



**RESHAPING EUROPEAN ADVANCES TOWARDS GREEN LEADERSHIP
THROUGH DELIBERATIVE APPROACHES AND LEARNING**

D 1.3 The REAL DEAL Handbook: Citizen Consultation and Participation for the European Green Deal

**WP1 – State-of-the-art assessment of deliberative and
participatory approaches relevant to the
EGD**

**Prepared by Stephen Stec
Central European University (CEU)**

**Reviewed by
Else Giesbers, WR
Kristina Naunova, CAN Europe**



REAL DEAL has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 101037071. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

Project Summary

REAL DEAL will stimulate a pan-European debate to reshape citizens' and stakeholders' active participation through deliberative processes around the European Green Deal (EGD). It brings together researchers and practitioners of deliberative democracy from a wide range of disciplines including environmental rights and the law of public participation, ethics and responsible innovation, gender studies and ecofeminism, psychology, geography, urban planning, and sustainability studies. It includes the EU's largest civil society networks advocating on the environment, climate, sustainable development, local democracy, and the European movement. It teams up with youth climate, social justice and women's organisations, SMEs, universities and research institutes, mobilising networks with thousands of CSOs, uniting millions of citizens and activating contacts to thousands of policymakers. In a large co-creation exercise, REAL DEAL will develop, test, and validate innovative tools and formats to propel deliberative democracy to the next level. It will test its innovations at citizens assemblies for the transition in at least 13 countries. We will scrutinise pan-European formats ranging from digital deliberation through our online platform www.realdeal.eu to in-person processes such as an Assembly for a Gender-Just Green Deal and a pan-European Youth Climate Assembly. REAL DEAL will co-create a comprehensive protocol for meaningful citizens' participation and deliberation to work towards the objectives of the EGD. It will validate recommendations on how to design such processes and how they can be applied by European institutions, Member States, and civil society alike. Gender equality will be embedded into the project's DNA. It pays specific attention to the leave-no-one-behind principle, fostering the engagement of disenfranchised groups that are disproportionally burdened by environmental damage. REAL DEAL will develop a new model of environmental citizenship across Europe.

Project Information

Acronym	REAL DEAL
Title	Reshaping European Advances towards green Leadership Through Deliberative Approaches and Learning
Project ID	101037071
Funding Programme	Horizon 2020
Topic	LC-GD-10-1-2020, European capacities for citizen deliberation and participation for the Green Deal
Start and end date	1 February 2022 – 31 January 2025
Duration	36 months
Website	www.realdeal.eu

Consortium partners

Logo	Partner	Abbreviation	Country
	INSTITUTE FOR ADVANCED SUSTAINABILITY STUDIES	IASS	Germany
	EUROPEAN ENVIRONMENTAL BUREAU	EEB	Belgium
	ALLEANZA ITALIANA PER LO SVILUPPO SOSTENIBILE	ASviS	Italy
	ASSOCIATION DES AGENCES DE LA DEMOCRATIE LOCALE	AADL/ALDA	France
	CENTRAL EUROPEAN UNIVERSITY	CEU	Hungary
	CLIMATE ACTION NETWORK EUROPE	CAN EUROPE	Belgium
	DIALOGIK	DIA	Germany
	EUROPEAN MOVEMENT INTERNATIONAL	EMI	Belgium
	GLOBAL CLIMATE FORUM	GCF	Germany
	FORENINGEN NYT EUROPA	NYT EUROPA	Denmark
	SOLIDAR	SOLIDAR	Belgium
	TECHNICAL UNIVERSITY OF BERLIN	TUB	Germany
	TRILATERAL RESEARCH	TRI IE	Ireland
	WAGENINGEN UNIVERSITY & RESEARCH	WR	Netherlands
	WOMEN ENGAGE FOR A COMMON FUTURE	WECF	Germany
	YOUTH AND ENVIRONMENT EUROPE	YEE	Czech Republic

Lead Contributor	Stephen Stec, CEU
	Stecs@ceu.edu
Other Contributors	Antoni Abat, CEU (Contributor)
	Eva Schwab, CEU (Contributor)
	Brooke Ellen Moore, CEU (Contributor)
	Frederik Hafen, EEB (Contributor)
	Margarida Martins, EEB (Contributor)
	Ingeborg Niestroy, IASS (Contributor)
	Ortwin Renn, IASS (Contributor)
	Pia-Johanna Schweizer, IASS (Contributor)
	Solène Droy, IASS (Contributor)
	Luca Johannsen, IASS (Contributor)
	Agata Gurzawska, TRI (Contributor)
	Aine Sperrin, TRI (Contributor)
	Anke Stock, WECF (Contributor)

Due Date	31.01.2023
Delivery Date	31.01.2023
Type	R (Report)
Dissemination level	PU = Public

Document History

Version	Date	Description	Reason for Change	Distribution
V1.1	13.01.2023	Version for internal review	Editing	13.01.2023
V1.2	31.01.2023	Final submission		31.01.2023
V1.3	31.03.2023	Resubmission	Editing the Annex (country profiles)	31.03.2023

Table of contents

1	Introduction – What is this Handbook for?	10
2	The background for the obligation to engage citizens in relation to the EGD	13
2.1	EGD and the 2030 Agenda	15
2.2	EGD and the SDGs: a brief history of citizen engagement	17
2.3	Participatory Rights: The right to a healthy environment and Rio Principle 10	22
2.4	Consultative mechanisms and alternatives to the rights-based approach	26
3	Environmental Governance in Europe	31
3.1	Governance Approaches	31
3.2	Dimensions of environmental governance	35
3.2.1	Transparency	37
3.2.2	Participation	38
3.2.3	Access to Justice	39
3.2.4	Compliance assurance, Accountability	41
3.2.5	Effectiveness and efficiency	43
3.3	Non-EU member states (European Neighbourhood)	44
4	Mechanisms for citizen engagement in relation to the EGD	47
4.1	Legal standards for participatory mechanisms	47
4.1.1	Transparency and access to information	47
4.1.2	Public participation in EIA, SEA, etc.	49
4.1.3	Access to Justice	50
4.2	Engaging in compliance assurance and accountability: Complaint handling	54
4.3	Specific obligations under the law. Legal mechanisms	56
5	Practices for consultative and deliberative mechanisms for citizen engagement	58
5.1	Complexities of multi-level governance: The example of the Nexus approach	59
5.2	SEA - Strategic Environmental Assessment	60
5.3	SDG consultations and similar processes	61
5.4	Other methods including Citizen Assemblies and related experience in Europe ...	63
6	Analysis and recommendations	70
6.1	Improving implementation of environmental governance standards	73
6.2	Institutionalising consultative mechanisms	74
6.3	Safeguards for possible risks/problems of consultative mechanisms	75
6.4	Further activities under REAL DEAL	78
7	Bibliography	79

8 Annex – Country Profiles.....	83
Austria	84
Denmark	91
Germany.....	97
Greece.....	103
Hungary	109
Ireland.....	116
Italy	123
Lithuania	130
Republic of North Macedonia.....	139
Poland	145
Serbia	151
Spain	162
Ukraine	170

Executive summary

The European Green Deal (EGD) promises to transform the EU into the first climate-neutral region of the world by 2050 and to catapult it to global leadership in sustainability.

The **REAL DEAL** ('Reshaping European Advances towards green Leadership Through Deliberative Approaches and Learning') project strives to enhance direct citizen participation and deliberation for the EGD and sustainable development, and to bring this approach into a productive relationship with Civil Society Organisation (CSO) participation.

This Handbook is a first step in support of the co-creation activities undertaken by REAL DEAL and provides a snapshot of the existing legal and institutional frameworks for citizen engagement in relation to the EGD. Citizen engagement, consultation and participation are fundamental aspects of the relationship between governments and the people under international and European law and policy. As a foundation for these activities, this Handbook has been developed to present general, practical guidance for citizens, civil society organizations, other stakeholders, implementing authorities, governments, and legal professionals engaged in consultation and participation related to the EGD, on legal and institutional aspects related to the prospective methods and mechanisms for achieving the goals of the EGD. It also covers to the extent possible the legal and institutional frameworks for innovative forms of engagement based on consultative mechanisms such as citizen assemblies.

Citizen engagement is examined from different standpoints, particularly how citizen engagement relates specifically to the EGD and the 2030 Agenda. The evolution of the concept of sustainable development has always gone hand-in-hand with the development of conceptions of citizen engagement as an indispensable component in fostering all-of-society responses to current sustainability challenges. The rights-based framework has emerged to establish procedural and participatory rights as the bedrock of citizen action. The Aarhus Convention is the most advanced expression of environmental democracy worldwide and provides the foundation for a strong participatory culture throughout Europe.

At the same time, another type of citizen engagement based on consultative mechanisms rather than the rights-based approach, has grown in importance to respond to the complexities of policymaking in the field of sustainable development. An emerging understanding of the considerations necessary for effective consultation informs various conceptual foundations, aimed at recognizing environmental justice concerns, ensuring inclusiveness, reaching marginalised groups, and respecting nature.

Both approaches, however, are contained within the European framework for environmental governance, which covers five key dimensions: transparency, participation, access to justice, compliance and accountability, and effectiveness and efficiency. This framework in turn helps to identify those areas where citizen engagement can really make a difference in regard to the spectrum of issues covered by the EGD. Citizens, moreover, play an important role in each of the dimensions, and the legal and institutional frameworks demonstrate the necessity of citizen engagement in the themes related to environmental governance. The Aarhus Convention framework is relevant to all these dimensions to some degree. The Convention institutions and the standards that have been reached through a quarter-century of implementation are explored, with references given to the large body of guidance and resources on implementation of the Convention and related European law.

The rights-based approach has certain limitations, however, and the growth of consultative forms, formats, methods and tools and their constant variation and innovation are firm evidence of the urgent pressure for all actors in society to work together in new and innovative formats to reach solutions to the challenges of the triple global crisis of climate

change, loss of biodiversity and pollution. As authorities, citizens and stakeholders gain experience with consultative mechanisms, norms will be established. This is a gradual process, however, and at present the legal and institutional framework for many of these mechanisms is in an early stage of development. Nevertheless, there are many initiatives presently underway, particularly at the EU level and in leading EU Member States.

Some of these consultative forms, formats, methods and tools will be demonstrated in the REAL DEAL project. Recommendations aimed at civil society and public authorities are also provided on how citizen participation and deliberation can be further institutionalised to complement and strengthen representative democracy and existing forms of institutionalised dialogue at the European and Member State levels. The Handbook will serve as a resource in project activities, and can be a living document that is taken up in further stages leading to the develop of the REAL DEAL Protocol and the establishment of a Citizen Deliberation Academy.

The Handbook consists of a General Part as well as 13 Country Profiles which examine the legal and institutional frameworks for participation, deliberation and consultation in relation to the EGD in each country. The 13 countries studied in this project are: Austria, Denmark, Germany, Greece, Hungary, Ireland, Italy, Lithuania, North Macedonia, Poland, Serbia, Spain and Ukraine. The Handbook also examines the ways in which the EU legislative and institutional frameworks influence the non-EU Member States.

List of figures

Figure 1 The elements of the European Green Deal (European Commission, 2019).....	16
Figure 2 Whole of society: the multi-level, - sector and -actor governance of sustainable development	19
Figure 3 Different participation types and links to mindsets	33

List of tables

Table 1 List of acronyms/abbreviations	9
Table 2 Glossary of terms	9
Table 3 Concepts and features of stakeholder and public involvement	14
Table 4 Summary of themes and their allocation to dimensions	36
Table 5 Consultation requirements under the SEA Directive	61
Table 6 Types of deliberative democratic processes	65
Table 7 Outcome criteria	72
Table 8 Process criteria	72

List of acronyms/abbreviations

Abbreviation	Explanation
ACCC	Aarhus Convention Committee
CEPA	UN Committee of Experts on Public Administration
CJEU	Court of Justice of the European Union
CoFoE	Conference on the Future of Europe
CSO	Civil Society Organisation
DPO/OPD	Disabled People's Organisation/ Organisation of Persons with Disabilities
EC	European Commission
ECHR	European Convention on Human Rights
ECOSOC	UN Economic and Social Council
EECCA	Eastern Europe, Caucasus and Central Asia
EIR	Environmental Implementation Review
EGA	Environmental Governance Assessment
EGD	European Green Deal
EIA	Environmental Impact Assessment
EU	European Union
HLPF	High Level Political Forum
IAIA	International Association for Impact Assessment
IEMEI	Internal Environmental Measure with Extraterritorial Implications
MLG	Multi-Level Governance
MOP	Meeting of the Parties
NGO	Non-Governmental Organisation
NSDS	National Sustainable Development Strategies
OECD	Organisation for Economic Co-operation and Development
PRTR	Pollutant Release and Transfer Register
REAL DEAL	The project, 'Reshaping European Advances towards green Leadership Through Deliberative Approaches and Learning'
SDGs	Sustainable Development Goals
SEA	Strategic Environmental Assessment
TEU	Treaty on European Union

TFEU	Treaty on the Functioning of the European Union
UN CSD	Commission for Sustainable Development
UN DESA	United Nations Department of Economic and Social Affairs
UNECE	United Nations Economic Commission for Europe
VNR	Voluntary National Review

Table 1 List of acronyms/abbreviations

Glossary of terms

Term	Explanation
Citizen engagement	Co-creation and information exchange between the public and authorities. In the context of sustainable development, a key element in the all-of-society transition.
Participation	The term participation refers to different mechanisms and processes for members of the public to represent their interests, express opinions and exert influence in policymaking, decision-making and other official processes. Participation is often based on legal frameworks granting rights to participate.
Deliberation	For a process to be called deliberative, it must rely on a mutual exchange of arguments and reflections rather than on decision-making based on the status of the participants, sublime strategies of persuasion or socio-political pressure. Deliberative processes should include a debate about the relative weight of each argument and a transparent procedure for balancing pros and cons.
Consultation	Deliberative processes managed by public authorities to gather information and public views as inputs to policymaking or decision-making processes
Deliberative democracy	Measures including informed citizen recommendations on policy questions; citizen opinion on policy questions; informed citizen evaluation of ballot measures, and permanent representative deliberative models
Environmental governance	An inclusive system of actors, institutions and norms that establishes responsibility and accountability, and builds trust and capacity to cooperate in policymaking, decision-making, implementation and enforcement, in the field of environment
Governance	The totality of interactions in which government, other public bodies, private sector and civil society participate (in one way or another), aimed at solving public challenges or creating public opportunities

Table 2 Glossary of terms

1 Introduction – What is this Handbook for?

The European Green Deal (EGD) is the most ambitious and broadest policy framework in the history of the European Union (EU). It promises to transform the EU into the first climate-neutral region of the world by 2050 and to catapult it to global leadership in sustainability¹. It is an integral part of the European Commission's strategy to make the UN 2030 Agenda² and its Sustainable Development Goals (SDGs)³ a reality. With ambitious environmental and climate objectives at its core, it touches upon every aspect of society and economy.

Citizen engagement, consultation and participation are fundamental aspects of the relationship between governments and the people under international and European law and policy. The international community recognized as early as the 1990s that citizen engagement in its various forms is one of the main means for achieving sustainability and in Europe the connection has been expressly made between citizen engagement and the right to a healthy environment through the 1998 Aarhus Convention (see section 2.3, below). These connections are supported through decades of scholarship, that can be exemplified by Andrew Stirling's three arguments for participation (Stirling, 2006):

- Substantive: Integration of knowledge into decision-making
- Instrumental: increasing acceptance of the outcomes of decision-making
- Normative: participation as a civil right and means for sustaining democracy

The REAL DEAL project stands for '**Reshaping European Advances towards green Leadership Through Deliberative Approaches and Learning**'. It strives to enhance direct citizen participation and deliberation for the EGD and sustainable development, and to bring this approach into a productive relationship with Civil Society Organisation (CSO) participation. REAL DEAL will stimulate a pan-European debate to reshape citizens' and stakeholders' active participation through deliberative processes around the EGD by bringing together researchers and practitioners of deliberative democracy from a wide range of disciplines and including the EU's largest civil society networks advocating on the environment, climate, sustainable development, local democracy, and the European movement.

Further stages of the REAL DEAL project include a large co-creation exercise that will develop, test, and validate innovative tools and formats to propel deliberative democracy to the next level. It will test its innovations using various forms, formats, methods and tools in at least 13 countries as well as in pan-European formats ranging from digital deliberation through the online deliberation platform (accessible via www.realdeal.eu) to in-person processes such as an Assembly for a Gender-Just Green Deal and a pan-European Youth Climate Assembly. It will validate recommendations on how to design such processes and how they can be applied by European institutions, Member States and neighbours, and civil society alike. Gender equality is embedded into the project's DNA. It pays specific attention to the leave-no-one-behind principle, fostering the engagement of disenfranchised groups that are disproportionately burdened by environmental damage.

¹ European Commission, A European Green Deal, https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

² UN Department of Economic and Social Affairs, <https://sdgs.un.org/2030agenda>

³ UN Department of Economic and Social Affairs, The 17 Goals, <https://sdgs.un.org/goals>

The REAL DEAL project has among its aims to co-create a comprehensive protocol for meaningful citizens' participation and deliberation to turn the objectives of the EGD into political actions and social practice. The main feature of this protocol is to ensure joint ownership over this crucial transformation by a wide range of stakeholders and citizens and to provide guidance on how to give a voice to citizens and those individuals and groups who are often neglected and disenfranchised from the political process while being most affected by environmental damage and the necessary transformation. The REAL DEAL Protocol will also be sensitive to the diversity within Europe concerning social and political histories, cultures, institutional arrangements, and the way in which they give rise to different aspirations and challenges associated with the realisation of a green and just transformation.⁴

This Handbook is a first step in support of the co-creation activities by giving a snapshot of the existing legal and institutional frameworks for citizen engagement in relation to the EGD. The significance of the transition towards sustainability envisioned by the EGD is so great and the stakes so high that a full range of possibilities for citizen engagement need to be considered. It is therefore critical to have a clear understanding of the legal, institutional and policy background for citizen engagement as a foundation for examining possible forms, formats, methods and tools. As a foundation for these activities, this Handbook has been developed to present general, practical guidance for citizens, civil society organizations, other stakeholders, implementing authorities, governments, and legal professionals engaged in consultation and participation related to the EGD, on legal and institutional aspects related to the prospective methods and mechanisms for achieving the goals of the EGD. It is meant to be used in connection with the activities carried out under the REAL DEAL project.

The Handbook consists of a General Part as well as 13 Country Profiles which examine the legal and institutional frameworks for participation, deliberation and consultation in relation to the EGD in each country. The types of citizen engagement that rely upon a legal framework based upon the rights of individuals and groups to take part in decision-making and policy-making that affects them are discussed. As further set out below, Europe's quarter-century experience with the Convention on Access to Information, Public Participation in Decisionmaking, and Access to Justice in Environmental Matters (the Aarhus Convention) is invaluable in this regard. The Handbook also covers to the extent possible the legal and institutional frameworks for innovative forms of engagement based on consultative mechanisms such as citizen assemblies. Recommendations aimed at civil society and public authorities are also provided on how citizen participation and deliberation can be further institutionalised to complement and strengthen representative democracy and existing forms of institutionalised dialogue at the European and Member State levels.

It is also important to understand what the Handbook is not. The Handbook does not examine in great detail various innovative forms, formats and methods of citizen deliberation, many of which are new and somewhat undeveloped in practice. The focus of the Handbook is on the legal and institutional frameworks, which are conservative in terms of their development over time. That is, they do not change rapidly in response to the development

⁴ The Protocol will cover the following questions:

- a) What are the most suitable formats, methods and tools that promise to elicit and respect citizens and stakeholder preferences while at the same time ensuring that the implemented actions remain within the planetary boundaries that have been identified and accepted as credible by science and politically codified in the EGD?
- b) What are appropriate institutional and organisational means to ensure the integration of civil society input obtained from organised interest and value groups and/or the input of non-organised citizens?
- c) Which processes link the various vertical governance levels in the policy arenas of the EGD and how can they be sustained? How can local, regional, national, and European governance levels be addressed by innovative forms of deliberative democracy in an integrative and mutually productive manner?

of a new form, format or method, but rather the forms, formats and methods have to be tried out against the existing legal and institutional framework. These forms, formats and methods are examined in depth through other project outputs.

