

Access to justice **in the EIA and SEA Directives**

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EU ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS
Workshop for judges and prosecutors
Vienna, 19-21 February 2025

CONTENT

DETAILED PROVISIONS

WHAT CAN BE CHALLENGED?

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CONDITIONS

QUALITY OF THE REVIEW

WHERE TO FIND MORE INFORMATION



EIA and SEA DIRECTIVES: How to approach the A2J requirements

EIA:

- Art. 11 of the Directive, Art. 10a of the old EIA Directive (85/337/EEC) and corresponding case-law
- *per analogiam* case-law on the IED Directive, SEVESO III Directive and Natura 2000 assessment under the Habitats Directive

SEA Directive:

- no detailed provisions
- *per analogiam* case-law on access to justice concerning plans and programmes

In 2017 the Commission published a [Notice \(C 275/2017\) on access to justice in environmental matters](#). It consists of a guidance document that clarifies how individuals and their associations can challenge decisions, acts and omissions by public authorities.

Several updates have been made to this notice

[Update 1](#) – Judgments delivered by the EU Court of Justice since the adoption of Commission Notice

[Update 2](#) covering the period between 16 April 2018 and 10 March 2019

[Update 3](#) covering the period between 11 March 2019 and 31 December 2019

[Update 4](#) covering the period between 28 May 2020 and 14 January 2021



Commission Notice on Access to Justice in Environmental Matters



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Commission Notice on Access to Justice in Environmental Matters



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Rulings of the Court of Justice of the European Union
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Environmental assessments of plans, programmes and projects
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2020-11-06

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<https://op.europa.eu/en/publication-detail/-/publication/a831d19b-6f99-11ed-9887-01aa75ed71a1/language-en>



EU Law – EIA Directive (2011/92/EU, Art. 11)

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**.
2. Member States **shall determine at what stage** the decisions, acts or omissions may be challenged.
3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned **wide access to justice**. To that end, **the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient** for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.
4. The provisions of this Article shall **not exclude the possibility of a preliminary review** procedure before an administrative authority and **shall not affect the requirement of exhaustion of administrative review procedures** prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be **fair, equitable, timely and not prohibitively expensive**.
5. In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.



EU Law – SEA Directive (2001/42/EC)

No access to justice provisions!

Art. 6 Consultations

Art. 7 Transboundary consultations

Art. 9 Information on the decision

Art. 2: "The public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups



EIA and SEA DIRECTIVES: How to approach the A2J requirements

EIA:

- Art. 9(2) + Art. 9(4) of the Aarhus Convention
- Art. 47 of the EU Charter
- (national Constitution, European Charter of Human Rights)

SEA Directive:

- Art. 9(3) + Art. 9(4) of the Aarhus Convention
- Art. 47 of the EU Charter
- (national Constitution, European Charter of Human Rights)



- Recently references from the one European Court to the other have become more often.



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The Aarhus Convention: An Implementation Guide (second edition)

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Public participation >

Published: June 2014

Guide is available in Chinese, English, French and Russian. If you would require a hard copy of the Guide please contact the secretariat at public.participation@un.org

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THE ECHR FRAMEWORK

Art. 6 ECHR: Applicable to administrative matters – construction, expropriation, environmental protection (*Sporrong and Lönnroth v Sweden*, 7152/75; *Taşkın and Others v Turkey*, 46117/99) + **climate change** (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, 53600/20)

Art. 2 and 8: Positive obligation of the State to protect from dangerous activities (i.e. illegal industrial operations)

Dzemyuk v. Ukraine (2014): The applicant alleged that the construction of a cemetery near his house had led to the contamination of his water supply – both for drinking and gardening purposes – leaving his home virtually uninhabitable and his land unusable (violation of Art. 8)

Solyanik v. Russia (2022): The applicant complained that the ongoing use of the cemetery near his home had led to contamination of the soil and a well, his only source of drinking water. (violation of Art. 8)

Verein KlimaSeniorinnen Schweiz and Others v Switzerland (2024): Insufficient mitigation of climate change (violation of Art. 8)



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Interim measures
Interim measures indicated concerning Georgia
16/11/2021 The Court has decided to indicate

Chamber
Judgme
16/11/2021

Even though the European Convention on Human Rights does not enshrine any right to a healthy environment as such, the European Court of Human Rights has been called upon to develop its case-law in environmental matters on account of the fact that the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.

The Court has not yet ruled on the issue of State climate-change action. There are currently three cases pending before the Grand Chamber of the Court on this issue.

