



# **Access to Justice in Environmental Matters**

**Recent developments in the case law  
of the European Court of Justice**

# The role of CJEU case law for access to national courts

***Access to Justice provisions** are included in some EU secondary environmental law, but there are still gaps (e.g. in the area of nature, air, waste, water)*

***A Commission proposal** of 2003 aimed at filling the missing gaps, but did not receive the necessary support by MS*

***Case law** of the CJEU has considerably evolved since 2003 and now covers much of the subject matters*

# Access to Justice provisions in EU secondary law

*Article 11 of Directive 2011/92/EU (environmental impact assessment);*

*Article 25 of Directive 2010/75/EU (Industrial Emissions Directive)*

*Article 23 of Directive 2012/18/EU (Seveso)*

*Article 13 of Directive 2004/35/EEC (Environmental Liability Directive)*

## Examples of cases falling outside the scope of A2J provisions in EU secondary law

- *Hunting derogations under the Birds and the Habitat Directive*
- *Omission to adopt air quality plans*
- *Certain projects in Natura 2000 sites*

# Relevant topics for A2J

- 1. Legal standing for NGOs and individuals*
- 2. Scope of review*
- 3. Remedies*
- 4. Costs*
- 5. Timeliness*
- 6. Practical information*

# Legal Standing for NGOs

***C-243/15:*** *An environmental NGO is entitled to challenge a decision not to carry out an appropriate assessment for a project in a Natura 2000 site, as well as an assessment which is carried out.*

*Other important judgements: **C-240/09, C-404/13***

# Scope of review

## ***C-72/14 – East Sussex***

A system of judicial review complies with the principle of effectiveness if “ *it enables the court or tribunal hearing an application for annulment of such a decision to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of the decision*”

*Conclusion: Even if standard of review is not specified in EU law, the review has to be effective in ensuring that objectives of the relevant EU legislation are achieved.*

# Costs

***Not prohibitively expensive procedures:*** *the legal costs incurred by the parties to the proceedings should not be set a level that effectively deters or bars citizens and their associations from bringing legal challenges.*

***C-530/11:*** *The CJEU specifies criteria which the national judge has to apply in order to avoid that costs for procedure become prohibitively high*



# Commission initiative on access to justice in environmental matters

*A tool for **decentralised enforcement** of EU environmental legislation*

*Specific rules are necessary to **overcome basic barriers** that exist in many legal systems, in particular, if the right to go to court is very restricted.*

***Less complaints** to COM if access to justice works better at MS level*

# Methodology

**Creating** *no new legal obligation but drawing inferences from EU legal principles and case-law in case of gaps in EU secondary legislation*

**Covering** *all relevant aspects of access to justice*

**Targeting** *legal practitioners such as judges, lawyers, administrations, civil society*



European  
Commission

***Thank you!***