

ERA Workshop for Judges :

National Judges and the Aarhus Acquis - focus on Access to Justice

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3RD PILLAR OF THE AARHUS CONVENTION: ACCESS TO JUSTICE

Right to bring a legal challenge (legal standing)



With the support of the "Cooperation with National Judges in the field of Environmental Law" programme of the EU

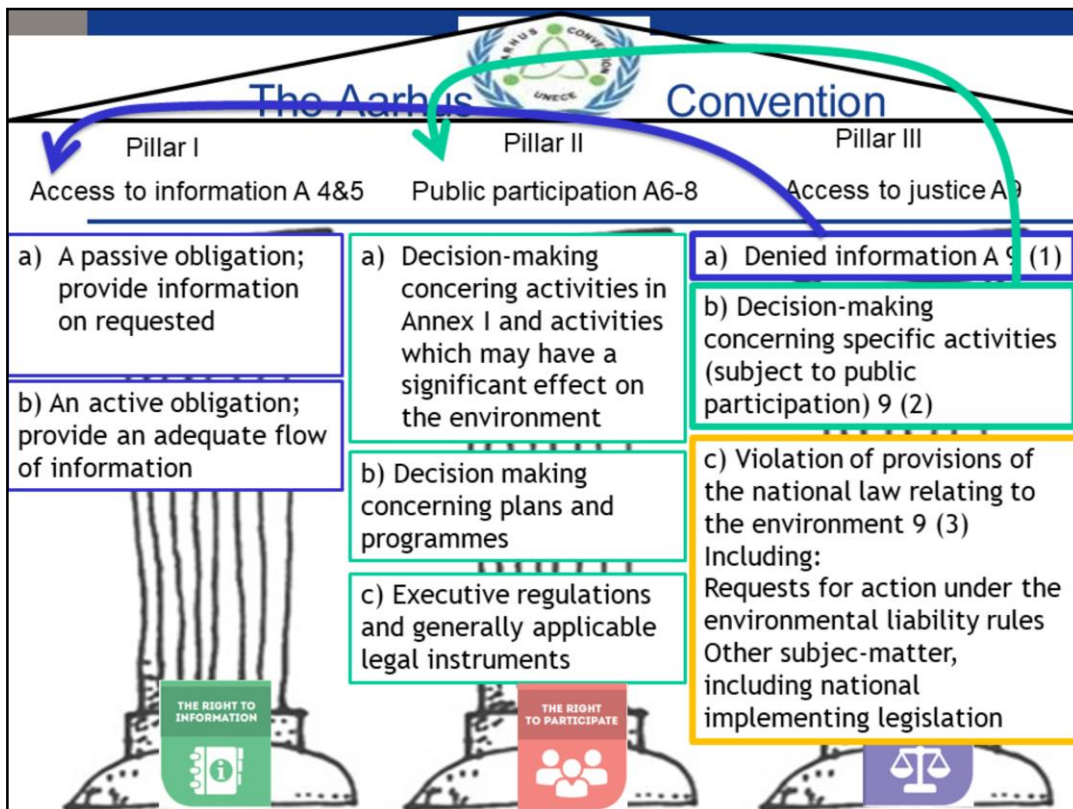
Right to bring a legal challenge (legal standing)

- Legal standing - locus standi
- Categories of legal standing rights
- Explicit provisions for legal standing under the EU substantive environmental law
- *Locus standi* for the environmental NGOs
- CJEU case law



Christina Olsen Lundh
2019

The case law will not be presented separately but integrated in the presentation.



The three pillar structure of the Aarhus convention: an overview.

Access to justice is addressed in article 9 of the Aarhus convention. In its structure, it reflects the three pillars. This third pillar, will we now look deeper into and see how it is reflected in EU law.

Access to justice

- Access to justice is intrinsic to EU Environmental law and draws upon fundamental principles of EU law that are reflected in the provision of the
 - EU Treaties
 - The Aarhus convention
 - Secondary EU law
 - Interpreted in case-law of the CJEU

Convention

Pillar III

8 Access to justice A9

a) Denied information A 9 (1)

b) Decision-making concerning specific activities (subject to public participation) 9 (2)

c) Violation of provisions of the national law relating to the environment 9 (3)
Including:
Requests for action under the environmental liability rules
Other subject-matter, including national implementing legislation





Access to justice is intrinsic to EU Environmental law.

It draws upon fundamental principles of EU law that are reflected in

the provisions of the EU Treaties,

The Aarhus convention,

secondary EU law and in how it is interpreted in the case-law of the CJEU

Access to justice

The CJEU has held that **It is for the national court**, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible is consistent with objectives laid down in the Aarhus convention.

(Case C-240/09 Slovak Brown Bear)

Convention

Pillar III

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a) Denied information A 9 (1)

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Other subject-matter, including national implementing legislation




It is also important to keep in mind that the CJEU has held that it is for the national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible is consistent with objectives laid down in the Aarhus convention.

Case C-240/09

50 It follows that, in so far as concerns a species protected by EU law, and in particular the Habitats Directive, it is for the national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.

Access to justice

National courts...

...are the ordinary courts for implementing EU law within the legal system of the member states.

...have the powers to review decisions that are incompatible with EU law and order compensation for the damage caused.

Convention

Pillar III

8 Access to justice A9

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National courts...

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In its *Opinion 1/09 (Unified Patent Litigation System)* of 8 March 2011, the EUCJ ruled that the ECPC (The European and Community Patents Court) would be illegitimate, because the prospective new Court would remove the prerogative of national courts to decide issues of EU law themselves. National courts are entrusted with the interpretation and application of EU law, and they are not entitled to delegate that function to an international tribunal:

The member States cannot confer the jurisdiction to resolve ... disputes [about patents] on a court created by an international agreement which would deprive those courts of their task, as 'ordinary' courts within the European Union legal order, to implement European Union law and, thereby, of the power provided for in Article 267 TFEU, or, as the case may be, the obligation, to refer questions for a preliminary ruling in the field concerned.

(Opinion 1/09, OJ (2011) C2112, at paras 80, 81, 85.)

Brussels, 21.12.2016 C(2016) 8600 final COMMUNICATION FROM THE COMMISSION EU Law: Better Results through Better Application, p. 4:

"The Member States have the primary responsibility for transposing, applying and implementing EU law correctly. (Article 4(3) TEU, Articles 288(3) and Article 291(1) TFEU). They also have to provide sufficient remedies to ensure effective legal protection in the fields covered by EU law. This means that, where citizens' rights under EU law are affected at national level, the public have to be granted access to rapid and effective national redress mechanisms. These must comply with the principle of effective judicial protection set out in the Treaty (Article 19(1) second subparagraph TEU and Article 47 Charter of Fundamental Rights.). National courts are 'the common courts' for upholding EU law and contribute effectively to enforcing it in individual cases. They have the competence to uphold the actions of individuals seeking protection against national measures that are incompatible with EU law or financial compensation for the damage caused by such measures."

Access to justice:

Legal standing - locus standi

*"...justice is open
to all, like the Ritz
Hotel."*

- limits participation in court
proceedings -



Sir James Charles
Mathew, Irish judge
(10 July 1830 -
9 November 1908)

Legal standing limits participation in court proceedings on formal grounds.



Locus standi is a “gatekeeper” tool.

It determines whether hearings should be held and who should be heard.

But it is only one parameter in the broader concept of “access to justice”.

Legal standing is fundamental.



Individuals o ENGO:s can only be heard by
a judge
if they have
the right to bring a challenge.



EU Environmental law establishes a common framework of obligations for public authorities and rights for the public

Legal standing - locus standi

The entitlement to bring a legal challenge to a court of law or other independent and impartial body in order to protect a right or interest of the claimant regarding the legality of a decision, act or omission of a public authority.

Ensuring the protection of rights and interests

Represents the ways in which public authorities fulfil duties placed on them under EU environmental law



EU Environmental law establishes a common framework of obligations for public authorities and rights for the public.

Having that in mind: Legal standing can be defined as *The entitlement to bring a legal challenge to a court of law or other independent and impartial body in order to protect a right or interest of the claimant regarding the legality of a decision, act or omission of a public authority.* Decisions, acts and omissions represent the ways in which public authorities fulfil — or take a position on — duties placed on them under EU environmental law, for example to ensure that certain installations operate under a permit.

Legal standing is a way to ensure the protection of rights and interests.

EU Environmental law establishes a common framework of obligations for public authorities and rights for the public

Legal standing - locus standi

The entitlement to bring a legal challenge to a court of law or other independent and impartial body in order to protect a right or interest of the claimant regarding the legality of a decision, act or omission of a public authority.



Legal standing is a way to ensure the protection of rights and interests.

Legal standing - locus standi



Legal standing can vary depending on, inter alia:

The subject matter of the contested decision, act or omission.

Whether the claimant is an individual or a recognised environmental NGO.



Basis for Legal standing - locus standi

Subject matter of decisions, acts and omissions **environmental matters:**

1. Requests for **environmental information** and entitlement to receive information
2. Specific activities that are subject to **public participation** requirements
3. **Requests for action** under environmental liability rules
4. Other subject matter, such as national **implementing legislation, general regulatory acts, plans and programmes** and **derogations**.

Access to justice A9

a) Denied information A 9 (1)

b) Decision-making concerning specific activities (subject to public participation) 9 (2)

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Including:
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Other subject-matter, including national implementing legislation

ERA
European Agency for the Environment

European Commission

European Court of Justice

The following categories distinguishes between different situations that over the time have given rise to locus standi in CJEU case law.

- requests for environmental information and entitlement to receive information
- specific activities that are subject to public participation requirements,
- requests for action under environmental liability rules
- other subject matter, such as national implementing legislation, general regulatory acts, plans and programmes and derogations.

As you can see, they reflect article 9 in the Aarhus convention.

Basis for Legal standing - locus standi

Subject matter of decisions, acts and omissions **environmental matters**:

1. Requests for **environmental information** and entitlement to receive information
2. Specific activities that are subject to **public participation** requirements
3. **Requests for action** under environmental liability rules

Explicit rights for locus standi can be found in EU environmental legislation

Note:

Case C-243/15 *Lesoochrannárske Zoskupenie VLK II*- the CJEU establishes legal standing requirements for cases beyond EU secondary law on the basis of the Charter article 47 in conjunction with article 9 (2) of the Aarhus convention

4. Other subject matter, such as national **implementing legislation, general regulatory acts, plans and programmes** and **derogations**.

The extent also varies with the person seeking to challenge something; if it is an **individual**, an **ENGO** or **other entity**.



For the first three categories explicit legal standing rights can be found in secondary EU environmental legislation.

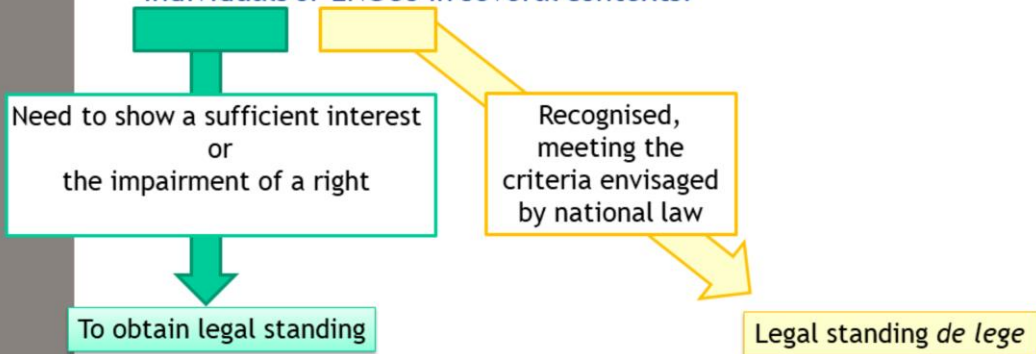
Here, one should also note the second slovak Brown Bear- case, where the CJEU establishes legal standing requirements for cases beyond EU secondary law on the basis of Article 47 of the Charter of Fundamental rights in conjunction with article 9(2) of the Aarhus Convention for decisions, acts and omissions for which the public participation provision of Article 6 in the Aarhus Convention applies.

The extent of legal standing also varies according to whether the person seeking to challenge is an individual, environmental NGO or other entity.

Legal standing - locus standi



- Some EU secondary law **explicitly** provide for legal standing.
- However, the CJEU has recognised legal standing for individuals or NGOs in several contexts.



Generally (but not always), individuals need to show sufficient interest or the impairment of a right to obtain legal standing, recognised NGO:s meeting the criteria envisaged by national law have legal standing *de lege*. I will come back to what these things mean.

Basis for Legal standing - locus standi

Subject matter of decisions, acts and omissions environmental matters:

- 1. Requests for environmental information and entitlement to receive information**
- 2. Specific activities that are subject to public participation requirements**
- 3. Requests for action under environmental liability rules**
- 4. Other subject matter, such as national implementing legislation, general regulatory acts, plans and programmes and derogations.**

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Now, we will look into each one the legal basis, starting with requests for environmental information.

1. Requests for environmental information and entitlement to receive information
Article III
Access to justice A9
a) Denied information A 9 (1)
b) Decision-making concerning specific activities (subject to public participation) 9 (2)
c) Violation of provisions of the national law relating to the environment 9 (3) Including: Requests for action under the environmental liability rules Other subject-matter, including national implementing legislation

Article 9.1

Any person who considers that his or her **request for environmental information has been ignored**, wrongfully refused or otherwise not dealt with (in accordance with article 4) shall have access **to a review procedure** before a **court of law** or **another independent and impartial body established by law**.

Legal standing right

Request for **environmental information** ignored/refused/not dealt with

What?

Access to **review procedure** before a **court of law** or **another independent and impartial body established by law**

Where?

Who?

Any person

In article 9.1 we find a right to legal standing when a request for environmental information in accordance with article 4 has been ignored.

Thus; the right to a review based on the requirements of Article 9(1) of the Aarhus Convention is intended to protect the right to make an information request.

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC



EU environmental law confers rights on natural and legal persons to request environmental information!



Requirements of Article 9 (1) of the Aarhus Convention



EU environmental law confers rights on natural and legal persons to request environmental information.

These rights, to a review process, when having requested environmental information are first of all found in the Access to Environmental Information Directive .

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC, **article 6**

Legal
standing
right

What?

Where?

Who?



