

EU implementation of the Aarhus Convention in the area of access of justice in environmental matters.

Fields marked with * are mandatory.

Introduction

The questionnaire consists of two parts. The first part is aimed at all respondents and includes general questions on the relevance of the Aarhus Convention and Regulation to individuals and others, as well as questions on its effective implementation and the impacts of possible changes that would ensure the EU's compliance with the Aarhus Convention. The second part of the questionnaire seeks information about the experience with existing mechanisms to review environmental acts as provided for by Regulation (EC) No 1367/2006 (the Aarhus Regulation). This second part is particularly aimed at respondents directly involved with or affected by the Aarhus Regulation and its requirements.

It should take approximately 20 to 40 minutes to fill in the questionnaire, depending if you respond only to Part 1 or to both Parts 1 and 2. You may interrupt your session at any time and continue answering at a later stage. If you do so, please remember to keep the link to your saved answers as this is the only way to access them. Only questions marked with a red asterisk are mandatory. Once you have submitted your answers online, you will be able to download a copy of the completed questionnaire.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian

- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Wendel

* Surname

TRIO

* Email (this won't be published)

wendel@caneurope.org

* Organisation name

255 character(s) maximum

CLIMATE ACTION NETWORK EUROPE

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)

- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

55888811123-49

*Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|---|---|--|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Samoa |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> San Marino |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Senegal |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Serbia |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Seychelles |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Ethiopia | <input type="radio"/> Mali | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Argentina | <input type="radio"/> Falkland Islands | <input type="radio"/> Malta | <input type="radio"/> Singapore |
| <input type="radio"/> Armenia | <input type="radio"/> Faroe Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Sint Maarten |
| <input type="radio"/> Aruba | <input type="radio"/> Fiji | <input type="radio"/> Martinique | <input type="radio"/> Slovakia |
| <input type="radio"/> Australia | <input type="radio"/> Finland | <input type="radio"/> Mauritania | <input type="radio"/> Slovenia |
| <input type="radio"/> Austria | <input type="radio"/> Former Yugoslav Republic of Macedonia | <input type="radio"/> Mauritius | <input type="radio"/> Solomon Islands |
| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Somalia |
| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> South Africa |
| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Georgia and the South Sandwich Islands |
| <input type="radio"/> Bangladesh | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova | <input type="radio"/> South Korea |
| <input type="radio"/> Barbados | <input type="radio"/> Gabon | <input type="radio"/> Monaco | <input type="radio"/> South Sudan |
| <input type="radio"/> Belarus | <input type="radio"/> Georgia | <input type="radio"/> Mongolia | <input type="radio"/> Spain |
| <input checked="" type="radio"/> Belgium | <input type="radio"/> Germany | <input type="radio"/> Montenegro | <input type="radio"/> Sri Lanka |
| <input type="radio"/> Belize | <input type="radio"/> Ghana | <input type="radio"/> Montserrat | <input type="radio"/> Sudan |
| <input type="radio"/> Benin | <input type="radio"/> Gibraltar | <input type="radio"/> Morocco | <input type="radio"/> Suriname |
| <input type="radio"/> Bermuda | <input type="radio"/> Greece | <input type="radio"/> Mozambique | <input type="radio"/> Svalbard and Jan Mayen |
| <input type="radio"/> Bhutan | <input type="radio"/> Greenland | <input type="radio"/> Myanmar/Burma | <input type="radio"/> Swaziland |
| <input type="radio"/> Bolivia | <input type="radio"/> Grenada | <input type="radio"/> Namibia | <input type="radio"/> Sweden |

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czech Republic
- Democratic Republic of the Congo
- Denmark
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- North Korea
- Northern Mariana Islands
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Saint Martin
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

* I agree with the [personal data protection provisions](#)

Part 1 - General questions

10. The European Union is a party to the Aarhus Convention, which amongst other things seeks to promote access to justice in environmental matters. 'Access to justice' in environmental matters means that the public is offered the possibility to initiate procedures for the review of acts and decisions taken by authorities, or review procedures in cases where the authorities should have adopted acts and decisions but failed to do so. To help fulfil its obligations under the Convention, the EU adopted Regulation (EC) No 1367/2006 (the Aarhus Regulation).

Which of the following statements best describes your situation?

- I have never heard of the Aarhus Convention nor the Aarhus Regulation.
- I have never heard of the Aarhus Convention nor the Aarhus Regulation but I am aware of the possibility to challenge non legislative environmental acts of the EU.
- I have heard about the Aarhus Convention, but I am not sure how it is implemented at national or EU level and therefore how it affects me.
- I am familiar with the Aarhus Convention and/or the Aarhus Regulation.

