The Implementation of the Aarhus Convention's Third Pillar in the European Union – a Rocky Road Towards Compliance

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Summary: This article provides a detailed analysis of the European Union's road towards compliance with the third pillar of the Aarhus Convention and the current developments in this regard. The European Union's Notice on Access to Justice in Environmental Matters that was accepted in 2017 is also evaluated. No doubt, that environmental concerns became extremely important in the 21st Century, in front of the judicial bodies as well. It is interesting to see how the EU has been struggling to reach compliance with the right to access environmental justice, causing not just heated conversation between the greening NGO sphere and the EU, but also raising significant concerns regarding the effectiveness of the decision-making system.

Keywords: access to justice in environmental matters – Aarhus Convention – Court of Justice of the European Union – NGO – implementation – third pillar

1. Introduction

In the long line of environmentally related international treaties, the Aarhus Convention[1] has a special place. Not just because it has a unique divided structure, providing three correlated, but different rights, but also because the European Union is party to the treaty. The European Union signed the Aarhus Convention in 1998, and after the ratification procedure, the decision on the conclusion of the Aarhus Convention was adopted in 2005. The Convention itself was signed in 1998 and entered into force in 2001.[2] It was accepted by the aim to *"to con-*

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1 The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Hereinafter: Aarhus Convention, Convention.

2 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Aarhus, 1998 (2001) UNTS Vol. 2161, p. 447.

tribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters."[3] The original structure of the treaty is built on free main pillars: firstly, the right to access environmental information, secondly, the public participation in environmental decision-making and last but not least, the access to justice in environmental matters. The issue can be raised whether the Aarhus Convention is an instrument of environmental law or can be labelled as a human rights convention? The international treaty was accepted within the frame of the United Nations Economic Commission for Europe (UNECE) and one of the two legally binding tools[4] that put Principle 10 of the Rio Declaration on Environment and Development in practice.[5] The UNECE communication declares the Aarhus Convention is a *"new kind of environmental agreement"* that *"links environmental rights and human rights"* concerning the rights of future generations and sustainable development.[6] Because the aim of the Convention is not the direct protection of the environment, it cannot be considered a simple multilateral environmental treaty. It is more about the ecocentric approach as part of environmental ethics, where human rights gain a new dimension, and the treaty provisions encourage the governments and other actors to accept new legislation and to provide real public access to decision making in environmental matters. There is a strong correlation between human rights and the environment; the international legal order of environmental law is contributing to human rights protection as well.[7]

The European Union is a party to the Convention since 2005 and through a set of Directives and other instruments had successfully implemented the first[8]

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3 Aarhus Convention Art.1. Objective.

4 The other tool is the Protocol on Pollutant Release and Transfer Registers (2009).

5 Principle 10 of the Rio Declaration: *"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."*

6 Available at: https://www.unece.org/env/pp/introduction.html (04 February 2020).

7 *See* Jankuv, J. Protection of Right to Environment in International Public Law. *ICLR*, 2019, vol. 19, no. 1, pp. 146–171.

8 Especially via the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. OJ L 41. 2003. 2. 14., p. 26–32. CELEX 32003L0004.

and second pillars[9] of the Aarhus Convention. The EU joined the international treaty *"as an essential step forward in further encouraging and supporting public awareness in the field of environment and better implementation of environmental legislation in the UN/ECE region, in accordance with the principle of sustainable development"*.[10] The accepted legislation had modified the EU law in several aspects to comply with the rules of the Aarhus Convention.[11]

Furthermore, a new regulation is also in force detailing how the Community bodies and institutions shall applicate the provisions of the Convention.[12] The Regulation clarifies the Aarhus Convention's terms, such as defines *"environmental information"* and *"plans and programmes relating to the environment"*.

