

# Introduction & Presentation of new access to justice resources

Csaba Kiss (Coordinator)

14 October 2021

Side Event to the Aarhus Convention  
MOP7

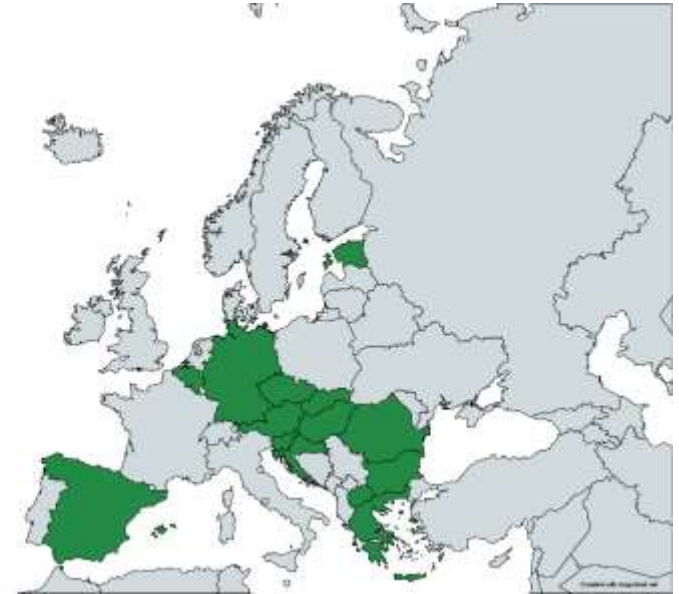
# Introduction

- [ClientEarth](#) (CE)
- NGO using the power of law to protect people & the planet
- Offices in London, Brussels, Warsaw, Madrid, Berlin, Beijing, Calabasas (USA)
- Works in over 60 countries in Europe, Asia, Africa and the Americas



# Introduction

- [Justice and Environment](#)  
(J&E)
- Network of environmental legal NGOs
- 14 member organizations
- Mission: J&E uses its legal expertise and experience to improve EU environmental laws and their implementation for the benefit of the environment and people across Europe



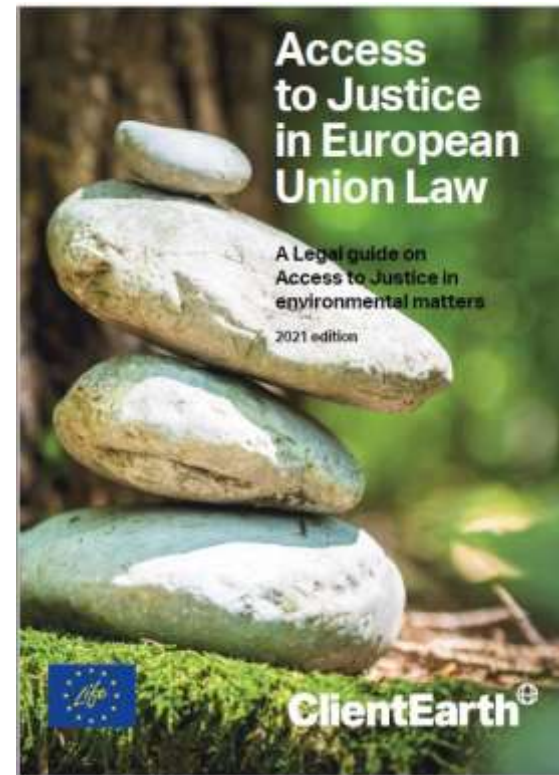
# EARL project

- 2017-2020
- Education and Awareness Raising of Legal Professionals on environmental law and access rights
- Austria, Belgium, Estonia, France, Germany, Hungary, Poland, Slovakia, Spain
- <https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/>



# Resources

- EARL – online resources
  - [Guide](#) on ATOJ in the EU
  - 8 country [toolkits](#)
  - Interactive [platform](#) (EE, HU, PL)
  - Lawyer [database](#) (15 MS)
  - 26 online [newsletters](#)