The Handbook is not proscriptive but examines a range of formats and methods that may be appropriate in various situations. In its analysis, the Handbook draws first and foremost on examples from national legislation and practice. It takes into account the range of diversity of systems of law and policy throughout the 13 countries studied and aims to fit this diversity. Consequently, the inclusion of a particular example of law or practice may not constitute a positive example in all respects and does not imply endorsement.

In conjunction with the Handbook, the REAL DEAL project has produced other important and useful outputs, including an examination of scholarship on conceptual frameworks for deliberation and participation (D1.1), and a comprehensive review of the literature on participatory and deliberative techniques and processes relevant to the EGD (D1.2), both of which can be consulted for more in-depth information. In connection with D1.2, the key formats and methods are described in short factsheets. Furthermore, there are comprehensive but compact Factsheets on key cases of citizen assemblies at national or subnational level, which provide insights in experience with conducting this format as well as details of the design. One example is included in D 1.2 (Annex), and all will be made available on the project's website www.realdeal.eu.

Both online and printed versions of the Handbook are being produced. The online version is intended to be a living document that will be revised based upon the outcomes of future activities under the project. As such it can continue to be a useful resource in connection with the development of a Protocol and in the work of the future Citizen Deliberation Academy to be established at the conclusion of the REAL DEAL project. The country profiles of the Annex in this document will be available online (www.realdeal.eu), together with the Factsheets on citizen assemblies (see above).

The 13 countries studied in this project are: Austria, Denmark, Germany, Greece, Hungary, Ireland, Italy, Lithuania, North Macedonia, Poland, Serbia, Spain and Ukraine.

The Handbook begins with a brief overview of the benefits of citizen engagement from different standpoints, and how citizen engagement relates specifically to the EGD and the 2030 Agenda. It then examines two main types of citizen engagement, which nevertheless should be considered together in terms of influencing decisions, measures and implementation related to the EGD. These are participatory, rights-based mechanisms, and consultative mechanisms. The next section of the Handbook lays out the framework for environmental governance in the EU, which in turn helps to identify those areas where citizen engagement can really make a difference in regard to the myriad issues covered by the EGD. Section 4 of the Handbook applies the specific legal frameworks and mechanisms to the dimensions of environmental governance, while Section 5 explores the legal and institutional frameworks relevant to some of the consultative forms, formats, methods and tools that will be tried out in the REAL DEAL project. The Handbook ends with a selection of recommendations for further development of citizen engagement in the EGD at the European and Member State levels.

2 The background for the obligation to engage citizens in relation to the EGD

One way of looking at the obligation to engage citizens is to divide the issue between two main channels – the participatory one in which individuals and groups have rights to shape decisions that affect them; and the deliberative one in which the engagement of representative individuals and groups leads to better and more inclusive substantive decisions and policymaking. The relative rights and powers of those engaged in these processes can vary widely, which will affect which strategies are employed in a given case. Many complex decision- and policymaking processes have aspects of both kinds of citizen engagement.

All of society has a stake in the success of the EGD. But certain actors in society, individuals, groups and organizations may have a stake in a specific decision or policy. Where such stakeholders have legally recognizable rights and interests separate and apart from the general population, the processes and procedures that are employed to take these rights and interests into account can be described as participatory processes. Because participatory processes are often rights-based they are comparatively formalistic. Europe has decades of experience and has been a global leader in the development of rights-based participatory mechanisms in environmental and sustainability matters. In the area of participation, the wider European space has been endowed with the Aarhus Convention. This Convention and the vast body of law that has evolved from it define to a large extent the rights and procedures that are relevant to the achievement of the EGD in an array of types of governmental and administrative action, from environmental impact assessment to permitting to certain acts of the European-level institutions governed by the so-called Aarhus Regulation.

However, in parallel with the types of decision and policy-making processes that depend on the rights-based approach, there exists another area of citizen engagement that is not as formally defined in law or regulation. That area can be referred to as citizen consultation and falls within what has been described by the Organisation for Economic Co-Operation and Development (OECD) as deliberative democracy.

Deliberative processes are distinguished from rights-based participatory processes in the sense that deliberative processes engage various actors in argumentative discourse aimed at reaching a level of consensus. Complex societies require rule-based deliberative processes in order to guide political decision-making. In such processes, the actors are empowered to engage in transparent procedures culminating in an optimal outcome. Modern notions of deliberative processes have embraced pluralism, participation and due process as means of increasing the legitimacy of decision-making. Such processes may seek to achieve a representativeness of societal actors without regard to whether they may have legally recognizable rights or interests in a particular decision-making or policy making process. The methods used may take cognizance of the situations and conditions of certain groups as a means of consciously countering structural biases, or may take forms which attempt to overcome obstacles to engagement. Innovative forms of citizen engagement also try to confront problems such as zero-sum thinking, conflict and polarization in discourse, and expose hidden assumptions and value judgments.

The OECD distinguishes between four categories of deliberative democracy:
(1) informed citizen recommendations on policy questions;

- (2) citizen opinion on policy questions;
- (3) informed citizen evaluation of ballot measures, and
- (4) permanent representative deliberative models.⁵

In their literature review, the REAL DEAL researchers identified six concepts of stakeholder and public involvement. Their salient features are set forth in the following table⁶.

Concept	Main objective	Rationale	Formats and tools
Functionalist	Improvement of quality of decision output	Representation of all knowledge carriers, integration of systematic, experiential and local knowledge	Delphi, workshops, hearing, inquiry, citizen advisory committees
Neo-liberal	Representation of all values and preferences in proportion to their share in the affected population	Informed consent of the affected population; Pareto-rationality plus Kaldor-Hicks (win-win solutions)	Referendum, focus groups, negotiated rule-making, mediation
Deliberative-Rational Discourse	Competition of arguments with respect to criteria of truth, normative validity and truthfulness	Inclusion of relevant arguments, reaching consensus through argumentation	Discourse oriented models, citizen forum, deliberative jury
Anthropological	Common sense as ultimate arbiter in disputes (jury model)	Inclusion of non-invested laypersons representing basic social categories such as gender, income, and locality	Consensus conference, citizen jury, planning cell
Emancipatory	Empowerment of less privileged groups and individuals	Fostering agency of those who suffer most from environmental degradation and systemic inequalities	Action group initiatives, town meetings, community development groups, science shops
Post-modern	Demonstration of variability, plurality and legitimacy of dissent	Acknowledgment of plural rationalities, no closure necessary, mutually acceptable arrangements are sufficient	Open forums, open space conferences

Table 3 Concepts and features of stakeholder and public involvement

Whatever formats and methods are used, they should meet certain meta-criteria in that they should be effective, efficient, resilient, fair and legitimate. Even where a result is reached meeting all of these meta-criteria and which is largely supported by consensus, other considerations may come into play. One of the most difficult problems in deliberative

⁵ <https://www.oecd-ilibrary.org/sites/36f3f279-en/index.html?itemId=/content/component/36f3f279-en>

⁶ See Renn, O., & Schweizer, P.-J. (2009). Inclusive risk governance: Concepts and application to environmental policy making. *Environmental Policy and Governance*, 19(3), 174–185. <https://doi.org/10.1002/eet.507>; Renn, O., & Schweizer, P.-J. (2020). Inclusive governance for energy policy making: Conceptual foundations, applications, and lessons learned. In O. Renn, F. Ulmer, & A. Deckert (Eds.), *The Role of Public Participation in Energy Transitions* (pp. 39–79). Academic Press. <https://doi.org/10.1016/B978-0-12-819515-4.00003-9>

processes related to the EGD is to achieve a measure of social justice, given the unequal distribution of costs and benefits in the transition towards sustainability. Another problem is to ensure that the interests of the environment are fully taken into account, since social actors themselves might reach a compromise consensus that meets their own interests but is inadequate to reach the level of outcome necessary to achieve the ambitions of the EGD towards the environment. The 2030 Agenda serves as the normative umbrella that spreads over any procedurally adequate mechanism as a kind of fixed firmament against which processes can be judged.

Further reading

- Stirling, A. (2006). Analysis, participation and power: Justification and closure in participatory multi-criteria analysis. *Land use policy*, 23(1), 95–107.
- A thorough analysis of the conceptual frameworks for citizen engagement can be found in D1.1: Criteria for assessing citizen participation in the EGD.

2.1 EGD and the 2030 Agenda

The 2030 Agenda for Sustainable Development is an ambitious overarching international framework with goals, targets and actions adopted by the UN General Assembly in 2015.⁷ Its four main components are the Sustainable Development Goals (SDGs), the Paris Agreement on climate change⁸, the Sendai Framework on Disaster Risk Reduction⁹, and the Addis Ababa Action Agenda on financing for sustainable development¹⁰. The EGD is primarily oriented towards The EGD is primarily oriented towards achieving the goals of the SDGs and the Paris Agreement.

The EGD was adopted as the “number one” political priority of the current European Commission (EC) in 2019 – a powerful sign that solving the triple environmental crises of climate change, biodiversity loss and pollution had moved from the margins to the heart of EU policymaking. This major shift in political priorities is a success following the decades-long efforts of scientists and activists to align policy with science, values and experience, as much as it is a direct result of the pressure arising from the recent youth activism. The EGD’s ambitions are translated into concrete targets and policies, ranging from the initial issued climate policy¹¹ (“Fit for 55”, with a European Climate Law) to a comprehensive

⁷ Transforming Our World: The 2030 Agenda for Sustainable Development (2015) <https://sdgs.un.org/publications/transforming-our-world-2030-agenda-sustainable-development-17981>

⁸ ‘The Paris Agreement is a legally binding international treaty on climate change, adopted by 196 Parties at COP 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016’. United Nations Climate Change <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

⁹ The Sendai Framework was endorsed by the UN General Assembly following the 2015 Third UN World Conference on Disaster Risk Reduction, and advocates for the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries. United Nations Office for Disaster and Risk Reduction, <https://www.undrr.org/implementing-sendai-framework/what-sendai-framework>

¹⁰ The Addis Ababa Action Agenda was adopted at the Third International Conference on Financing for Development and subsequently endorsed by the UN General Assembly in 2015. The Action Agenda establishes a strong foundation to support the implementation of the 2030 Agenda for Sustainable Development with over 100 concrete measures that draw upon all sources of finance, technology, innovation, trade, debt and data, in order to support achievement of the Sustainable Development Goals. United Nations, Sustainable Development Goals Knowledge Platform, <https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=2051&menu=35>

¹¹ Council of the European Union, <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>

approach for food policy (“From Farm to Fork”¹² for food and agriculture, followed by a broader framework for sustainable food systems) (see Figure 1), laid out in a detailed roadmap with timelines¹³. Also, EU neighbourhood countries are aligning with the EGD and are committed to achieving carbon neutrality by 2050, most notably the Western Balkans which have adopted a “Green Agenda for the Western Balkans” to these ends¹⁴.

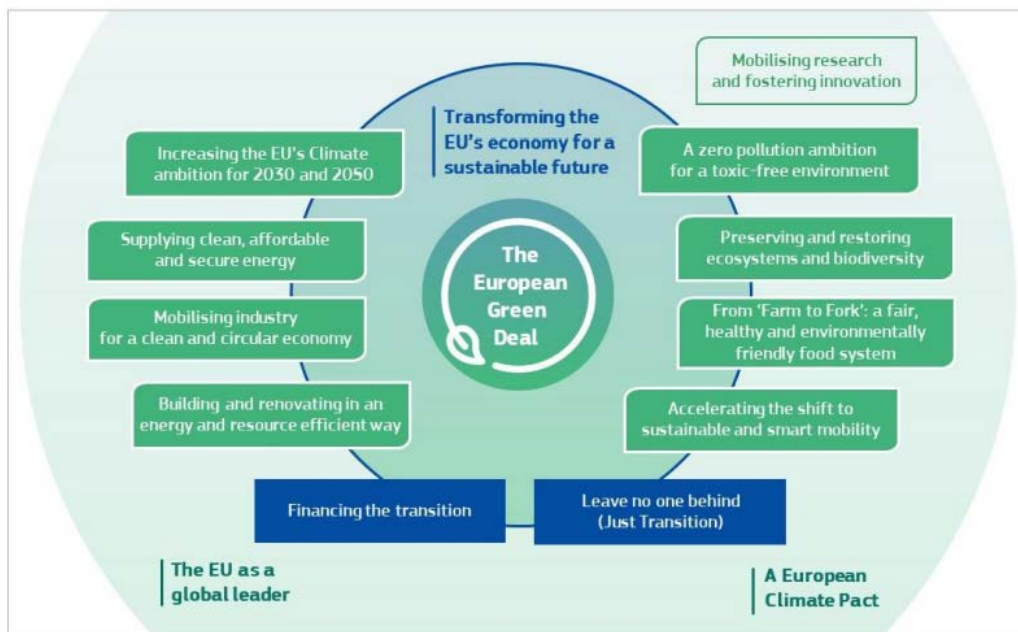


Figure 1 The elements of the European Green Deal (European Commission, 2019¹⁵)

Several EU member states committed to action for achieving the SDGs from the outset and at EU level there were some citizen engagement activities such as deliberations within the Multi-stakeholder platform on SDGs¹⁶. However, it was not until the new Commission was in place in 2019 that EU level action on the SDGs was proposed. The Commission is committed to SDG implementation through the EGD, stating: “*The European Green Deal ... is our new growth strategy. It puts sustainability – in all of its senses – and the well-being of citizens at the center of our action.*”¹⁷ Alongside this general commitment there are specific governance planning intentions, such as integrating the SDGs into the European Semester¹⁸ and, in general, mainstreaming sustainability in all EU policies. In the context of the follow-up of the 2030 Agenda and the SDGs at the international level (the UN “High Level Political Forum” (HLPF)), each year a number of countries are submitting so-called “Voluntary National Reviews (VNRs)”¹⁹. The EU will submit a “Voluntary Review” in 2023. This review is a regional one at the EU level, while individual Member States might submit their Voluntary National Reviews.

¹² European Commission, https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en

¹³ [Annex to the Communication on the European Green Deal Roadmap - Key actions.](#)

¹⁴ <https://www.rcc.int/greenagenda>; <https://www.clingendael.org/publication/energising-eu-enlargement>

¹⁵ [Commission Communication \(COM \(2019\) 640 final\): The European Green Deal](#), p. 3.

¹⁶ https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/engagement-civil-society-private-sector-and-other-stakeholders_en

¹⁷ [Commission Communication \(COM\(2019\) 650 final\), Annual Sustainable Growth Strategy 2020](#), p.1

¹⁸ ‘The European Semester is the European Union’s framework for the coordination and surveillance of economic and social policies’. European Commission, https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en

¹⁹ UN HLPF, Voluntary National Reviews, <https://hlpf.un.org/vnrs>

Further reading:

- UN DESA website on the SDGs: <https://sdgs.un.org/>
- UN HLPF: <https://hlpf.un.org/home>
- SDG knowledge hub (IISD): <https://sdg.iisd.org/>
- UN Sustainable Development Knowledge Platform on VNRs: <https://sustainabledevelopment.un.org/vnrs/#VNRDatabase>
- European Commission on the SDGs: https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_en
- Eurostat SDG reports: <https://ec.europa.eu/eurostat/web/sdi>

2.2 EGD and the SDGs: a brief history of citizen engagement

The SDGs are the most recent step in a long journey that the international community embarked open decades ago aiming towards the transition to sustainable development. The need for public and stakeholder consultation and participation, for the involvement and engagement of civil society, has been an essential part of **governance for sustainable development** – as the foundation of what the REAL DEAL project refers to as a ‘green and just transition’.

The first conceptual basis for sustainable development appeared in the so-called Brundtland Report, published as “Our Common Future” (1987). Concerning governance and citizen engagement, it states that the law alone cannot enforce the common interest, that community knowledge and support is needed, which entails greater public participation in the decisions that affect the environment, as well as promoting citizens' initiatives, empowering people's organisations, and strengthening local democracy²⁰. Citizens groups, NGOs and the education sector will play a “crucial part in putting the world onto sustainable development paths”²¹.

The political declaration (“Rio Declaration”) and action plan (“Agenda 21”) adopted at the UN Conference on Environment and Development in 1992 (“Rio Conference”²²), further elaborated on the insight that more and better participation is needed, including in Rio Principle 10 (see section 1.3 below), as well as in the call to countries to develop national strategies for sustainable development, and to set up multi-stakeholder councils for sustainable development. Agenda 21 established the so-called Major Groups approach which has become the standard in many UN processes and has sometimes been used as a model on the national and subnational levels. The nine Major Groups are: Children and Youth, Women, the Scientific and Technological Community, Local Authorities, Labor Unions, Indigenous Peoples, Business and Industry, Farmers, and NGOs (focused on environmental NGOs). The nine Major Groups approach has subsequently been modified and expanded to include “other stakeholders.”²³

²⁰ [Brundtland report - Our common future \(1987\)](#), para 77.

²¹ Ibid, Chair's Foreword.

²² The UN Conference on Environment and Development involved 172 countries, was attended by 108 Heads of State and 2,400 NGOs. <https://sustainabledevelopment.un.org/outcomedocuments/agenda21>

²³ <https://hlpf.un.org/mgos>



Public participation thus became embedded within the concept of sustainable development as an indispensable element in the transition towards sustainable societies.

Sustainable Development

Sustainable Development as an overarching concept for a development paradigm comprises as a governance concept a ‘whole of society’ approach, in which stakeholder engagement is a normative element (see Figure 2). The three axes are multi-level (vertical), multi-sectoral (horizontal) and multi-actor (most notably stakeholder engagement, relevant for both axes). Underlying the whole structure is the knowledge dimension, including the science-policy-society interface, the practice of (impact) assessments, and monitoring. Leadership is an indispensable element.²⁴

This approach has evolved over around 20 years of practice and theorisation, most notably on sustainable development strategies, which continue in many countries and have been used as the framework and vehicle for SDG implementation since 2015. Governance for sustainable development has been further conceptualised during the SDG implementation process, including in the works on “Policy Coherence for Sustainable Development (PCSD)”, which is enshrined in the SDGs as SDG target 17.14.

²⁴ Niestroy, I., Hege, E., Dirth, E., & Zondervan, R. (2019). Europe's approach to implementing the Sustainable Development Goals: good practices and the way forward. Study commissioned by the European Parliament's Committee on Development. ISBN: 978-92-846-4578-7 (pdf); Meuleman, L. (2018). Metagovernance and Sustainability: A Framework for Implementing the SDGs. London: Routledge; Dewulf, A.R.P.J., Meijerink, S., & Runhaar, H. (2015). Editorial: The governance of adaptation to climate change as a multi-level, multi-sector and multi-actor challenge: a European comparative perspective. *Journal of Water and Climate Change*, 6(1), 1-8. <https://doi.org/10.2166/wcc.2014.000>

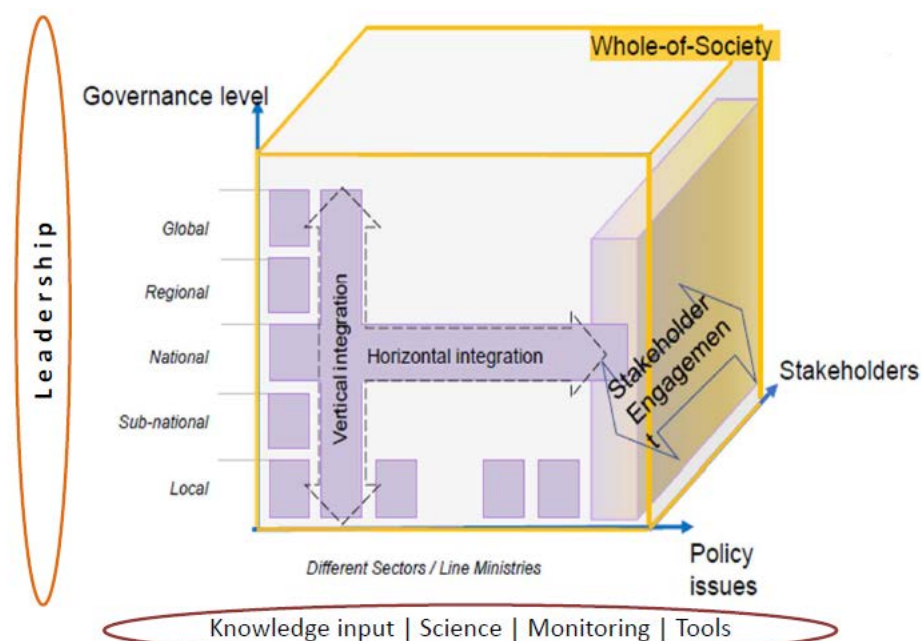


Figure 2 Whole of society: the multi-level, - sector and -actor governance of sustainable development²⁵

Over the years, practice has brought significant improvements in the involvement of civil society organisations in the adoption of sustainable development strategies and policies. It has become standard practice that consultations or other forms of engagement are conducted. These include citizens assemblies and public events such as the Conference on the Future of Europe.²⁶

The SDGs have a quite strong governance component: all thematic SDGs (1 – 15) have governance targets and SDG 16 (on institutions) and SDG 17 (means of implementation) are two dedicated cross-cutting governance SDGs.