Cases pending before the Grand Chamber of the Court
On 11 January 2023 the Grand Chamber held a procedural meeting in the three climate cases pending before it – Verein Klimaseniorinnen Schweiz and Others v. Switzerland, Carline v. France and Duarte Agostinho and Others v. Portugal and 32 Others. At that

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ERA

Summary of major ECtHR decisions in the field of environmental protection and newly in climate change (in English)

Press/Press Services/Fact Sheets/Environment

These factsheets are regularly updated.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Aarhus Convention)



Access to information

- ✓ public
- ✓ passive obligation
- ✓ active obligation

Public participation in decision-making

- ✓ public concerned
- ✓ Annex I and other activities with significant effects
(*EIA, IED, Natura 2000, SEVESO III*)
- ✓ plans and programmes
- ✓ general legal regulation

Access to justice

- ✓ public (concerned)
- ✓ denied information
- ✓ **decisions** from pillar II (*EIA, IED, NATURA 2000, SEVESO III*)
- ✓ violation of (other) provisions of the national law relating to the environment



The Aarhus Convention – Art. 9(2)



2. Each Party shall, within the framework of its national legislation, ensure that 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.

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 referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.



The Aarhus Convention – Art. 9(2) and 9(3)



The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

who: public concerned (affected individuals + NGOs meeting national criteria consistent with providing **wide access to justice**) **if not?**

what: review procedure of decisions/acts/ommissions concerning activities with significant effect on the environment (EIA/IED/Natura 2000 + national law)

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.

who: members of the public where they meet criteria laid down in the national law

what: review procedure of acts/ommissions of private persons/authorities which contravene **(any)** provisions of the national law. **if not?**



LEGAL STANDING: **Preconditions** and wide access to justice

Stichting Varkens in Nood and Others (C-826/18, Admissibility of the action subject to prior participation in the decision-making procedure):

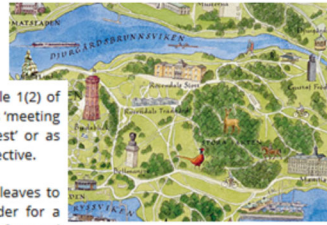
Art. 9(2) regime: participation in the administrative procedure is not a suitable condition for the admissibility of the judicial proceedings brought by NGO, even though that condition does not apply where such organisations cannot reasonably be criticised for not having participated in that procedure.

However, **Article 9(3) AC** does not preclude the admissibility of judicial proceedings to which it refers from being made subject to the participation of the applicant in the procedure preparatory to the contested decision, unless the applicant cannot reasonably be criticised, in the light of the circumstances of the case, for not having intervened in that procedure

WHO - Conditions

C-263/08 (*Djurgården-Lilla Värtans*)

– only NGOs with environmental objectives active for 3 years, 2.000 members



- 44 As regards non-governmental organisations which promote environmental protection, Article 1(2) of Directive 85/337, read in conjunction with Article 10a thereof, requires that those organisations 'meeting any requirements under national law' are to be regarded either as having 'sufficient interest' or as having a right which is capable of being impaired by projects falling within the scope of that directive.
- 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.
- 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.



+ administrative review is not sufficient!

- There should be no condition that a right has been infringed.
- But there can be other conditions. Often MS set conditions regarding the number of Members.
- The CJEU ruled that the condition is not prohibited, but wide access to justice must be ensured.
- In the Swedish case, they ended up with only 2 NGOs meeting the threshold. This was found to be not conform with the wide access to justice requirements.

Ferrari with the doors closed: Balancing the system

C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband
Nordrhein-Westfalen eV/Bezirksregierung Arnsberg Trianel
Kohlekraftwerk Lünen

The German system of judicial review

- involves a “careful and detailed” **scrutiny of administrative decisions**,
- admissibility criteria are such that **few are able to access this system**, particularly groups bringing actions alleging environmental harm.



WHO: Individuals

C-570/13 (*Gruber*):

40 Therefore, *although the national legislature is entitled, inter alia, to confine the rights whose infringement may be relied on by an individual* in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 11 of Directive 2011/92 to individual public-law rights, that is to say, individual rights which, under national law, can be categorised as individual public-law rights (see, to that effect, judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraphs 36 and 45), the provisions of that article relating to the rights to bring actions of members of the public concerned by the decisions, acts or omissions which fall within that directive's scope *cannot be interpreted restrictively*.