11. The available mechanisms to review EU acts, decisions or omissions (all referred to as "decisions" only in the table below for the sake of brevity) include requests for internal review through administrative procedures or actions brought to the EU Court of Justice according to different judicial procedures. How would you rate the availability of each these means for individuals or NGOs?

	Very positively	Slightly positively	Neither positively nor negatively	Slightly negatively	Negatively	Don't know
a) How would you rate the current possibilities for <u>individuals</u> to request the EU to carry out an <u>internal review</u> of a decision it has made that impacts the environment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
b) How would you rate the current possibilities for <u>NGOs</u> to request the EU to carry out an <u>internal review</u> of a decision it has made that impacts the environment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
c) How would you rate the current possibilities for <u>individuals</u> to bring an EU decision that impacts the environment <u>before the EU Court of Justice</u> ?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
d) How would you rate the current possibilities for <u>NGOs</u> to bring an EU decision that impacts the environment <u>before the EU Court of Justice</u> ?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
e) How would you rate the current possibilities for <u>individuals</u> to bring, <u>before the court in your country</u> , an EU decision that impacts the environment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
f) How would you rate the current possibilities for <u>NGOs</u> to bring, <u>before the court in your country</u> , an EU decision that impacts the environment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

12. Public participation in decision-making is also a possible way for the public to have a say in legally binding general acts and decisions relating to the environment before these are actually adopted.

To what extent do you agree or disagree with the following statements concerning EU decision-making on environmental matters?

	Very positively	Slightly positively	Neither positively nor negatively	Slightly negatively	Negatively	Don't know
a) How would you rate the current possibilities for individuals to participate in the decision-making processes at EU level regarding environmental matters?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
b) How would you rate the current possibilities for NGOs to participate in the decision-making processes at EU level regarding environmental matters?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
c) How would you rate the way the EU takes into account the views expressed by the public when taking decisions that affect the environment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

13. Individuals and non governmental organisations (NGOs) can challenge EU acts before a national court, which can – and sometimes must - refer the case to the EU Court of Justice for a preliminary ruling (Article 267 TFEU).

Were you aware of this possibility as a way of challenging EU acts?

- Yes
- No

14. Have you ever been involved in or affected by a procedure under Article 267 TFEU (reference for a preliminary ruling)? If yes, please provide a reference to the relevant case if possible (add a link or attach a pdf of the judgment).

- Yes
- No

15. In your opinion, how does the mechanism enabling national courts to request the Court of Justice of the European Union to rule on an EU act (Article 267 TFEU) function in your country of residence?

- Satisfactorily
- Unsatisfactorily
- Don't know

16. Can you please explain your answer? Why do you think the established mechanism to challenge EU acts through national court (Article 267 TFEU) in your country of residence is functioning in a satisfactory or unsatisfactory manner?

500 characters maximum

CAN-E works with member organisations in all EU countries, some of which use the legal systems in their home countries to challenge acts and decisions which impact on the environment. We have observed that

- i) NGOs and citizens are still faced with major problems to gain legal standing in environmental cases,
- ii) Article 267 is not enforceable through a meaningful mechanism on the national level (in the many cases courts reject Art 267 procedure) and
- iii) the procedure takes an extremely long time.

There is no meaningful process of challenging implementation of directives and regulations directly.

17. Any person can also challenge EU acts by directly requesting the EU Court of Justice to rule on the legality of the act if that act is of direct and individual concern to that person (Article 263(4) TFEU).

Are you aware of this possibility as a way of challenging the EU acts?

- Yes
- No

18. In your opinion, how does the established mechanism to challenge EU acts through the Court of Justice of the European Union (Article 263(4) TFEU) function?

- Satisfactorily
- Unsatisfactorily
- Don't know

19. Can you please explain your answer? Why do you think the established mechanism to challenge EU acts through the Court of Justice of the European Union (Article 263(4) TFEU) is functioning in a satisfactory or unsatisfactory manner?

500 characters maximum

The CJEU interprets “direct and individual concern” very narrowly which excludes standing de facto in most environmental cases where “everyone” might be concerned. Its interpretation does not take into account the way the European Charter on Fundamental Rights actually promises legal remedies, Art 47. A change in the Court’s interpretation of this article is necessary, to ensure that individuals and NGOs affected by EU legislative acts are allowed to seek redress before the EU courts without having to engage in lengthy and costly procedures before national courts.

20. The Aarhus Convention Compliance Committee noted several problems with respect to the EU’s implementation of the Convention (for further information, please see <https://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html>). These problems are listed below.

How would you rate the importance of each of these problems?