# Resources

- EARL – replicable resources
  - 57 training events in 9 countries
  - 12 online webinars
  - 1 online conference with 285 attendees)



# Resources

- EC – [eJustice Fact Sheets](#)
- All 27 EU MS
- In-depth knowledge on ATOJ
- In English, later in other EU languages



# Thank you for your attention!

Csaba Kiss

Coordinator

[info@justiceandenvironment.org](mailto:info@justiceandenvironment.org)

[www.justiceandenvironment.org](http://www.justiceandenvironment.org)

J&E is funded by the European Commission, DG Environment.  
The sole responsibility of this material lies with the author (J&E).







# 2021 Guide on Access to Justice in European Union Law

Sebastian Bechtel

Environmental Democracy Lawyer

14 October 2021

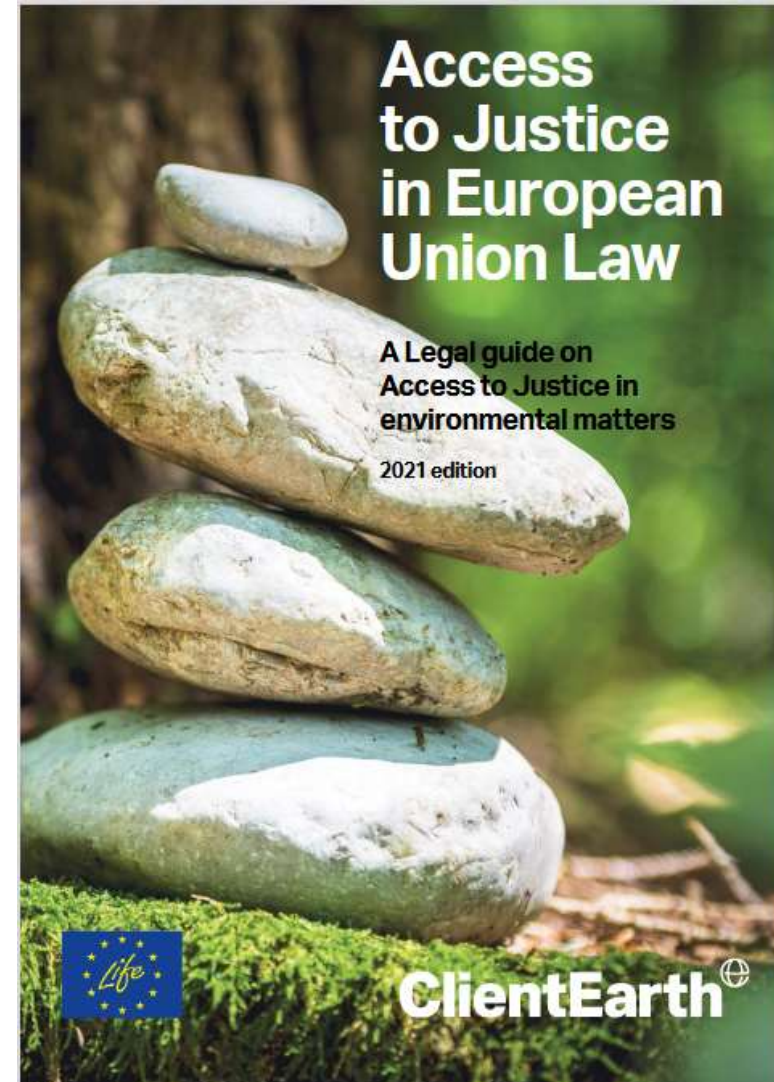
**ClientEarth**

# Agenda

- Presentation of the Guide
- 3 recent case highlights
- Amended EU internal review mechanism