On the other hand, the right to access environmental justice has proven as a significant challenge for the European Union to comply with. There is no need to explain how vital access to justice is for individuals and organisations to challenge environmental decisions in front of judicial bodies. Compliance with the third pillar of the Aarhus Convention has appeared as a *black hole* in the legislation of the European Union. Every version of the alleged new law was cancelled in the beginning. Finally, in 2017, the Aarhus Convention Compliance Committee[13] found the EU in violation of the Aarhus Convention for strictly limiting to challenge the EU institutions' decisions before the Court of Justice of the European Union.

2. Access to environmental justice

In general, access to justice means that every citizen has the right to seek legal protection and sufficient remedy in front of judicial bodies. As Theodore Roosevelt

9 In order to implement the second pillar, the Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 was accepted, providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. OJ L 156., 2003. 6. 25., p. 17–25. CELEX 32003L0035.

10 UNTC Aarhus Convention, Declarations and Reservations. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27#EndDec (05 February 2020)

11 For example, the Directive concerning environmental assessment (Directive 2001/42/EC) and the Water Framework Directive (Directive 2000/60/EC) and also extended the scope of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents to all Community institutions and bodies.

12 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. OJ L 264., 2006. 9. 25., p. 13–19. CELEX 32006R1367.

13 Hereinafter: ACCC.

said: *"Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it wherever found, against the wrong."* Access to justice, in general, is one of the core values of the European Union, that also appears in the Charter of Fundamental Rights as well.[14] *"Access to justice provides a means to environmental laws, correct erroneous administrative acts, decisions and omissions and to push competent authorities to do their job."*[15] Access to justice has two main components: firstly, right to a fair trial and secondly, right to an effective remedy.[16] The primary source of law is the Treaty on Functioning of the European Union stating that: *"The Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law."*[17] The Charter of Fundamental Rights provides a full Chapter sentenced to *"justice"*. Article 47 provides the right to a fair trial and effective remedy.[18]

The implementation of access to justice in environmental matters is the most difficult to put into practice, out of the Aarhus Convention's pillars.[19] Access to justice is a core value in modern democracies, and every legal system has a set of rules to provide the citizens' fundamental right. It is also a crucial part of public international law, especially human rights conventions.[20]

Access to justice in environmental matters is a specific form of the right in question and proved to be a significant burden for the EU and the member states

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[14] Charter of Fundamental Rights of the European Union. OJ C 326, 26. 10. 2012, pp. 391–407. CELEX 12012P/TXT.

[15] EBESSON, J. Access to Justice at the National Level. *Aarhus Convention at Ten, Interactions and Tensions between Conventional International Law and EU Environmental Law*, 2011, p. 247.

[16] Handbook on European law relating to access to justice. European Union Agency for Fundamental Rights and Council of Europe, 2016, pp. 20–21.

[17] Treaty on Functioning of the European Union. OJ C 326, 26. 10. 2012, pp. 13–390. CELEX12012M/TXT. Art. 19. (1).

[18] Art. 47. 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. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."*

[19] DROSS, M. Access to Justice in Environmental Matters. *Tilburg Foreign Law Review*, 2004. volt. 11, no. 4, pp. 721.

[20] *See* Art 8 Universal Declaration of Human Rights (1948) *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."* Art. 6 (1) European Convention on Human Rights *"… everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…."* Art 25 American Convention on Human Rights *"Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts…"*.

as well. Access to justice in environmental matters is regulated in Article 9 of the Aarhus Convention. Under the rules of the Convention, access to justice has to be ensured in an impartial, fair procedure if the member of the public can prove *sufficient interest* or *impairment of a right*.[21] Also, the procedure must be equitable, timely and not overly expensive.[22] The member of the public shall *"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."*[23]

In the case of access to justice in environmental matters, the European Union relies on the national judicial systems. As it will appear, the EU was not able to adopt any specific legislation sentenced to the matter, so the burden on the member states' courts is even more pressuring. In many cases, the EU law relies on the national court to oversee the correct application and enforcement of community measures. However, the unique legislation does *"not fit comfortably"* to the national legal or judicial system, causing less adequate application.[24] It is proved, that the member states' current legislation on access to justice in environmental matters differs considerably and there is a lack of harmonisation. Minimum standards exist in only those member states' which successfully harmonised by secondary law, for example as a result of the Environmental Impact Assessment Directive. In the communication of the European Union, the national courts should focus on the relevant decisions of the CJEU[25] and follow up on the latest recommendations. The EU law has been modified in some aspect to comply with the third pillar – for example, in the case of the Habitat Directive – but the lack of specific legislation challenged the national courts so far.[26]