1. Member States shall ensure that **any applicant** who considers that his **request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with** (...) has access to **a procedure in which the acts/omissions of the public authority can be reconsidered (...) or reviewed administratively** by **an independent and impartial body established by law**. Any such procedure shall be expeditious and either free of charge or inexpensive.

The Access to Environmental Information Directive, 2003/4/EC, provides explicitly in its Article 6 for a judicial review procedure to examine acts or omissions by public authorities in relation to requests for environmental information falling within the directive's scope.

The member states shall ensure that **any applicant** who considers that his....

....request for information has been ignored, wrongfully refused, inadequately answered or otherwise not dealt with...

...has access to a procedure in which the acts/omissions of the public authority can be reconsidered or reviewed administratively

... by an independent and impartial body established by law.

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC, **article 6**

Seveso III directive, Article 23

Legal
standing
right

What?

Who?

Member States shall ensure that:

(a) **any applicant requesting information** pursuant to points (b) or (c) of Article 14(2) or Article 22(1) of this Directive **is able to seek a review in accordance with Article 6 of Directive 2003/4/EC** (The Access to Environmental Information Directive), of **the acts or omissions of a competent authority in relation to such a request;**



There are also other directives with this expressed right to a review, for example the Seveso III directive, in which article 23 refers to article 6 in the Access to environmental information directive....

Article 23 states that the member states shall ensure that.....

...any applicant requesting information pursuant to certain articles in this directive....

... is able to seek a review in accordance with article 6 of the access to environmental information directive...

... of the acts or omissions of a competent authority in relation to such a request.

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC, **article 6**



There is also a right to receive (not only request) environmental information!

The rights of applicants for environmental information include the right to have the competent public authority correctly fulfil conditions related to the supply of information

Case C-71/14 *East Sussex* p 56



But it also confers rights to **receive** environmental information. In EU legislation these rights are found in the Access to Environmental Information as well as in several pieces of sectoral environmental information.

In the case *East Sussex* the CJEU made clear that....

the rights of applicants for environmental information **include** the right to have the competent public authority correctly fulfil conditions related to the **supply** of information

C-71/14

56 It should be recalled in this connection that the EU legislature, in adopting Directive 2003/4, intended to ensure the compatibility of EU law with the Aarhus Convention by providing for a general scheme to ensure that any natural or legal person in a Member State has a right of access to environmental information held by or on behalf of public authorities, without that person having to state an interest (judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 36 and the case-law cited). The existence of effective administrative and judicial review of the making of a charge for supplying such information is intrinsically linked to the realisation of that objective. Furthermore, that review must necessarily relate to whether the public authority has complied with the two conditions in Article 5(2) of that directive, identified in paragraph 29 above.

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC



There is also a right to receive (not only request) environmental information!



Any natural or legal person in a Member State **has a right of access to environmental information** held by or on behalf of public authorities,



without that person having to state an interest.



The existence of effective **administrative and judicial review of the charge** for supplying such information **is intrinsically linked to the realisation of the directive's objective** (to ensure compatibility EU law – Aarhus Convention).



The review must necessarily relate to **whether the public authority has complied with the two conditions in Article 5(2) of that directive.**



Case C-71/14 *East Sussex*, paragraph 56.

In East Sussex the court stated that :

Any natural or legal person in a Member State **has a right of access to environmental information** held by or on behalf of public authorities, **without that person having to state an interest.**

The existence of effective **administrative and judicial review of the charge** for supplying such information **is intrinsically linked to the realisation of the directive's objective** (to ensure compatibility EU law – Aarhus Convention). **The review must necessarily relate to whether the public authority has complied with the two conditions in Article 5(2) of that directive.**

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1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC



There is also a right to receive (not only request) environmental information!

Conditions related to the supply of information

Article 5
Charges

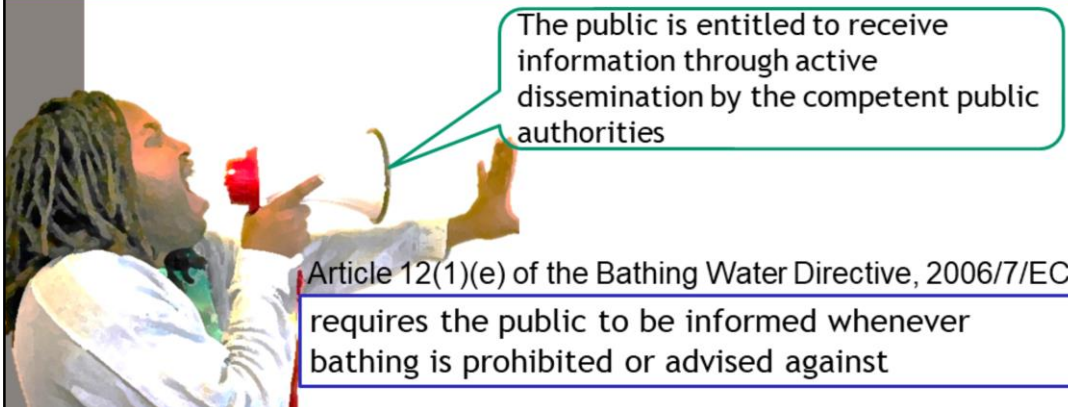
1. **Access to any public registers or lists** established and maintained as mentioned in Article 3(5) and examination in situ of the information requested **shall be free of charge.**
2. Public authorities **may make a charge for supplying** any environmental information but such charge **shall not exceed a reasonable amount.**
3. Where charges are made, public authorities shall publish and make available to applicants a **schedule of such charges** as well as information on the **circumstances in which a charge may be levied or waived.**

In article 5 we find conditions related to the supply of information:

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC, **article 7**

The INSPIRE Directive (establishing an Infrastructure for Spatial Information in the EC), 2007/2/EC, article 11



The public is also entitled to receive environmental information through active dissemination by the competent public authorities (See for example Article 7 of the Access to Environmental Information Directive, 2003/4/EC, and Article 11 of the INSPIRE Directive, 2007/2/EC.). It is important that public authorities fulfil this obligations since it may, inter alia, be important for safeguarding the right to have one's health protected.

Article 7

Dissemination of environmental information

1. Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology, where available.
The information made available by means of computer telecommunication and/or electronic technology need not include information collected before the entry into force of this Directive unless it is already available in electronic form.
Member States shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunication networks.
2. The information to be made available and disseminated shall be updated as appropriate and shall include at least:
 - (a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
 - (b) policies, plans and programmes relating to the environment;
 - (c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities;
 - (d) the reports on the state of the environment referred to in paragraph 3;
 - (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
 - (f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in the framework of Article 3;
 - (g) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2(1)(a) or a reference to the place where the information can be requested or found in the framework of Article 3.
3. Without prejudice to any specific reporting obligations laid down by Community legislation, Member States shall take the necessary measures to ensure that national, and, where appropriate, regional or local reports on the state of the environment are published at regular intervals not exceeding four years; such reports shall include information on the quality of, and pressures on, the environment.
4. Without prejudice to any specific obligation laid down by Community legislation, Member States shall take the necessary measures to ensure that, in the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information held by or for public authorities which could enable the public likely to be affected to take measures to prevent or mitigate harm arising from the threat is disseminated, immediately and without delay.
5. The exceptions in Article 4(1) and (2) may apply in relation to the duties imposed by this Article.
6. Member States may satisfy the requirements of this Article by creating links to Internet sites where the information can be found.

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 - (c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities;
 - (d) the reports on the state of the environment referred to in paragraph 3;
 - (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
 - (f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in the framework of Article 3;
 - (g) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2(1)(a) or a reference to the place where the information can be requested or found in the framework of Article 3.
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6. Member States may satisfy the requirements of this Article by creating links to Internet sites where the information can be found.

For example;

Article 12(1)(e) of the Bathing Water Directive, 2006/7/EC requires the public to be informed whenever bathing is prohibited or advised against; and

1. Requests for **environmental information** and **entitlement to receive information**

The Access to Environmental Information Directive, 2003/4/EC, **article 7**

The INSPIRE Directive (establishing an Infrastructure for Spatial Information in the EC), 2007/2/EC, article 11



The public is entitled to receive information through active dissemination by the competent public authorities

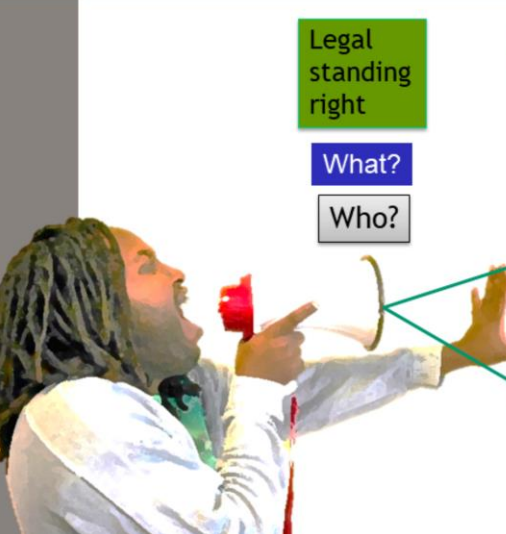
Article 8(3) of the Drinking Water Directive, 98/83/EEC

requires consumers to be promptly informed of health-endangering drinking water contamination

Article 8(3) of the Drinking Water Directive, 98/83/EEC, requires consumers to be promptly informed of health-endangering drinking water contamination.).

1. Requests for environmental information and entitlement to receive information

The Access to Environmental Information Directive, 2003/4/EC, **article 6**



Legal standing right

What?

Who?

Any natural or legal person submitting an information request enjoys legal standing to **challenge a decision, act or omission of the public authority responsible for dealing with that request. Rights to receive information through active dissemination may also entitle individuals and associations to bring legal challenges.**

Thus, we have to extend the legal standing right a little bit more than the wording in article 6 of the Access to Environmental Information Directive, 2003/4/EC, in such a way that it may also include rights to receive information through active dissemination.

Basis for Legal standing - locus standi

Subject matter of decisions, acts and omissions **environmental matters:**

1. Requests for **environmental information** and entitlement to receive information
2. **Specific activities that are subject to public participation requirements**
3. **Requests for action** under environmental liability rules
4. Other subject matter, such as national **implementing legislation, general regulatory acts, plans and programmes** and **derogations**.

Access to justice A9

a) Denied information A 9 (1)

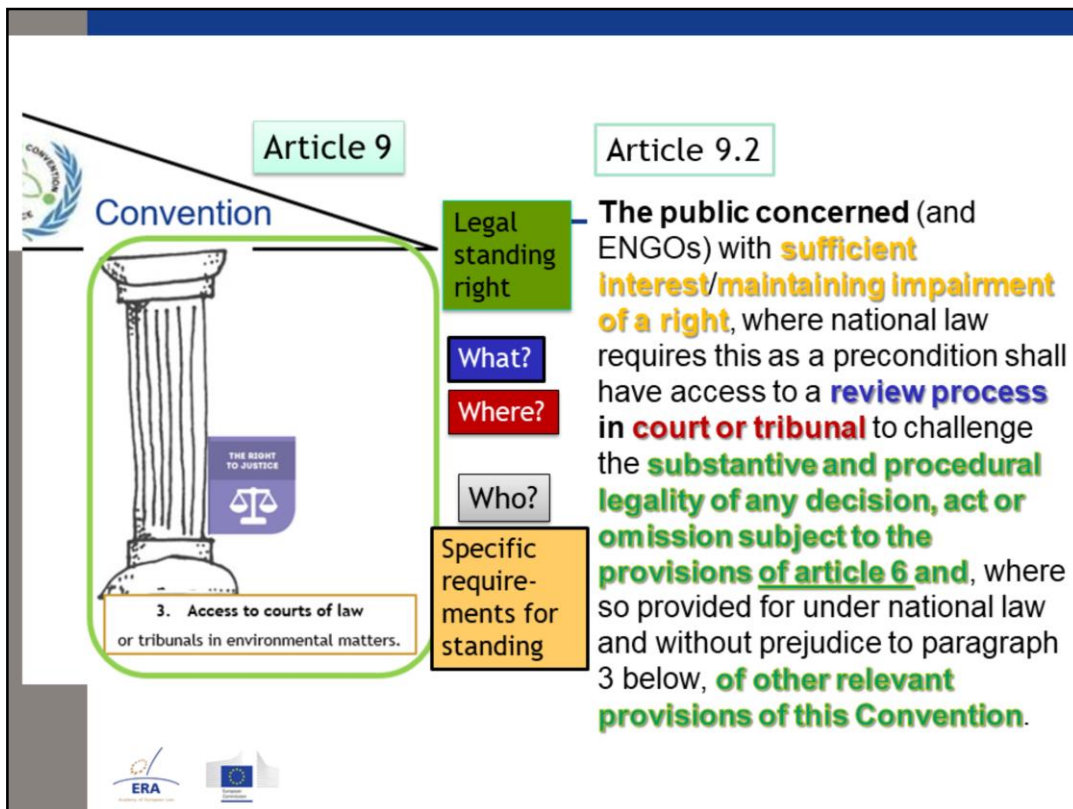
b) Decision-making concerning specific activities (subject to public participation) 9 (2)

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Including:
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Other subject-matter, including national implementing legislation

ERA
European Environment Agency

European Union
European Commission

The we have the second basis – based on article 9 (2). So, let us start with article 9 (2). Decision-making concerning specific activities subject to public participation.



... members of the public concerned...

...but not all members of the public concerned – members of the public concerned...