²⁵ Niestroy, I. (2021). SDGs as a compass for pathways to sustainability, and framework for cooperation of Civil Society Organisations. Presentation at the Dialogue for Future 2021- Networking conference of the program 'Expanding Cooperation with Civil Society in the Eastern Partnership Countries and Russia' <https://civilsocietycooperation.net/>; after Niestroy et al. 2019 (see previous footnote).

²⁶ For the EU level, see, for example, https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/engagement-civil-society-private-sector-and-other-stakeholders_en



The 2030 Agenda is also strong in CSO participation, but does not include the direct language of the earlier frameworks for sustainable development on citizen participation. “Citizenship” features as an aim under SDG 4 relating to education, with target 4.7 that promotes the development of skills to advocate for sustainable living, aspects that we are dealing with in REAL DEAL.²⁷

The 2030 Agenda is broader in certain respects than the EGD and is more comprehensive and elaborate on governance. In its preamble under the “P” for “Partnership” it addresses the determination of the international community to implement Agenda 2030 through a revised Global Partnership for Sustainable Development ... “with the participation of all countries, all stakeholders and all people”. Requirements for participation feature across the board in the 2030 Agenda,²⁸ including in the guiding principles for the implementation and follow-up (i.e., accountability). In the SDGs themselves, participation features in several policy and governance targets, such as 5.5 (full and effective participation of women), 6.B (water and sanitation management), 11.3 (human settlement planning), and – most notably - in target 16.7: *“Ensure responsive, inclusive, participatory and representative decision-making at all levels”*.

SD Competency in the European Framework

The Treaty on the Functioning of the European Union (TFEU) establishes Union-level competency over the environment and sustainable development through TFEU Articles 2, 3, 13 and 191. Public consultations within the European Union are enshrined through the TFEU, Article 2 Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality: *“Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.”*

²⁷ SDG target **4.7**: By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, **global citizenship** and appreciation of cultural diversity and of culture’s contribution to sustainable development.

²⁸ E.g. paragraphs 20, 25, 27, 72.

The subsidiarity principle guarantees that decision-making will take place as close as possible to the citizen, whereas action to be undertaken at the community level is justified in relation to the possibilities offered by the national, regional, or local level.²⁹ In areas in which the EU does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level “by reason of the scale and effects of the proposed action.” On the national level, the principle of subsidiarity supports autonomous governance at the appropriate level for decision-making, in particular for a local authority in relation to the central government. It therefore involves the sharing of powers between several levels of authority.

The Better Regulation Agenda has been adopted by the European Commission to assist Member States in designing effective and efficient legislation. It includes guidelines and a toolbox that provide guidance on consultation processes with stakeholders within the European Union system.³⁰ Five key stages are required for consultation – 1) political validation which includes a consultation strategy 12 months in advance of adopting the proposal, 2) an interservice group finalises the consultation strategy and necessary documents, 3) a roadmap for consultation is publicly released and adapted based on feedback, 4) the consultation strategy is implemented, and 5) finally a report is written summarising the results of the consultation process.

The EGD states that the transition “must be just and inclusive”, and that “active public participation and confidence in the transition is paramount if policies are to work and be accepted”. It therefore proclaims that “a new pact is needed to bring together citizens in all their diversity, with national, regional, local authorities, civil society and industry working closely with the EU’s institutions and consultative bodies”.³¹ It includes as a concrete governance proposal the “European Climate Pact”, that lays out three ways to engage with the public on climate action:

1. Encouraging information sharing to increase public understanding of the challenges of climate change and environmental degradation and potential solutions.
2. Create both real and virtual spaces for collaboration on realising specific climate action goals.
3. Building capacity to facilitate grassroots initiatives on climate change and environmental protection.³²

The EC considers its European Climate Pact “the EU’s commitment to sustainable development”, and as “empowering citizens to shape a greener Europe”³³. During the first phase of action of the Pact a new format for participation and deliberation was tested – called “peer parliaments”, which is being further considered in the REAL DEAL project³⁴. In the context of the EGD it is recognised that for sustainability and climate action to be effective, consultative approaches on policies and actions need to extend to everyone in our communities. This is in keeping with the ‘no-one left behind’ principle. Alongside the EGD

²⁹ Article 5(3) TEU and Protocol (No 2) on the application of the principles of subsidiarity and proportionality

³⁰ https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en

³¹ [Commission Communication \(COM \(2019\) 640 final\): The European Green Deal](#), p. 2.

³² Ibid, p. 22, and https://climate-pact.europa.eu/index_en

³³ https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/engagement-civil-society-private-sector-and-other-stakeholders_en#the-european-climate-pact-the-eus-commitment-to-sustainable-development

³⁴ https://climate-pact.europa.eu/about/peer-parliaments_en; https://climate-pact.europa.eu/peer-parliaments-documents_en

principles, the Commission also follows the Better Regulation Guidelines when consulting stakeholders.

With respect to public participation, a range of EU policies and programmes have already engaged citizens in their design and implementation, ranging from Citizens' Dialogues³⁵ to Horizon Europe Missions³⁶, from cohesion policy to green urban infrastructure. However, the approaches and formats used could be enhanced based on the lessons learnt from successful deliberative processes. The REAL DEAL project aims to develop approaches how citizens participation could be applied in a systematic way, going beyond one-off consultations and towards an institutionalisation of participation with a legal basis. It sets out to stimulate a pan-European debate involving different stakeholder groups, with the aims of reshaping citizens' and stakeholders' active participation and deliberation in the green and just transition.

Further reading

- UN DESA website on the SDGs, <https://sdgs.un.org/>
- Capacity development: UN Public Administration Network, Curriculum on Governance for the Sustainable Development Goals, <https://unpan.un.org/capacity-development/curriculum-on-governance-for-the-SDGs>
- European Commission – on civil society engagement for the SDGs, https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/engagement-civil-society-private-sector-and-other-stakeholders_en

2.3 Participatory Rights: The right to a healthy environment and Rio Principle 10

As discussed above, the approaches taken to citizen engagement in the EGD can vary, and effective citizen engagement might require the employment of various forms in parallel, applying a strategic approach. The types of participation based upon a recognition of rights has a long and deep tradition in Europe.

The right to a healthy environment and the duty to protect the environment

The global recognition of the right to a healthy environment and the duty of all persons to protect the environment goes all the way back to 1972 when the international community met in Stockholm at the first “Earth Summit” in response to growing awareness of threats to the environment from human activity. The conference adopted the Stockholm Declaration, Principle 1 of which states:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

³⁵ European Commission, Citizen dialogues https://ec.europa.eu/info/events/citizens-dialogues_en

³⁶ European Commission, Horizon Europe Missions, https://research-and-innovation.ec.europa.eu/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe/eu-missions-horizon-europe_en

Although the formulation is outdated, and should be taken to refer to “humans” or “humankind,” Stockholm Principle 1 still stands as the clearest statement on the global level about the duty to protect the environment and laid the foundation for progressively greater measures to protect the environment in national policies, law and, in some cases, constitutions³⁷

This Handbook does not explore in great detail the situation with respect to a right to a healthy environment in Europe. The UN Human Rights Council Resolution 48/13 on the right to a clean, healthy and sustainable environment called on states to work together, and with other partners, to implement this right. The European Convention on Human Rights³⁸ does not include an express right to a healthy environment, but certain provisions such as Article 8 and Article 10 have been interpreted in a manner that begins to approximate such a right. The reader can find numerous other publications for further explanation.

How to realize this right and carry out this duty was defined in Principle 10 of the Rio Declaration (1992), which states:

*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.*³⁹

Rio Principle 10 seeks to ensure that everyone has access to information, participates in decision-making and has access to justice in environmental matters, to guarantee the right to a healthy and sustainable environment for present and future generations. The “access rights” have emerged to be particularly important in promoting transparent, inclusive and accountable environmental governance and they are considered necessary elements to achieve environmental democracy.⁴⁰

Many countries, including some in Europe, developed national law and practice on the kinds of rights delineated in Principle 10, even before the international community adopted the

³⁷ Ole W. Pedersen (2020) “Human Rights in a changing environment” in Research Handbook on Transnational Environmental Law, Veerle Heyvaert and Leslie-Anne Duvic-Paoli eds. (Chentelham: Edward Elgar), 340-351. Following the predominant anthropocentric tradition of the end of the XX Century, the “solemn responsibility to protect and improve the environment” was based exclusively on the impact that the environment has on human life. Elena de Ruiz Garcia (2018) “El medio ambiente sano: La consolidación de un derecho”, *Iuris Tantum, Revista Boliviana de Derecho*, 25, available at: http://www.scielo.org.bo/scielo.php?pid=S2070-81572018000100019&script=sci_arttext (last access on 18 October 2022).

³⁸ Krämer, L. (2020). To justify the wayes of God to men. Limits to the Court’s powers of interpretation, written by Matthijs van Wolferen (2018). *Journal for European Environmental & Planning Law*, 17(1), 99-104.

³⁹ <https://www.unep.org/civil-society-engagement/partnerships/principle-10>

⁴⁰ Banisar (2011) “Moving from Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice.” *Sustainable development law & policy*. 12 The link between Stockholm Principle 1 and the subject matter of Rio Principle 10 was expressly made in “Our Common Future,” *ibid.*, paras. 81-82, and in the Preamble to the Aarhus Convention.

principle. This law and practice contributed to the development of the Aarhus Convention in the 1990s under the auspices of the United Nations Economic Commission for Europe.

The Aarhus Convention established the three areas of rights in Principle 10 (access to information, public participation in decision-making, and access to justice) as fundamental pillars of environmental law, justice and human rights.⁴¹ The Parties to the Convention⁴² - which include all 13 countries studied under REAL DEAL and the EU itself - are required to make the necessary provisions in their law and practice so that public authorities (at national, regional or local level) will ensure that these rights are made effective. It is important to mention that the EU is a Party to the Convention in addition to the 27 Member States in their own right. This implies a kind of double "ratification" and stresses the importance of the Convention in the different levels of governance.

The rights-based approach is most relevant in ensuring transparency and in enforcing the procedural aspects of citizen engagement, as well as other aspects of access to justice.

The Aarhus Convention in European law

All EU Member States, the European Union itself, and other countries in Europe including Serbia, North Macedonia and Ukraine, are Parties to the Aarhus Convention. The 13 countries included in the REAL DEAL project have adopted implementing legislation pursuant to their obligations under the Convention. EU Member States moreover have to apply the European Union Directives that have been adopted to implement the Convention. A range of European legislation applicable to the Member States had to be amended to come into compliance with the Convention. The national legislation thus adopted has the status of any domestic law. Within the EU legal order, the Convention is also binding on the EU institutions themselves, which has been put into law through the Aarhus Regulation 1367/2006. For countries aspiring to EU membership, in addition to their obligations under the Convention itself, application of the Aarhus Convention is taken into account in determining readiness for accession due to the fact that the Convention has been embedded into EU law.

Thus, the public has the opportunity to make use of the Convention provisions wherever matters relating to the environment or to sustainable development are under consideration, whether it be the level of the EU institutions or the Member State level or both. The proper level for consideration is determined by the EU Treaty and by the principle of subsidiarity, with the aim to produce integrated and coherent policy outcomes.

This Handbook need not repeat the vast body of work on implementation of the Convention. There are many guides that can be used, particularly "The Aarhus Convention: An Implementation Guide" published by the United Nations⁴³. However, some important points can be made below and also in Section 4.1 of this Handbook.

With respect to the first pillar of the Aarhus Convention, "access to environmental information", the Protocol on Pollutant Release and Transfer Registers, implemented through relevant European legislation, has helped to address the biggest concern in terms of

⁴¹ Peters, B. (2018). Unpacking the diversity of procedural environmental rights: the European Convention on Human Rights and the Aarhus Convention. *Journal of Environmental Law*, 30(1), 1-27.

⁴² https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en

⁴³ <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

compliance with the Convention by EU Member States in the field of transparency, which is the lack of active dissemination of meaningful information on the state of the environment. Through the European database, the E-PRTR, which includes Serbia in addition to the EU Member States and others, key environmental data are easily accessible to the public. The EU adopted provisions on access to environmental information and extended the right of access to all documents held by an EU institution or body through the Aarhus Regulation.

Concerning the second pillar, "public participation in environmental decision-making", European law has updated provisions on public participation in national procedures on environmental impact assessment and integrated pollution prevention and control.⁴⁴ In addition, the Aarhus Regulation applies to environment-related plans or programs which are provided for by legislative, regulatory, or administrative acts on the EU level.⁴⁵

The third pillar relates to "access to justice" in environmental matters and provides for judicial enforcement of the rights in the first two pillars as well as opportunities for the public to participate in implementing and enforcing environmental law. However, attempts at harmonising access to justice in environmental matters at EU level failed due to being blocked in the Council of Ministers⁴⁶. The Commission identified the need to ensure access to justice by including specific provisions in EU legislative proposals related to environmental legislation⁴⁷. However, the Commission largely failed to fulfil this promise and did not systematically include access to justice provisions in EGD legislation. This means that legally speaking, access to justice at national level must be achieved through national mechanisms while referring as necessary to the Aarhus Convention, rather than through national legislation transposing EU legislation.

Instead of developing a Directive on the subject, the Commission decided that an interpretative communication on access to justice in environmental matters would be the most appropriate and effective means to address the problem. The extensive Commission Notice (2017/C 275/01), clarifies how individuals and associations can challenge before the organs of the Member States the decisions, acts and omissions of public authorities related to the relevant environmental law.

The Court of Justice of the European Union (CJEU) is competent with respect to EU Law, and since the entry into force of the Convention, is competent to interpret the text as it applies to the Member States. De facto the CJEU judgments also influence the interpretation of the Aarhus Convention in non-EU countries.⁴⁸ The Aarhus Convention Compliance Committee also interprets the Aarhus Convention, and there has been at least one instance where the interpretations of the two bodies were not entirely consistent. As a body of the Meeting of the Parties (MOP), and not a judicial body, the Committee's findings and

⁴⁴ Krämer, L. (2020). To justify the ways of God to men. Limits to the Court's powers of interpretation, written by Matthijs van Wolferen (2018). *Journal for European Environmental & Planning Law*, 17(1), 99-104.

⁴⁵ De Apodaca Espinosa, Á. R. (2018). El acceso a la justicia ambiental a nivel comunitario y en España veinte años después del Convenio de Aarhus. *Revista Catalana de Dret Ambiental*, 9(1).

⁴⁶ A Commission proposal from 2003 failed to gather the needed support in Council and the Commission, ultimately, in 2014 withdrew its proposal.

⁴⁷ See paragraph 33, Commission Communication on Improving access to justice in environmental matters in the EU and its Member States <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52020DC0643>

⁴⁸ Karliuk, M. (2019). The Influence of CJEU Judgments on the legal order of the Eurasian Economic Union. *The Impact of the European Court of Justice on Neighbouring Countries*, edited by Arie Reich and Hans Micklitz (Oxford University Press, 2020).

recommendations nevertheless carry great weight. Towards the non-EU Parties to the Convention, the Compliance Committee proceedings may carry even greater weight than the CJEU decisions, which are only binding on EU Member States.

The case law of the CJEU should be followed closely, as it has rapidly developed in areas that may be related to the EGD. NGOs have been increasingly utilising the right to access to justice in environmental matters and the wider public has increased demands for the enforcement of environmental laws before the courts. The focus has been mainly on procedural rights, but the CJEU has also recognised that certain EU environmental legislation confers substantive rights to people and their associations. Despite this evolution, the interpretation of the CJEU has been very restrictive regarding the legal standing of natural and legal persons and does not allow them to take legal action in the general interest.

On 6 October 2021, the European Union amended the Aarhus Regulation to ensure greater compliance of EU law with the Aarhus Convention and in particular made the possibility of internal review fairer and more effective. These amendments mark an important development towards full compliance by the EU with its obligations under the Convention.⁴⁹ The focus of the improvements was on the scope and the characteristics of the internal review. Enhancing the ambit and the protective effects of the administrative phase increases the potential number of cases that may be brought before the EU General Court.⁵⁰

Another important aspect of the Aarhus Convention is that it obliges its Parties to promote Aarhus principles in international forums. Looking for example at climate change negotiations, however, it can be seen that European CSOs have to be ever vigilant in demanding that the EU institutions and representatives effectively advocate for better citizen engagement at the global level.⁵¹

Further reading:

- The Aarhus Convention: An Implementation Guide: <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>
- Putting Rio Principle 10 Into Action: A Guide to the Bali Guidelines (UNEP, 2015) <https://wedocs.unep.org/handle/20.500.11822/11201>

2.4 Consultative mechanisms and alternatives to the rights-based approach

Much of the content of the Aarhus Convention involves the establishment and the definition of rights that can be used, applied and enforced through legal processes. In fact, the Aarhus Convention has been characterized as a hybrid treaty that has some aspects of a human rights instrument besides its aim at environmental protection, and it is often touted as a major force in the development of “environmental democracy.”

But the Convention also includes a number of provisions that can be characterized as more political in character, that involve “soft law” (i.e., aspirational or political commitments, or

⁴⁹ *ibid*

⁵⁰ Leonelli, S., & Tempini, N. (2021). Where health and environment meet: the use of invariant parameters in big data analysis. *Synthese*, 198(10), 2485-2504.

⁵¹ Holzinger, K., & Sommerer, T. (2014). European environmental policy. Greening the world?. *EU Policies in a Global Perspective*, London: Routledge, 111132.

obligations without clear and measurable standards) or which impose obligations on the States that cannot be carried out through the rights-based approach.

Moreover, the mechanisms that have developed all over the world in the implementation of Rio Principle 10 have taken many forms, some of which are only peripherally based on legal principles.

Whereas the rights-based approach draws its strength from providing a last line of defence and from creating precedents for better application of the Convention in the future, there are alternative approaches which may be more effective in appropriate circumstances in creating a culture of compliance and in developing the rights further. Some of these mechanisms may be referred to as consultative or cooperative mechanisms.

Consultative mechanisms are relevant in respect of strategic-level decision-making, planning, programming, policy-making, and development of legislation at various levels. They are also relevant in cooperative enforcement (including complaint handling), and other means of increasing effectiveness and efficiency in the implementation of measures related to public policy.

Below is presented a set of consultative approaches which can supplement or provide alternatives to the traditional rights-based approach.

Fraussen et al (2020) note that different consultative approaches are necessary depending on the issue being discussed. In some cases, views of the public are sufficient, in others expert involvement is also critical.⁵² The EGD often requires consultation and participation with both the public and experts.

Conceptual approaches

The REAL DEAL project has selected and analysed a range of approaches which are relevant to the EGD. These include the following: *Environmental Justice*, *Environmental Rights*, *Ecocentrism*, *Environmental Pragmatism*, *Biocentrism*, *Ecofeminism*, *Environmental citizenship*, and *Ecomodernism*. These approaches should be considered against the overarching concept of Sustainable Development elaborated through the global instruments described above.

Environmental Justice

Environmental justice recognises the links between environment and individual/community health and security⁵³. Environmental conditions can impact health of individuals and communities directly or indirectly. For instance, air quality can affect lung health, extreme weather events can present physical dangers, climate change can lead to increased susceptibility to injury and disease, or changes in the availability of food and nutrition can affect growth and development. Environmental justice promotes the use of laws and policies at international and state levels to address impacts of pollution and climate related events. It also recognises the need for involvement of stakeholders affected by pollution and climate change in order to be effective. This can occur in the drafting and negotiation of related laws and policies, engagement in litigation, or through demonstrations and protests. While some advocates of environmental justice focus on the linkage of race to the disproportionate

⁵² Fraussen, B., Albareda, A. & Braun, C. Conceptualizing consultation approaches: identifying combinations of consultation tools and analyzing their implications for stakeholder diversity. *Policy Sci* 53, 473–493 (2020). <https://doi.org/10.1007/s11077-020-09382-3>

⁵³ US Environmental Protection Agency, <https://www.epa.gov/environmentaljustice>

impacts of pollution and climate related events,⁵⁴ the European approach applies a wider societal lens to alleviate disproportionate burdens of pollution and climate change⁵⁵. It also recognises the intersectoral harmful impacts of climate change, providing mechanisms for redress and including all members of society in pursuing improved climate conditions⁵⁶. During public participation processes it is important to realise the connectedness of environmental initiatives with environmental justice concerns.