3. The European Union's steps towards compliance

The European Union's legislative procedure concerning access to environmental justice has a long and unfortunate history. Officially, the EU joined the Aarhus Convention in 2005, but the *"Aarhus-inspired"* legislation had already started in 2003. In 2006 the EU adopted the Aarhus Regulation on the application of

[21] Aarhus Convention, Art. 9. 2. a) and b).
[22] Aarhus Convention, Art. 9. 1–5.
[23] Aarhus Convention, Art. 9. 1. b).
[24] Ryall, Á. *Effective Judicial Protection and the Environmental Impact Assessment Directive in Ireland*. Hart Publishing, 2009, p. 257.
[25] Court of Justice of the European Union (CJEU).
[26] Communication on access to justice at national level related to measures implementing EU environmental law. 21/07/2016, pp. 1–5.

the provisions of the Aarhus Convention, that is still in force.[27] The Commission adopted a proposal to contribute to the implementation of the Aarhus Convention and to eliminate several shortcomings in the EU's environmental law. The main aim off the proposal was to justify the legislative procedure at the EU level and the legal basis of the future directive.[28] In 2004 the European Parliament[29] and the European Economic and Social Committee[30] issued very detailed opinions on the Proposal, suggesting several modifications for to Committee to consider. The Commission had its last meeting about the *Access to Justice Directive Proposal* in 2005. For a six-year term between 2006 and 2012, no official steps had been made concerning the Proposal in question. So, the first attempt to accept a legal instrument about environmental justice failed. In 2012 the Commission adopted a communication with the specific aim to improve access to justice.[31] As the Communication stated, several provisions in environmental law restricted to ensure *"reasonable access to justice"*. The Communication also mentioned the previous proposal: *"a 2003 Commission proposal aimed at facilitating wider access has not progressed but the wider context has changed, in particular, the Court of Justice has confirmed recently that national courts must interpret access to justice rules in a way which is compliant with the Aarhus Convention. National courts and economic as well as environmental interests face uncertainty in addressing this challenge."* In 2012 the Parliament Resolution's on the Review of the 6th Environment Action Plan also mentioned the obligation of full compliance with the Aarhus Convention as the following: *"underlines that the 7th EAP should provide for the full implementation of the Aarhus Convention, in particular regarding access to justice; stresses, in this connection, the urgent*

[27] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. OJ L 264., 2006. 9. 25., pp. 13–19. CELEX 32006R1367.

[28] Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters. COM/2003/0624 final – COD 2003/0246 CELEX 52003PC0624.

[29] European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies (COM(2003) 622-C5-0505/2003 – 2003/0242(COD).

[30] Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies'. 2004/C 117/13.

[31] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness COM/2012/095 final CELEX 52012DC0095.

need to adopt the directive on access to justice; calls on the Council to respect its obligations resulting from the Arhus Convention and to adopt a common position on the corresponding Commission proposal before the end of 2012."[32]

The second phase of implementation attempts started in 2012 and ended in 2014 when the Proposal was officially withdrawn. Meanwhile, comparative studies had been delivered about justice in environmental matters, and also further communications were accepted to hasten the adoption of the new legislation; unfortunately, all attempts failed.