41 In the present case, *it appears from the order for reference that Ms Gruber is a 'neighbour', within the meaning of Paragraph 75(2) of the Gewerbeordnung, a concept which includes persons to whom the construction, continued existence or operation of a facility might pose a risk or cause a nuisance or whose property or other rights in rem might be put at risk.*



- The right of Ms Gruber was based on her property value, not the environment.
- Still, the court rule that she should be granted access to justice, interpreting the Directive widely.

WHO: Individuals

C-570/13 (*Gruber*):

42 Having regard to that provision's terms, *it appears that persons falling within the concept of 'neighbour' may be part of the 'public concerned'*, within the meaning of Article 1(2) of Directive 2011/92. Those 'neighbours' can bring an action only against a consent granted for the construction and operation of a facility. Since they are not parties to the procedure examining whether an EIA need be carried out, they cannot challenge that decision in the context of an action against the development consent decision. *Thus, by restricting the right to bring an action against decisions examining whether an EIA need be carried out in relation to a project only to the project applicants, the participating authorities, the ombudsman for the environment (Umweltanwalt) and the municipality concerned, the UVP-G 2000 deprives a large number of individuals from exercising that right to bring an action, including, in particular, 'neighbours' who may meet the conditions laid down in Article 11(1) of Directive 2011/92.*

43 That near general exclusion restricts the scope of Article 11(1) and is accordingly *incompatible* with Directive 2011/92.

THE ECHR FRAMEWORK

Important to determine affected individuals:

Cordella and Others v. Italy (2019): 180 applicants complained about the effects of toxic emissions from the Ilva steelworks in Taranto on the environment and on their health. The Court considered that 19 applicants did not have victim status, since they did not live in one of the towns classified as being at high environmental risk. In respect of the other applicants, the Court held that there had been a violation of Article 8 and Article 13 (right to an effective remedy).

Cannavacciuolo and Others v. Italy (2025): Long-term unauthorised waste management in part of Italy. According to the ECtHR, the Italian authorities failed to take adequate and timely measures to assess and address the impact of the pollution. The Court criticized the lack of coordinated action, delayed investigations, slow efforts to remedy the pollution, inadequate monitoring and insufficient legal measures against criminal waste management (violation of Article 2).



WHAT?

EIA Directive: the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

1) No EIA at all? Kraaijeveld (C-72/95), Boxus (C-128/09), Solvay (C-182/10)

Judgment of the Czech Supreme Administrative Court of 26 February 2024, No 8 As 277/2021-66: The NGOs can challenge the lack of the screening procedure in a dispute regarding their participation in the permitting procedure

2) EIA not necessary (end in the screening phase)

3) EIA conclusions

4) development consent



- If there is no EIA there must be a sort of judicial review to confirm that there is no need for an EIA
- Often this is not the case, there is no EIA. Then to challenge the project, should the public wait for the final decision?
- The Court says that NGOs can challenge the absence of an EIA.

WHAT: Which proceedings?

Procedure for amending a permit

A new environmental impact assessment is **not required** for the renewal of an existing permit **in the absence of any works** or interventions involving alterations to the physical aspect of the site (C-275/09, C-121/11)

Physical works:

Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen (C-411/17),
Friends of the Irish Environment (C-254/19)

Exception from the species protection?

C-463/20 (*Namur-Est Environnement*)

...decision adopted under Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and which authorises a developer to derogate from the applicable species protection measures in order to carry out a project within the meaning of Article 1(2)(a) of Directive 2011/92 forms part of the development consent procedure

WHAT?

SEA Directive: ?

Art. 9(3) of the Aarhus Convention:

acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment

Inter-Environnement Wallonie and Terre wallonne (C-41/11),
Association France Nature Environnement (C-379/15)

In exceptional cases, it is possible not to repeal a plan or programme, for example a land use plan. However, the following cumulative conditions must be met: 1) the contested measure/act implements EU environmental law; 2) the resulting legal vacuum would be worse for the environment than maintaining the regulation; 3) it will be assessed whether the adoption of the new measure/act avoids adverse impacts on the environment 4) the effects (4) the effects of the inconsistent regulation will be maintained only for as long as necessary.



- The legal vacuum of an annulment of an entire, for example, land use plan could be more jeopardising than maintaining it.
- There are plenty of cases on other Directives, not on the SEA.

Similar cases

C-237/07 (Janecek – on air quality action plans):

„the natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts”.

