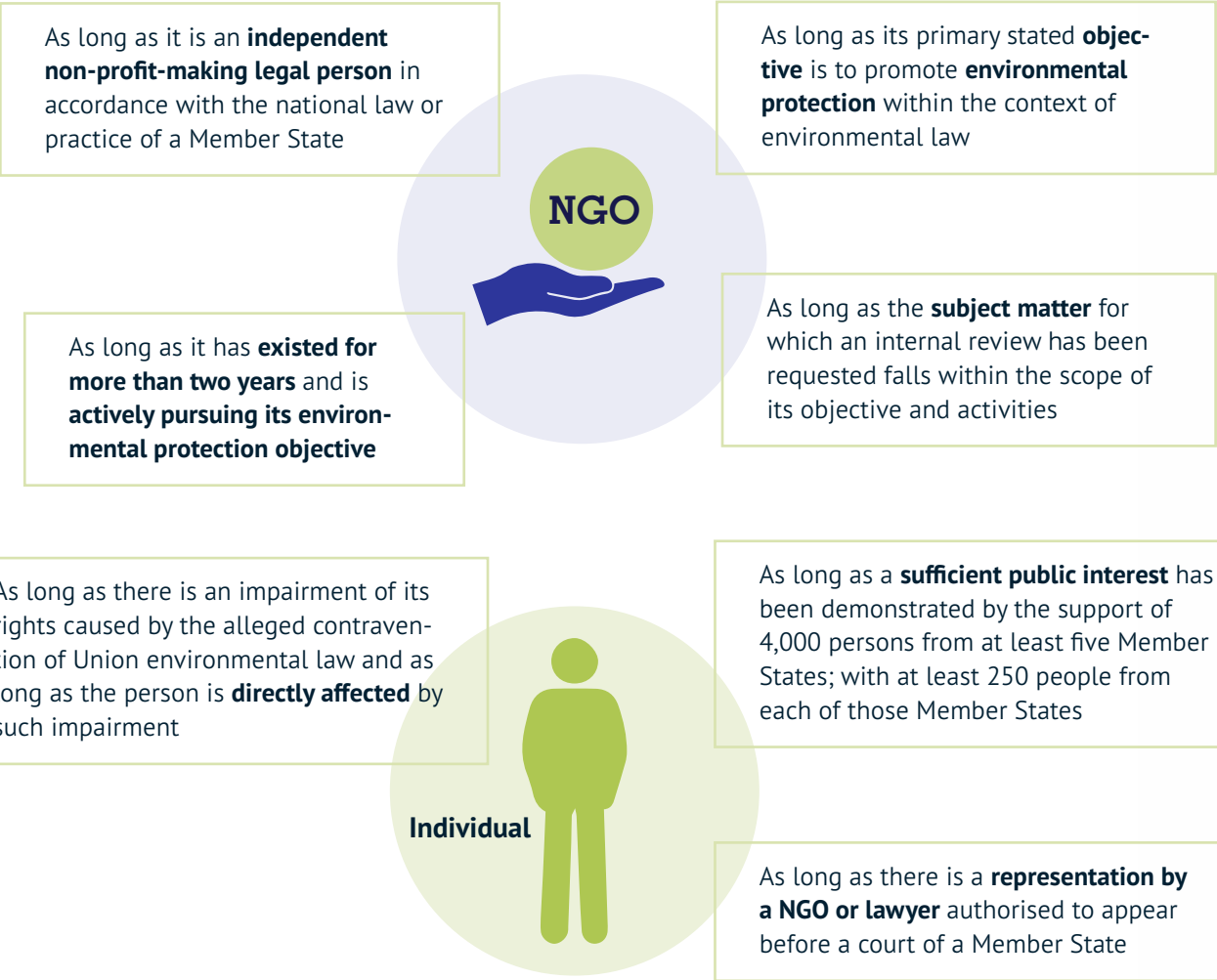
An internal review may also be requested in the case of an alleged **administrative omission** if it contravenes environmental law.

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Who can initiate an internal review?

Non-governmental organisations and individuals can initiate an internal review if they meet certain criteria:



What to consider when requesting an internal review of an administrative act?

Such a request must be submitted **in writing** and **state grounds for the review**. The request must be made within a maximum of **eight weeks** from the date of the adoption, notification or publication of the administrative act, whichever is the latest. The Union institution shall consider the request unless it is manifestly unfounded or lacks substantial grounds. The institution must respond **in writing** and as soon as possible, but no later than **within 16 weeks**. The reply must also contain reasons.

A later response is possible, but the institution must act **within 22 weeks** at the latest. A request for internal review does not incur any immediate costs.

Can NGOs or individuals bring an action before the European Court of Justice?

Yes, according to the latest legislation, NGOs or individuals may, if necessary, bring an action before the European Court of Justice.

Examples and further information on requests for internal review, or RIR, can be found here:
[European Commission, Requests for internal reviews.](#)
Justice and Environment, The RIR: Practical Application of the Request for Internal Review, Brüssel 2011.



Remedies for lack of or inadequate public participation

In principle, all EU citizens have the right to contact all of the EU institutions as well as the advisory bodies of the Union and the right to receive a response. If a citizen wishes to express his/her opinion e.g. after the deadline of a public consultation, he/she can contact the European Commission and it must reply.