(a) Having a sufficient interest

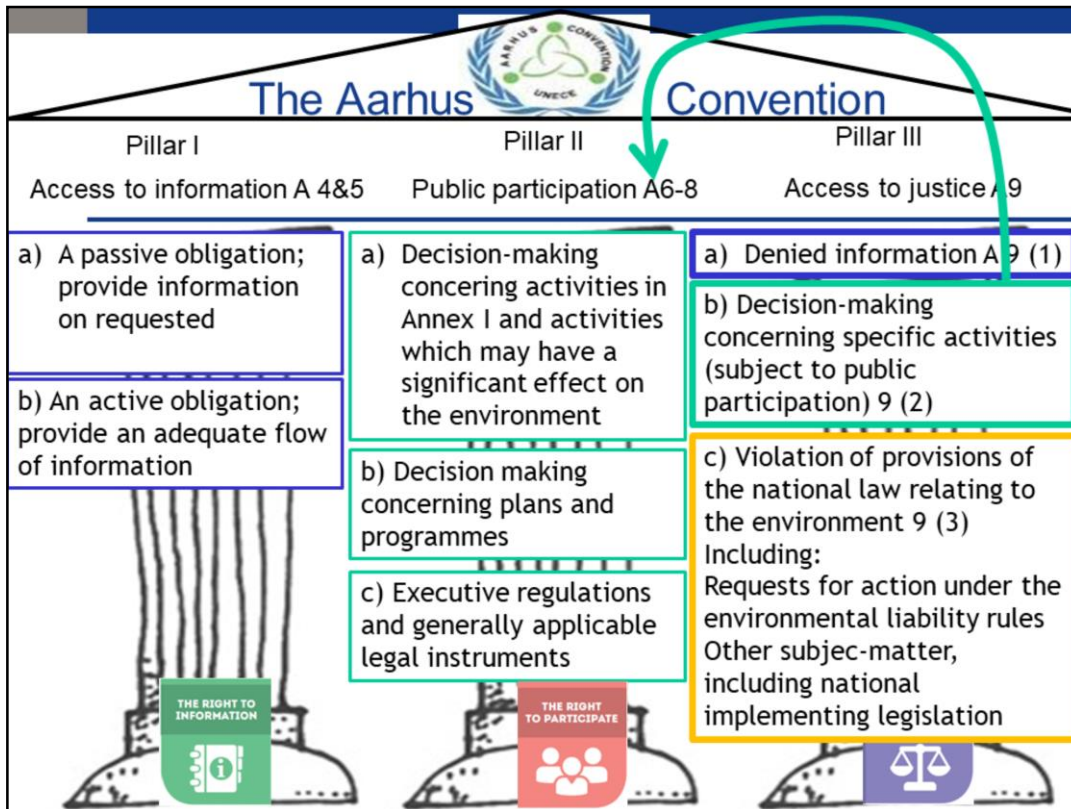
or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition...

have access to a review procedure before a court of law and/or another independent and impartial body established by law....

... to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

Concerning the legal standing right, article 9.2 thus refers to article 6.

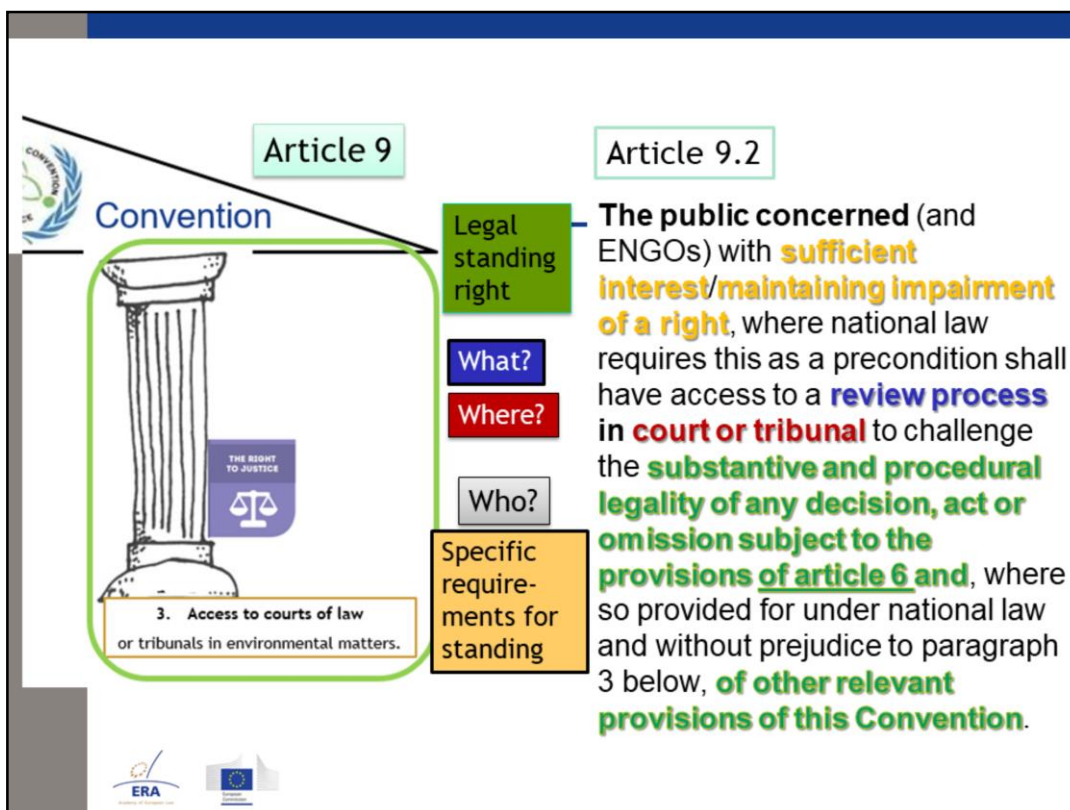


Just for illustration!

	Article 9	Article 9.2
	what constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention To this end, the interest of any non-governmental organization meeting the requirements shall be deemed sufficient having a sufficient interest and that such organizations shall also be deemed to have rights capable of being impaired.	The public concerned (and ENGOs) with sufficient interest/maintaining impairment of a right, where national law requires this as a precondition shall have access to a review process in court or tribunal to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

Then the article continues and explains that what constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention.

It also states that to this end, the interest of any non-governmental organization meeting the requirements shall be deemed sufficient having a sufficient interest and that such organizations shall also be deemed to have rights capable of being impaired.



It is **the public concerned** that benefits both from the right to public participation provision in Article 6(2) and from the access to justice provisions of Article 9(2).

Public concerned in the Aarhus Convention



"Public concerned" benefits from the public participation provisions of article 6 (2) ---→ also in article 9 (2) and corresponding EU legislation



Also in the corresponding EU secondary legislation it is the '**public concerned**' who benefits from the legal standing provision.



Public concerned in the Aarhus Convention

Public concerned:

Article 2(5)

‘the public affected or likely to be affected by, or having an interest in, the environmental decision-making’

The Public:

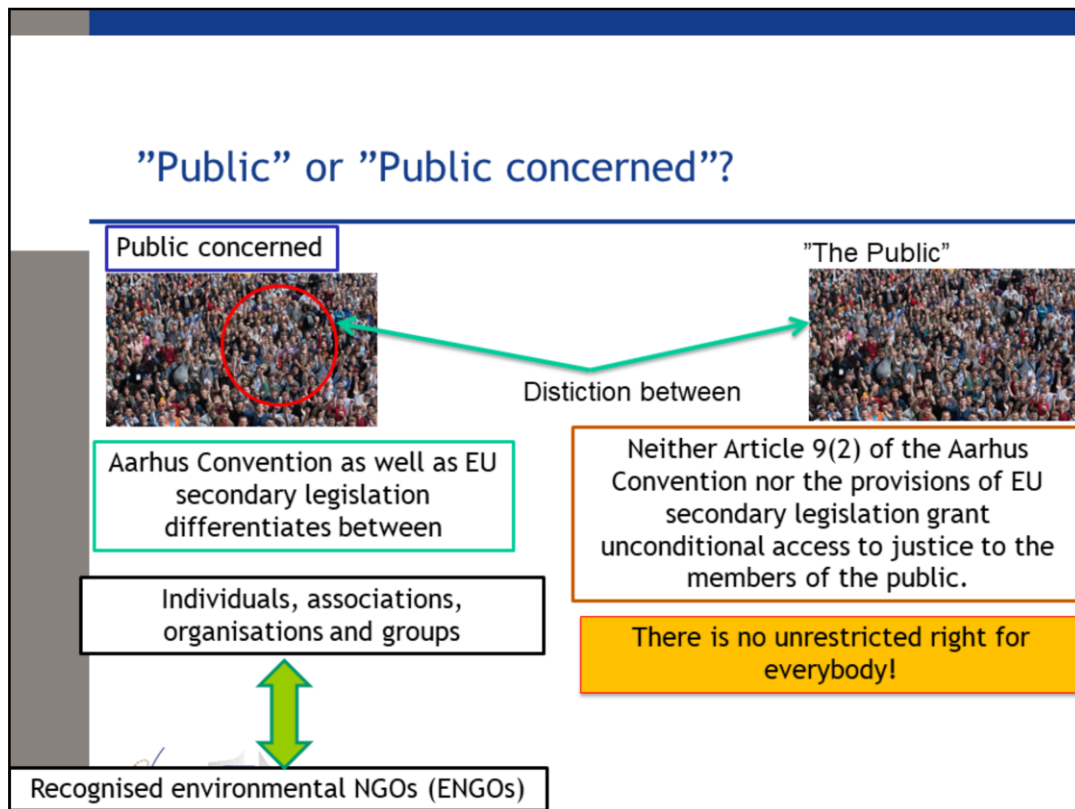
Article 2(4)

‘one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups’



“The public concerned” is defined in article 2 (5) of the convention as *‘the public affected or likely to be affected by, or having an interest in, the environmental decision-making’* .

‘The public’ is defined in article 2 (4) as *‘one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups’*.



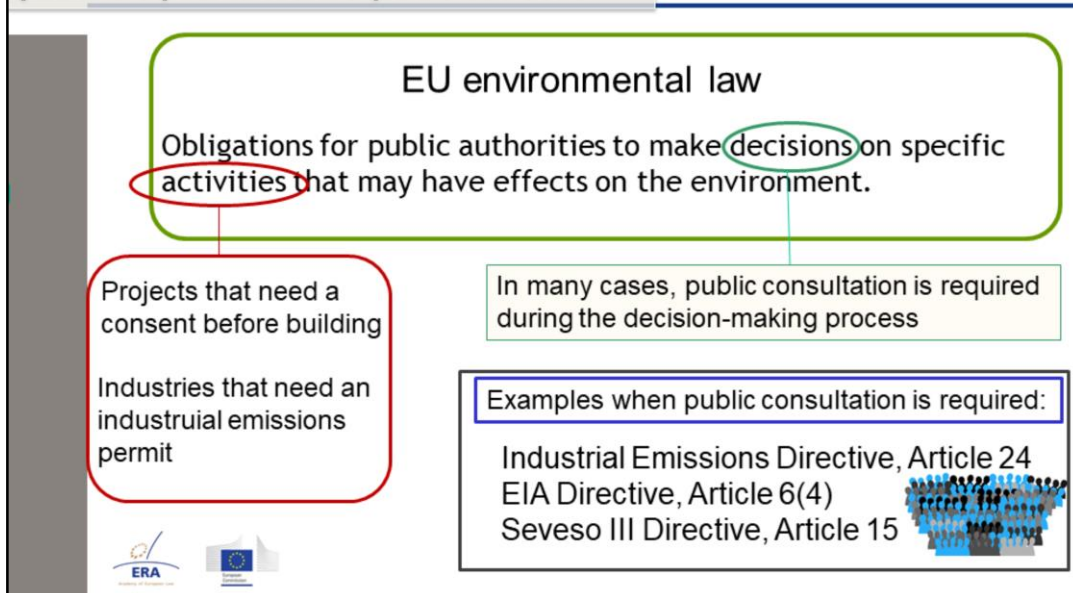
Note the distinction!

Neither Article 9(2) of the Aarhus Convention nor the provisions of EU secondary legislation grant unconditional access to justice to the members of the public.

As mentioned before, both the Aarhus Convention and the EU secondary legislation derived from it, differentiates in legal standing rights between...

Individuals, associations, organisations and groups and Recognised environmental NGOs.

2. Specific activities that are subject to public participation requirements



Now, let's turn to the EU environmental legislation.

It contains a significant number of obligations that require public authorities to make decisions on specific activities that may have effects on the environment.

For example, a proposed motorway will require a consent decision by a public authority before building can start. Industries requires a decision on an industrial emissions permit before it can commence operating.

In many cases EU secondary environmental legislation requires public consultation during the decision-making process

Examples are Article 24 of the Industrial Emissions Directive, (2010/75/EU), Article 6(4) of the Environmental Impact Assessment Directive, 2011/92/EU, and Article 15 of the Seveso III Directive 2012/18/EU.

(There is a vaguer public consultation requirement in Article 6(3) of the Habitats Directive, 92/43/EEC, which, however, has to be read in conjunction with Article 6(1)(b) of the Aarhus Convention, see Case C-243/15 *LZ II*, paragraph 45.).)

Examples when public consultation is required: IED, article 24

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), Article 24

Who?

What?

When?

1. Member States shall ensure that **the public concerned** are given **early and effective opportunities to participate** in the following procedures:
 - (a) **the granting of a permit** for new installations;
 - (b) **the granting of a permit** for any substantial change;
 - (...)



The public participation provision in the IED, requires that the public concerned are given early and effective opportunities to participate in the procedures for the granting of a permit for new installations and the granting of a permit for an substantial change.

Examples when public consultation is required: EIA Directive, Article 6 (4)

DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, Article 6(4)

Who?

What?

When?

The public concerned shall be given **early and effective opportunities to participate** in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities **before the decision on the request for development consent** is taken.



The public participation provision in the EIA directive says, in short, that the public concerned shall be given early and effective opportunities to participate... before the decision in the request for development consent is taken...