WHY:

Protection of health

- *the failure to observe the measures required by the directives which relate to air quality and drinking water, and which are designed to protect public health, could endanger human health, the persons concerned must be in a position to rely on the mandatory rules included in those directives (see Case C-361/88 Commission v Germany; Case C-59/89 Commission v Germany; and Case C-58/89 Commission v Germany).*

WHO:

- the natural or legal persons directly concerned



- There were no provisions on access to justice but the Court ruled that there would be no effectiveness of the law without the possibility to challenge violations.

Similar cases

Janecek (C-237/07), ClientEarth (C-404/13, ambient air quality assessment and management): The affected individuals must be able to require adoption of air-pollution action plans

Wasserleitungsverband Nördliches Burgenland and Others (C-197/18, Nitrates Directive): Affected natural and legal persons, such as the applicants in the main proceedings (**incl. municipality and a water distribution association**), should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions

Affected natural and legal persons, such as the applicants in the main proceedings (incl. municipality and a water distribution association), should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions

municipality = not public concerned under the Aarhus Convention, but can be affected by violation of EU law

The obligations provided for in Article 5(4) and (5) of Directive 91/676 are clear, precise and unconditional, which means that they can be invoked by individuals against the State (see, by analogy, judgment of 26 June 2019, Craeynest and Others, C-723/17, EU:C:2019:533, paragraph 42).

THE CONTENT OF THE RIGHT – AIR QUALITY PLANS

- The Court of Justice **limited the right of persons to request a specific content of a plan**. It held that the public authorities were to take measures to keep the time of (the risk of) exceedance as short as possible, but that they benefitted of a large amount of discretion, so that specific measures could not be asked for (C-237/07).
- Similar approach applies to the obligations in the **NEC Directive**. The natural and legal persons directly concerned must be able to require the competent authorities, if necessary by bringing the matter before the national courts, to observe and implement such rules of EU law – for example **to draw up national programmes for the progressive reduction of national emissions of inter alia SO₂ and NO_x** (Joined Cases C-165/09, C-166/09 and C-167/09)

WHO

C-252/22 (Societatea Civilă Profesională de Avocați AB & CD)

*Does **the public** include a **legal entity such as a law firm partnership**, which does not rely on the infringement of any right or interest specific to that entity, but rather the infringement of the rights and interests of natural persons – namely the lawyers of which that partnership is comprised – [and] can such an entity be treated as a group of natural persons acting through an association or organisation for the purposes of Article 2(4) of the Convention?*

CJEU: It is not contrary to EU law for national legislation to grant such standing under Article 9(3) of the Aarhus Convention only to environmental NGOs and to other entities only in the event of an infringement of their private interest. That provision has a broader scope than Article 9(2) of the Aarhus Convention, since it applies to a wider category of acts and decisions and is addressed to members of the general 'public'. It confers greater discretion on the Member States in establishing criteria for determining the real holders of the right to judicial protection among all members of the public.

It is essential that, as a result of the criteria laid down, 'certain 'categories' of members of the public are not denied any right to a remedy. On the contrary, the need to establish a legitimate private interest merely renders inadmissible actions brought by persons who have no specific relationship with the administrative act they wish to challenge.

C-613/22 (Dublin 8 Residents Association)

WITHDRAWN CASE:

Does article 11(1)(a) of The EIA Directive read in conjunction with article 47 of the Charter of Fundamental Rights and/or article 9(2) to (4) of the Aarhus Convention have the effect that where an environmental NGO meets the test for standing set out in that provision, the NGO concerned is to be regarded as having sufficient capacity to seek a judicial remedy notwithstanding a general rule in the domestic law of a member state which precludes unincorporated associations from bringing legal proceedings?

If not, does it have that effect in circumstances where the domestic law of the member state concerned provides that an NGO that meets the test for standing conferred by article 1(2)(e) of the directive is thereby conferred with capacity to seek a judicial remedy?

Or, does it have that effect in circumstances where the domestic law of the member state concerned and/or procedures adopted by the competent authority of the member state concerned have enabled an environmental NGO which would not otherwise have legal capacity in domestic law to nonetheless participate in the administrative phase of the development consent process?

(...)