Environmental Rights

The environmental rights approach links existing civil, political, social, economic and cultural rights to a right to specific environmental conditions or the right to be free from the impacts of environmental harm. For example, the rights to clean water and air or the right to freedom from pollution are related to the right to life and the right to health. This approach allocates environmental concerns as a subset of human rights, that to realise human rights certain environmental conditions must be met. Therefore, it is appropriate that environmental rights are incorporated into human rights instruments and warrant legal protection⁵⁷. An aspect of the environmental rights approach is that fundamental rights including procedural rights help persons to realise their substantive environmental rights. Environmental rights require engagement with persons to identify the scope of their rights for incorporation into laws and policies to be actionable⁵⁸. This approach is anthropocentric and independent of the recent trend towards recognizing rights of nature.

Ecocentrism

Ecocentrism looks beyond how nature can serve humans. It suggests that the moral codes which humans have developed to engage with each other should extend to nature and animals⁵⁹. Ecocentrism is also reluctant to rely on technology to resolve naturally occurring challenges. Instead, it favours initiatives which promote nature's ability to realign and rebalance itself to solve issues related to sustainability, including climate related issues⁶⁰. Incorporating an eco-centrist perspective into public participation presents challenges as it is difficult to construct the "self-interest" of natural objects, although there have been recent advances in recognizing the legal personality of rivers and other natural elements.

Environmental Pragmatism

⁵⁴ Nelson, J.R., Grubestic, T.H. Environmental justice: A panoptic overview using scientometrics (2018) Sustainability

⁵⁵ Laurent, E. Issues in environmental justice within the European Union. Ecological Economics (2011), v. 70

⁵⁶ Gach, E. Normative shifts in the global conception of climate change: The growth of climate justice(2019) Social Sciences

⁵⁷ Soveroski, M. (2008). Environment Rights versus Environmental Wrongs: Forum over Substance? - Soveroski—2007—Review of European Community & International Environmental Law—Wiley Online Library. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9388.2007.00575.x> ; Waks, L. J. (1996). Environmental Claims and Citizen Rights. Environmental Ethics. https://www.pdcnet.org/enviroethics/content/enviroethics_1996_0018_0002_0133_0148

⁵⁸ Christel, Lucas. G., & Gutiérrez, R. A. (2017). Making Rights Come Alive: Environmental Rights and Modes of Participation in Argentina. <https://journals.sagepub.com/doi/abs/10.1177/1070496517701248>

⁵⁹ Matzek, V., & Wilson, K. A. (2021). Public support for restoration: Does including ecosystem services as a goal engage a different set of values and attitudes than biodiversity protection alone? PLOS ONE, 16(1), e0245074. <https://doi.org/10.1371/journal.pone.0245074>

⁶⁰ Aguilar-Luzón, M. C., Carmona, B., Calvo-Salguero, A., & Castillo Valdivieso, P. A. (2020). Values, Environmental Beliefs, and Connection With Nature as Predictive Factors of the Pro-environmental Vote in Spain. Frontiers in Psychology, 11, 1043. <https://doi.org/10.3389/fpsyg.2020.01043>

Environmental pragmatism is not concerned with theoretical discussions of value or morality in relation to nature. Instead, it focuses on practical problems and seeks solutions with the input of those most affected⁶¹. Consensus building is achieved through inclusive dialogue which in turn feeds into policy making. The central tenet is that with more relevant stakeholders engaged in discussions, better policy and action will be reached on sustainability issues. Environmental pragmatism relies on stakeholders not placing individual socio-economic concerns as a priority over the wider societal needs, which cannot be guaranteed by explicit enforcement of equality measures⁶². During public participation processes environmental pragmatism can be useful to guide the approach and topics of discussion but must overcome the potential for exclusion and individual self-interest.

Biocentrism

Biocentrism is similar to ecocentrism while it places the value of humans on a par with all other living organisms. It recognises human reliance on other species while promoting the concept of competition as necessary for survival.⁶³ Current political, economic and social systems do not facilitate biocentrism or ecocentrism as they motivate the exploitation of natural resources as well as the use of natural resources for basic survival without regard to long-term impacts on the biosphere as a whole. Biocentrism does not dismiss the current political structures, rather it seeks to represent the interests of living organisms other than humans in decision making processes. It considers international agreements and deliberation mechanisms as positive initiatives to promote and protect the equality of nature with humans⁶⁴. In public participation processes biocentrism can be challenging to incorporate because of beliefs of human life warranting greater value than other organisms.

Ecofeminism

Ecofeminism recognises the disproportionate harms imposed by climate change and unsustainable practices on women in all their diversity in particular as well as other marginalised groups⁶⁵. This approach tends to be critical of capitalism and patriarchal structures. Ecofeminism recognises that an intersectional approach to climate solutions must be taken to address the multiple ways in which people are disproportionately negatively affected by climate change and other unsustainable practicesⁱ. Intersectionality considers the connected nature of social and political identities such as race, ethnicity, age, disability, class, geographic location and religion in their application to a group or individual and how these overlapping identities procure their own systems of discrimination, disadvantage or privilege⁶⁶. The societal roles which women are forced to occupy due to patriarchal structures cause them to be most vulnerable to the effects of climate change. Ecofeminism suggests that advocating for and realising intersectional gender equality cannot occur without addressing climate oppression⁶⁷. An ecofeminist approach supports public participation processes as it advances the inclusion of broader sources of knowledge to

⁶¹ Reitan, (1998), Pragmatism, Environmental World Views, and Sustainability, *Electronic Green Journal*, 1(9), <https://escholarship.org/uc/item/0th496m4>

⁶² Booth, K. J. (2012). Environmental Pragmatism and Bioregionalism. *Contemporary Pragmatism*, 9(1), 67–84. <https://doi.org/10.1163/18758185-90000217>

⁶³ Emmenegger, S., & Tschentscher, A. (1993). Taking nature's rights seriously: The long way to biocentrism in environmental law. *Geo. Int'l Envtl. L. Rev.*, 6, 545., 580

⁶⁴ Ibid.

⁶⁵ Susan Buckingham, Ecofeminism, Editor(s): James D. Wright, *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition), Elsevier, 2015, Pages 845-850,

⁶⁶ Lynne M. Woehrle, Gender Studies, Editor(s): Lester R. Kurtz, *Encyclopedia of Violence, Peace, & Conflict* (Third Edition), Academic Press, 2022, Pages 82-91,

⁶⁷ Genevieve R. Painter, Feminist Legal Theory, Editor(s): James D. Wright, *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition), Elsevier, 2015, Pages 918-925

contribute to a more complete and diverse overview of problems and solutions, and promotes societal benefits by protecting marginalised members of society who are affected most adversely or in unique ways by climate change and unsustainable practices.

Environmental citizenship

Environmental citizenship can be exemplified by the approach to climate change. It is centred on the idea of citizens being engaged and equipped to participate in decision making structures and processes to disrupt the status quo of climate actions. It recognises that in order to progress towards carbon neutrality the involvement of all citizens is necessary. It argues that all citizens are affected by both the actions required to achieve this and the adverse repercussions if carbon reductions are not realised⁶⁸. Further it recognises that these actions will not affect everyone equally and to secure buy-in from all members of society we must recognise and address the disproportionate burdens. Environmental citizenship is optimistic about the potential social-economic benefits for states and individuals of transitioning to sustainable ways of living. It empowers individuals to take action within their own lives towards sustainability⁶⁹ as well as engaging in protests and demonstrations to demand larger scale systemic change from governments⁷⁰.

Ecomodernism

Ecomodernism seeks to capitalise on technological advancements in the belief that innovations to benefit humans will solve problems without the need of considering the consequence to the natural environment. It posits that technological advancements will enable human life to continue in adverse conditions caused by climate change, such as through space colonisation and synthetic replication of naturally occurring phenomena. It fails to recognise the potential abuse of technology and the violations to marginalised communities whose natural amenities will be exploited, such as water resources being affected by hydropower stations and the disruption to biodiversity that wind turbines can cause⁷¹. Ecomodernism does not include the public as stakeholders and places disproportionate and undemocratic values on technology and science. Instead, the public are labourers within the cyclic systems of reliance on exploitation of natural resources for security. Because of the focus on individual security rather than wider environmental concerns ecomodernist approaches can cause conflicts within public participation processes.

Further reading:

- European Commission, Better Regulation Guidelines and Toolbox
https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en
- OECD Policy Coherence for Sustainable Development (PCSD)
<https://www.oecd.org/gov/pcsd/>

⁶⁸ Amand, A., and Jareño Cuesta, E. (Eds.). (2021). The Future of Environmental Citizenship in the EU. TellUs - EU Environmental Policy Lab. Bruges: College of Europe

⁶⁹ Dobson, A. (2007). Environmental citizenship: Towards sustainable development. *Sustainable Development*, 15(5), 276–285. <https://doi.org/10.1002/sd.344>

⁷⁰ Kowasch, M., Cruz, J. P., Reis, P., Gericke, N., & Kicker, K. (2021). Climate Youth Activism Initiatives: Motivations and Aims, and the Potential to Integrate Climate Activism into ESD and Transformative Learning. *Sustainability*, 13(21), 11581. <https://doi.org/10.3390/su132111581>

⁷¹ Midttun, A., & Witoszek, N. (Eds.). (2016). *Energy and transport in green transition: Perspectives on ecomodernity*. Routledge, Taylor & Francis Group, Earthscan.

3 Environmental Governance in Europe

3.1 Governance Approaches

Government decisions are usually prepared in preliminary form and ultimately implemented by the civil service in ministries and/or agencies. Political leaders set the goals, targets and timelines. They decide, for example, on an EU legal target that 60% of all municipal waste must be recycled by 2030. How to reach such a target is a matter of ‘governance’.

Governance can be described as the totality of interactions in which government, other public bodies, private sector and civil society participate (in one way or another), aimed at solving public challenges or creating public opportunities.⁷²

The following definition of environmental governance was used in connection with a European Commission-funded project to develop an environmental governance assessment framework for the Member States:

“An inclusive system of actors, institutions and norms that establishes responsibility and accountability, and builds trust and capacity to cooperate in policymaking, decision-making, implementation and enforcement, in the field of environment.”

These definitions can incorporate a range of public participation approaches, which is important, because different kinds of policy challenges call for different responses, and governance designs for participation must be tailored to assist with developing those responses.⁷³ Governance is the complement of policy: it is the ‘how’ to implement the ‘what’.

A brief history of governance in Europe

Historically, most modern government organisations in Europe are based on hierarchical principles formulated by the sociologist Max Weber, with detailed divisions of tasks, a command-and-control style of management, and legislation as the main tool. In countries where this governance culture is strong, this is reflected in the number of lawyers in ministries. In Germany, for example, a large majority of the key positions in the civil service is traditionally filled by people with legal training, while in contrast this is a minority in the Netherlands.⁷⁴

After the second World War, societies changed across many European countries. Especially in North-western European countries, higher education contributed to an increasing call for public participation. Governments on their part began to realise that participation was also in their interest, as it brought in additional knowledge and could result in more acceptance of new policies and laws. Starting in countries that already had a consensus culture, like the Netherlands and Denmark, in the 1990s gradually public consultation and later participation and even co-creation were introduced. This was supported by legal provisions but went further. The Dutch Environment Ministry, for example, decided to make interactive policymaking with stakeholders the basic style of operation of the whole ministry.⁷⁵

⁷² Meuleman, L. (2008), Public management and the metagovernance of hierarchies, networks and markets. Heidelberg: Springer

⁷³ Bryson, J. M., Quick, K. S., Slotterback, C. S., & Crosby, B. C. (2013). Designing public participation processes. *Public administration review*, 73(1), 23-34.

⁷⁴ Raadschelders, Jos CN, and Mark R. Rutgers. 1996. ‘The Evolution of Civil Service Systems’. *Civil service systems in comparative perspective*: 67–99.

⁷⁵ Meuleman, L. (2003): ‘The Pegasus Principle’. Reinventing a credible public sector. Utrecht: Lemma.

Following the international policy response to global environmental challenges in the form of the paradigm of sustainable development, the 2000s saw the emergence of a strong movement towards governance focusing on including stakeholders.⁷⁶ The foreword of the 2003 report “Environmental Governance in Europe,” by the European network of national environmental advisory councils, observed:

“Legislative processes have become more participatory and transparent. The requirements to adopt a legislative path have become more demanding, namely as a consequence of extensive impact assessments and stakeholder consultations. Finally new, more cooperative and consensual approaches for addressing public goods, such as public health and the environment, have been promoted by the European Commission, such as voluntary agreements and new tools of coregulation or other non-legislative measures”⁷⁷.

At the same time, a strong movement urged governments to reorganise themselves and their governance systems as if they were private companies.⁷⁸ This ‘market governance’ movement called “New Public Management” reduced inefficiencies but became heavily criticised because it neglected inclusivity and therefore was not as effective as promised. According to this approach the old, hierarchical and legalistic style of governance would gradually disappear and be replaced by market and/or network governance; this has, however, not happened.⁷⁹

In fact, all three styles of governance, each with their own strengths and weaknesses, now appear in various combinations. This has resulted in a much broader ‘toolbox’ for governments to address complex societal challenges as compared to the classical legal style, while recognizing that legislation remains the main tool for certain problems.

Three basic governance styles

Every European country has a different governance tradition, linked to national history and values. In all countries legal solutions for societal challenges (hierarchical governance) are important, but in some, collaboration and informal partnerships among a range of stakeholders (network governance) are also important, and again others prefer to rely also on market mechanisms and financial incentives (market governance). In comparative European research, groups of countries have been distinguished with similar public administration characteristics.⁸⁰

What we have now, in the early 2020s, is a quite dynamic situation, where governments can, if they want, combine and switch between different governance approaches. At least 50

⁷⁶ Rhodes, R.A.W. (2007): Understanding Governance – Ten years on. Organization Studies Vol. 28, pp 1243-1264.

⁷⁷ Meuleman, L., Ingeborg Niestroy, and Christian Hey. 2003. Environmental Governance in Europe. The Hague: RMNO/EEAC.

⁷⁸ Osborne, David and Ted Gaebler (1992): Reinventing government: how the entrepreneurial spirit is transforming the public sector. Reading, Mass.:Addison Westley.

⁷⁹ Wollmann, Helmut (2000): Comparing institutional development in Britain and Germany: (Persistent) divergence or (progressing convergence? In: Wollmann, Helmut and Eckhard Schröter (eds.) (2000): Comparing Public Sector Reform in Britain and Germany, pp 1-26.

⁸⁰ Kuhlmann, S., & Wollmann, H. (2019). Introduction to comparative public administration: Administrative systems and reforms in Europe. Edward Elgar Publishing. The authors distinguish five country groups with similar models and traditions of public administration: (1) the Continental European Napoleonic model; (2) the Continental European federal model; (3) the Nordic model; (4) the Anglo-Saxon model; (5) the Central Eastern European model.

differences have been described between the three basic styles⁸¹. The manner in which public administrations operate (Figure 3). Strong participation correlates with network governance thinking, and weak participation with hierarchical governance mindset. Figure 3 displays a continuum of types of public participation across five boxes from left to right ranging from weak to strong on their value to participation. The boxes are information, consultation, cooperation, co-design, co-decision.

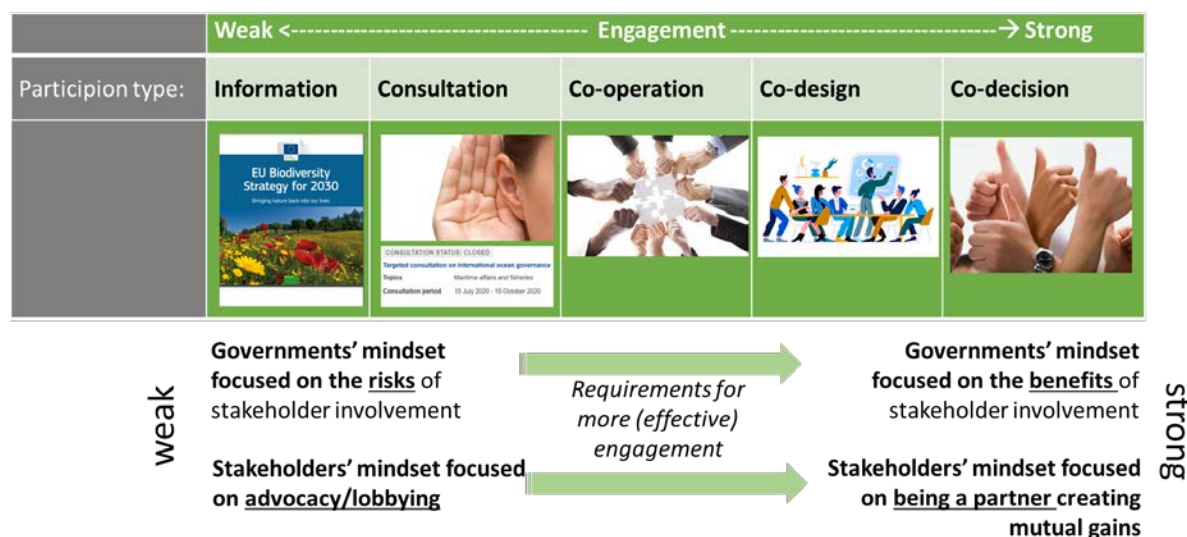


Figure 3 Different participation types and links to mindsets

Metagovernance

EU policy frameworks like the EGD, and its deliverables, need to be efficient and effective in all countries and therefore usually are accompanied by a combination of elements of all three basic governance styles. The Fit for 55 climate package, and the EU's biodiversity Strategy, are examples of strategies combining legislation, partnership creation, communities of practice and expert networks, awareness raising activities, and financial incentives and/or disincentives. This EU approach can be described as metagovernance: governance of governance.⁸² Such an over-riding set of principles to guide the process of government, organisation and structure has been around forever⁸³, partly related with polycentrism. The European Commission "plays a key metagovernance role in organizing parallel power networks, providing expertise and recommendations, developing benchmarks, monitoring progress, exchanging best practices"⁸⁴. This broad approach to metagovernance follows the above-mentioned broad definition of governance with its three ideal-typical governance styles. A different school of political scientists define governance as only

⁸¹ Meuleman, Louis. 2018. Metagovernance for Sustainability: A Framework for Implementing the Sustainable Development Goals. Routledge.

⁸² E.g. Jessop, B. 2011. Metagovernance. In: Bevir, M. (ed.) The Sage Handbook of Governance. London: Sage. Caviedes, Alexander, and Willem Maas. 2016. 'Sixty-Five Years of European Governance'. Journal of contemporary European research 12(1): 395–405; Meuleman, 2018; Tömmel, Ingeborg. 2016. 'EU Governance of Governance: Political Steering in a Non-Hierarchical Multilevel System'. Journal of Contemporary European Research 12(1).

⁸³ Roe, M. (2020). Metagovernance. In: Governance, Policy and Juxtaposition. Springer, Cham.

⁸⁴ Jessop, B. (2004). Multi-level governance and multi-level metagovernance (pp. 49-74). Multi-level governance. Oxford: Oxford University Press.

network governance, and therefore metagovernance as the coordination or steering of network governance⁸⁵.