# The Guide

- Intended for lawyers, public authorities, judges and NGOs
- Updated in February 2021
- Available online + hard copies
- 4 chapters on access to justice in the MS + 1 regarding EU institutions/bodies



**ClientEarth**

# Chapter 1: Access to info

Implementation of Art. 9(1) AC on MS level

Some highlights:

- Information on emissions
- Public authorities for requests:  
special powers & control
- Costs
- Time (C96 and C141)

## Chapter 2: Public Participation Rights

Implementation of Art. 9(2) AC on MS level

Based on legislation: EIAD, IED, Seveso III Directive

Based on case law only: appropriate assessments (Habitats), water permits (Water Framework Directive), waste permits (Waste Framework Directive)



## Chapter 2: Public Participation Rights

Some highlights:

- Standing of individuals + NGOs
  - “formal criteria” for NGOs (C137)
- Scope of review (*Trianel, North East Pylon, Flausch*)
- Standard of review



## Case highlight 1: *Stichting Varkens*

- Art. 9(2) public participation cannot be precondition for access to justice
- Art. 9(3): Limitation to right of effective remedy (Art. 52(1) Charter)
  - “proportional”, if excuse exist
  - nothing on material preclusion

No: C-826/18



## **Chapter 3: Contraventions of environmental law**

Implementation of Art. 9(3) AC on MS level

Based on legislation: Environmental Liability Directive

Based on case law only: Any directly effective provision of EU environmental law



# Chapter 3: Contraventions of environmental law

Highlights:

- Plans, permits, programmes, derogations
- ELD standing (*Folk*)
- Individuals standing (*Burgenland + NRW*)

## **Chapter 4: Requirements for all review procedures**

Implementation of Art. 9.4 & 9.5 under  
EU law

Largely based on EU case law + general  
principles + Charter of Fundamental  
Rights / ECHR

## **Chapter 4: Requirements for all review procedures**

Highlights:

- Effective remedies;
- Injunctive relief;
- Timely;
- Costs;
- Assistance + info

## **Case highlight 2:** ***Deutsche Umwelthilfe***

- NOx exceedances in Munich
- Minister-President of Bavaria states he will not comply with administrative court order
- Fines ineffective -> detention?
- Obligation to apply coercive measures = more dissuasive, repeated fines

No: C-752/18

# Chapter 5: Decisions of EU institutions/bodies

Judicial avenues:

- No direct access to the CJEU (Art 263 TFEU)
- National courts can refer questions (Art. 267 TFEU) but
  - Needs national case
  - Restrictive national standing rules + high costs
  - National judges hesitant to refer questions
  - Takes years

# Internal review - the idea

- Reg 1367/2006 (Aarhus Reg) establishes internal review
- EU institution or body adopts an administrative act or should have adopted such an act
- NGOs can request an internal review within 6 weeks of adoption

=>

1. Positive decision: Act is changed / altered
2. Negative decision: NGO is addressee, can challenge the decision before the EU General Court (Art 263 TFEU)

# What will the amendment mean?

Internal review of all non-legislative acts with legal and external effects - examples:

- Commission decisions approving the list of new fossil fuel energy infrastructure projects (the so-called **PCI list**);
- Commission decisions regulating **real driving emissions** tests for motor vehicles;
- Council decisions to determine **total allowable catch** limits (fisheries);
- Decisions of the European Chemicals Agency (ECHA), European Food Safety Authority (EFSA) etc
- ...