TIMELINESS, EFFICIENCY AND COSTS

[Klohn \(C-167/17, EIA\)](#): No direct effect of EU law implementing Art. 9(4) of the Aarhus Convention (requirement for a procedure which is not prohibitively expensive)

[C-470/16 \(North East Pylon, EIA\)](#): ...but it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the Aarhus Convention

[East Sussex \(C-71/14\)](#), [Gruber \(C-570/13\)](#), [Mellor \(C-75/08\)](#): The requirement of effectiveness covers the judge's examination of the assessment of the merits of a decision, act or omission, such as in the case as well the scrutiny of national legislation and regulatory acts

[\(C-41/11, Inter-Environnement Wallonie\)](#)

[Leth \(C-420/11\)](#): A national court dealing with a dispute governed by EU environmental law must be in a position to order interim measures as well as to award compensation for pecuniary damages, provided the three conditions for state liability are met

TIMELINESS, EFFICIENCY AND COSTS

The national court *should be able to bring the national practice in line* with EU legislation.

Example: In [Case C-404/13 ClientEarth](#), the CJEU ruled that *the national court should order any measure necessary to bring the air pollution plan into line with EU air quality legislation*. In this case, an NGO asked the UK courts to order the government to improve plans required under EU law to reduce dangerous levels of nitrogen dioxide in 16 urban areas, including Greater London. High nitrogen dioxide levels affect the health of millions of British people, especially vulnerable groups such as children and old people. The first UK court ruled that it was not its business to order the government to improve air quality measures but the UK Supreme Court sought guidance from the CJEU which confirmed it is (also) up to the national courts to achieve effectiveness of the EU law.

EIA

It is for the national court to determine whether it is possible under domestic law *for a consent already granted to be revoked or suspended* in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of the EIA Directive, or alternatively, if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered.

(See Wells, C-201/02, paragraphs 66-70, operative part 3; see also Leth, C-420/11, paragraphs 37-38; Stadt Wiener Neustadt, C-348/15, paragraphs 40, 45-46)

TIMELINESS, EFFICIENCY AND COSTS

"However, a national provision under which projects in respect of which the consent can no longer be subject to challenge before the courts, because of the expiry of the time limit for bringing proceedings laid down in national legislation, are purely and simply deemed to be lawfully authorised as regards the obligation to assess their effects on the environment, which it is for the referring court to ascertain, is not compatible with that directive." (Stadt Wiener Neustadt, C-348/15, paragraph 43)

C-252/22 (Societatea Civilă Profesională de Avocați AB & CD)

Article 9(4) and (5) of the Convention must be interpreted as meaning that, in order to ensure compliance with the requirement that judicial proceedings not be prohibitively expensive, a court called upon to make an order for costs against an unsuccessful party in an environmental dispute must take into account all the circumstances of the case, including that party's interest and the public interest in the protection of the environment.

Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC

(e) the execution of projects within the meaning of Article 1(2)(a), as referred to in Article 4(1) and (2), of Directive 2011/92/EU of the European Parliament and of the Council ⁽²⁴⁾, where such conduct is carried out without a development consent and causes or is likely to cause substantial damage to the quality of air or soil, or the quality or status of water, or substantial damage to an ecosystem, animals or plants;

Article 15

Publication of information in the public interest and access to justice for the public concerned

Member States shall ensure that persons affected or likely to be affected by the criminal offences referred to in Articles 3 and 4 of this Directive and persons having a sufficient interest or maintaining the impairment of a right, as well as non-governmental organisations that promote environmental protection and meet requirements under national law, have appropriate procedural rights in proceedings concerning those offences, where such procedural rights for the public concerned exist in the Member State in proceedings concerning other criminal offences, for instance as a civil party. In such cases, Member States shall also ensure, in accordance with their national law, that the information on the progress of the proceedings is shared with the public concerned, where that is done in proceedings concerning other criminal offences.

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Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC

- (57) Since the environment cannot represent itself as a victim in criminal proceedings, for the purpose of effective enforcement, members of the public concerned should have the possibility of acting on behalf of the environment as a public good, in accordance with national law and subject to the relevant procedural rules.
- (58) This Directive does not require Member States to introduce new procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning criminal offences other than those provided for pursuant to this Directive, such as the right to participate in proceedings as a civil party, such procedural rights should also be granted to the members of the public concerned in proceedings concerning the environmental criminal offences defined in this Directive. The rights of the members of the public concerned are without prejudice to the rights of victims as set out in Directive 2012/29/EU of the European Parliament and of the Council ⁽¹⁴⁾. The notion of ‘members of the public concerned’ and of ‘victims’ should remain distinct and Member States should not be required to apply victims’ rights to members of the public concerned. This Directive does not require Member States to grant to members of the public concerned the procedural rights in criminal proceedings that they grant to categories of persons other than members of the public concerned.



THANK YOU FOR YOUR ATTENTION!

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