Defining metagovernance in a broad way makes it possible to analyse and design governance frameworks also beyond the network paradigm. For example, the EU's Environmental Implementation Review can be seen as a metagovernance intervention itself. When, in 2015, the European Commission realised that weak implementation of EU environmental policy and law results in economic, social and environmental costs of around €50 billion per year, despite legal infringement procedures and high fines imposed on the Member States (hierarchical governance), and despite EU funds for environmental infrastructure (market governance), it concluded that a new approach should be employed: a process of informing, peer learning and dialogue between Member States, stakeholders and the Commission (network governance).⁸⁶

To conclude, stakeholder participation and deliberation is part of a broader picture. There is always a certain governance pattern in the background that may be less or more supportive of participation. This is relevant for environmental governance as well as for even more complex policies like the EGD and the SDGs. Extensive efforts are made to improve stakeholder participation to support SDG implementation in many countries, but in a few countries, stakeholder participation remains at a low level⁸⁷ The EU's approach of policy packages that include different governance tools typically includes requirements for stakeholder participation. This is supportive for setting up deliberative processes, also in countries where legal obligations for citizen or stakeholder participation are poorly implemented.⁸⁸

Where little or no government support to citizens or stakeholder participation (legal or otherwise) exists, it could be useful to articulate towards government representatives that the 2030 Agenda has a strong inclusiveness principle. For example, SDG 16 (6) defines good public institutions as being effective, accountable and inclusive. Underpinning this, inclusiveness features in five of the eleven principles of effective governance for sustainable development as formulated by the UN Committee of Experts on Public Administration (CEPA)⁸⁹ endorsed by the UN member states in the Economic and Social Council (ECOSOC): (7) Leaving no one behind; (8) Non-discrimination; (9) Participation; (10) Subsidiarity; (11) Intergenerational equity.

Promotion of citizen involvement and stakeholder participation is also key in one of the most important governance frameworks, namely policy coherence for sustainable development (PCSD). It is an official SDG indicator (17.14.1) with eight sub indicators, of which one is on participation. UNEP and OECD are jointly promoting the application of PCSD in all countries.

⁸⁵ See e.g., Torfing, J. (2016). Metagovernance. In C. Ansell & J. Torfing (Eds.), *Handbook on Theories of Governance* (pp. 525–537). Edward Elgar Publishing

⁸⁶ Meuleman, 2018.

⁸⁷ Niestroy et al. 2019.

⁸⁸ An example was a grant of the European Commission to the EEB, the umbrella of European environmental NGOs, for helping its members in the EU Member States to advocate for an active stakeholder role in environmental implementation (Ten Brink, P. Presentation at the Expert Group Greening the European Semester and the EIR, 8 Sept. 2018, https://ec.europa.eu/environment/integration/green_semester/pdf/10thMeetingExpertGroup/PtB_presentation_6_September_2018_final.pdf)

⁸⁹ UNCEPA is a subsidiary body of UN ECOSOC with the task to advise the UN and its member states on public administration and governance for the SDGs.

Further reading:

- Environmental Implementation Review (EIR) https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en
- OECD <https://www.oecd.org/gov/pcsd/>
- UNEP Handbook PCSD 2022 (forthcoming): <https://www.unep.org/resources/policy-and-strategy/people-and-planet-unep-strategy-2022-2025>

3.2 Dimensions of environmental governance

Closing the implementation gap in the field of EU environmental policy was an important priority for the European Commission under the 7th Environmental Action Programme. To this end, the Commission published, for the first time, an Environmental Implementation Review (EIR) in February 2017, in which the Member States were evaluated according to various criteria related to implementation of the ‘acquis communautaire’⁹⁰ in the field of environment. Among the cross-cutting, systemic reasons this review identified for a lack of good progress in implementation of environmental legislation was the way in which national, regional and local authorities manage the development of environmental policy and establish compliance assurance. A number of issues were identified for individual Member States to implement, including compliance assurance, access to justice, environmental liability and access to spatial information.

The periodic EIR reports represent a reporting tool that complements environmental legislation. The EIR helps the European Commission to design programmes of support for Member States to improve their environmental performance. The EIR is also useful for citizens and stakeholders by raising public awareness about the importance of implementing environmental rules and the main challenges. It also provides useful information to help those concerned take action to preserve human health and protect the environment throughout the EU by ensuring that competent authorities correctly apply the existing environmental rules.

The thematic areas addressed in the EIR are:

- circular economy and waste management
- biodiversity and natural capital
- zero pollution (namely air quality, industrial emissions, major industrial accidents prevention, noise, water quality and management)
- chemicals
- climate action

During the first round of this exercise, it became clear that the methodological approaches for assessing Member State's implementation performance were not mature in these areas. Consequently, under a Commission-funded project, an environmental governance assessment framework was developed through a complex, participatory process on the levels of dimensions, themes and indicators, which have formed the basis of the EIR chapter on environmental governance. This framework is being used in the second part of the EIR which focuses on the enabling environment for addressing the thematic areas above.

The dimensions of environmental governance are:

⁹⁰ The “acquis Communautaire” is the body of European law, legislation, court decisions, etc. that Member States need to incorporate into their domestic legal systems.

- Transparency
- Participation
- Rule of Law
- Compliance assurance and Accountability
- Effectiveness/efficiency

Within these five dimensions, 21 themes were identified. Twenty of the themes are allocated to the dimensions, some of which may relate to more than one dimension. The last theme is an overarching one: the context and characteristics of environmental governance on the national level.

Context	Transparency (Aarhus dimension 1)	Participation (Aarhus dimension 2)	Access to Justice (Aarhus dimension 3)	Compliance assurance and Accountability	Effectiveness and Efficiency
The context and characteristics of environmental governance	Evidence and Reporting	Public participation	Practical information	Promotion, monitoring, enforcement	Enabling financing
	Access to information	EIA/SEA	Access to justice	Liability	Administrative Capacity
	Reliability/quality	Public confidence	Effective remedies	Complaint Handling	Cross-sectoral coordination
		Equitability/inclusiveness	Judicial capacities		Integrated assessment
			Corruption		Flexibility/adaptability

Table 4 Summary of themes and their allocation to dimensions

The dimensions and themes show that the Aarhus Convention has played an important role in the development of the European environmental governance assessment framework. At the same time, considerations of both the rights-based participatory approach, and the consultative, cooperative and collaborative approaches can be found in this framework. The dimensions of Transparency, Participation and Access to Justice are closely related to the Aarhus Convention, but also extend into areas that are less rights-oriented, such as the theme of “Equitability/inclusiveness.” Compliance assurance and accountability involves legal mechanisms such as citizen engagement in enforcement, working in cooperation with enforcement authorities, which also has a connection to the Aarhus Convention (Article 9.3). The theme of Effectiveness and Efficiency is perhaps the most flexible in terms of making use of consultative and cooperative mechanisms, but it too has legal elements, for example through the use of management tools such as integrated assessment.

The Environmental Governance Assessment project further undertook a review of a wide range of sources of information available through a cross-section of existing assessment frameworks with a connection to environmental governance, including those on attitudes towards public authorities, implementation of specific legal obligations or mechanisms, levels of corruption, and human and financial resources, among others. This framework was applied in the Environmental Implementation Reviews in 2019 and 2022. EIR reports are available on the European Commission website for 2017, 2019 and 2022.

The EIR country dialogues – convened on the national level by national authorities – facilitate communication between governments and administrations and other stakeholders, including civil society, on the findings of the EIR. The Commission strongly encourages

these exchanges to find solutions to the challenges identified in the EIR reports. The Commission has published guidelines on organising EIR dialogues.

Further reading:

- European Commission, Environmental Governance Assessment portal, https://ec.europa.eu/environment/environmental_governance/assessment/
- Environmental Implementation Review (EIR) https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en
- Guidelines on EIR Country Dialogues - <https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/a7c856cc-e3b9-462e-b28d-ed7880e9fb43/details>

3.2.1 Transparency

The first dimension of environmental governance is “Transparency.” Transparency is an essential precondition of citizen engagement. Transparency and openness in governance are now among the fundamentally distinctive traits of contemporary public administration. It can be broadly defined as “the opposite of secrecy” and encompasses⁹¹.

Access to information covers both the 'passive' or reactive aspect of transparency, i.e., the obligation on public authorities to respond to public requests for information, and the 'active' aspect dealing with other obligations relating to providing environmental information, such as collection, updating, and public dissemination.

The right to access to information in an environmental governance context may be understood in part as giving citizens a right to know details about the state of the environment they live in. From a normative aspect, this includes information on the general state of the environment and information on the specific state of selected parts of the environment and on how government -authorized activities may have an impact on that environment.⁹²

While the right to obtain certain government held information is an integral part of a democracy, the implementation of that right varies from country to country both in terms of the access to information by all citizens, and in terms of the relative access to information by certain marginalised groups. However, when the information in question relates to the environment, the exercise of the right of access to information is harmonized in Europe through the standards of the Aarhus Convention. The Aarhus Convention definition of environmental information is very broad and includes a wide range of information held by public authorities that pertains in any way to the environment or related human health.⁹³

Transparency in the development of environmental policies is a principle in its own right but it is also the main tool that enables public participation and deliberative discourse. Without access to information, public consultations and deliberative processes become meaningless. Neither ordinary citizens, nor civil society organizations, nor scientists and academics can meaningfully contribute to public policy discourse unless they have a sufficient level of access to information.

⁹¹ *Transparency in International Law*, edited by Andrea Bianchi, and Anne Peters, Cambridge University Press, 2013. ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/uab/detail.action?docID=1543547>.

⁹² <https://unece.org/environment-policy/public-participation/access-to-information>

⁹³ Directive 2003/4/EC of 28 January 2003 on public access to environmental information

Studies have shown that transparency has benefits from the earliest through to the final stages of public participation and deliberative processes. Transparency in the process of selecting participants determines, in part, the credibility and legitimacy of the overall process. In regard to the later stages of decision-making, studies have suggested that transparent and extensive reviews can help to increase credibility, not least because such activities tend to expand the number of stakeholders involved⁹⁴.

Transparency is, therefore, essential to effective participatory processes, and for the ability of members of the public to influence political agendas. This does not mean that transparency needs to be unlimited, as there might be good reasons for there to be some non-public activities within a broadly transparent process. Examples of valid reasons for non-disclosure are, for example, national security or private data. Again, the Aarhus Convention standards are relevant to be examined. However, when a public authority is perceived as having a history of secrecy and operating “behind closed doors”, it can be difficult for the public to accept and trust processes that result. In such cases, a process that provides open access to information in a way that is appropriate for the participants is necessary to overcome mistrust⁹⁵.

Further reading:

- The Aarhus Convention: An Implementation Guide: <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>
- US National Research Council (2008) Public Participation in Environmental Assessment and Decision Making, eds Dietz T, Stern PC (National Academy Press, Washington, DC)

3.2.2 Participation

The recent effectiveness of youth activism has raised awareness of the impact of climate change and the need to incorporate climate initiatives into national and international laws and policies⁹⁶. Despite the increased media attention in the last few years, public participation in climate initiatives is not a new concept. The second dimension of environmental governance, participation by the public in processes developing climate related initiatives is at the heart of the Rio Declaration and the Aarhus Convention. There have also been region specific international agreements promoting public participation, such as the Escazú Agreement for the Latin America and Caribbean region in 2018. International standards require states to facilitate access to information and public participation through public authorities⁹⁷. The Aarhus Convention provides significant detail on how public participation is to be facilitated from the public notification of a proposed decision or initiative to the logistics of completing the public consultation⁹⁸.

Various instruments adopted by the Aarhus Meeting of the Parties include further guidelines for states implementing the Aarhus Convention on how to realise public participation rights contained therein. For example, the MOP adopted detailed recommendations on implementation of the public participation provisions of the Convention (the Maastricht Recommendations⁹⁹). In addition, the Almaty Guidelines on promoting the application of the

⁹⁴ Dietz and Stern (2008), “Public Participation in Environmental Assessment and Decision Making”, p. 150

⁹⁵ *ibid*, p. 149

⁹⁶ Centre for International Environmental Law, Promoting Public Participation in Climate Policies: Key Entry Points at the COP-25 and beyond (2019) https://www.ciel.org/wp-content/uploads/2019/09/PromotingParticipation_EntryPoints_COP25_final.pdf

⁹⁷ Article 3, Aarhus Convention.

⁹⁸ Article 6, Aarhus Convention

⁹⁹ https://unece.org/DAM/env/pp/Publications/2015/1514364_E_web.pdf

principles of the Aarhus Convention in international forums recognise the need to eliminate the barriers to participation in international climate initiatives and Multilateral Environmental Agreements¹⁰⁰. Such barriers include the limited possibilities for non-state actors to attend meetings, intervene or, to submit documentation and the specific difficulties minority groups and affected communities face when trying to obtain access to decision-making at the international level.

Members of the public can bring a complaint to the Compliance Committee of the Aarhus Convention. Complaints brought from EU states include a failure to consult by Lithuanian authorities about the operation of a landfill site¹⁰¹. Spanish authorities charging a fee to access environmental information during land zoning without public participation,¹⁰² Austrian authorities' failure to consult the public in relation to new public transport systems, and the failure to publicly provide information relating to the EIA of a community sports facility in Poland¹⁰³. As well as the mechanisms to influence domestic laws and policies and to make complaints directly to the Aarhus Compliance Committee, members of the public have a role in European monitoring of Aarhus Convention implementation. Bende Toth notes the recognition at European level since 1990 of the right to participate in climate issues.¹⁰⁴ The European Council recognises the importance of public participation in Environmental Impact Reviews conducted by States.¹⁰⁵

Further reading:

- Aarhus Convention Maastricht Recommendations
https://unece.org/DAM/env/pp/Publications/2015/1514364_E_web.pdf

3.2.3 Access to Justice

Access to justice is a set of rights which allows the public (individuals and NGOs) to go to court or other tribunals when there is a violation of law or rights. Access to justice is a fundamental part of the rule of law in a functioning democracy and the questions of who has standing for access to justice and for what types of decisions go to the heart of discussions about the accountability of public authorities. Whereas access to court can take the form of civil law claims for environmental damages, or criminal prosecution for environmental crimes, access to justice in the context of environmental governance focuses on the avenues by which citizens and NGOs can challenge the decisions of public authorities on substantive or procedural grounds. Access to justice is important because it gives individuals and NGOs the agency to litigate in order to protect the environment.

Principle 10 of the Rio Declaration and later the Aarhus Convention crystallised the notion of access to justice as a pillar of environmental governance; a pillar that is ancillary to the other two (access to information and participation in decision-making) and provides a guarantee that judicial recourse procedures can be called upon in case a party violates the rights

¹⁰⁰ Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, Para 15. <https://unece.org/environment-policy/publications/almaty-guidelines-promoting-application-principles-aarhus>. See also sections 5 and 6. of this handbook discussing the challenges to participation.

¹⁰¹ https://unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_6_e.pdf

¹⁰² https://unece.org/fileadmin/DAM/env/pp/compliance/CC-26/ece_mp_pp_c.1_2009_8_add.1_e.pdf

¹⁰³ https://unece.org/fileadmin/DAM/env/pp/compliance/CC-25/ece_mp_pp_c.1_2009_6_add.2_e.pdf

¹⁰⁴ Toth, Public Participation and Democracy in Practice - Aarhus Convention Principles as Democratic Institution Building in the Developing World, 30 J. LAND Resources & ENVTL

¹⁰⁵ <https://ec.europa.eu/environment/eir/pdf/Guidelines%20EIR%20country%20dialogues.pdf>

enshrined in the Convention.¹⁰⁶ There is no specific European Directive or regulation at the community level that would require all Member States to adopt a series of concrete measures in a uniform manner.¹⁰⁷ Rather it is up to each state to guarantee access to justice in accordance with its own internal legal order. Access to justice norms and closely aligned with the principle of legal certainty and the positive consequences that follow from it. Access to justice in the context of environmental governance implies that the public should have access to a court or another independent and impartial review body to ask for a review of potential violations of the convention on procedural grounds or on substantive grounds.¹⁰⁸

From the perspective of the Aarhus Convention, there are three distinct avenues of access to justice which have to be guaranteed. Firstly, the possibility to request a legal review of a refused request for access to environmental information. Secondly, the possibility to go to court if one's right to public participation was infringed upon. Thirdly, the general right to bring decisions and omissions affecting the environment to court for the failure to comply with other (environmental) laws. In practice, the third avenue is often the most problematic as it demands a review of the substantive parts of a decision.

The body of decisions of the Aarhus Convention Compliance Committee are very valuable in exploring aspects of access to justice in the application of the Convention in the Parties.

The legal recognition of the right of a person to appear before a tribunal and to have his or her case heard is referred to as legal standing (*locus standi*). According to the Aarhus Convention, legal standing in certain cases should be extended to the so called "public concerned" which includes the public affected, or likely to be affected by, or having an interest in environmental decision-making. There is a lot of discussion and case law defining the concept of the "public concerned" but most importantly article 2(5) of the Aarhus Convention states that NGOs that promote environmental protection and meet national law requirements are automatically assumed to have an interest in environmental decision-making. This means that NGOs have a privileged legal position in the area of environmental decisions and policy.

Legal standing is a complex area of law that takes many forms around the world. European countries may take note of the tendency to relax standing requirements in parts of the world. The granting of open standing is sometimes allowed in the context of recognizing rights of nature, such as in Ecuador or New Zealand, where any person can go to court to protect nature without needing to prove a specific legal interest.

Certain standards of due process must also be met. Article 9(4) of the Convention sets out general minimum standards that apply to these appeal procedures: contracting parties 'shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.

Further reading:

- These topics are treated in great detail in: The Aarhus Convention: An Implementation Guide: <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

¹⁰⁶ Sconfienza, U. (2015). The narrative of public participation in environmental governance and its normative presuppositions. *Review of European, Comparative & International Environmental Law*, 24(2), 139-151.

¹⁰⁷ Ibid

¹⁰⁸ Ruiz de Apodaca (op cit).

3.2.4 Compliance assurance, Accountability

Compliance with EU environmental policies and laws happens on two different levels. Firstly, there is the compliance by private individuals and companies. Secondly, there is the compliance of EU Member State governments and public authorities with environmental laws. This section focusses on the first element of compliance assurance.

The EU encourages Member States to further compliance via promoting, monitoring, and enforcing. Promotion happens via awareness-raising and the issuing of guidance mostly addressed at businesses. A good example is the host of guidance documents on the REACH regulation¹⁰⁹. Monitoring involves the carrying out of inspections, investigations, audits, and the consolidation of that data. It can also include the handling of complaints received by the public, which are addressed further down below. A good example are the mandatory requirements under the Industrial Emissions Directive for carrying out environmental inspections on the sites of emitting industrial installations¹¹⁰. Enforcement means the use of national authority to try to stop the breaking of the law. Here, the most useful resources at European level are the Environmental Liability Directive under civil law and the Environmental Crime Directive under criminal and administrative law.

Prevention

A big part of preventing compliance problems from businesses and individuals involves help from the Member States in complying with relevant requirements of EU legislation through providing information, advice and other means. These Member States efforts are referred to as 'compliance promotion', and can take the form of guidance, 'frequently asked questions' (FAQ), helpdesks, and are increasingly reliant on online tools and information sources.¹¹¹

Monitoring and inspections

To discover compliance problems, Member States can take actions ranging from more traditional environmental inspections and investigation of complaints from the public to the use of new techniques such as citizen science. Examples of citizen science include phone apps that track pollution events, transportation patterns, migration of species, or that provide a platform for detection and reporting of violations of environmental law in real time¹¹². Site inspections can result from complaints and are still one of the key forms of monitoring for discovering compliance problems. They are required to be systematic for industrial installations. Monitoring also includes police or other criminal investigations into environmental crimes.

Information about the planning of inspections required under Article 23 of the Industrial Emissions Directive is provided online in most of the Member States, although generally not detailed. As an additional monitoring tool, earth observation and geo-spatial intelligence is used in most of the Member States, although mostly limited to specific environmental issues

¹⁰⁹ European Chemicals Agency, Guidance on REACH, <https://echa.europa.eu/guidance-documents/guidance-on-reach> (accessed on 18/10/2022)

¹¹⁰ Directive 2010/75/EU on industrial emissions, Article 23 Environmental inspections

¹¹¹ Development of an assessment framework on environmental governance in the EU Member States 2019, page 77

¹¹² Citizen science makes it easier for Member States to get useful scientific and other information from the public (form of citizen engagement). Bio Innovation Service, "Citizen science for environmental policy: Development of an EU-wide inventory and analysis of selected practices", report for European Commission, November 2018

or specific cases, and it is often not completely clear how exactly the information gathered is used in compliance monitoring¹¹³.