Examples when public consultation is required: Seveso III Directive, Article 15

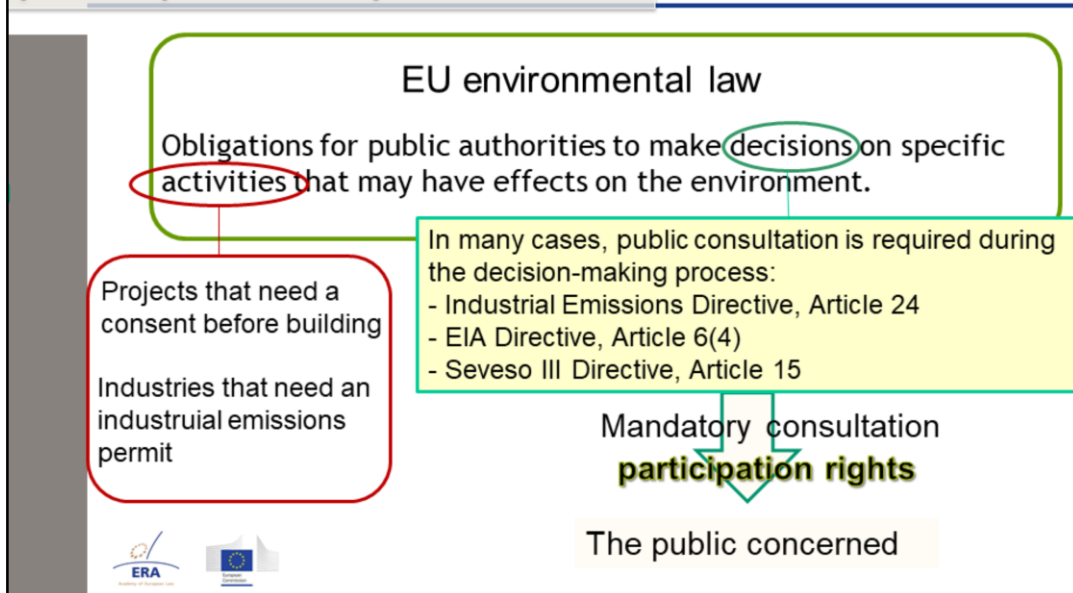
DIRECTIVE 2012/18/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, Article 15

- Public consultation and participation in decision-making**
- Who?** 1. Member States shall ensure that **the public concerned** is given
- What?** an **early opportunity to give its opinion on specific individual projects** relating to: (...)
- When?** 4. Member States shall ensure that **the public concerned** is entitled to **express comments and opinions to the competent authority before a decision is taken on a specific individual project as referred to in paragraph 1**, and that the results of the consultations held pursuant to paragraph 1 are duly taken into account in the taking of a decision.



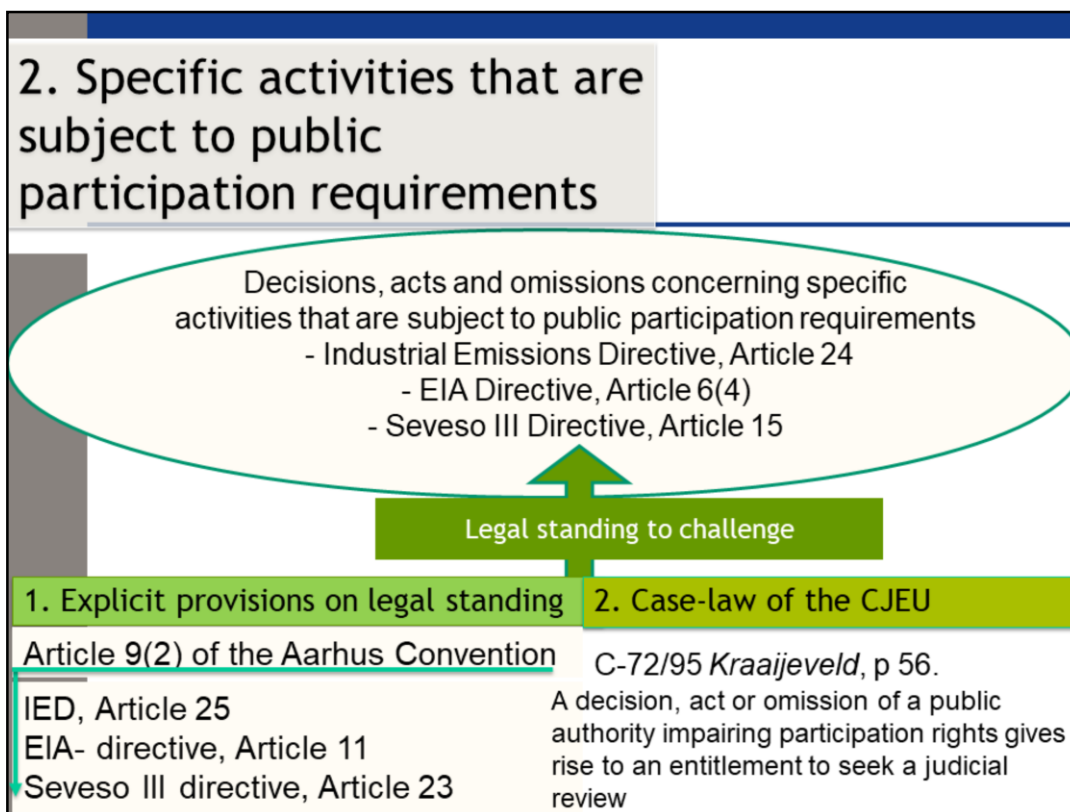
And the Seveso III directive prescribes on public participation that the public concerned must be given an early opportunity to give it opinion in specific individual projects and to express comments and opinions to the competent authority before a decision is taken.

2. Specific activities that are subject to public participation requirements



In these three directives we find rules on mandatory consultation.

In other words; mandatory consultation confers **participation rights** on the public concerned.



Legal standing to challenge decisions, acts and omissions concerning specific activities that are subject to public participation requirements can be based on both express provisions on legal standing and the case law of the CJEU.

I will start with case law – or rather: one case.

Namely the *Kraaijeveld* –case which was delivered in 1996 and in which the CJEU confirmed that a decision, act or omission of a public authority impairing participation rights gives rise to an entitlement to seek a judicial review.

(Case C-72/95 *Kraaijeveld*, paragraph 56.)

Then, based on wording of article 9 (2) in the Aarhus directive, we have provisions in those three directive we just looked into, protecting legal standing on basis of public participation.

Industrial Emissions Directive, Article 25



Contain provisions based on the wording of Article 9(2):

IED, Article 25
EIA-directive, Article 11
Seveso III Directive, Article 23

Legal standing right

What?

Where?

Who?

Specific requirements for standing

1. Member States shall ensure that, in accordance with the relevant national legal system, **members of the public concerned** have **access to a review procedure** before a **court of law or another independent and impartial body established by law** to challenge the **substantive or procedural legality of decisions, acts or omissions subject to Article 24** when **one of the following conditions** is met:

Public consultation

(a) they have a **sufficient interest**;

(b) they **maintain the impairment of a right**, where administrative procedural law of a Member State requires

Article 25 of the IED states that the member states shall ensure that

...members of the public concerned....

...shall have access to a review procedure before a court of law or another independent and impartial body established by law..

....to challenge the substantive or procedural legality of decisions, acts or omissions subject to article 24.... Which is about public consultation.

And the members of the public concerned needs to meet at least one of the conditions to have standing:

- a) They must have a sufficient interest or
- b) They must maintain the impairment of a right where the national law requires this as a precondition.

EIA Directive, Article 11

The EIA process cycle



Contain provisions based on the wording of Article 9(2):

IED, Article 25
EIA-directive, Article 11
Seveso III Directive, Article 23

Legal standing right

What?

Where?

Who?

Specific requirements for standing

1. Member States shall ensure that, in accordance with the relevant national legal system, **members of the public concerned:**
 - (a) having a **sufficient interest**, or alternatively;
 - (b) **maintaining the impairment of a right**, where administrative procedural law of a Member State requires this as a precondition; have **access to a review procedure** before **a court of law or another independent and impartial body established by law** to challenge the **substantive or procedural legality of decisions, acts or omissions subject to the public participation** provisions of this Directive. (For example, article 6)

Article 11 in the EIA directive is very similar.

Seveso III directive, Article 23



Contain provisions based on the wording of Article 9(2):

IED, Article 25
EIA-directive, Article 11
Seveso III Directive, Article 23

Legal standing right

What?

Where?

Who?

Specific requirements for standing

Member States shall ensure that:

(a) (...)

(b) in their respective national legal system, **members of the public concerned** have access **to the review procedures set up in Article 11** of Directive 2011/92/EU (EIA-directive) for **cases subject to Article 15(1)** of this Directive.

Public consultation and participation in decision-making

1. Member States shall ensure that the public concerned is given an early opportunity to give its



ERA
European Railway Agency



European Union

The we have the Seveso III directive,



The wording is very similar in the three directives.

Article 9 (2) of the Aarhus Convention refers to situations in which the public participation provisions of Article 6 of the Aarhus Convention apply.

But, this secondary legislation which we just looked closer at, does not cover all decision-making processes covered by Article 6 — and therefore not all of Article 9(2).

Since Article 9(2) refers to situations in which the public participation provisions of Article 6 of the Aarhus Convention apply, Member States are obliged to have in place a judicial review regime whenever **Article 6 of the Convention** foresees an obligation concerning public participation.

2. Specific activities that are subject to public participation requirements

Decisions, acts and omissions concerning specific activities that are subject to public participation requirements

Legal standing to challenge

1. Explicit provisions on legal standing

Article 9(2) of the Aarhus Convention
IED, Article 25
EIA- directive, Article 11
Seveso III directive, Article 23

2. Case-law of the CJEU

C-72/95 Kraaijeveld, p 56:
A decision, act or omission of a public authority impairing participation rights gives rise to an entitlement to seek a judicial review.

Specific
requirements
for standing

Sufficient interest or impairment of a right

How to interpret and apply

"sufficient interest" or "impairment of a right"

?

*In the light of the obligation to grant a wide
access to justice in environmental matters*

!

Rights which may be impaired:

- **procedural rights** of the individual stemming from EU environmental law (e.g. public participation rights)
- **substantive rights** conferred on the individual (e.g. protection of human health, property rights).

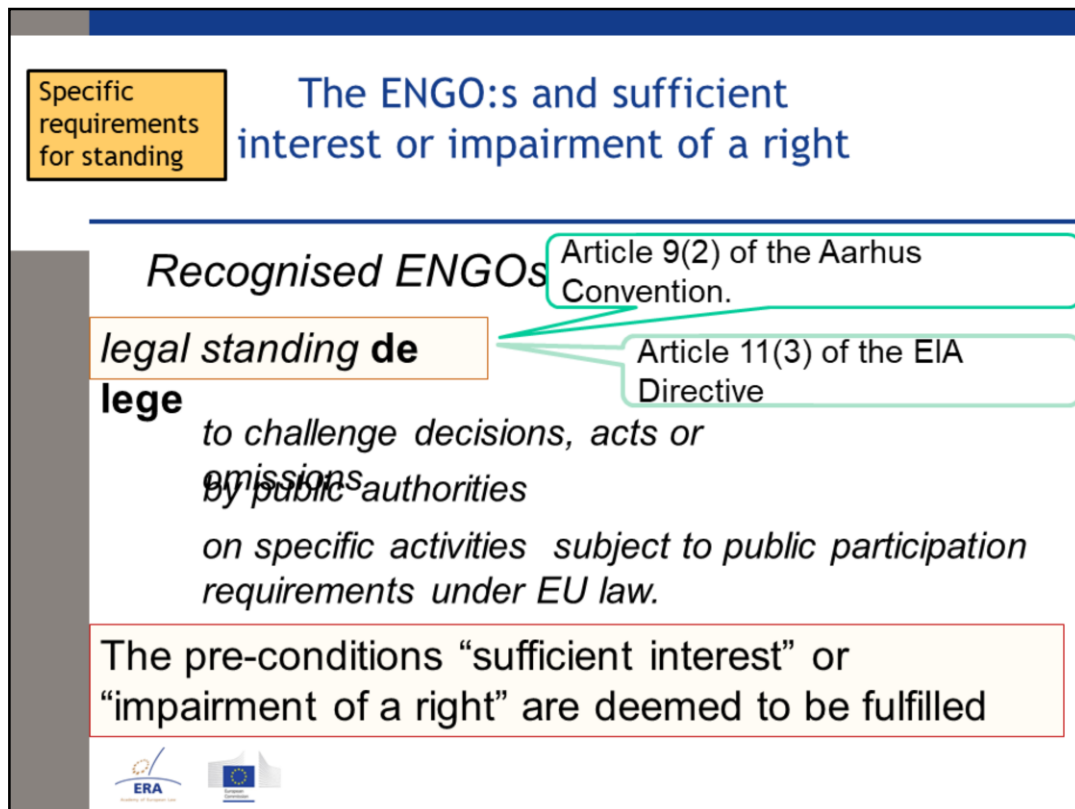


In all of these cases with "public concerned" there have been a possibility for the member states to have "specific requirements for standing". So, how to interpret "sufficient interest" and "Impairment of a right"? What is this? What is a sufficient interest or impairment of a right? And how much discretion is there for the member states?

If we start with the discretion of the member states: this precondition has to be interpreted and applied in the light of **the obligation to grant a wide access to justice in environmental matters**.

Rights which may be impaired include **procedural rights of the individual** stemming from EU environmental law (e.g. public participation rights) as well as....

... substantive rights conferred on the individual (e.g. protection of human health, property rights).



Recognised ENGO:s has legal standing **de lege**....

.... it follows directly from article 9 (2) in the Aarhus and article 11(3) in the EIA directive.

.

They have legal standing to....

The pre-conditions; having “sufficient interest” or “impairment of a right” are deemed to be fulfilled;

Specific
requirements
for standing

The ENGO:s and sufficient interest or impairment of a right

Recognised ENGOs

Article 9(2) of the Aarhus
Convention.

legal standing de

leget the interest of any non-governmental organization meeting the requirements (...) shall be **deemed sufficient for the purpose of** subparagraph (a) [**having a sufficient interest**]. Such organizations shall **also be deemed to have rights capable of being impaired...**

The pre-conditions “sufficient interest” or “impairment of a right” are deemed to be fulfilled



it follows, as we have seen, from the wording of A 9(2) in AC

Specific
requirements
for standing

The ENGO:s and sufficient interest or impairment of a right

Recognised ENGOs

*legal standing de
lege*

Article 11(3) of the EIA
Directive

3. (...) To that end, **the interest of any non-governmental organisation** meeting the requirements (...) **shall be deemed sufficient for** the purpose of point (a) of paragraph 1 of this Article [= **having a sufficient interest**] .

The pre-conditions “sufficient interest” or
“impairment of a right” are deemed to be fulfilled



In article 11 (3) of the EIA directive, the wording is very similar.