If the right to participate in environmental matters has been potentially violated by EU institutions, the following **non-judicial complaint channels** are open:

- Complaint to the European **Ombuds(wo)man** or
- Petition to the **Petitions Committee of the European Parliament**

All citizens or associations have **the right to petition**. They can petition the European Parliament at any time. The more signatories a petition has, the likelier its success.

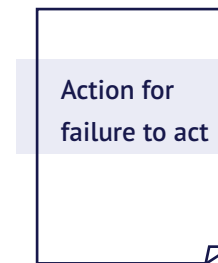
Subjects of a petition can be individual complaints, general concerns or requests to the European Parliament. The petition is only required to be related to the activities of the European Union.

You can submit or support petitions on the **petition portal of the European Parliament**: www.europarl.europa.eu/petitions/en/home



Can an action be brought directly before the Court of Justice of the European Union?

The following legal remedies are available to individual plaintiffs for judicial review of **decisions, acts and omissions of the Union institutions** in environmental matters:



Find out more about access to justice in environmental matters in the European Union [here](#).

Who can sue according to EU treaties?

»Any natural or legal person may [...] institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.«

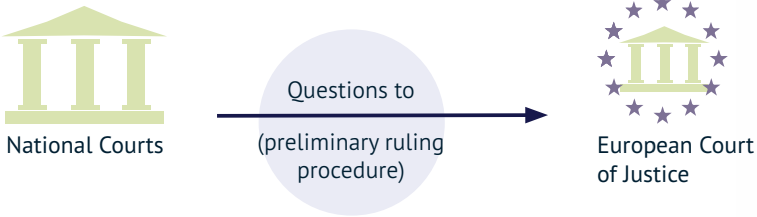


Which other judicial and extrajudicial remedies are available?

Under certain circumstances, complaints by environmental associations or citizens before national courts can be referred to the European Court of Justice (so-called **preliminary ruling procedure**). Complaints by environmental associations or citizens to the European Commission can lead to **infringement procedures** against individual Member States.

Preliminary ruling procedures

An indirect form of action is the preliminary ruling procedure, in which a court of a Member State refers one or more questions on the application of Union law to the European Court of Justice. The **national court** submits the question(s) on the interpretation or validity of a provision of Union law in accordance with its national procedural rules (e.g. in Germany in the form of a court order). If it is a court of last instance (such as the Federal Administrative Court in Germany) the referral to the Court of Justice is mandatory. Individual plaintiffs have no direct influence on whether a national court actually refers the question of application to the European Court of Justice or not.



Infringement procedures

The **European Commission** can initiate infringement procedures against a Member State if it violates European environmental law. **Member States** may also refer a matter to the European Court of Justice if they consider another Member State to be in breach of European environmental law.

Individuals or associations cannot initiate formal infringement procedures. However, they can **complain to the Commission about a Member State's breach of EU law**. This allows the public to bring potential violations of European environmental law to the European Union's attention.



However, it should be noted that the Commission is not generally obliged to initiate infringement procedures., The Commission refers the matter to the European Court of Justice, if necessary (infringement action).



International remedy before the Aarhus Committee

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The Aarhus Convention Compliance Committee (ACCC) is a quasi-judicial convention body. Any citizen or environmental organisation can use the international complaint mechanism before the Aarhus Committee to communicate a Party's violation of the Aarhus Convention. Parties to the Convention include all EU Member States as well as the European Union itself.

The Aarhus Committee prepares findings and recommendations on **public complaints**, which are called »communications from the public«. The Meeting of the Parties, as highest decision-making body, usually adopts the Committee's findings and recommendations.

Information on the completed and ongoing international public communication procedures (nearly 200), including those against the European Union and Germany, can be found [here](#).



Further Information

Independent Institute for Environmental Issues (UfU) e.V.

www.aarhus-konvention.de (German only)

UNECE – Aarhus Secretariat

www.unece.org/env/pp/introduction.html

European Commission

<https://ec.europa.eu/environment/aarhus/>

Federal Ministry for the Environment

www.bmuv.de/en/topics/education-participation/participation/citizen-participation

Deutscher Naturschutzring

www.dnr.de/fileadmin/EU-Koordination/Publikationen_und_Dokumente/bruesseler1x1.pdf (German only)



Notes

1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1621422435977&uri=CELEX%3A12016M%2FTXT> 2 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> 3 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT> 4 www.un.org/depts/german/conf/agenda21/rio.pdf 5 Complainant in Case C-32 (access to justice and Aarhus Regulation) and NGO observer in Case C-128 (European Commission state aid measures).

European environmental policy and legislation play significant roles in global climate and environmental protection. Also the majority of national environmental laws are made in Brussels. It is crucial that citizens and environmental organisations are involved in these ground-breaking processes and decisions as well as their implementation at an early stage. For this, the Aarhus Convention forms the decisive legal foundation. It sets high standards for **access to environmental information, transparency** and **public participation** in European and national administrative procedures. It opens up **access to justice in environmental matters**. Since the European Union – along with all its Member States – is a contracting Party to the Aarhus Convention in its own right, the Aarhus procedural principles as well as information, participation and access to justice rights must be developed not only within Member States, but also for European procedures and processes.

In this brochure, you will learn about **judicial and extrajudicial remedies available for European environmental protection**. Two other UfU brochures deal with your right to access environmental information and to participate for environmental protection at European level.