In some Member States (Greece, Lithuania) publicly available internet mapping services are used to detect illegal construction. Other Member States have set up mobile apps for compliance monitoring to municipalities and citizens, focused on reporting, for example, of illegal waste dumps or illegal logging, problems with local infrastructure, and other issues at municipal level¹¹⁴.

Complaint handling as part of compliance assurance and accountability

Effective mechanisms to enable members of the public to make complaints about environmental problems, and for those complaints to be properly addressed, can provide additional reinforcement to the implementation of environmental policy commitments, as well as public confidence in environmental regulation. There are different dimensions of complaint-handling, from complaints to public authorities about environmental problems that the authorities are asked to deal with (for examples, harm to a Natura 2000 site), to complaints about public authorities' alleged failure to fulfil environmental tasks, often made to national ombudsperson offices. Member States usually provide online information on how to complain about environmental problems, which is mostly easily accessible and clear, and the channels of complaints range from phone number and email addresses to Twitter and Facebook accounts¹¹⁵.

In most of the Member States, there is an institution with the functions of a general ombudsman which also handles environmental complaints which include, for example, an ombudsman for human rights, a parliamentary ombudsman, chancellors for justice, commissioners and mediators. In Malta, there is a specialised national level environmental body, the environmental commissioner. In Austria, at the level of the regions, there are environmental ombudsman offices¹¹⁶.

Education

Educating the public is paramount. It is important to have public-awareness raising initiatives with the objective of making citizens aware of the possibility to alert or inform national authorities about facts likely to cause environmental damage, or which seem non-compliant with environmental law provisions, or which otherwise help the authorities to fulfil their responsibilities. To this end, it is also important to educate the public about the applicable legislation and the progress of certain projects alongside the means through which environmental infringements can be reported to the competent authorities.

Further reading:

- European Commission, Environmental Compliance VADE MECUM, <https://www.ecologic.eu/17483>
- European Commission, Development of an assessment framework on environmental governance in the EU Member States, March 2019, https://ec.europa.eu/environment/environmental_governance/pdf/development_assessment_framework_environmental_governance.pdf
- Communication of the European Commission on EU actions to improve environmental compliance and governance COM(2018)10 final and Staff Working Document SWD(2018) 10 final
- Towards an improved assessment of environmental compliance assurance (COWI 2018)

¹¹³ Development of an assessment framework on environmental governance in the EU Member States 2019, page 78

¹¹⁴ idem, page 79

¹¹⁵ idem, page 80

¹¹⁶ idem, page 81

3.2.5 Effectiveness and efficiency

The fifth and last dimension of environmental governance is “Effectiveness and efficiency.” As set forth in the scoping of the Environmental Governance Assessment framework:

“The dimension of Effectiveness and efficiency includes themes related to resource issues, including financial, human and technical capacities. Mechanisms, procedures and tools for policy coherence and integrated decision-making are also major components of effectiveness and efficiency. These include cross-sectoral coordination, EIA/SEA, integrated permitting, and other mechanisms aimed at flexible, adaptive governance. Attention to this dimension facilitates achievement of SDGs. Many of the themes under this dimension also bear a relation to the European Semester, including actions related to the goal of the circular economy.”¹¹⁷

Among issues that are of importance to citizen engagement in this area are the types of decisions regarding financing and the absorption of available funds. Funding programming is often an obscure, expert-driven process, but involvement of the public ensures transparency and better outcomes. The EGD will involve extensive financing of environmental policies on the EU and Member State level. Citizens should be engaged in policymaking and decision-making regarding each Member State’s sources of funds in selected sectors, allocation of public expenditure to environmental protection per level of governance, EU funding and the absorption rates under relevant funds and their budget lines. Citizen engagement may relate to: how public authorities encourage absorption of available funds for environmental investment (e.g. access to information about funding opportunities); existence of domestic environmental finance tracking; systems of earmarking of funds collected through fiscal and other market-based instruments to environmental protection; the institutional set up for distribution of funding, and its quality (e.g. expertise of staff in charge). In addition, the public should have opportunities to take part in any identification of financing needs through ex ante evaluations and assessments of selected policies and programmes. Citizens should also be able to monitor administrative capacities in all public authorities that are involved in matters related to implementation of the EGD. Such authorities may include those involved in permitting, planning and programming, as well as enforcement, which relates this dimension to the one on complaint handling.

This dimension can also broadly be interpreted to cover a range of issues related to cross-sectoral coordination, including strategic environmental assessment (SEA) and complex multi-level governance processes, such as the water-energy-food-ecosystem nexus, which refers to the relationships or interdependencies of water use, energy production, food security and nature conservation. The nexus concept is discussed further below.

Effectiveness in environmental matters has been related to participation and it aims to improve by increasing acceptance of and identification with decisions as well as improved trust relationships between state and non-state actors. Public participation in environmental decisions in the European policy context is expected to increase effectiveness and improve legitimacy.¹¹⁸

¹¹⁷ Development of an assessment framework on environmental governance in the EU Member States, Annex I, https://ec.europa.eu/environment/environmental_governance/pdf/development_assessment_framework_environmental_governance.pdf

¹¹⁸ Høgl, K., Kvarda, E., Nordbeck, R., & Pregernig, M. (Eds.). (2012). Environmental governance: The challenge of legitimacy and effectiveness. Edward Elgar Publishing.

Effectiveness and efficiency are also factors that describe how participants perceive the output and outcome of participation processes.¹¹⁹ Effectiveness measures the impact of a participation process. In contrast, efficiency may be understood as “cost-effectiveness”.¹²⁰ Strictly speaking, the effectiveness of policy/governance refers to the extent to which a given goal is reached; environmental effectiveness refers to the extent to which a policy is likely to achieve environmental improvements in the sense of sustainable use of resources, protection of ecosystems and human health, and prevention of environmental degradation. Aspects of efficiency, delivery, implementation, goal attainment, or improving environmental conditions may all contribute to effectiveness.¹²¹

Concentrating on the detailed implementation of public participation methods can significantly influence their effectiveness. Accordingly, any modifications to legislation should ideally be accompanied by enhanced guidance on good public participation practice to ensure that it is defective and adds value.¹²² Such guidance should focus not only on the types of techniques that can be used to engage the public but also on careful preparation for their use and upon using them properly.¹²³

Further reading:

- Development of an assessment framework on environmental governance in the EU Member States,
https://ec.europa.eu/environment/environmental_governance/pdf/development_assessment_framework_environmental_governance.pdf

3.3 Non-EU member states (European Neighbourhood)

The environmental ambition of the EGD will not be achieved by the EU acting alone. The drivers of climate change and biodiversity loss are global and are not limited by national borders.¹²⁴ The EU will continue to lead international efforts and build alliances with like-minded states and international organisations. The EGD is integral to the Commission’s strategy to implement the United Nations’ 2030 Agenda including the SDGs.¹²⁵ The EU consolidates its vision of growth and prosperity to that of sustainability, promoting environmental objectives, and especially mitigation and adaptation in defining its external action.¹²⁶

¹¹⁹ Schroeter, R., Scheel, O., Renn, O., & Schweizer, P. J. (2016). Testing the value of public participation in Germany: Theory, operationalization and a case study on the evaluation of participation. *Energy research & social science*, 13, 116-125.

¹²⁰ Ernst, A. (2019). How participation influences the perception of fairness, efficiency and effectiveness in environmental governance: An empirical analysis. *Journal of Environmental Management*, 238, 368-381.

¹²¹ Schilling-Vacaflor, A., Gustafsson, M. T., Cotta, B., Lenschow, A., Soendergaard, N., Inoue, C., ... & Challies, E. How Policy Dismantling Undermines Transnational Sustainability Governance: The Case of Agro-Commodity Chains from Brazil.

¹²² Hartley, N., & Wood, C. (2005). Public participation in environmental impact assessment—implementing the Aarhus Convention. *Environmental impact assessment review*, 25(4), 319-340.

¹²³ Ibid

¹²⁴ Commission Communication (COM/2019/640 final). The European Green Deal.

¹²⁵ Ibid

¹²⁶ Giles Carnero, R. M. 2021. “La oportunidad de una cláusula ambiental de elementos esenciales en acuerdos comerciales de la Unión Europea con Estados terceros: a propósito del Acuerdo Unión Europea-Mercosur”, *Documento de Trabajo*, 44. <http://hdl.handle.net/10272/19489>

The REAL DEAL project includes actions in three non-EU states, specifically North Macedonia, Serbia and Ukraine. North Macedonia and Serbia belong to the Western Balkans region and Ukraine belongs to the Eastern Partnership, or according to the UN classification, Eastern Europe, Caucasus and Central Asia (EECCA). All three countries are candidates for EU membership.

The EU pursues external action through different kinds of legal mechanisms and regulatory techniques, including unilateral measures that extend its regulatory power to processes taking place abroad. These measures are proliferating in many EU policy areas, including environmental law.¹²⁷ The use of domestic measures with extraterritorial impacts enables the EU to indirectly regulate activities and behaviour that do not take place within its territory, thus influencing the content and direction of foreign legal systems and ultimately the development of international law.¹²⁸

The Internal Environmental Measures with Extraterritorial Implications (IEMEIs) are an example of this extraterritorial impact which is an important manifestation of the exercise of EU global regulatory power.¹²⁹ Examples of IEMEIs include the sustainability criteria for biofuels, the inclusion of aviation emissions in the EU Emissions Trading System (EU ETS), regulation of ship recycling, exports of waste of electrical and electronic equipment, imports of timber, and imports of fish and fishery products. By their legal design, IEMEIs regulate conduct or processes taking place, at least partly, in third countries and influence business practices and regulatory approaches abroad, thus having important impacts on different kinds of third country.¹³⁰

One of the main factors in the relationship between the non-EU member states and EU governance on Environmental law is conditioned on whether the state is a candidate to become a member of the Union and therefore is in the process of harmonizing EU legislation into national law. A state candidate has to meet the conditions of membership known as the “Copenhagen criteria”.¹³¹ Among these conditions, the promotion of sustainable non-inflationary growth respecting the environment is defined as crucial.¹³² The state candidate needs to adopt, implement and enforce the environmental chapter of the *acquis* (chapter 27) which comprises over 200 major legal acts covering multi-sectorial horizontal legislation, and requires significant investment and a strong and well-equipped administration at a national and local level.¹³³

In the framework of foreign action, Regulation (EU) 2021/1529 of the European Parliament and of the Council of September 15, 2021, establishing the Instrument for Pre-Accession Assistance (IPA III), was approved. In this case, it is worth noting the little relevance given to environmental protection as a criterion for granting aid, since it simply appears on a list of

¹²⁷ Ioanna Hadjiyianni. 2017. “The Extraterritorial Reach of EU Environmental Law and Access to Justice by Third Country Actors” *European Papers* 2, 519-542.

¹²⁸ Extraterritoriality and the Impact of EU Regulatory Authority: Environmental Protection as Soft Power Jamile Bergamaschine Mata Diz and Hélio Eduardo de Paiva Araújo In N. Cunha Rodrigues (ed.), *Extraterritoriality of EU Economic Law, European Union and its Neighbours in a Globalized World* 4, https://doi.org/10.1007/978-3-030-82291-0_15.

¹²⁹ Ioanna Hadjiyianni, op.cit.

¹³⁰ Ibid

¹³¹ https://european-union.europa.eu/principles-countries-history/joining-eu_en

¹³² DOC/93/3 European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency.

¹³³ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

twenty optional criteria in no order of preference. This fact is striking given that the state of environmental protection in the candidate states is one of the criteria for their accession.¹³⁴

Connected with IPA III, Serbia and North Macedonia are among the countries which committed to reach climate neutrality by 2050 pursuant to the Green Agenda for the Western Balkans, adopted under the auspices of the Regional Cooperation Council.¹³⁵

Particular emphasis is put on supporting the ecological transition in the EU's immediate Neighbours, namely the Western Balkans, the Southern Neighbourhood and the Eastern Partnership countries. In concrete terms, the proposal to gear EU trade policy to support the ecological transition, including commitments to sustainability in EU trade agreements, is one of the most consequential measures.¹³⁶ The EU also has great effect through the Energy Community Treaty, which also concerns Ukraine, besides Serbia and North Macedonia. The EU will put emphasis on supporting its immediate Neighbours by establishing innovative forms of engagement, such as the Commission's proposal for a Neighbourhood, Development, and International Cooperation Instrument.¹³⁷

Additionally, the CJEU acts as the 'gatekeeper' of international law, determining the effects of international agreements in the EU legal order and also decisions of compliance bodies. In this role, the CJEU engages with various external actors, including third country applicants, international courts, and compliance review bodies established under international agreements, thus increasingly emerging as a transnational actor.¹³⁸ In relation with the Aarhus Convention and due to the fact that there is no ad hoc Court to interpret the Convention, the interpretation of the CJUE may have an extraterritorial effect.¹³⁹

Further reading:

- Green Agenda for the Western Balkans, <https://www.rcc.int/greenagenda>
- Energy Community, <https://www.energy-community.org/>
- Energising EU Enlargement, <https://www.clingendael.org/publication/energising-eu-enlargement>

¹³⁴ Pol Pallàs Secall, "PERSPECTIVA DEL DERECHO DEL MEDIO AMBIENTE Y DE LAS POLÍTICAS AMBIENTALES DE LA UNIÓN EUROPEA" REVISTA CATALANA DE DRET AMBIENTAL Vol. XII Núm. 2 (2021): 1 – 29

¹³⁵ <https://www.rcc.int/greenagenda>

¹³⁶ Sidi, M. 2020. "The European Green Deal assessing its current state and future implementation" *FIA Working Paper* 114. <http://hdl.handle.net/11584/313484>

¹³⁷ Eckert, Eva, and Oleksandra Kovalevska. 2021. "Sustainability in the European Union: Analyzing the Discourse of the European Green Deal" *Journal of Risk and Financial Management* 14, no. 2: 80. <https://doi.org/10.3390/jrfm14020080>. See <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/neighbourhood-development-and-cooperation-instrument>.

¹³⁸ Hadjiyianni, I (2021). "The CJEU as the gatekeeper of international law: The cases of WTO and the Aarhus Convention" *International and Comparative Law Quarterly*, 70, 895-933

¹³⁹ See Karliuk, op cit.

4 Mechanisms for citizen engagement in relation to the EGD

4.1 Legal standards for participatory mechanisms

4.1.1 Transparency and access to information

Aarhus Convention

As alluded to in the Chapter on Dimensions of environmental governance, the right to access to information is guaranteed by the UNECE Aarhus Convention¹⁴⁰. Whereas article 4 sets out the active right of the public to obtain information upon request, article 5 sets out the obligations for public authorities to collect and proactively publish environmental information. What constitutes environmental information can today best be deduced from the EU's directive 2003/4/EC on public access to environmental information¹⁴¹. Besides the examples listed in the Aarhus Convention article 2(3), the EU directive also specifically spells out different forms of decisions and legislations and reports on the implementation of environmental legislation. Additional to the Directive on public access to environmental information, there are also separate sectoral EU and national laws with specific information requirements in areas such as water, waste, and emissions policy.

Access to national documents

As shown by a recent study, there are large differences between the level of access to information in one country to the next and room for improvement remains across the board¹⁴². The Aarhus Convention provides a minimum baseline for access to environmental information. With regard to the active right to file a request for access to documents, many states are still lacking far behind implementing the convention's obligations properly. The obligations for proactive publication by public authorities are less strong and, therefore, much easier to comply with. Ideally, all environmentally relevant data should be accessible by the public in user-friendly one-stop-shop online formats that are both accessible as well as machine readable.

Some national legal systems have dedicated access to information public authorities or have tasked Ombudsman institutions with reviewing such requests. A challenge access to environmental information faces in many national systems is that it is treated in the same way as access to information in any other policy area.

Access to EU documents

Article 15 of the Treaty on the Functioning of the European Union (TFUE) and article 42 of the Charter of Fundamental Rights of the European Union state that citizens and residents of the European Union have a right of access to the documents of Union institutions, bodies, offices and agencies, whatever their medium. NGOs and other legal persons registered in an

¹⁴⁰ UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 1998), see <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>

¹⁴¹ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information

¹⁴² EEB 2019, For your Information, Implement for life https://eeb.org/wp-content/uploads/2019/12/EEB-access-to-information_final3.pdf

EU Member State also have the same right as individuals to ask for documents. The rules about public access to documents are set in Regulation (EC) No 1049/2001.¹⁴³

These transparency rules apply to the European Commission, the European Parliament, and the Council of the European Union, as well as other offices, bodies, and agencies. When it comes to the European Central Bank, the Court of Justice of the European Union, and the European Investment Bank, this right only applies to their administrative functions. There is a website dedicated to the exercise of this right of access to documents: AsktheEU.org. After a request, EU institutions have the obligation to answer within 15 working days. If the requester is not happy with the information provided, the request was fully or partly denied, or when the EU has failed to answer the request within the specified deadline, a confirmatory application (appeal) can be submitted.

PRTR Protocol

The UNECE Kyiv Protocol on Pollutant Release and Transfer Registers (PRTR Protocol) is a legally binding instrument with the objective "to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers (PRTRs)."¹⁴⁴ This protocol is an 'open' global treaty, meaning that any UN Member State can join, irrespective of whether they have ratified the Aarhus Convention.

PRTRs bring information on polluting emissions into the public domain, and thereby raise awareness about major sources of threats to human health and the environment. By increasing transparency, they enable the public to play a more effective role in influencing the decision-making processes related to such threats and, hopefully, create pressure on companies to reduce the pollution arising from their activities.¹⁴⁵ The Protocol requires its Parties to establish and maintain a publicly accessible and structured national register or database. The information contained in the PRTR is to be supplied through mandatory periodic reporting by the owners or operators of certain types of potentially polluting facilities, such as refineries, thermal power stations, chemical and mining industries, waste incinerators and treatment facilities, wood and paper production and processing, shipbuilding, intensive agriculture and aquaculture, among others. These should report annually on releases (into the environment) of certain types of pollutants as specified in the Protocol¹⁴⁶, as well as off-site transfers of waste (to waste disposal sites or recovery facilities) and pollutants released in wastewater from the facility. The Protocol also requires that PRTRs progressively contain information on pollution from other diffuse sources, such as pollution from traffic to air, from agriculture to water and from small polluting enterprises to land, water or air.

The information contained in the PRTR must be searchable and identifiable according to categories such as companies, facilities or geographical locations; types of activity, pollutant or waste; and the environmental medium into which the pollutant is released (air, water, land). Each Party must promote public awareness of its PRTR and provide assistance and guidance to the public in accessing the register and in understanding and using the information contained in it, as the PRTR must be user-friendly. Article 11 of the PRTR establishes the right of public access to information through direct electronic access through public telecommunications networks, such as an open website on the Internet, as the

¹⁴³ 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. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:145:0043:0048:EN:PDF>

¹⁴⁴ [Kyiv Protocol on Pollutant Release and Transfer Registers \(PRTR Protocol\)](#), article 1

¹⁴⁵ A simplified guide to the Protocol on Pollutant Release and Transfer Registers, page 4. <https://unece.org/info/Environment-Policy/Public-participation/pub/2281>

¹⁴⁶ Kyiv Protocol on PRTR, Annex II, <https://unece.org/environment-policy/public-participation/prtrs-protocol-text>

primary means of public access (free of charge) and also through “other effective means” for members of the public who do not have direct electronic access to the PRTR.