Specific
requirements
for standing

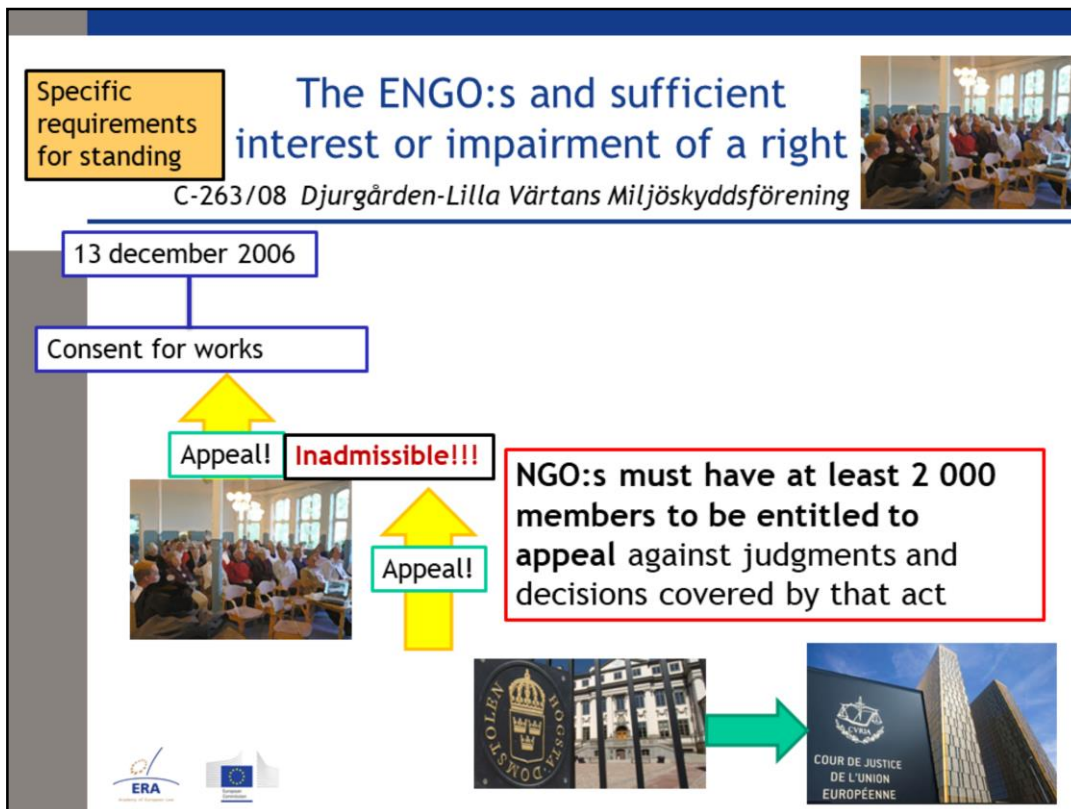
The ENGO:s and sufficient interest or impairment of a right

C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening*



To some extent it was clarified in the case C-263/08, *Djurgården - Lilla Värtans Miljöskyddsförening*.

Djurgården- Lilla Värtans miljöskyddsförening is a local ENGO – and here it is!



The case in short was that consent to some works in Stockholm was given and the ENGO appealed before the Environmental Court of Appeal but the appeal was held to be inadmissible....

The reason for this was that the Miljöskyddsförening had not fulfilled the national conditions for ENGO:s to appeal.

According to the Environmental Act an ENGO must have at least 2 000 members to be entitled to appeal.

This ENGO didn't fulfil that condition.

The ENGO brought an appeal before *Högsta domstolen* who turned to the CJEU with some questions.

Specific
requirements
for standing

The ENGO:s and sufficient interest or impairment of a right

C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening*



May Member States provide that small environmental protection associations (ex. < 2000 members) have no right of access to a review procedure?

Article 11 leaves to national legislatures the task of **determining the conditions** which may be required in order for an ENGO to have a right of appeal under the conditions set out above.

However!



One of these questions was if a member state may provide that associations with less than 2000 members have no right of access to a review procedure. The court first stated that article 11 leaves to national legislatures the task of determining the conditions which may be required...

However!

C-263/08 *Djurgården - Lilla Värtans Miljöskyddsförening*

45 **While it is true that Article 10a of Directive 85/337, by its reference to Article 1(2) thereof, leaves to national legislatures the task of determining the conditions** which may be required in order for a non-governmental organisation which promotes environmental protection to have a right of appeal under the conditions set out above, the national rules thus established must, first, ensure 'wide access to justice' and, second, render effective the provisions of Directive 85/337 on judicial remedies. Accordingly, those national rules must not be liable to nullify Community provisions which provide that parties who have a sufficient interest to challenge a project and those whose rights it impairs, which include environmental protection associations, are to be entitled to bring actions before the competent courts.

Specific
requirements
for standing

The ENGO:s and sufficient interest or impairment of a right

C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening*



May Member States provide that small environmental protection associations (ex. < 2000 members) have no right of access to a review procedure?

Article 11 leaves to national legislatures the task of **determining the conditions** which may be required in order for an ENGO to have a right of appeal under the conditions set out above.

However!

The national rules thus established must,

1. Ensure **'wide access to justice'** and,
2. **Render effective the provisions of the Directive on judicial remedies.**



The national rules thus established must,

1. Ensure **'wide access to justice'** and,
2. **Render effective the provisions of the Directive on judicial remedies.**

C-263/08 *Djurgården - Lilla Värtans Miljöskyddsförening*

45 While it is true that Article 10a of Directive 85/337, by its reference to Article 1(2) thereof, leaves to national legislatures the task of determining the conditions which may be required in order for a non-governmental organisation which promotes environmental protection to have a right of appeal under the conditions set out above, **the national rules thus established must, first, ensure 'wide access to justice' and, second, render effective the provisions of Directive 85/337 on judicial remedies.** Accordingly, those national rules must not be liable to nullify Community provisions which provide that parties who have a sufficient interest to challenge a project and those whose rights it impairs, which include environmental protection associations, are to be entitled to bring actions before the competent courts.

Specific requirements for standing

The ENGO:s and sufficient interest or impairment of a right

C-263/08 Djurgården-Lilla Värtans Miljöskyddsförening





The EUCJ:

Accordingly:

National law may require that such an association has as its object the protection of nature and the environment.

The condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact **exist** and that it **is active**.

However, the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of the Directive and in particular the objective of **facilitating judicial review of projects which fall within its scope.**




All in all the CJEU stated that....

National law may require that such an association has as its object the protection of nature and the environment....

The condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact **exist** and that it **is active**....

However, the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of the Directive and in particular the objective of **facilitating judicial review of projects which fall within its scope.**

In this context it might be mentioned that there were only two (2) ENGOs in Sweden at that time that fulfilled the requirement....

C-263/08 Djurgården - Lilla Värtans Miljöskyddsförening

46 From that point of view, a national law may require that such an association, which intends to challenge a project covered by Directive 85/337 through legal proceedings, has as its object the protection of nature and the environment.

47 Furthermore, it is conceivable that the condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact exist and that it is active. **However**, the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of Directive 85/337 and in particular the objective of facilitating judicial review of projects which fall within its scope.

Specific
requirements
for standing

The ENGO:s and sufficient interest or impairment of a right

C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening*



Recognised ENGOs

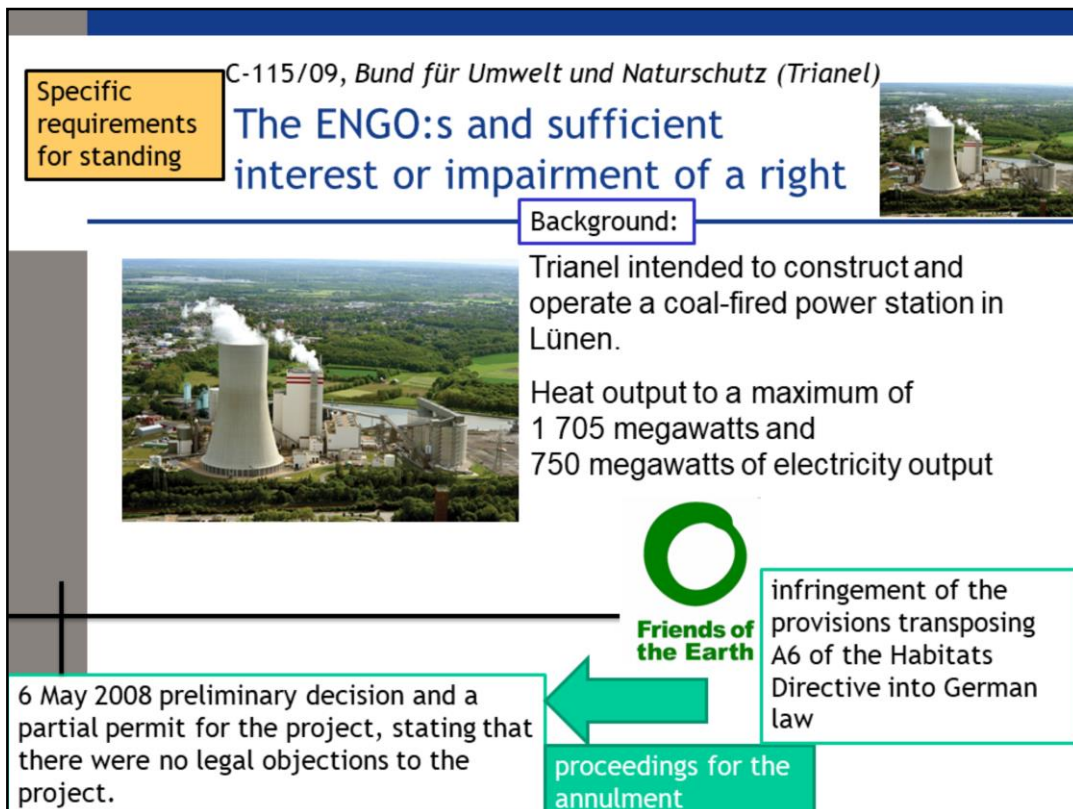
How much can national law require from an ENGO to be "recognised" and get legal standing?

Although it is for the Member States to make rules defining such requirements, they may not be framed in a way that makes it impossible for NGOs to exercise a right to go to court in order to protect the general interest. The national rules '*must [...] ensure wide access to justice*'



C-263/08 *Djurgården - Lilla Värtans Miljöskyddsförening*, p 45

The CJEU has clarified the extent of the requirements of national law that NGOs can be expected to fulfil to get this legal standing. It has stated that, although it is for the Member States to make rules defining such requirements, they may not be framed in a way that makes it impossible for NGOs to exercise a right to go to court in order to protect the general interest. The national rules '*must [...] ensure wide access to justice*' (Case C-263/08 *Djurgården*, p 45).



We also have the Trianel-case where a preliminary decision and partial permit for a project were issued.

On 6 May 2008, in the context of the environmental impact assessment of that project, the Bezirksregierung Arnsberg (Arnsberg District Administration) – the defendant in the main proceedings – issued Trianel with a preliminary decision and a partial permit for the project. The preliminary decision stated that there were no legal objections to the project.

Friends of the Earth initiated proceedings for the annulment of those measures. The ENGO relied in particular on an infringement of the provisions transposing the Habitats directive into German law.

before the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Nordrhein-Westfalen Land; ‘the referring court’). Friends of the Earth relied, in particular, on an infringement of the provisions transposing into German law the Habitats Directive and, in particular, Article 6 thereof.

Specific requirements for standing

C-115/09, *Bund für Umwelt und Naturschutz (Trianel)*

The ENGO:s and sufficient interest or impairment of a right





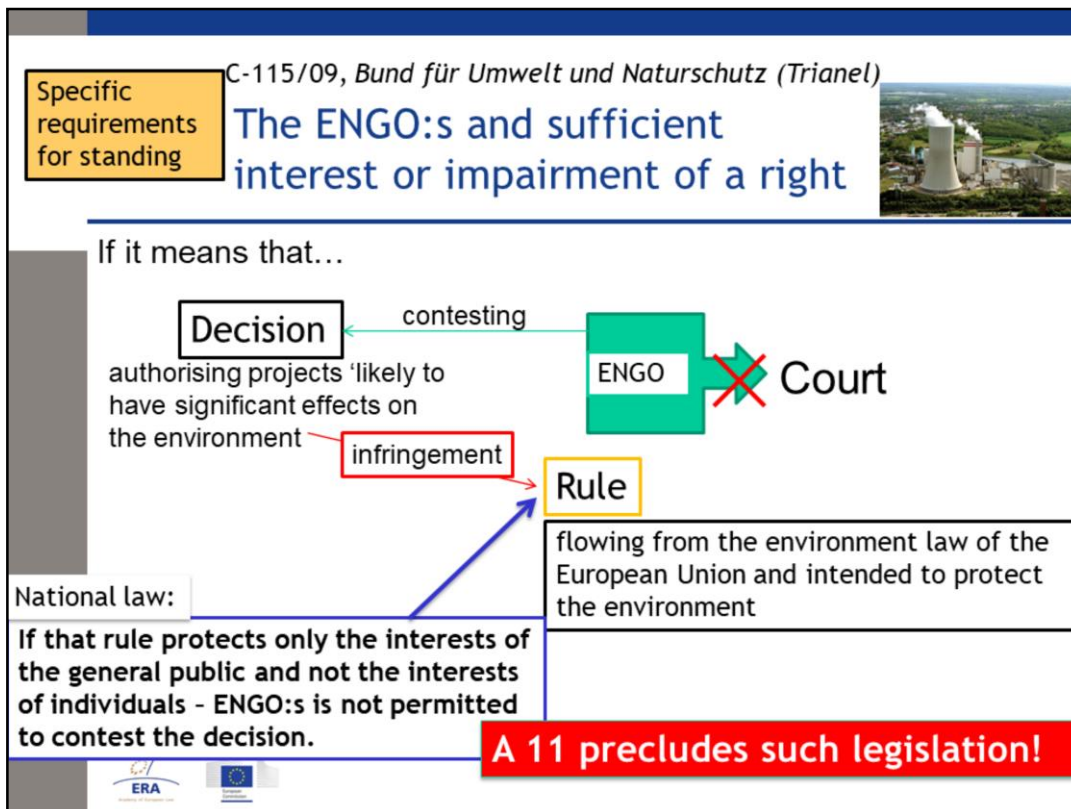
infringement of the provisions transposing A6 of the Habitats Directive into German law

proceedings for the annulment

Background:

On the basis of domestic law, an ENGO is not entitled to rely on infringement of the law for the protection of water and nature or on the precautionary principle as those provisions do not confer rights on individuals. The right of action accorded to non-governmental organisations is comparable with that provided for under the general rules of administrative procedural law governing actions for annulment (...), which provide that **an action challenging an administrative measure will be admissible only if the administrative measure affects the claimant's rights, that is to say, his individual public law rights.**

According to German procedural law the ENGO didn't have legal standing because the administrative measure didn't affect the organisations individual public law rights.