A new decade has started since the last legislative proposal, and the EU is still *"continue to explore ways and means"* to successfully comply with the third pillar of the Aarhus Convention – as is clearly stated in the Commission's Roadmap.[33] The Aarhus Convention Compliance Committee was informed about the failure of the European Union at the matter of environmental justice and provided detailed recommendations and findings since 2008. In 2017 the Committee recommended that the CJEU modifies its case-law or that the Union amends the Aarhus Regulation or adopts new legislation.[34] The meeting of the Parties in 2017 could not agree in the case of the European Union and postponed the consideration to the next session in 2021. In 2018 the Commission published a roadmap and started a public consultation on the topic of access to justice in environmental matters.[35] As part of the same path, the Council adopted a decision requesting a study on the Union's findings and possible outcomes.[36] In September 2019 the EU published a more than three hundred page long study on the implementation of the Aarhus Convention in the area of access to justice in environmental matters, usually referred to as the Milieu Report.[37] In between, in April 2017 the

[32] European Parliament resolution of 20 April 2012 on the review of the 6th Environment Action Programme and the setting of priorities for the 7th Environment Action Programme – A better environment for a better life (2011/2194(INI)) Paragraph 68.

[33] EU implementation of the Aarhus Convention in the area of access to justice in environmental matters. DG ENV.E4 – Compliance and Better Regulation Unit. Q2 2019.

[34] Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union1 Adopted by the Compliance Committee on 17 March 2017.

[35] EU implementation of the Aarhus Convention in the area of access to justice in environmental matters. Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/Ares-2018-2432060 (05 February 2020).

[36] Council Decision (EU) 2018/881 of 18 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006. OJ L 155, 19. 6. 2018, pp. 6–7. CELEX 32018D0881.

[37] Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters Final report September 2019, 07.0203/2018/786407/SER/ENV.E.4.

European Commission adopted a *Notice on Access to Justice in Environmental Matters* serving as a guidance document that clarifies how individuals and their associations can challenge decisions, acts and omissions by public authorities related to EU environmental law before national courts.[38] To sum up, in the last more than fifteen years, the European Union has not accepted any legally binding instrument to implement the third pillar of the Aarhus Convention. Besides, the EU objected to the investigation of the ACCC and subjected itself a series of negative comments from the NGO sphere and the member states.

4. Main problems leading non-compliance with the third pillar

In the latest communication of the European Commission, a detailed summary can be found in which the ACCC's critics are compared with the comments of the European Union.[39]

The first round of critics is about the administrative review mechanism that should be opened beyond NGOs to other members of the public. As the EU replied, the parties, who can seek administrative and judicial review represents the issue of *"who"* would start the procedures.[40]

The question of eligible applicants – especially in acts for annulment – proved to be a considerable burden for the Court of Justice of the European Union. Since the middle of the '90s, the CJEU denied access to justice in environmental matters for NGOs and failed to provide a detailed explanation of how these organisations can meet with the requirements as applicants.

In the *Slovak Brown Bear Case,*[41] the CJEU ruled that Article 9(3) of the Aarhus Convention cannot be considered as a *self-executing* norm in the member states legal order. The Decision occurred in a preliminary ruling from the Supreme Court of the Slovak Republic. The applicant was a Slovak non-governmental organisation, "VLK ('LZ')" which wanted to participate in an administrative procedure regarding derogations concerning protected species – more

[38] Notices from European Union Institutions, bodies, offices and agencies. Commission Notice on access to justice in environmental matters. Official Journal of the European Union, C 275, 18 August 2017. CELEX C:2017:275:TOC.

[39] Commission, Report on European Union implementation of the Aarhus Convention in the area of access to justice in environment matters. Brussels, 10. 10. 2019. SWD (2019) 378 final. (Hereinafter: Commissions Communication, 2019.)

[40] Commission's Communication, 2019, p. 24.

[41] Judgment of the Court (Grand Chamber) of 8 March 2011. Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky.Case C-240/09. ECLI:EU:C:2011:125.

specifically the brown bears – and areas which are protected by the Habitat Directive. The Court decided that Article 9(3) of the Convention does not have direct effect in European Union law. On the other hand, it is crucial to interpret the relevant rules to the fullest extent possible, to enable an environmental protection organisation to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law. In 2011 the case raised significant issues regarding to mixed agreements because member states are responsible for the performance of the obligations according to Article 9(3) and will remain so unless and until the Community adopts provisions of Community law covering the implementation of those obligations – as it was clearly defined when the EU became party to the Convention. Mixed agreements are agreements including shared competences or concurrent competences or member states' competences.[42] The member states remain responsible until the EU exercise its power under the EC Treaty and adopts proper provisions in the matter.[43]