## Still to improve ...

- Standing for individuals: very restrictive criteria
  - Challenging legislative acts?
  - Scope: Commission **State Aid** Decisions – Example: Approving EU Member State funding to hydro power plants that violate the Water Framework Directive
- > ACCC/C/2015/128 = next presentation



# Thank you!

Sebastian Bechtel

Environmental Democracy Lawyer

e. [sbechtel@clientearth.org](mailto:sbechtel@clientearth.org)

t. +32 (0) 2 808 88 62

ClientEarth, 60 Rue du Trône (Box 11), Brussels, 1050

# Selected Access to Justice Findings of the Aarhus Convention Compliance Committee

Summer Kern, Lawyer

Thursday, 14 October 2021, 10:00-11:30 CET

Side Event to the 7th Meeting of the Parties to the Aarhus Convention

“Recent developments regarding access to justice  
ACCC & case law”

# Overview

- Discuss selected new access to justice findings concerning the rights to:
  - Challenge certain decisions of the EU
  - Bring judicial challenges when blocked by NGO recognition requirements
  - Individual use rights
- Present interlinkages with statements and rulings of other bodies
- Not present a comprehensive, exhaustive review
  - Time allowing: Discuss cases concerning concept of what is “fair” under article 9(4)
  - Mention other cases of interest

# C128 (EU)

- Concerns state aid decisions by the European Commission
- Access excluded by
  - Aarhus Regulation
  - CJEU jurisprudence
- **Committee found**: This violates article 9(3) and 9(4) of the Convention

# C128 *continued*

Article 9(3): “...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.”

- Communicants and observers:
  - All members of the public blocked
  - No access
  - Some state aid decisions have the potential to contravene provisions of its national (EU law). Articles 11, 191 & 194 TFEU, secondary legislation...

# C128 *continued*

- [The Commission in 2019 SWD](#), pp. 22-23:
  - Article 9(3) of the Aarhus Convention does not require that the challengeable act has an environmental purpose
  - To be compliant, the EU system of redress needs to allow for the scrutiny of all Union acts for compliance with Article 11 TFEU
- The CJEU in [Austria v. Commission C-594/18 P](#)
  - Articles 11, 194 and other rules apply to state aid decisions
  - Therefore the Commission must check that state aid does not violate EU law on environment and refuse it if it does

# *C128 conclusions*

- Given above, no legal argument to deny access to justice. Not after C32, and this context harder
- Find a productive way forward

# C137 (Germany)

- Concerns effect of a recognition criterion to have a “democratic structure”
  - entails not only membership in the organization, but full voting rights
  - Need this recognition to bring legal challenges and blocks many, including major NGOs like WWF and Greenpeace
- **Committee found: This violates article 9(2) in conjunction with article 2(5)**



# *C137 conclusions*

- Selected take-aways:
  - 9(2) imposes nothing more than meeting 2(5) for NGOs
  - NGO work to protect the environment is not a popularity contest
  - Consider also [Djurgården \(C-263/08\)](#); AG Sharpston's [Opinion](#)

# C135 (France)

- Concerns an individual who sought to challenge a ministerial order. Denied standing despite arguments that:
  - There are certain provisions regarding the right to participate in, and initiate proceedings against, decisions that affect the environment
  - The fact he took part in the public participation procedure during the preparation of the challenged order
  - He has an interest in wildlife and its preservation

**Committee found: No violation of Article 9(3) for denial of standing**

# C135 *conclusions*

- No actio popularis
- Factors raised not sufficient to establish 9(3) standing for individuals
- Dicta regarding use rights
  - Genesis in [Sierra Club v. Morton fn](#)
  - [Commission's Notice on Access to Justice](#), paras. 48-55 but especially para. 56
  - CJEU ([Folk](#), [Burgenland](#), [NRW](#))
  - Ukraine's Supreme Court [judgment](#)
- Way(s) forward with use rights?

# Fairness (Article 9(4))

- [C90 \(UK\)](#)
  - Developers having access to full merits review, but other members lacking this fails to ensure procedures are fair
- [C131 \(UK\)](#)
  - Time limits to bring judicial review
  - Costs issues

# Thank you for your attention!

Summer Kern

summer\_kern@justiceandenvironment.org

[www.justiceandenvironment.org](http://www.justiceandenvironment.org)

J&E is funded by the European Commission, DG Environment.  
The sole responsibility of this material lies with the author (J&E).