The CJEU then stated: that if there is a rule.... Flowing from EU environmental law, intended to protect the environment....

and if a national rule protects only the interests of the general public and not the interests of individuals and that ENGOs are not permitted to contest the decision..... Article 11 precludes such legislation!

1. **Article 10a of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, precludes legislation**

which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of a rule flowing from the environment law of the European Union and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals.

Article 11 precludes legislation which does not permit ENGOs to go to court....

...to contest a decision on a project likely to have a significant effects on the environment....

on the infringement of a rule flowing from EU environmental law, intended to protect the environment, only on the ground that the rule protects only the interests of the general public and not the interests of individuals.

1. **Article 10a of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, precludes legislation which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of a rule flowing from the environment law of the European Union and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals.**

Specific
requirements
for standing

C-115/09, *Bund für Umwelt und Naturschutz (Trianel)*

The ENGO:s and sufficient interest or impairment of a right



The CJEU in short:

It is for the Member States to define what constitutes
the impairment of a right!

However:

The wording of Article 11(3) of the EIA Directive and
the second paragraph of Article 9(2) of the Aarhus
Convention mean that this discretion is qualified by
**the need to respect the objective of ensuring wide
access to justice for the public concerned.**



C-115/09, *Bund für Umwelt und Naturschutz (Trianel)* p 44

Basis for Legal standing - locus standi

Subject matter of decisions, acts and omissions **environmental matters:**

1. Requests for **environmental information** and entitlement to receive information
2. Specific activities that are subject to **public participation** requirements
3. Requests for action under **environmental liability rules**
4. Other subject matter, such as national **implementing legislation, general regulatory acts, plans and programmes** and **derogations**.

Access to justice A9

a) Denied information A9 (1)

b) Decision-making concerning specific activities (subject to public participation) 9 (2)

c) Violation of provisions of the national law relating to the environment 9 (3)
Including:
Requests for action under the **environmental liability rules**
Other subject-matter, including national **implementing legislation**

ERA
European Research Area

EU
European Union



We are now leaving the area of "public participation..."

Provisions of national law relating to the environment.
Request for action under the environmental liability rules,
Other subject matter, including national implementation legislation, general
regulatory acts, plans and programmes

Article 9(3) of the Aarhus Convention

Legal
standing
right

What?

Where?

Who?

Specific
require-
ments for
standing

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law, members of the public** have **access to administrative or judicial procedures** to challenge **acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.**



General basis for legal standing

4. Other subject matter

Article 9(3) of the Aarhus Convention

Legal
standing
right

What?

Where?

Who?

Specific
require-
ments for
standing

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law, members of the public** have **access to administrative or judicial procedures** to challenge **acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.**

"The public" also includes NGO:s



As previously noted, the definition of '*the public*' includes environmental NGOs. Article 9(3) is broader than Article 9(2). To make it clearer, let us compare them.

General basis for legal standing		
4. Other subject matter		
<u>A 9(2) of the Aarhus Convention</u> The public concerned (and ENGOS) with sufficient interest/maintaining impairment of a right, where national law requires this as a precondition shall have access to a review process in court or tribunal to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention	Legal standing right What? Where? Who? Specific requirements for standing	<u>A 9(3) of the Aarhus Convention</u> In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public (and ENGOS) have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment

In Article 9(3) the intended beneficiary of legal standing is ‘the public’, which is by definition broader than the ‘public concerned’.

General basis for legal standing		
4. Other subject matter		
A 9(2) of the Aarhus Convention The public concerned (and ENGOS) with sufficient interest/maintaining impairment of a right, where national law requires this as a precondition shall have access to a review process in court or tribunal to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention	Legal standing right What? Where? Who? Specific requirements for standing	A 9(3) of the Aarhus Convention In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public (and ENGOS) have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment

Article 9(3) also refers to acts and omissions by private persons, while Article 9(2) is limited to decisions, acts and omissions of public authorities.

General basis for legal standing		
4. Other subject matter		
A 9(2) of the Aarhus Convention The public concerned (and ENGOS) with sufficient interest/maintaining impairment of a right, where national law requires this as a precondition shall have access to a review process in court or tribunal to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention	Legal standing right What? Where? Who? Specific requirements for standing	A 9(3) of the Aarhus Convention In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public (and ENGOS) have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment

On the other hand, Article 9(3) leaves the contracting parties the choice between an administrative review procedure and a judicial review procedure.

General basis for legal standing

4. Other subject matter

A 9(2) of the Aarhus Convention

The public concerned (and ENGOs) with **sufficient interest/maintaining impairment of a right**, where national law requires this as a precondition shall have access to a **review process in court or tribunal** to challenge the **substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and**, where so provided for under national law and without prejudice to paragraph 3 below, **of other relevant provisions of this Convention**

Legal standing right

What?

Where?

Who?

Specific requirements for standing

A 9(3) of the Aarhus Convention

In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law, members of the public (and ENGOs)** have **access to administrative or judicial procedures** to challenge **acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment**

Further, it makes no reference to impairment of a right or the sufficiency of an interest – but still the members of the public needs to meet the criteria, if any.

General basis for legal standing		
4. Other subject matter		
<u>A 9(2) of the Aarhus Convention</u> The public concerned (and ENGOs) with sufficient What constitutes a sufficient interest and impairment of a right... To this end, the interest of any NGO meeting the requirements (...) shall be deemed sufficient for the purpose of [having sufficient interest]. Such organizations shall also be deemed to have rights capable of being impaired...	Legal standing right What? Where? Who? Specific requirements for standing	<u>A 9(3) of the Aarhus Convention</u> In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public (and ENGOs) have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment

Article 9 (3) does not provide for legal standing *de lege* for environmental NGOs.

General basis for legal standing

4. Other subject matter

Article 9(3) does not contain any clear and precise obligation capable of directly regulating the legal position of individuals, since it is subject to the adoption of subsequent measures by contracting parties.

(Case C-240/09 LZ I, Slovak Brown bear p 45)

Article 9(3) intended to ensure effective environmental protection

Case C-240/09 LZ I, Slovak Brown Bear p 46



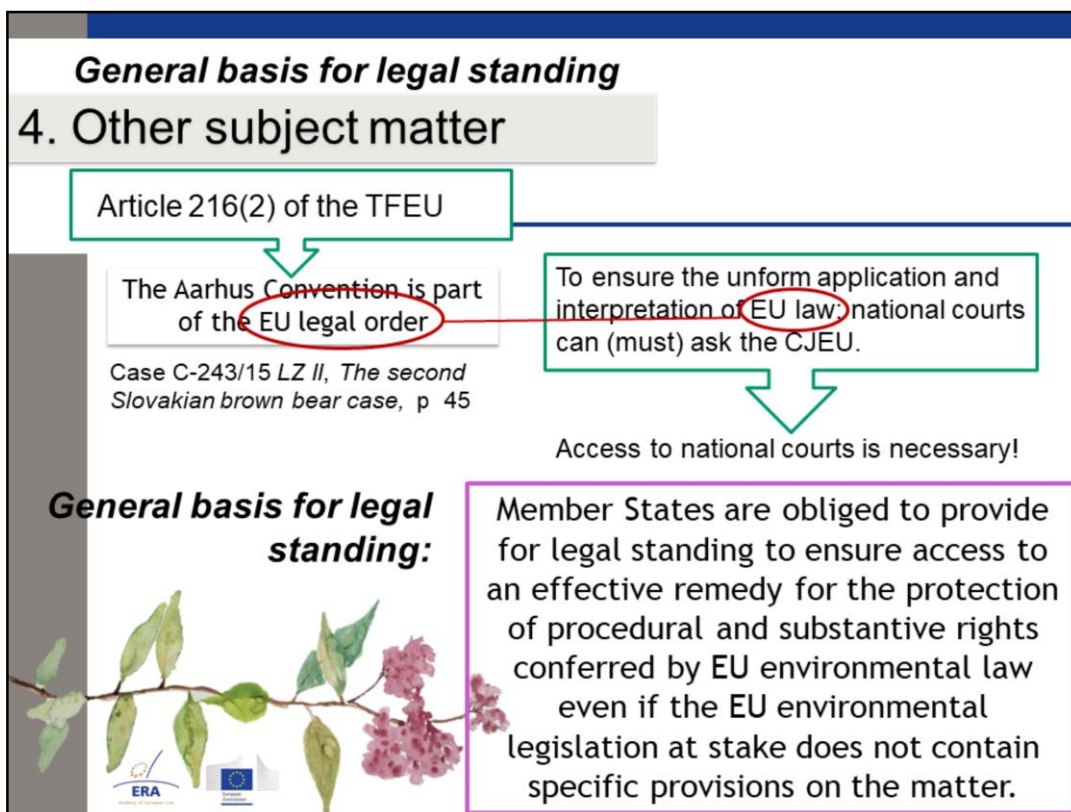
It is inconceivable to interpret Article 9(3) in such a way as it makes it in practice impossible or excessively difficult to exercise rights conferred by EU law.

Case C-240/09 LZ I, Slovak Brown Bear paragraph 49

As a consequence, the CJEU has clarified that Article 9(3) does not contain any clear and precise obligation capable of directly regulating the legal position of individuals, since it is subject to the adoption of subsequent measures by contracting parties (Case C-240/09 LZ I, paragraph 45).

However, the CJEU has also held that the provisions of Article 9(3), although drafted in broad terms, are intended to ensure effective environmental protection (Case C-240/09 LZ I, paragraph 46)

‘it is inconceivable that Article 9(3) of the Aarhus Convention be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law’ (Case C-240/09 LZ I, paragraph 49)



By virtue of Article 216(2) of the TFEU, the Aarhus Convention is part of the EU legal order (Case C-243/15 LZ II, paragraph 45).

The requirements of the EU legal order, which are binding for the Member States in the implementation of Article 9(3) of the Convention, include the uniform application and interpretation of EU law. A key mechanism for ensuring this is the possibility for — and sometimes the duty on — national courts to seek a ruling from the CJEU under Article 267 of the TFEU on the validity or interpretation of specific EU law requirements.

This necessitates access to the national courts – otherwise there would be no cases for the national courts in which they could ask the CJEU for interpretation.

In the light of all these considerations, Member States are obliged to provide for legal standing to ensure access to an effective remedy for the protection of procedural and substantive rights conferred by EU environmental law even if the EU environmental legislation at stake does not contain specific provisions on the matter.

General basis for legal standing

4. Other subject matter

Article 19(1) TEU

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law

Article 47(1) Charter of Fundamental Rights

Everyone, whose rights and freedoms guaranteed by the law of the Union are violated, has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.



Article 19 (1) of the Treaty of the European Union states that *Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law*

Article 47(1) of the Charter of Fundamental Rights, which Member States are bound to respect when implementing EU law, confirms what is said in article 19 (1).

It provides that ‘*everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article*’.

Thus; when dealing with the enforcement of environmental law the CJEU is not only guided by the obligations of the Aarhus Convention, but also by the principle of effectiveness of EU law and by the right to an effective remedy now guaranteed by Article 47 of the Charter of Fundamental Rights. This has been the case since Case 26/62 *Van Gend en Loose* when the court established the principle of direct effect of EU law AND stated that “The vigilance (attentiveness, alertness) of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles 169 and 170 [now Articles 258 and 260 of the TFEU] to the diligence of the Commission and of the Member States” (p. 13).

In other words: the Court stressed that *the public* was also the guardian of the correct application of EU law, through access to the national court systems.

It can also be recalled that Article 37 of the Charter provides for the integration of a high level of environmental protection and the improvement of the quality of the environment into the policies of the Union.

3. Requests for action under environmental liability rules

The Environmental Liability Directive (ELD)



Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the **prevention** and **remedying** of environmental damage

Establishes a framework based on the **polluter pays principle** to prevent and remedy environmental damage.

Article 191 (2) TFEU

Deals with "pure ecological damage"

Based on the powers and duties of public authorities ("administrative approach")



Civil liability system for "traditional damage" (damage to property, economic loss, personal injury)



In the ELD directive, we have still explicit EU rules.

...establishes a framework based on the **polluter pays principle** to prevent and remedy environmental damage.

As the ELD deals with the "pure ecological damage" it is based on the powers and duties of public authorities ("administrative approach")....

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the **prevention** and **remedying** of environmental damage (ELD) establishes a framework based on the **polluter pays principle** to prevent and remedy environmental damage. The polluter pays-principle is set out in the Treaty on the Functioning of the European Union (Article 191(2) TFEU).

As the ELD deals with the "pure ecological damage", it is based on the powers and duties of public authorities ("administrative approach") as distinct from a civil liability system for "traditional damage" (damage to property, economic loss, personal injury).

This is distinct from....

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the **prevention** and **remedying** of environmental damage (ELD) establishes a framework based on the **polluter pays principle** to prevent and remedy environmental damage. The polluter pays-principle is set out in the Treaty on the Functioning of the European Union (Article 191(2) TFEU).

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3. Requests for action under environmental liability rules

The Environmental Liability Directive (ELD)



Encourage natural and legal persons to play a role in assisting competent authorities to address situations of environmental damage covered by environmental liability rules



The ELD, aims, amongst other things, to encourage natural and legal persons **to play a role** in assisting competent authorities to address situations of environmental damage covered by environmental liability rules.

(These rules include detailed provisions on '*remedial measures*' for environmental damage coming within the directive's scope, see Article 7 of the Environmental Liability Directive, 2004/35/EC.).

3. Requests for action under environmental liability rules

The Environmental Liability Directive (ELD)

Article 12 is about "request for action"



Who?

Natural or legal persons affected or likely to be affected by environmental damage/having a sufficient interest in environmental decision making relating to the damage /alleging the impairment of a right. + Certain NGOs

What?

entitled to **submit any observations** relating to instances of environmental damage/ imminent threat of such damage of which they are aware and shall be entitled to **request the competent authority to take action** under this Directive.



Legal standing right

The competent authority is **required to take a decision on the request for action** →

A 13

And so; it allows natural or legal persons affected by such damage or having a sufficient interest in the damage or alleging the impairment of a right caused by the damage and certain NGO:s

It envisages that certain NGOs will be deemed to have a sufficient interest or rights capable of being impaired, so entitling them to request action.

to make submissions and requests to the competent national authority to take necessary measures.

The legal standing right means that - the competent authority is required to take a decision on the request for action (Article 12 of the Environmental Liability Directive, 2004/35/EC.) and if it doesn't; you can go to court! This is expressed in article 13.