The legal standing of the NGOs and the required Plaumann-test as a measurement in front of the CJEU, causing a heated discussion between the EU and the civil sphere for a long time. The first round was the infamous Greenpeace ruling of the CJEU in 1998 in which the well-known organisation wanted to challenge the Commission's decision taken between 1991 and 1993 to disburse to the Kingdom of Spain financial assistance provided by the European Regional Development Fund for the construction of two power stations in the Canary Islands.[44] The Court decided, environmental NGOs must fulfil the criterion of the Plaumann-test: *"Persons other than the addressees may claim that a decision is of individual concern to them only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person addressed."*[45] The international organisation was not able to meet with the measurements of "*individual concern*". In the view of environmental NGOs, the CJEU is strictly limiting access

[42] *See* Leal-Arcas, R. The European Community and Mixed Agreements. *European Foreign Affairs Review*, vol. 6 no. 4, 2004, pp. 2004, pp. 483–513.

[43] Council decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters. Declaration by the European Community in accordance with Article 19 of Convention on access to information, public participation in decision-making and access to justice in environmental matters. 2005/370/EC.

[44] Judgment of the Court of 2 April 1998. Stichting Greenpeace Council (Greenpeace International) and Others v Commission of the European Communities. Case C-321/95 P. ECLI:EU:C:1998:153.

[45] Judgment of the Court of 15 July 1963. Plaumann & Co. v Commission of the European Economic Community. Case 25–62. ECLI:EU:C:1963:17.

to justice in the European Union since none of the relevant organisations could meet the requirements and they are practically forbidden from challenging environmentally related decisions. The scope of the Plaumann-test is quite restricted because it is only applied in actions for annulment if the applicant is considered as non-privileged.[46] In 2017 the CJEU delivered another decision concerning Greenpeace, the application for annulment of the Commission's decision approving State aid for the nuclear power plant, Hinkley Point C. The Court ruled that the applicant failed to meet with the criteria of *"individual concern"* denying access to justice – again.[47] In the *Janecek* case from 2008, the Court also had to deal with the term of *"directly concerned"* and ruled: *"persons directly concerned must be in a position to require the competent national authorities to draw up an action plan, even though, under national law, those persons may have other courses of action available to them for requiring those authorities to take measures to combat atmospheric pollution."*[48]

NGOs are incredibly crucial at the field of environmental policy, serving the *watchdogs' function* and should have the power to challenge and dispute environmentally related decisions. The role of non-governmental organisations is generally frowned in the European Union, for example, because of the lack of formalised involvement in decision-making procedures.[49] The problems arising from the lack of proper implementation of the Aarhus Convention is just another added issue.

Secondly, the ACCC found that review should encompass not just acts of individual scope but general acts to. In this regard, the European Union emphasised, the EU has a unique catalogue of legal sources and institutions; other bodies can adopt many different types of acts with various legal effect. Moreover, the scope of review is also a problem, because in the opinion of the ACCC, every administrative act that is merely environmentally-related should be challengeable, not only acts that are accepted as part of environmental law. For the European Union, *"what"* can be challenged is limited to and only act under environmental law.[50] About the ACCC findings, not just legally binding and external, but other acts should also be open to review. Meanwhile, the European Union justifies the scope

[46] Gombos, K. *European law – the legal order of the European Union*. Budapest: Wolters Kluwer Publishing. 2019, pp. 91–95.

[47] Order of the Court (Eighth Chamber) of 10 October 2017. Greenpeace Energy eG v European Commission. Case C-640/16 P. ECLI:EU:C:2017:752.

[48] Judgment of the Court (Second Chamber) of 25 July 2008. Dieter Janecek v Freistaat Bayern. Case C-237/07. ECLI:EU:C:2008:447.