Further reading:

- [AsktheEU.org](https://asktheeu.org)
- A simplified guide to the Protocol on Pollutant Release and Transfer Registers, <https://unece.org/environment-policy/publications/simplified-guide-protocol-pollutant-release-and-transfer-registers>
- PRTRs advancing sustainability, environmental governance and a green economy, <https://unece.org/environment-policy/publications/prtrs-advancing-sustainability-environmental-governance-and-green>
- Guidance to the Protocol on Pollutant Release and Transfer Registers, <https://unece.org/environment-policy/publications/guidance-protocol-pollutant-release-and-transfer-registers>
- Etzioni, A. (2018). The Limits of Transparency. In: Alloa, E., Thomä, D. (eds) Transparency, Society and Subjectivity. Palgrave Macmillan, Cham. https://doi.org/are.uab.cat/10.1007/978-3-319-77161-8_9

4.1.2 Public participation in EIA, SEA, etc.

The Aarhus Convention promotes public participation in activities which will impact the climate and people. This can include the health of the public, their social amenities and long-term sustainability for their communities. Environmental Impact Assessments (EIAs) processes have specific public participation obligations which are implemented via different methods in the Member States¹⁴⁷. In order to meet their obligations under Article 6 of this Directive, Member States must evidence public consultation as part of the EIA process. Member States are given independence to establish consultation mechanisms as long as there is an opportunity for public contributions and that information about proposed developments are made available to the public. EIAs have attracted much academic and civil society attention internationally as to their efficacy. This research has indicated that¹⁴⁸ conformity in standards regarding EIAs has improved since the 1990s and that consultation is impactful at various stages of the EIA. Hasan et al.¹⁴⁹ have noted the increased role of CSOs and NGOs in conducting EIAs as part of their work to improve social and economic conditions for communities they seek to serve¹⁵⁰. NGOs can improve EIA consultation processes as they can represent the interests of structurally excluded communities, although this should not be automatically assumed and individual actors should not be excluded because of the participation of NGOs.¹⁵¹ The International Association for Impact Assessment (IAIA) has developed training resources on the inclusion of the public in EIAs. Once the relevant authority has identified a proposal which requires an EIA, consultation with the public should be embedded in all stages of the assessment. The benefits of public participation include, the improved quality of decision-making, the inclusion of traditional, local knowledge and experience,¹⁵² the strengthening of local impacts and the increase of confidence in the EIA process. EIA's must include a prediction of the impacts of

¹⁴⁷ Lee, Norman, and Christopher Wood. “EIA—A European Perspective.” *Built Environment* (1978-), vol. 4, no. 2, 1978, pp. 101–10. *JSTOR*, <http://www.jstor.org/stable/23284627>. Accessed 14 Oct. 2022.

¹⁴⁸ Adam Barker, Christopher Wood, An evaluation of eia system performance in eight eu countries, *Environmental Impact Assessment Review*, Volume 19, Issue 4, 1999, Pages 387-404, ISSN 0195-9255,

¹⁴⁹ Md Arif Hasan, Kh Md Nahiduzzaman, Adel S. Aldosary, Public participation in EIA: A comparative study of the projects run by government and non-governmental organizations, *Environmental Impact Assessment Review*, Volume 72, 2018, Pages 12-24, ISSN 0195-9255,

¹⁵⁰ Ibid.

¹⁵¹ https://www.iaia.org/pdf/south-eastern-europe/Sec_E_Topic_3.PDF

¹⁵² Ibid.

a development or intervention, rather than merely identifying that an impact will occur. These impacts should be considered based on their projected duration and severity, as well as whether they are permanent or temporary. Not all potential impacts can be guaranteed to be considered within the EIA process, but having due regard to the concerns arising from public participation will secure confidence in the process.

Gauthier et al. note that while EIAs are reactive to project or development design – the consideration of the impact comes after the design process has been proposed. Strategic Environmental Assessments (SEAs) represent a preliminary stage of decision-making that sets the strategic stage for further action.¹⁵³ Article 2, para. 8 of the SEA Directive requires public participation from an early stage of development.¹⁵⁴ These include ensuring the aims and process of the consultation are clear and transparent, that the scope of consultation is proportionate to the aim, support to participants to facilitate their meaningful engagement, ethical and professional standards of engagement must be enforced and adapted to the relevant cultural context.¹⁵⁵

As well as participation in the EIA and SEA process, members of the public can utilise litigation under administrative law within EU Member states to challenge the EIA process where they consider themselves to have a significant interest in the development or an impairment of an individual right¹⁵⁶. The procedures involved in this litigation will be influenced by the domestic legal system.

Further reading:

- Resource Manual to Support Application of the Protocol on SEA, <https://unece.org/resource-manual-sea>

4.1.3 Access to Justice

As outlined in Section 3.2.3 above, access to justice in the context of the EGD is a set of procedural mechanisms which enable members of the public to go to court or another tribunal to enforce certain rights or to seek justice when public authorities violate the law. In the context of deliberative processes, access to justice is complementary to other rights related to environmental decision-making. It guarantees the enforceability of various rights, including the right to environmental information, and specific participatory rights regarding the right to be consulted, the right to contribute to a decision, and the right to challenge any improper aspect of the process leading to the resulting decision¹⁵⁷. As previously explained in section 3.2.3, in accord with the Aarhus Convention, the possible avenues for access to justice are threefold. Firstly, the access to justice for the failure by state authorities to uphold someone's access to information rights. Secondly, for the failure to uphold someone's public participation right. Thirdly, access to justice concerning acts, decisions and omissions by public authorities.

¹⁵³ Ario Gauthier, Louis Simard, Jean-Philippe Waaub, Public participation in strategic environmental assessment (SEA): Critical review and the Quebec (Canada) approach, *Environmental Impact Assessment Review*, Volume 31, Issue 1, 2011, Pages 48-60,

¹⁵⁴ https://unece.org/DAM/env/eia/Publications/2016/Good_Practice_Recommendations_on_Public_Participation_in_Strategic_Environmental_Assessment/1514364_E_Espoo_web.pdf

¹⁵⁵ *ibid*, at p. 12

¹⁵⁶ Keller, M. EU Environmental Impact Assessment: frequently asked questions by domestic legal practitioners. *ERA Forum* 19, 551–560 (2019). <https://doi.org/10.1007/s12027-018-0542-3>

¹⁵⁷ See p 13, ClientEarth 2021 edition, Legal Guide on Access to Justice in environmental matters, "Access to Justice in European Union Law"

The Aarhus Convention further specifies that in order for access to justice to be granted, the remedies for violations have to be adequate and effective¹⁵⁸, including injunctive relief possibilities, they have to be fair, equitable, timely and not prohibitively expensive¹⁵⁹, and there has to be some form of dissemination of information about the access to court and a system of legal assistance mechanisms¹⁶⁰.

Specific aspects of access to justice, including standing requirements, due process considerations, and adequate remedies, among others, are discussed in detail in publications such as the Aarhus Convention Implementation Guide and the ClientEarth Legal Guide on Access to Justice.

This sub-chapter will examine the right of access to justice at four distinct levels. Firstly, the access to national level courts. Secondly, the access to review of acts and omissions of European Union institutions. Thirdly, the role of the Aarhus Convention Compliance Committee. Fourthly, the role of the European Charter of Human Rights and the Council of Europe.

National level

The European Commission's Environmental Implementation Reviews (EIRs) as well as several research projects have identified systemic shortcomings concerning access to justice in many national legal systems. Although highlighting successful practices in some EU Member States, the European Commission's Environmental Implementation Reviews have called on Member States for more effective access to justice in environmental matters in national courts.¹⁶¹ Particularly, they bring attention to hurdles NGOs are facing to obtain standing to bring legal proceedings to court. Similar shortcomings have also been identified outside of the EU Member States.

This does not, however, make litigation at national level an unsuitable tool to enforce public participation rights of individuals and NGOs. In those cases where legal standing is established, the impact that litigation can have is enormous.

Globally, there are over 1,200 Environmental Courts and Tribunals in at least 44 countries, including 8 EU Member States, at the national and state/province levels. This does not include the great number of "stand-alone" Environmental Courts and Tribunals at the local/municipal levels.¹⁶² National environmental courts "range from fully developed, independent judicial branch bodies with highly trained staffs and large budgets all the way to simple, underfunded village environmental courts that handle environmental cases one day a month with rotating judges."¹⁶³ On the other hand, environmental tribunals range from complex administrative-branch bodies chaired by ex-Supreme Court justices, with law judges and science-economics-engineering PhDs, to local community land use planning

¹⁵⁸ Art 9(3) Aarhus Convention

¹⁵⁹ Article 9(4) Aarhus Convention

¹⁶⁰ Article 9(5) Aarhus Convention. This handbook will not go into detail on these requirements. For further information please consult the Aarhus convention Implementation Guide and the Client Earth 2021 edition Legal guide on Access to Justice in environmental matters "Access to Justice in European Union Law" https://www.clientearth.org/media/fesgdu3u/clientearth_guide_2021_gb_bat.pdf

¹⁶¹ European Commission Communication: Environmental Implementation Review 2022 - Turning the tide through environmental compliance. COM(2022) 438 final.

¹⁶² Preston, B. J. (2014). Characteristics of successful environmental courts and tribunals. *Journal of Environmental law*, 26(3), 365-393.

¹⁶³ Morrow, K (2019). The ECHR, Environment Based Human Rights Claims and the Search for Standards. In S. Turner, D. Shelton, J. Razzaque, O. McIntyre, & J. May (eds.) *Environmental Rights: The Development of Standards* (pp. 41-59).Cambridge: Cambridge University Press.

boards with no law judge.¹⁶⁴ Most of these specific environmental courts and chambers do not require specific targeted application by the claimant or defendant but are automatically assigned once a matter falls within their remit. Strategic choices may become important when deciding whether to seek redress for a legal issue from a civil, administrative, or criminal court or tribunal.

Successful Environmental Courts usually a) are recognized by governments, stakeholders and the wider community alike as the appropriate and legitimate forum for resolving environmental disputes; and b) have a comprehensive jurisdiction to hear, determine and dispose of matters and disputes arising under all environmental laws enacted by the government of the land. They are independent of government, composed by specialized judges; centralised courts providing access to scientific and responsive to relevant environmental problems.¹⁶⁵

European Union level

Access to justice for acts or omissions of institutions of the EU is mostly regulated by the Aarhus Regulation. The Aarhus Regulation details rules on an internal mechanism to review EU administrative acts or omissions alleged by members of the public to contravene EU environmental law. This regulation was revised in 2021¹⁶⁶. The system of internal review allows an EU institution to remedy or address the subject of the challenge first, before the matter is taken to the EU courts¹⁶⁷. The review of the Aarhus Regulation addressed the findings of the Aarhus Convention Compliance Committee and largely improved the access for both individuals and NGOs¹⁶⁸. However, the review failed to address an issue of limited standing with regard to EU institution decisions in the area of state aid policy which remains, at the time of writing, still unresolved¹⁶⁹.

Another avenue to consider for obtaining access to justice is through the CJEU. It has been extremely difficult to access EU courts on environmental matters. Traditionally, EU measures are addressed to specific individuals who then have standing to challenge the measure at court. In environmental matters, however, measures by an EU institution or body are rarely addressed to a specific person, as they concern the environment which is of general interest. In those cases, individuals or environmental associations must prove that they are directly and individually concerned (according to the so called Plauman criteria) with the measure.
170

There is in theory also the possibility to access the CJEU via a challenge brought at national level. This process is called the preliminary reference procedure¹⁷¹. However, this route does not adequately work in practice. The procedure gives a large amount of discretion to national courts and can therefore not be seen as an adequate alternative to a direct right of review at EU level¹⁷².

¹⁶⁴ Ibid

¹⁶⁵ Ibid.

¹⁶⁶ Regulation EC 2021/1767

¹⁶⁷ More information on how to file a request for internal review at EU level can be found here https://environment.ec.europa.eu/law-and-governance/aarhus/requests-internal-review_en

¹⁶⁸ See finding ACCC/C/2008/32 European Union
Hedemann-Robinson, M. (2022). Access to Environmental Justice and European Union Institutional Compliance With the Aarhus Convention: A Rather Longer and More Winding Road than Anticipated. *European Energy and Environmental Law Review*, 31(3).

¹⁶⁹ See findings ACCC/C/2015/128 European Union

¹⁷⁰ Krämer, op cit, 2018

¹⁷¹ Article 267 Treaty on the Functioning of the European Union

¹⁷² As was also confirmed by the ACCC in ACCC/C/2008/32 European Union

Aarhus Convention Compliance Committee

The Aarhus Convention Compliance Committee is well recognized and is making important and influential findings on Aarhus Convention Parties' compliance with the Convention. It is also one of only a few review mechanisms in environmental law which are open to members of the public¹⁷³. However, the Committee is under-resourced, and its findings have to be endorsed by the MOP of the Convention before they become binding. This means that the Aarhus Convention Compliance Committee should not be relied upon as the main review body for issues with access to justice at national level. National courts need to provide the standard avenue for review, while the Compliance Committee should tackle more complicated issues of interpretation of the Aarhus Convention.

European Convention on Human Rights

Separately from the Aarhus Convention system, the European Convention on Human Rights (ECHR)¹⁷⁴ has a history of safeguarding some human rights which are connected with environmental democracy. The most relevant provision is the ECHR's Article 8, roughly a privacy right that has been extended to environmental issues, despite the fact that the ECHR regime does not contain an explicit 'environmental human right' or indeed any coverage of environmental issues in the text of the Convention. Nonetheless, a will emerged within the European Court of Human Rights to accommodate environment-based claims. This identification of environment-based claims required a certain amount of judicial creativity and recognition of the Convention as a living document.¹⁷⁵ The door has been opened to the ECHR being used to further claims of violations against human rights which can be attributed to environmental and climate change issues.¹⁷⁶

The court's approach acknowledges environmental issues as established core human rights concerns, while sidestepping the conceptual and practical difficulties of an explicit right to a healthy environment.¹⁷⁷

Nevertheless, complaints related to environmental harm can succeed before the European Court of Human Rights. Guidance on how to make a complaint can be found here:

<https://www.echr.coe.int/Pages/home.aspx?p=applicants&c>

Further reading:

- Clientearth legal guide on access to justice
https://www.clientearth.org/media/fesgdu3u/clientearth_guide_2021_gb_bat.pdf
- European Court of Human Rights, Press Unit, Factsheet -Environment and the Convention on Human Rights, October 2022 (Summarises environmental related caselaw considered by the European Court of Human Rights),
https://www.echr.coe.int/documents/fs_environment_eng.pdf

¹⁷³ See p. 6, UNECE 2019, Guide to the Aarhus Convention Compliance Committee
https://unece.org/DAM/env/pp/Publications/Guide_to_the_Compliance_Committee_second_edition_2019_English/Guide_to_the_Aarhus_Convention_Compliance_Committee_2019.pdf

¹⁷⁴ Council of Europe, https://www.echr.coe.int/documents/convention_eng.pdf

¹⁷⁵ George (Rock) Pring & Catherine (Kitty) Pring. (2016) Environmental Courts & Tribunals: A Guide for Policy Makers, United Nations Environment Programme, available at:
<https://www.unep.org/resources/report/environmental-courts-tribunals-guide-policy-makers> Last access on 18 October 2022

¹⁷⁶ Ibid

¹⁷⁷ Ibid

4.2 Engaging in compliance assurance and accountability: Complaint handling

Enforcement and prevention

It is not always possible to prevent compliance problems. There are different ways of responding when a problem is identified, such as the issuing of warning, follow-up compliance measures, the application of sanctions and other enforcement actions. Enforcement actions draw on administrative, criminal and civil law to stop, deter, sanction and obtain redress for non-compliant conduct and encourage compliance. Most Member States publish statistics on the prosecution of environmental crimes and their outcomes, but only a few include detailed information on the subject matter of the investigated crime¹⁷⁸. There is a scarcity of online information on cooperation in the Member States in the investigation and follow-up of serious environmental crimes.

Besides the direct court route, the best tool for individuals and CSOs to engage in compliance assurance is the filing of complaints to public authorities and oversight bodies. Filing a complaint is different from going to court for several reasons. Complaint handling can often be free of charge, quick, and can take non-legal arguments into account. However, the results of a complaint procedure can be less impactful than a court case and issues such as damage compensation are usually left unresolved.

Filing of complaints/ Modalities

Citizen observation and reporting of environmental issues and compliance gaps (see section 2.2.4), namely through the use of online mechanisms and mobile phone apps to facilitate reporting, can be a major contributor to compliance assurance. This kind of citizen information could be further enhanced by providing better and clearer information on regulated businesses, including information on inspections and enforcement notices.

Who to file a complaint to:

Generally speaking, there are three main categories of complaint handling bodies: 1) those that deal with environmental complaints against others, 2) those that deal with environmental complaints against themselves, and 3) general oversight bodies such as ombudsman institutions and committees on petitions¹⁷⁹.

National level:

At the national level there are numerous different complaint handling instances and avenues. Complaints may be handled by local, regional, or national institutions and the mandates of each institution may be difficult to navigate. Important to bear in mind is that any public authority that receives a complaint that is not under its competence should either direct the complainant to the correct authority or transmit the complaint itself.

A common addressee for complaints are ombudsman institutions. Most ombudsman institutions in the UNECE region countries cannot be part of the system of guaranteeing access to justice as their decisions are not legally binding and they cannot provide injunctive relief. Therefore, as a general rule, ombudsman institutions do not fulfil the requirements of

¹⁷⁸ Development of an assessment framework on environmental governance in the EU Member States 2019, page 83

¹⁷⁹ European Union 2020, Environmental Compliance Assurance Vade Mecum, Complaint-handling and citizen engagement

article 9 of the Aarhus Convention. Despite their lack of formal legal mandate, ombudsman institutions are often an effective and impactful element of environmental compliance and in ensuring high standards of participation in environmental decision making. Some countries even have ombudsman institutions specifically mandated and specialized in environmental issues.

EU level:

There are two different possibilities of addressing a complaint to the EU institutions. Firstly, addressing a complaint about the conduct, acts, or omissions of an EU institution itself. This is the case for filing for an internal review procedure or addressing a complaint to the European Ombudsman.¹⁸⁰ Secondly, there is the possibility to complain to the European Union about Member States. This most often takes the form of seeking recourse to the European Parliament's Committee on Petitions, or filing a complaint to the European Commission in the hopes of triggering an infringement proceeding.¹⁸¹ An infringement proceeding is an inquiry by the Commission into the compliance or lack thereof of a Member State with its obligations under relevant EU law.

ACCC

As a last line of defence for public participation rights stands the Aarhus Convention Compliance Committee. While not a traditional complaint-handling institutions, it still falls under the category of a compliance assurance body, as it is not strictly speaking a court of law and its decisions do not have direct legally binding effect. The ACCC considers submissions, referrals, communications or requests in order to examine compliance and implementation of the Aarhus Convention, as per article 15 of the Convention. In accordance with paragraph 13 of the annex to decision I/7, the Committee:

- Considers any submission, referral or communication concerning compliance by Parties with their obligations under the Convention;
- Prepares, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Convention;
- Monitors, assesses and facilitates the implementation of and compliance with the reporting requirements under article 10(2) of the Convention.

Any member of the public (natural or legal person) may submit a communication to the Committee. The communicant does not have to be a citizen of the State Party concerned, or, in the case of an organization, to be based in the State Party concerned, and does not need to be a citizen of, or be based in, a Party to the Convention. Furthermore, it is not necessary that the communicant be represented by a lawyer or that the communication is prepared with legal assistance (although the latter might be useful). The format for communications is available on the Committee's website¹⁸².

It is important to remember that the ACCC is not a redress mechanism, its goal is rather to promote the implementation of the Aarhus Convention.

The handling of complaints

Once a complaint is received by a public authority, certain minimum standards of conduct for the relationship between civil servants and the public apply. The handling of complaints can be further subdivided into the stages of reception, analysis, action, and finalization¹⁸³. Throughout all stages general principles of good governance should apply. Codes of conduct and good administrative standards can be of help both for the complaint handler but

¹⁸⁰ Article 20(2)(d) TFEU and Article 24 TFEU.

¹⁸¹ Article 24(3) EC

¹⁸² <https://unece.org/env/pp/cc/communications-from-the-public>

¹⁸³ page 11 European Union 2020, Environmental Compliance Assurance Vade Mecum, Complaint-handling and citizen engagement

also for the complainant. Some of the applicable principle and standards of complaint handling procedures include: proportionality, consistency, objectivity, information on the procedures, duty to give reasons, possibilities for appeals, timely handling, and costs (non-prohibitively expensive).

Further reading:

- https://ec.europa.eu/environment/environmental_governance/pdf/development_assessment_framework_environmental_governance.pdf
- Guide to the Aarhus Convention Compliance Committee (2019):
 - Complain to the European Ombudsman
<https://www.ombudsman.europa.eu/en/make-a-complaint>
 - File a Petition to the European Parliament's Committee on Petitions
<https://www.europarl.europa.eu/petitions/en/home>
- Environmental Compliance Assurance VADE MECUM: Complaint-handling and citizen engagement, <https://op.europa.eu/en/publication-detail/-/publication/1fc175c2-8051-11ea-b94a-01aa75ed71a1/language-en>

4.3 Specific obligations under the law. Legal mechanisms

INSPIRE

The INSPIRE directive is a legal framework that tries to standardize public recording of geospatial information. The framework covers 34 different themes of spatial data including themes on geology, transportation networks, land use, river flows, and natural disaster risk zones¹⁸⁴. These data themes have a major potential to support the priorities of the EGD. Geospatial data is crucial to environmental decision-making and should, therefore, be accessible between different countries' public authorities and the general public.