3. Requests for action under environmental liability rules

The Environmental Liability Directive (ELD)



Legal standing right

What?

Where?

Who?

Specific requirements for standing

Article 13

Review procedures

1. The persons referred to in Article 12(1) shall have access **to a court or other independent and impartial public body competent to review** the procedural and substantive legality of **the decisions, acts or failure to act of the competent authority** under this Directive.

Article 12(1)

Natural or legal persons affected or likely to be affected by environmental damage/having a **sufficient interest** in environmental decision making relating to the damage /alleging the **impairment of a right**.

+ Certain NGOs

The persons referred to in Article 12(1)- natural or legal persons affected or likely to be affected having a sufficient interest or alleging the impairment of a right plus certain NGO:s

shall have access **to a court or other independent and impartial public body competent to review** the procedural and substantive legality of

.....**the decisions, acts or failure to act of the competent authority** under this Directive.

The similarity in wording, including what is said about environmental NGOs, indicates that the CJEU case-law on legal standing already described can be taken into account in interpreting the ELD.

3. Requests for action under environmental liability rules

The Environmental Liability Directive (ELD)

Case C-529/15 Gert Folk,

CJEU Holding fishing right not expressly referred to in A 12

Three categories **1** **2** **3** which may initiate the procedures referred to in Articles 12 and 13

Member States have discretion to determine what constitutes a 'sufficient interest', or 'impairment of a right', they do not have such discretion as regards the right to a review procedure for those persons affected or likely to be affected by environmental damage

Natural or legal persons **affected or likely to be affected** by environmental damage/having a **sufficient interest** in environmental decision making relating to the damage /alleging the **impairment of a right**.



The Austrian Government maintains that the fact that persons holding fishing rights are not expressly referred to in Paragraph 12(2) of the WRG, to which Article 11(1) of the B-UHG refers, falls under the discretion which it exercises under Articles 12 and 13 of Directive 2004/35.

44 It must be stated, in that regard, that Article 12 of that directive determines the categories of legal or natural persons who are entitled to submit observations on environmental damage. Those three categories are persons affected or likely to be affected by environmental damage, or having a sufficient interest in environmental decision-making relating to the damage, or alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

45 As the Advocate General stated in point 72 of his Opinion, the wording of Article 12(1) of Directive 2004/35 enumerates three categories of natural or legal persons which, alternatively and independently considered, have standing. It establishes three distinct categories of persons which may initiate the procedures referred to in Articles 12 and 13 of that directive.

46 The full and correct transposition of this directive requires that those three categories of persons may submit observations on environmental damage, that they have the option to request that the competent authority take measures under that directive, and, accordingly, that they may initiate a procedure before a court or tribunal or any other competent public body, in accordance with Articles 12 and 13 of that directive.

47 Although the Member States have discretion to determine what constitutes a 'sufficient interest', a concept provided for in Article 12(1)(b) of Directive 2004/35, or 'impairment of a right', a concept laid down in Article 12(1)(c) of that directive, they do not have such discretion as regards the right to a review procedure for those persons affected or likely to be affected by environmental damage, as follows from Article 12(1)(a) of that directive.

48 With regard to the wording of Article 12 of Directive 2004/35, it appears that persons holding fishing rights are able to come within the three categories defined in Article 12(1) of that directive. It is clear from the file before the Court that they cannot, under national law, initiate a review procedure within the meaning of Article 13 of that directive, concerning environmental damage within the meaning of Article 2(1)(b) of that directive. Accordingly, by excluding the benefit of a right to a review procedure from all persons holding fishing rights, national legislation deprives a very large number of individuals who may come within one of the three categories defined in Article 12 of Directive 2004/35 of that right to a review procedure.

49 An interpretation of national law which would deprive all persons holding fishing rights of the right to initiate a review procedure following environmental damage resulting in an increase in the mortality of fish, although those persons are directly affected by that damage, does not respect the scope of Articles 12 and 13 and is thus incompatible with that directive.

50 Having regard to the foregoing considerations, the answer to the second question is that Article 12 and 13 of Directive 2004/35 must be interpreted as precluding a provision of national law, such as that at issue in the case in the main proceedings, which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of Article 2(1)(b) of that directive.

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Basis for Legal standing - locus standi

Subject matter of decisions, acts and omissions **environmental matters**:

1. Requests for **environmental information** and entitlement to receive information
2. Specific activities that are subject to **public participation** requirements
3. **Requests for action** under environmental liability rules
4. Other subject matter, such as national implementing legislation, general regulatory derogations.

- Pillar III
- 8 Access to justice A9
- a) Derogation of information A 9 (1)
 - b) Decision-making concerning specific activities (subject to public participation) 9 (2)
 - c) Violation of provisions of the national law relating to the environment 9 (3)
Including:
Requests for action under the environmental liability rules
Other subject-matter, including national implementing legislation



4. Other subject matter

Aarhus Convention

The TFEU

The EU Charter of Fundamental Rights

EU law principles (to protect procedural and substantive rights)



When there are no rules in EU secondary law, we still have the Aarhus convention, the [Treaty on the Functioning of the European Union](#) and the eu charter of fundamental rights – and taken together, they provide us with standing in several cases.

General basis for legal standing

4. Other subject matter

The general basis for legal standing to challenge decisions, acts and omissions of Member States in the fields covered by EU environmental law is laid down in national law.



National law has to be interpreted consistently with the requirements set out in:

Articles 19(1) TEU and
47 of the Charter of Fundamental Rights
Article 9(3) of the Aarhus Convention



The general basis....

We will first have a closer look at article 9 (3)

General basis for legal standing

4. Other subject matter

The general basis for legal standing to challenge decisions, acts and omissions of Member States in the fields covered by EU environmental law is laid down in national law, but has to be interpreted consistently with the requirements set out in Article 9(3) of the Aarhus Convention and Articles 19(1) TEU and 47 of the Charter of Fundamental Rights.



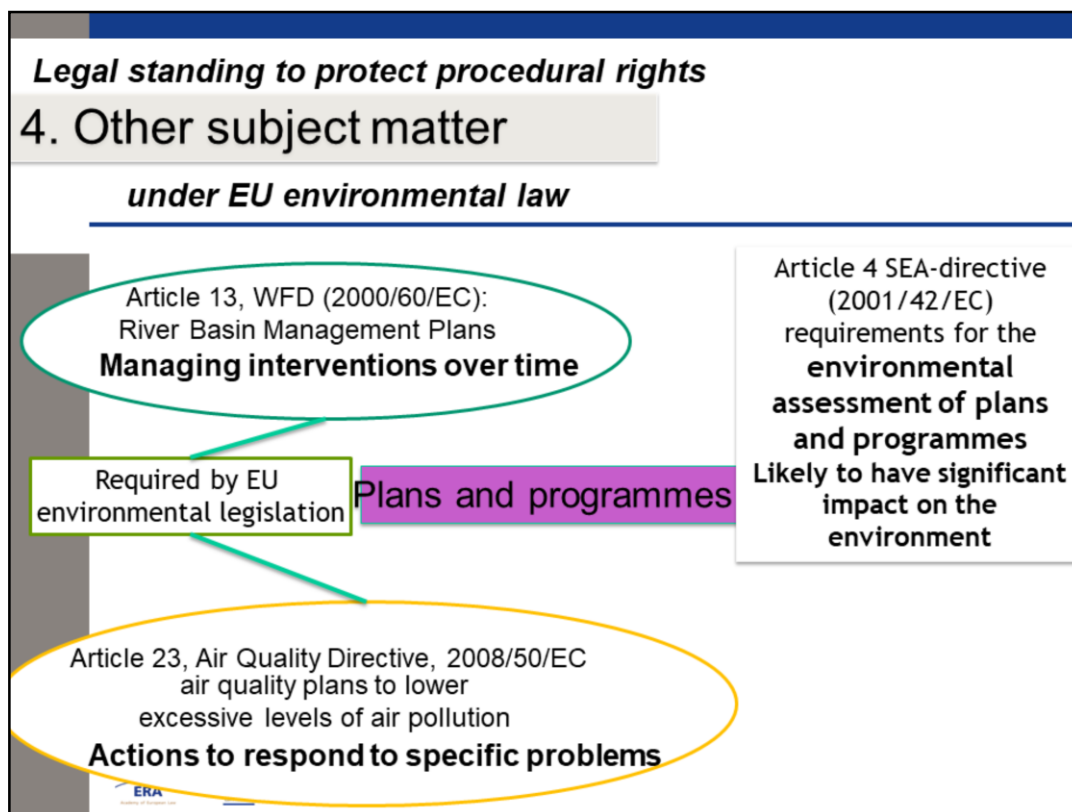
4. Other subject matter

under EU environmental law

Plans and programmes:



Procedural rights are particularly important in the case of plans and programmes.



Many pieces of EU environmental legislation require that plans and programmes be adopted to ensure that envisaged environmental objectives are achieved. These documents can serve as a means of managing interventions over time (e.g. river basin management plans) (Article 13 of the WFD (2000/60/EC)) or of setting out actions to respond to specific problems (e.g. air quality plans to lower excessive levels of air pollution) (Article 23 of the Air Quality Directive, 2008/50/EC.). In addition to requiring certain kinds of plan and programme to be adopted, EU environmental legislation also sets requirements for the environmental assessment of plans and programmes (e.g. land-use plans) which can have a significant impact on the environment (Article 4 of the Strategic Environmental Assessment Directive, 2001/42/EC).

Legal standing to protect procedural rights

4. Other subject matter

under EU environmental law

Article 13, WFD (2000/60/EC):
River Basin Management Plans
Managing interventions over time

Article 4 SEA-directive
(2001/42/EC)
requirements for the
environmental

Re
environ

**Stage of mandatory public
consultation during the decision-
making process**

Article 23, Air Quality Directive, 2008/50/EC
air quality plans to lower
excessive levels of air pollution
Actions to respond to specific problems

ERA
European Research Area

Much of the legislation concerned envisages a stage of mandatory public consultation during the decision-making process.

4. Other subject matter

under EU environmental law

Article 7 of the Aarhus Convention...:

**Stage of mandatory public
consultation during the decision-
making process**

...requires public consultation for plans and
programmes coming within its broad scope.



In this regard, Article 7 of the Aarhus Convention requires public consultation for plans and programmes coming within its broad scope.

4. Other subject matter

under EU environmental law

Article 7 of the Aarhus Convention requires public consultation for plans and programmes coming within its broad scope:

Plans and programmes related to the environment which are mandatory under EU law

No provision that explicitly requires public participation

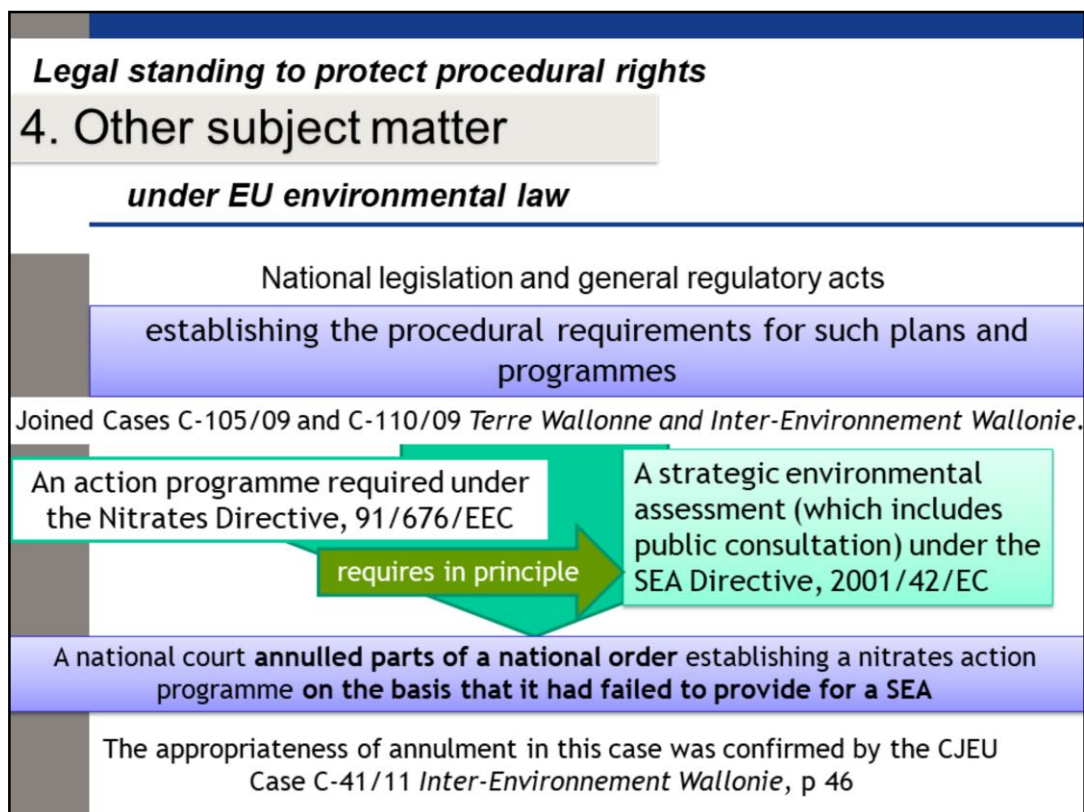
May still need to include public consultation.



Compare Case C-72/95 *Kraaijeveld*, p 4

On this basis, plans and programmes related to the environment which are mandatory under EU law but for which no explicit public participation provisions have been established, may still need to include public consultation.

Legal standing to challenge decisions, acts and omissions of public authorities concerning plans and programmes covered by Article 7 of the Convention can be defined in the light of the CJEU case-law on public participation. Applying the rationale of the ruling in *Kraaijeveld* (which concerned a project rather than a plan or programme), the beneficiaries of participation rights are entitled to ask for a review by a court of whether the required course of conduct in the decision-making process for a plan or programme was respected.



The CJEU case-law indicates that legal standing is not only relevant for decisions, acts or omissions on individual plans and programmes, but is also relevant for national legislation and general regulatory acts establishing the procedural requirements for such plans and programmes.

Indeed, in *Terre Wallonne and Inter-Environnement Wallonie* (Joined Cases C-105/09 and C-110/09 *Terre Wallonne and Inter-Environnement Wallonie*.), the CJEU ruled that an action programme required under the Nitrates Directive, 91/676/EEC, also requires in principle a strategic environmental assessment (which includes public consultation) under the Strategic Environmental Assessment Directive, 2001/42/EC.