[49] ELIANTONIO, M. The role of NGOs in environmental implementation conflicts: 'stuck in the middle' between infringement proceedings and preliminary rulings? *Journal of European Integration*, vol. 40 no.6, 2018, pp. 753–767.

[50] Commission's Communication, 2019, pp. 22–23.

of the procedure to acts having an external legal effect. The explanation is in the separation of powers, as one fundamental principle of the European Union. [51]

5. Closing remarks: compliance versus the semblance of compliance?

"Justice is open to all – like the Ritz Hotel."[52] The quotation is usually used to emphasize how expensive litigation could be, excluding those from the judicial system, who are directly affected by governmental and administrative decisions. In the European Union, the Aarhus Convention's third pillar had not brought the desired effect and in the interpretation of the NGO sphere, they are still practically excluded to challenge decisions and acts for annulment in front of the CJEU. It was emphasised, the scope of Plaumann-test is limited as described earlier, but the CJEU is slightly failed to provide a detailed explanation of how the organisations could meet with the requirements. In the last two decades, the European Union tried to reach compliance with the Aarhus Convention by modifying the relevant legislation and accepting the proper legislation. On the other hand, one of the shortcomings of the environmental policy is the lack of specific implementation of the third pillar. With regard to that, the main problems can be divided into the following segments. Firstly, the lack of specific binding legislation concerning access to justice in environmental matters and the failed Proposal. Moreover, the lack of proper legislation put too much burden on national courts in the member states.

The *locus standi* or legal standing generally means the right or ability to bring legal action to a court of law or to appear in a court. The legal standing of NGOs as part of the access to justice in environmental matters is a reason for complaint. The Commission's Notice issued in 2017 is the latest attempt to shed light in this regard. The Notice clarifies that *"in the absence of express legislative provisions, the requirements concerning legal standing have to be interpreted in the light of the principles established in the case-law of the CJEU"*.[53] Although some of the environmental directives specify the provisions of legal standing, access to justice is absent in most secondary legislation.[54] The aim of the European Union

[51] Commission's Communication, 2019, p. 24.

[52] SALMON, P. Access to Environmental Justice. *New Zealand Journal of Environmental Law*, 1998. Vol. 2, p. 11.

[53] Commission Notice on access to justice in environmental matters. C/2017/2616. 18 August 2017, p. 59.

[54] Ibidem.

is *"better results through better application"*[55] leaving the core decisions to the member states' administrative and judicial bodies. The main question is whether the new notice can help in better implementation, or the EU should finally adopt specific legislation at the matter of access to environmental justice. In two decades, the EU institutions were not able to agree on a particular law and the access to environmental justice is a still existing black hole in the European Union's legislation. Seemingly, the EU reached compliance with the Aarhus Convention, but because of the third pillar, the two opposing parties – NGOs v member states and EU – has very different opinions on the real possibilities. The EU's strict tenacity to the practice of the CJEU is understandable, but a more clarified approach would be appreciated from the NGO sphere. The failure of the EU is quite surprising, because it had been involved to the full discussion before the acceptance of the Aarhus Convention.

Article 9 is interpreted and applied differently in the member states. That is the reason why the NGO sphere is trying to pressure the EU institutions the adopt a new directive: *"Directive on Access to Justice in Environmental Matters, specifying minimum common rules for transposition of these provisions by member states, should be adopted."*[56] The will is understandable, but it is hardly imaginable that after twenty years of struggle, the EU will be able to reach common grounds and adopt the alleged legislation. In the foreseeable future, the European Union does not plan to adopt such a new directive. As a result, the EU stays in the state of the semblance of compliance. But as the well-known quote says: *"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."*[57]

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[56] Report on Access to Justice in Environmental Matters. Justice and Environment, p. 21. Avaiable at: http://www.justiceandenvironment.org/_files/file/2010/05/JE-Aarhus-AtJ_Report_10-05-24.pdf (07 February 2020).

[57] MEAD, M. In: KEYS, D. *Earth at Omega: Passage to Planetization*, 1982.

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