	1-Least important	2	3	4-Most important
a) The Aarhus Regulation’s internal review mechanism is open only to NGOs and not to members of the general public	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
b) To be admissible for a review request, the act or omission to be challenged must have an individual scope or impact on the organization/individual bringing the request	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c) The Regulation limits challenges to acts or omissions under environmental law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d) Only acts that are legally binding and have external effects (i.e. effects outside the administration taking the decision) can be open for review under the Regulation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

21. Do the problems mentioned in Question 20 impact you, and if so, how?

500 characters maximum

Part 2 - Specific questions

This part of the questionnaire seeks input on your experience with existing mechanisms to review EU environmental acts.

Administrative review

Regulation (EC) No 1367/2006 (the Aarhus Regulation) provides the possibility for an individual or an

NGO to request reviews of EU administrative acts directly with the EU institutions (e.g. the Commission services) (internal review).

22. Have you ever been involved in or affected by a request/request(s) for internal review of a EU decision or act under environmental law?

- Yes
- No

Judicial review

There are several ways to challenge the legality of an EU act before a court of law (judicial review). A case can be brought before the EU Court of Justice, either through the judicial review mechanism set up by Regulation (EC) No 1367/2006 (the Aarhus Regulation), or independently from the Regulation, directly in application of EU law (Article 263(4) TFEU). A case can also be brought before a national court, which would in turn bring the case to the EU Court of Justice for a preliminary ruling (Article 267 TFEU).

25. Have you ever been involved in or affected by the judicial review of legality of an EU act in the area of environment?

- Yes
- No

26. Where was/were the request(s) lodged?

- EU Court of Justice
- National court
- EU Court of Justice and national court

27. Was the reason for lodging the request at EU Court of Justice or national court, or both based on any of the following?

	EU Level	National Level
a) Better chance of success	<input type="checkbox"/>	<input type="checkbox"/>
b) Better knowledge of the system	<input type="checkbox"/>	<input type="checkbox"/>
c) The expected costs of the procedure	<input type="checkbox"/>	<input type="checkbox"/>
d) Lack of legal grounds to challenge a decision before that instance (e.g. absence of challengeable act at national level, legal standing, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

28. Please further explain your answer to Question 27.

500 characters maximum

The answers above do not match. The case in question, T 330/18, concerns the combined effect of several EU legal acts rather than individual implementation by EU Member States. The EU legal system of access to justice ignores the fact that decisions are taken on the EU level and are not a matter of implementation, making the run through the national courts futile. The actual case T 330/18 before the GC would not be able to occur in any national court.

29. Please consider your overall experience with regards to challenges before national courts, via preliminary ruling (Art. 267 TFEU). Did you experience/observe difficulties in relation to the following steps of the procedures:

	Major difficulties (prevented continuing the action)	Some difficulties (could be overcome)	Limited difficulties (did not impede the action)	Not at all	Don't know
a) Legal standing (i.e., right to bring the case to court)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Nature of the act challenged (e.g. EU act not implemented at national level)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Length of the procedure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) Dependence upon the willingness of the judge in bringing the request before CJEU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) Potential lack of enforcement of the decision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) Other (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

30. Please consider your overall experience with regards to direct challenge to the EU court (Art. 263(4) TFEU and Aarhus Regulation). Did you experience/observe difficulties in relation to the following steps of the procedures:

	Major difficulties (prevented continuing the action)	Some difficulties (could be overcome)	Limited difficulties (did not impede the action)	Not at all	Don't know
a) Legal standing (i.e., right to bring the case to court)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Nature of the act challenged (EU non-legislative act 'under environmental law')	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Length of the procedure	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

e) Potential lack of enforcement of the decision	<input type="radio"/>				
f) Other (please specify)	<input type="radio"/>				

31. How would you rate the process(es)?

- Satisfactory
- Unsatisfactory
- Neither satisfactory nor unsatisfactory
- Don't know

32. Please further explain your answer to Question 31 with additional information including the subject of the challenges and concrete examples if possible.

500 characters maximum

In the ongoing case *Carvalho et. al.* T 330/18 the plaintiffs, with support from NGO, challenge the adequacy of EU climate target until 2030. They challenge directly EU legal acts under Art 263 and raise an application under Art 340 TFEU. They ask the court to consider whether their fundamental rights as well as rules of primary EU law are upheld with the current legal acts. This is made very difficult under the current interpretation of Art 263 and both defendants have asked to dismiss the case as inadmissible.

Thank you for your contribution!

If you wish to add further information relevant to the scope of this questionnaire or expand on any of your answers, you can do so in the box below.

1000 characters maximum

If you wish to submit additional documentation within the scope of this questionnaire, you can upload your file here. Please note that all uploaded documents will be published together with your contribution, and that you should not include personal data in the document, if you opted for anonymous publication.

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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