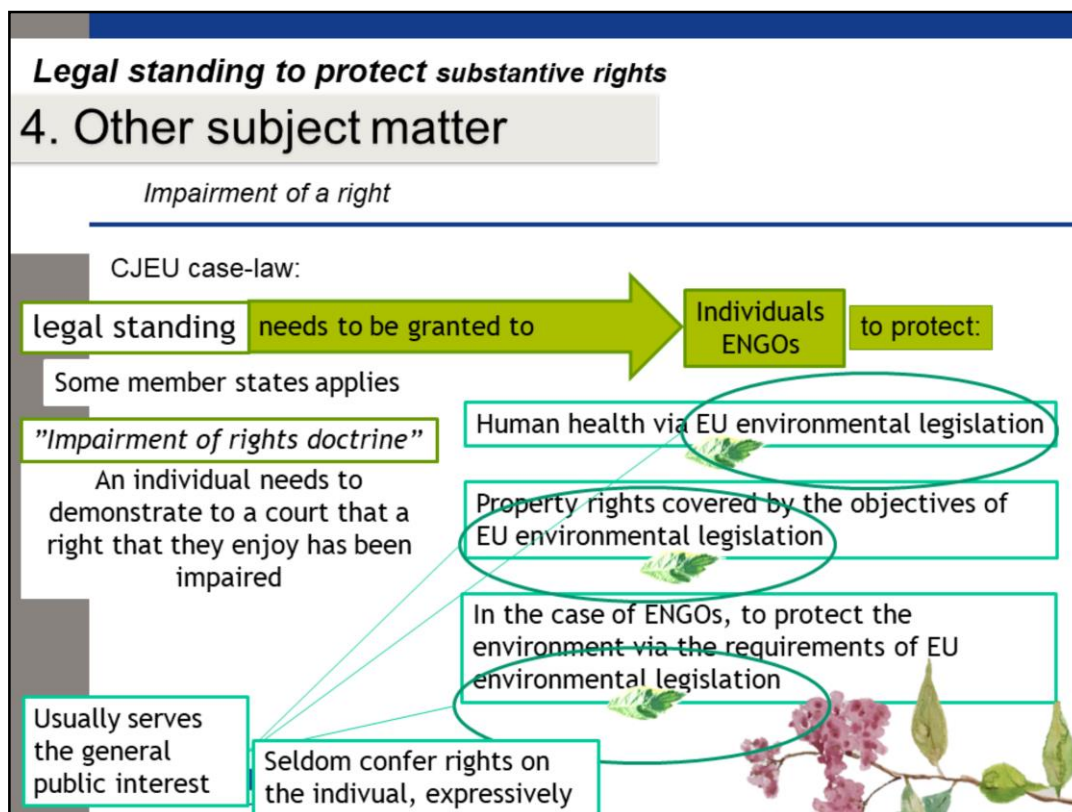
An action programme adopted pursuant to Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources is in principle a plan or programme covered by Article 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment since it constitutes a ‘plan’ or ‘programme’ within the meaning of Article 2(a) of the latter directive and contains measures compliance with which is a requirement for issue of the consent that may be granted for carrying out projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997.

As a result, a national court annulled parts of a national order establishing a nitrates action programme on the basis that it had failed to provide for a strategic environmental assessment. In the subsequent case, *Inter-Environnement Wallonie*, the CJEU confirmed the appropriateness of annulment in these circumstances (Case C-41/11 *Inter-Environnement Wallonie*, paragraph 46).

4. Other subject matter

Legal standing to protect procedural rights under EU environmental law :

Legal standing must be provided to individuals and environmental NGOs to ensure respect for EU environmental procedural provisions, such as those laying down decision-making procedures involving public participation, for example in procedures concerning plans and programmes.



It is CJEU case-law has made clear that:

legal standing needs to be granted to individuals and environmental NGOs to protect human health via EU environmental legislation, property rights covered by the objectives of EU environmental legislation, and, in the case of environmental NGOs, to protect the environment via the requirements of EU environmental legislation.

The application of the '*impairment of rights doctrine*' (i.e. the doctrine followed by certain Member States according to which an individual needs to demonstrate to a court that a right that they enjoy has been impaired)

This doctrine has presented challenges because environmental protection usually serves the general public interest

Does not usually aim at expressly conferring rights on the individual.

Legal standing to protect substantive rights

4. Other subject matter

Impairment of a right

The CJEU: C-115/09, *Bund für Umwelt und Naturschutz (Trianel)* p 44

It is for the Member States to define what constitutes the impairment of a right!

However:

The discretion

The wording of Article 11(3) of the EIA Directive and the second paragraph of Article 9(2) of the Aarhus Convention mean that this discretion is qualified by **the need to respect the objective of ensuring wide access to justice for the public concerned.**

Cannot make it excessively difficult to protect the rights conferred by EU law

Legal standing of members of the public, concerned by decisions/ acts/ omissions within the scope of the EIA Directive (and Article 9(2) of the Aarhus Convention) cannot be interpreted restrictively.

Case C-570/13 *Gruber*, p 40



As mentioned earlier, in the *Trianel* case the CJEU confirmed that it is for the Member States to define what constitutes the impairment of a right. However, the wording of Article 11(3) of the Environmental Impact Assessment Directive, 2011/92/EU, and the second paragraph of Article 9(2) of the Aarhus Convention mean that this discretion is qualified by the need to respect the objective of ensuring wide access to justice for the public concerned (C-115/09, *Bund für Umwelt und Naturschutz (Trianel)* p 44).

Further, the discretion of Member States on what constitutes the impairment of a right cannot make it excessively difficult to protect the rights conferred by EU law.

Therefore, legal standing of members of the public concerned by the decisions, acts or omissions which fall within the scope of the Environmental Impact Assessment Directive, 2011/92/EU — and Article 9(2) of the Aarhus Convention — cannot be interpreted restrictively (Case C-570/13 *Gruber*, paragraph 40.).

Legal standing to protect substantive rights

4. Other subject matter

Impairment of a right

In the context of the following decisions, acts and omissions of public authorities, the CJEU has upheld these rights:

The omission of a public authority to prepare a legally required air quality plan.

Case C-237/07 *Janecek*

Adopted national emission reduction programmes

Joined Cases C-165 to C-167/09 *Stichting Natuur en Milieu*.

The grant of a derogation under nature legislation

Case C-240/09 *LZ I (the first Slovak Brown Bear)*



The CJEU has upheld these rights in the context of the following decisions, acts and omissions of public authorities: the omission of a public authority to prepare a legally required air quality plan (104), adopted national emission reduction programmes (105) and the grant of a derogation under nature legislation (106).

The case-law therefore underlines the need for Member States and national courts to ensure legal standing to challenge very broad categories of decision, act and omission on the basis of an extensive set of substantive rights.

4. Other subject matter

must satisfy to claim legal standing

“...each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law, members of the public (and NGOs)...**”



Member States are **not** obliged to give standing to any and every member of the public or any and every NGO.

However!

Any such criteria should be consistent with the objectives of the Convention regarding ensuring access to justice!



Aarhus Convention Implementation Guide, p 198

Member States are not obliged to give standing to any and every member of the public (*actio popularis*) or any and every NGO. However, according to the Aarhus Convention Implementation Guide, any such criteria should be consistent with the objectives of the Convention regarding ensuring access to justice (See Aarhus Convention Implementation Guide, p. 198.).

4. Other subject matter

must satisfy to claim legal standing

“...each Party shall ensure that, **where they meet the criteria, if any, laid down in its national law, members of the public (and NGOs)...**”

May NOT be used as an excuse to have criteria so strict that they effectively bar all (or almost all) **ENGOS** from challenging acts or omissions that contravene national law relating to the environment!

Aarhus Convention Implementation Guide, p 198



The parties may not take the clause ‘*where they meet the criteria, if any, laid down in its national law*’ as an excuse for introducing or maintaining criteria so strict that they effectively bar all, or almost all environmental organisations from challenging acts or omissions that contravene national law relating to the environment (See Aarhus Convention Implementation Guide, p. 198.).

No significant effect...

4. Other subject matter

... *the need to submit objection*

C-664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*

Extension of a permit for a snow-making facility granted on legislation governing water-related matters

No EIA – no significant effect on the environment



No significant effect...

4. Other subject matter

... *the need to submit objection*

C-664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*

(1) Does A 4 in the WFD or that directive as a whole, in a process not subject to and EIA (not having significant effect on the environment) confer rights on an ENGO (...) to have access to administrative or judicial procedures under A 9(3) of the AC?

If question 1 is answered in the affirmative:

(2) Is it necessary under the AC to be able to assert those rights in the procedure before the administrative authority or is it sufficient with the possibility to appeal against the decision?

(3) Is it permissible for national procedural law to require ENGOs – like other parties – to submit its objections not only in an appeal to the administrative court, but in good time at the stage of the procedure before the administrative authorities, failing which it loses its status as a party and is also no longer able to bring an appeal at the administrative court?’



No significant effect...

4. Other subject matter

... *the need to submit objection*

C-664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*

1. **A9(3) A together with A 47 of the Charter must be interpreted as meaning that a duly constituted ENGO operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in A 4 WFD.**
2. **The combined provisions of A 9(3) AC, A 47 of the Charter and Article 14(1) of WFD must be interpreted as precluding national procedural rules that deprive ENGOs of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement WFD and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status.**



1. Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a duly constituted environmental organisation operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.
2. The combined provisions of Article 9(3) of that convention approved by Decision 2005/370, Article 47 of the Charter of Fundamental Rights and Article 14(1) of Directive 2000/60 must be interpreted as precluding national procedural rules that deprive, in situations such as that in question in the main action, environmental organisations of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement Directive 2000/60 and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status.
3. Subject to verification by the referring court of the relevant matters of fact and national law, Article 9(3) and (4) of that convention approved by Decision 2005/370, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding, in a situation such as that in question in the main action, a national procedural rule that imposes a time limit on an environmental organisation, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure.

No significant effect...

4. Other subject matter

... *the need to submit objection*

C-664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*

3. A 9(3) and (4) AC read in conjunction with A 47 of the Charter, must be interpreted as precluding a national procedural rule that imposes a time limit on an ENGO, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure.



1. Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a duly constituted environmental organisation operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.
2. The combined provisions of Article 9(3) of that convention approved by Decision 2005/370, Article 47 of the Charter of Fundamental Rights and Article 14(1) of Directive 2000/60 must be interpreted as precluding national procedural rules that deprive, in situations such as that in question in the main action, environmental organisations of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement Directive 2000/60 and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status.
3. Subject to verification by the referring court of the relevant matters of fact and national law, Article 9(3) and (4) of that convention approved by Decision 2005/370, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding, in a situation such as that in question in the main action, a national procedural rule that imposes a time limit on an environmental organisation, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure.

Summary

- Any natural or legal person submitting an information request enjoys legal standing to challenge a decision, act or omission of the public authority responsible for dealing with that request. Rights to receive information through active dissemination may also entitle individuals and associations to bring legal challenges.
- Public participation requirements that apply to specific activities confer rights on those who are concerned and entitle them to ask for a judicial review of the decision, act or omission at stake.



Summary

- **For individuals**, the precondition of needing to show the ‘impairment of a right’ or a sufficient interest in order to obtain legal standing to bring a challenge concerning a specific activity has to be interpreted and applied in the light of the obligation to grant a wide access to justice in environmental matters. Rights which may be impaired include procedural rights of the individual stemming from EU environmental law (e.g. public participation rights) as well as substantive rights conferred on the individual (e.g. protection of human health, property rights).
- **Recognised environmental NGOs** enjoy legal standing de lege to challenge decisions, acts or omissions by public authorities on specific activities which are subject to public participation requirements under EU law.
- **The criteria** that ENGOS have to fulfil to qualify for legal standing de lege must not be excessively difficult to satisfy and should take into account the interests of small and local NGOs.
- **The conditions** to be fulfilled by ENGOS in order to obtain legal standing de lege must not be less favourable for foreign NGOs than for domestic ones.



Summary

- While not enjoying legal standing de lege, **other associations, organisations and groups** may, subject to national law, enjoy legal standing on **the same basis as individuals**.
- Member States **may not restrict legal standing** to challenge a decision of a public authority to **those members of the public concerned who participated in the preceding administrative procedure to adopt that decision**.
- **Legal standing must be provided to individuals and ENGOs to ensure respect for EU environmental procedural provisions**, such as those laying down decision-making procedures involving public participation, for example in procedures concerning plans and programmes.

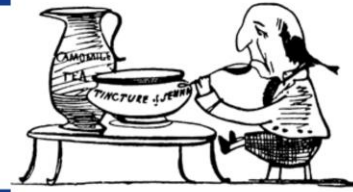


Summary

- Member States may adopt criteria that individuals and NGO:s must fulfil in order to obtain legal standing, but these criteria must not make it impossible or excessively difficult to exercise substantive and procedural rights conferred by EU law.
- Member States need to ensure legal standing to challenge very broad categories of decisions, acts and omissions in order to ensure that an extensive set of substantive rights can be exercised.



Effective remedies (reliefs)



There is a general requirement on every body of a Member State to nullify the unlawful consequences of a breach of EU environmental law. Member States must also refrain from taking any measures that can seriously compromise the attainment of a result prescribed by EU environmental law.

Member States have discretion with regard to effective remedies, provided that they comply with the principles of equivalence and effectiveness.



The effects of procedural defects



Minor procedural defects do not require remedies, provided it can be established (without placing any burden on the applicant for judicial review) that they did not impact on the contested decision.



"Make good any harm"

C-201/02, *Wells*, p 66



National courts must consider taking general or particular measures to address a lack of compliance with EU environmental law. These may need to include the suspension, revocation or annulment of unlawful decisions or acts, and the disapplication of legislation and regulatory acts.



Interim measures



A national court dealing with a dispute governed by EU environmental law must be in a position to order interim measures.



Interim measures



A national court dealing with a dispute governed by EU environmental law must be in a position to order interim measures.

Thank you!



Epidalea calamita

Natterjack toad
Kreuzkröte

Proceedings, looking for possibilities for the *Epidalea calamita* to move around, which might stop the building of a house on this site.