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## **The Aarhus Convention and Access to Justice in Europe as of Today**

- Reflections on the development of access to justice in environmental matters in Europe.

The European Union is a Party to the Aarhus Convention, as are all of its Member States. To some extent, the Convention is based on ideas that were already present in union legislation, such as Environment Impact Assessment (EIA). The Union was also very active in the negotiations leading to the Aarhus Convention. The express implementation of the third pillar of the Convention—access to justice—is divided between union legislation and national legislation. Article 9.2 of the Convention, dealing with access to justice in relation to permit decisions on industrial plants and installations, power stations, waste incinerators and landfills, mines, major infrastructural projects and other activities that may have a significant effect on the environment, is implemented by amendments to the EIA Directive and the IPPC Directive (2000/8/1).<sup>1</sup> Implementation of article 9.3 of the Convention, which demands that the public concerned have access to administrative or judicial procedures to challenge acts or omissions by private persons and public authorities believed to have contravened national law concerning the environment, has so far largely been left to the Member States. This was clarified by the Union on the approval of the Convention, when it stated that the Member States were responsible for the performance of Article 9.3 and would remain so unless and until Union legislation is adopted.<sup>2</sup>

This solution is problematic as it makes the implementation of the Convention dependent on the procedural system and the legal traditions in each Member State, where there are great differences when it comes to the possibilities for the public concerned to have access to justice in environmental matters. Both communications made by the public to the Compliance Committee<sup>3</sup> and studies made by the Task Force on Access to Justice under the Aarhus Convention<sup>4</sup> show that there exist many barriers to access to justice among the countries in the Union; restricted standing or restricted possibilities to invoke environmental arguments for individuals (“Schutznormtheorie”), lack of standing

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<sup>1</sup> The amendments are made by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 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

<sup>2</sup> See <http://www.unece.org/env/pp/ratification.htm>.

<sup>3</sup> See <http://www.unece.org/env/pp/pubcom.html>.

<sup>4</sup> See <http://www.unece.org/env/pp/a.to.j.html> - Analytic studies.

for NGOs, no available remedies, delay in the procedure, and – not least – high costs are such examples.

In my presentation, I will elaborate on the most important barriers to access to justice in environmental matters in Europe as of today. I will also focus is on the role of the courts in improving the enforcement of environmental law through participation from the public.