The directive obliges Member States to remove procedural obstacles to the sharing of data, identify data relevant for environmental policies, make the data accessible on the internet for authorities and the public, create digital support structures for downloading and visualization of the data, publish the data in agreed upon data models.

The guiding principles for INSPIRE data are transparency, accessibility, scalability, reliability, and accountability. INSPIRE data does not mean that every country is using the same data format, but it does mean that the data follows open standards and is interoperable with and available to other countries' systems. It is essentially a minimum standard for collaboration and quality.

In the context of deliberative processes, the main relevance of the INSPIRE directive has to do with access to environmental information. More specifically, it has to do with the quality of the environmental information. Harmonization of standards of geospatial data increases the digestibility of the raw data. Ideally the geospatial data should be published proactively and not upon request and should adhere to the FAIR principles – Findable, Accessible, Interoperable, Reusable. While the INSPIRE framework is relatively weak on the dissemination and request-ability requirements of the data, it must be read in conjunction with the EU directive on Access to Environmental Information which arguably includes the right to access environmentally relevant geospatial data. The evaluation of the INSPIRE

¹⁸⁴ European Commission website, INSPIRE, Infrastructure for spatial information in Europe (visited 24/10/2022) <https://inspire.ec.europa.eu/Themes/Data-Specifications/2892>

directive has, however, shown that most EU Member States tend to implement national environmental information systems and the INSPIRE directive separately¹⁸⁵.

At the time of writing, the INSPIRE directive was part of the “GreenData4all” revision package as part of the European Strategy for Data.

EU Birds and Habitats Directives

The EU Birds¹⁸⁶ and Habitats¹⁸⁷ Directives (EU Nature Directives) are the cornerstones of EU nature protection policy and have brought about the creation of Natura 2000, the world's biggest network of protected areas. These directives implement two Council of Europe conventions, the Bern Convention and the Bonn Convention. These Directives, together, protect over 1,000 species and more than 200 habitats in the EU.

The Birds Directive defines the guidelines at the European level for the protection and the management of the bird species living in the wild, first and foremost with respect to human activities (hunting, disturbance etc.). Through its five Annexes, the directive covers the designation of protected areas, habitats for wild birds, species protection and hunting regulations. As many other species are endangered, and the quality of natural and semi-natural habitats quickly recede, the Habitats Directive was adopted. The Habitats Directive ensures the conservation of a wide range of rare, threatened or endemic animal and plant species, by requiring Member States to, inter alia, keep or restore the protected habitats and species and establish special areas of conservation for these species and habitats.

In order to check whether the measures set out in these Directives are achieving their objective, Member States monitor progress and report back to the European Commission every six years on the status of the species and habitats of European importance that are present in their country. The European Commission then aggregates the information in order to determine the overall trend for each species and habitat across the EU and whether they have reached, or are on the way to reaching, a favourable conservation status.

A study of Implementation of the Directives in the EU found that stakeholder engagement, public participation and communication could do better or was unsatisfactory in the Member States analysed¹⁸⁸. Most Member States provide online information of some sort on the Birds and the Habitats Directives, but this information is mostly general, or simply reproduces the applicable national laws and ordinances. The Information is often dispersed on websites and brochures of several ministries and other institutions and thus not easily accessible. Many Member States have established some form of intermediaries, such as farm advisory systems, nature conservation agencies or research institutes for agriculture, which sometimes offer the services of dedicated experts to be contacted via phone or e-mail in case of questions¹⁸⁹.

Further reading:

- [“The EU Birds and Habitats Directives: For nature and people in Europe” \(2014\), European Commission](#)
- [The State of Implementation of the Birds and Habitats Directives in the EU: An analysis by national environmental NGOs in 18 Member States \(2018\)](#)

¹⁸⁵ European Union 2022, Final Report, Support to the evaluation of the implementation of the Directive 2007/2/EC on Infrastructure for Spatial Information in the European Community.

¹⁸⁶ Directive 2009/147/EG

¹⁸⁷ Directive 92/43/EEC

¹⁸⁸ [The State of Implementation of the Birds and Habitats Directives in the EU: An analysis by national environmental NGOs in 18 Member States \(2018\)](#)

¹⁸⁹ [Development of an assessment framework on environmental governance in the EU Member States](#), page 78

5 Practices for consultative and deliberative mechanisms for citizen engagement

This chapter outlines the legal and institutional basis for mechanisms for deliberative and consultative processes in various contexts. The transition towards sustainability requires complex policymaking in a wide range of areas at various scales and levels of governance. This chapter therefore begins by considering “multi-level governance,” particularly through the example of a format that balances competing interests and rivalrous uses of natural resources. We take a look at the water-food-energy-ecosystems Nexus approach that helps to reach policy outcomes in relation to shared river basins. The chapter continues with an overview of a major mechanism for citizen engagement in certain processes that are critical to achieving the SDGs at the EU level, i.e., SEA, then goes on to consider public participation and civil society engagement within processes for (national) sustainable development strategies and SDG implementation, and the respective monitoring. The chapter concludes with an overview of the citizen assembly format, which has received a great deal of attention in the context of the SDGs lately, as well as other forms, formats and methods which have been implemented in some European countries – many of which relate explicitly to environmental and sustainability issues such as climate.

The challenge of sustainability requires an all-of-society approach that uses a wide range of tools and methods as appropriate. Participatory mechanisms that are based on enforceable legal rights, however, while essential to a functioning democracy, often have an adversarial tone, particularly when recourse to access to justice is required. The Aarhus Convention recognizes that consultative mechanisms are more appropriate in certain circumstances. Therefore, the legal standards in the Convention are quite different when it considers plans, programmes and policies, or the processes that are involved in the development of legislation or legally binding rules.

When it comes to the development of plans and programmes, the Convention incorporates some of the legal standards related to public participation in decision-making, including those concerning the time frames and the effectiveness of opportunities for public participation, as well as the obligation to ensure that public participation is actually taken into account. Consequently, the Convention also sets up an optional framework for the Parties to make these analogous rights enforceable through access to justice provisions. It is up to each country to decide whether to do so. Nevertheless, citizens still have a chance to appeal against shortcomings in public participation in such processes by making use of the general access to justice provisions of the Convention.

In the case of the development of policies, the Convention is less specific with regards to whether members of the public can enforce their right to participate. It only requires States to endeavour to provide opportunities as appropriate. Similarly, with regard to legislative and other normative acts, great discretion is maintained for countries to decide on their own ways and means. The one positive obligation throughout these areas relates to the identification of those who may or should take part in the processes.

This is where the consultative mechanisms come in. As such processes increase in volume, moreover, they are gradually taking on more formality. It is presently too early to make firm conclusions as to legal norms or institutional frameworks in these areas. However, it is

important to examine the most common of these forms, formats, methods and tools against the backdrop of the legal framework that has been examined in this Handbook.

In Chapter 1, the OECD's four categories of deliberative democracy were mentioned:

- (1) informed citizen recommendations on policy questions;
- (2) citizen opinion on policy questions;
- (3) informed citizen evaluation of ballot measures, and
- (4) permanent representative deliberative models.¹⁹⁰

Here we will look a bit more into these, since the experience on each of these categories is relevant for the furtherance of the EGD. But first, setting the stage we look at the complexities of multi-level governance.

5.1 Complexities of multi-level governance: The example of the Nexus approach

Multi-level governance (MLG) refers to the collaborative policy-making process of multiple actors from multiple tiers of governance, such as the international, regional, national, and subnational levels of governance, as well as non-state arenas of political decision-making. At each level of governance, moreover, there are specific characteristics of multi-stakeholder involvement. These characteristics differ in accordance with the differences in tiers as well as the means and methods of decision-making across sectors. When analysing the impact of MLG on the implementation of deliberative processes and participative methods in environmental matters, assessments should be made from two perspectives: vertical and horizontal. The vertical dimension requires the integration of insights from various spatial or geographical levels (e.g., local and regional authorities and communities) to enhance and align decisions with the needs at other levels and is closely aligned with the subsidiarity principle discussed above. Horizontal integration, on the other hand, engages peers at the same level from parallel ministries, relevant public agencies, and sectoral stakeholders to ensure synergies and avoid misalignment. MLG is most often used as an analytical framework for examination of appropriate relationships among vertical tiers of governance, with an emphasis on territorial scope. Horizontal coordination is typically referred to as cross-sectoral coordination, and while distinct from multi-level governance, it is frequently taken into account in MLG processes.

As the Charter for Multilevel Governance in Europe states, multilevel-governance in Europe is “based on coordinated action by the EU, the Member States and regional and local authorities according to the principles of subsidiarity, proportionality and partnership, taking up the form of operational and institutional cooperation in the drawing up and implementation of the EU policies.” The principle of subsidiarity is applied to determine the proper level and the proper actors to deal with an issue or policy where there may be conflicting or overlapping responsibilities. This principle is applicable to environmental matters and helps to clearly define which level/actor does what, aiming at producing integrated and coherent policy results.

Complex issues such as climate change present MLG challenges because policy responses need to be implemented at all levels and depend on the behaviour of multiple actors across sectors and with overlapping stakes. Another set of problems relates to competing uses for specific natural resources. One such area of contention requiring complex MLG is water.

¹⁹⁰ <https://www.oecd-ilibrary.org/sites/36f3f279-en/index.html?itemId=/content/component/36f3f279-en>

The water-energy-food-ecosystems nexus (“Nexus”) refers to the relationships or interdependencies among water use, energy production, food security and nature conservation. Nexus assessment is a mechanism for assuring that measures in one particular sector do not negatively affect the functioning of the other sectors (i.e., holistic planning that increases synergies and avoids trade-offs).

Nexus assessment has developed beyond a research concept to a tool that is being explored in governmental programmes, initiatives of United Nations and even the private sector. The common scale for assessment is the river basin, which also helps to define the scope of stakeholder and citizen engagement.

“Nexus Dialogue” is the citizen engagement element of the “nexus approach” to natural resource management. While it shares some characteristics with the “multi-use sustained yield” analytical framework applied to resources, the nexus approach applies an assessment framework to take into account the complex interactions and connections among several sectors (e.g., energy, water, food, land, climate, environment and ecosystems) at different levels of governance related to a particular shared natural resource, such as a river basin. Applying the nexus approach involves assessment of the links and dynamics of the different sectors to harmonise their outlook and management as well as taking account of potential conflicts and synergies across sectors and boundaries. The purpose of nexus assessment is to support policy making and coherence between sectorial policies by investigating how the governance setting supports coordinated resource management, including addressing intersectoral issues and accounting for the environment. Nexus issues and nexus solutions are defined, respectively, as a problematic situation that affects more than one sector and an intervention that would benefit more than one sector (including environment at large). To offset the tendency to follow a series of technical analyses that often assume perfect implementation, Nexus Dialogue aims at identifying governance factors within sectors and at all levels of authority that may introduce uncertainty about the level of actual implementation of a particular solution. Nexus has been applied in several river basins inside and outside Europe and has the potential to be applied in the EGD context.

Further reading:

- De Strasser, L., Lipponen, A., Howells, M., Stec, S., & Bréthaut, C. (2016). A methodology to assess the water energy food ecosystems nexus in transboundary river basins. *Water*, 8(2), 59.
- Stec, S. (2017). Revised Governance Methodology for Assessing the Water-Food-Energy-Ecosystems Nexus. UN Doc. ECE/MP.WAT/TFWFEEN/2017/5 (18 Oct 2017).

5.2 SEA - Strategic Environmental Assessment

The most institutionalised procedure for the consideration of public participation in connection with the development of plans and programmes related to the environment is Strategic Environmental Assessment (SEA; see also above under 3.3.1). SEA is required under the 2003 Kyiv SEA Protocol to the Aarhus Convention and in the European Union by the SEA Directive.¹⁹¹

Under the EGD, however, SEA is neither required nor appropriate for all consultative processes. This is especially true in broader policy-level discussions or in activities aimed at promoting sustainability or achieving social consensus around certain complex issues. SEA can still be an important tool in conjunction with the other consultative mechanisms discussed below. It is also a means of translating the outcomes of other consultative

¹⁹¹ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

mechanisms into a mandatory legal process where they can be taken into account to influence plans, programmes and policies.

The European Commission has prepared guidance on the implementation of SEA within the EU,¹⁹² and the Aarhus Convention secretariat has prepared guidance on the implementation of the SEA Protocol,¹⁹³ which is applicable to the EU as well as North Macedonia, Serbia and Ukraine.

An overview of the consultation requirements where SEA is legally mandated is set forth in the table below (adapted from the Commission guide on implementation of the SEA Directive).

Stage of SEA	Consultation requirements in Domestic situations	Additional requirements in Transboundary situations
Determination if a plan or programme requires an SEA	Consultation of authorities (Art. 3(6)) Information made available to the public (Art. 3(7))	
Decision on scope and level of detail of the assessment	Consultation of authorities (Art. 5(4))	
Environmental report and draft plan or programme	Information made available to the public (Art. 6(1)) Consultation of authorities (Art. 6(2)) Consultation of the public concerned (Art. 6(2))	Consultation of authorities in the Member State likely to be affected (Art. 7(2)) Consultation of the public concerned in the Member State likely to be affected (Art. 7(2))
During preparation of plan or programme	Take account of environmental Report and opinions expressed under Art. 6 (Art. 8)	Take account of results of transboundary consultation (Art. 8)
Adopted plan or programme; statement according to Art. 9(1)(b), measures concerning monitoring	Information made available to authorities (Art. 9(1)) Information made available to the public (Art. 9(1))	Information made available to the consulted Member State (Art. 9(1))

Table 5 Consultation requirements under the SEA Directive

Further reading:

- The Aarhus Convention: An Implementation Guide
- Simplified Resource Manual to Support Application of the Protocol on SEA, https://unece.org/DAM/env/eia/documents/sea_simp_manual/Docs/Simplified_Resource_Manual_FINAL_ENG.pdf
- European Commission SEA guidance, https://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf

5.3 SDG consultations and similar processes

The 1992 Rio conference called on all countries to develop, for the implementation of its outcome document Agenda 21, **National Sustainable Development Strategies (NSDS)** and introduce related governance, including stakeholder involvement. In the first decade this

¹⁹² https://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf

¹⁹³ https://unece.org/DAM/env/eia/documents/sea_simp_manual/Docs/Simplified_Resource_Manual_FINAL_ENG.pdf

was taken up largely in the Global South only, while European countries joined in the run up to the Johannesburg World Summit on Sustainable Development in 2002. Also, the EU then adopted its first EU Sustainable Development Strategy - a proposal by the European Commission, adopted by the Gothenburg European Council in June 2001¹⁹⁴.

At international level the implementation process of Agenda 21 was followed-up in the UN Commission for Sustainable Development (UN CSD). The Agenda 21 system of “major groups” was followed in order to facilitate broad, systematic stakeholder consultation and participation. At national level the countries gradually adopted SD strategies, typically done with stakeholder consultation and participation.

Many countries also established **National Councils for Sustainable Development** (also sub-national ones were established) to combine the two functions: a) (co-)developing and following-up the respective national SD strategy and b) facilitating stakeholder participation – in the first place via representation in the SD Council, but also beyond, through outreach to the whole spectrum of CSOs, the business world, academia, grassroots organisations, the interested and the wider public.¹⁹⁵ This can be seen as first wave of a “whole of society” approach (see *Figure 2 above). These SD Councils hence typically are multi-stakeholder bodies, while the other tradition for advisory councils, also common in the environment field are such bodies with an academic or expert composition.¹⁹⁶

In many countries both SD strategies and SD councils were in place and active for and at the Rio + 20 conference, as well as when the SDGs were adopted. In those countries the SDG implementation was integrated in existing National SD Strategies, and the SD Councils have continued to play the roles for advising and engaging in such processes. While in Europe there is (still) a long-standing collaboration of these Councils in the EEAC network¹⁹⁷, the initiative for establishing a similar global network after the Rio+20 conference was not sustained.¹⁹⁸ An overview about strategic processes for sustainable development, which nowadays includes SDG implementation, is also provided by the European Sustainable Development Network (ESDN), in which the sustainable development officers of the national governments are engaged, together with associates from civil society or other walks of life.¹⁹⁹

In countries with SD strategies the involvement of organised civil society, other stakeholders, and the wider public has become the norm, and governance arrangements improved over time in sometimes several rounds of strategy revisions including the SDGs. In other countries the SDGs triggered a new wave of participation in the context of SDG implementation strategies, and the reporting to the UN in form of a ‘Voluntary National

¹⁹⁴ [COM \(2001\) 0264 final](#). Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development (Commission's proposal to the Gothenburg European Council)

¹⁹⁵ Niestroy (2005): [Sustaining Sustainability – a benchmark study on national strategies towards sustainable development and the impact of councils in nine EU member states](#). EEAC series, Background study No.2. Lemma, Utrecht. 308p; Niestroy (2007): [Stimulating informed debate – Sustainable Development Councils in EU Member States. A compilation of tasks, capacities, and best practice](#). Study commissioned by the German Council for Sustainable Development (RNE); EEAC network (2019): [Serving the science, society, policy interface for a better world. An overview of Advisory Councils on the Environment and for Sustainable Development in Europe](#).

¹⁹⁶ Niestroy (2007), EEAC network (2019).

¹⁹⁷ <https://eeac.eu/>

¹⁹⁸ <https://www.ncsds.org/index-2.html>

¹⁹⁹ <https://www.esdn.eu/>; <https://www.esdn.eu/country-profiles/agenda-2030-implementation>

Review' (VNR)²⁰⁰, which is an on-going review mechanism embedded within the 2030 Agenda to periodically monitor the implementation of the countries' commitments and the SDGs. This review is conducted by the UN "High Level Political Forum" (HLPF), is voluntary in nature, and is state-led.²⁰¹ Guidance developed by the HLPF indicates that stakeholder consultation must be undertaken in the preparation of the report.²⁰² Many EU Member States have already presented such VNRs and received feedback, once, twice and some already three times.²⁰³ For the countries where the REAL DEAL project is active, for example, the following have been submitted:

Germany (2016, 2021)
Hungary and Poland (2018)
Spain (2018, 2021)
Greece (2018, 2022)
Italy and Lithuania (2018, and forthcoming 2023)
Republic of Serbia (2019)
Austria, North Macedonia and Ukraine (2020).²⁰⁴

In some cases, the stakeholder engagement took the form of a 'Forum' that was in place during the preparation of the VNR, which typically takes about one year. While the forums were often intended to become permanent, this rarely is the case.²⁰⁵

Further reading:

- UN High-Level Political Forum on Sustainable Development. Lessons Learned and Good Practices in VNR Reporting: <https://hlpf.un.org/lessons-learned-and-best-practices>
- The Aarhus Convention: An Implementation Guide
- Resource Manual to Support Application of the Protocol on SEA, <https://unece.org/resource-manual-sea>

5.4 Other methods including Citizen Assemblies and related experience in Europe

The global policy response to the challenges of sustainability acknowledges that public authorities alone cannot solve these complex problems and an all-of-society mobilisation is required. It is worth briefly mentioning that, when public authorities most require a democratic check on their policies, a referendum is the closest mechanism to direct democracy. The referendum as a democratic mechanism has a very long history. Referenda may be binding or non-binding. Examples include referenda for EU decisions (see 'Deliberative polling weekend' on joining the Euro in Denmark in 2000²⁰⁶), and a first EU-wide deliberative poll in 2007.²⁰⁷ More recently this approach has been tried on an experimental basis in countries where the representative political system found itself in a

²⁰⁰ Niestroy et al. (2019): [Europe's approach to implementing the Sustainable Development Goals: Good practices and the way forward. Study commissioned by the European Parliament.](#)

²⁰¹ <https://hlpf.un.org/vnrs>; <https://hlpf.un.org/countries>.

²⁰² UN DESA, Repository of Good Practices in Voluntary National Review (VNR) Reporting, <https://hlpf.un.org/sites/default/files/2022-06/Repository%20of%20Good%20Practices.pdf>

²⁰³ <https://hlpf.un.org/vnrs>

²⁰⁴ <https://hlpf.un.org/vnrs>

²⁰⁵ Niestroy et al. (2019), and update for some countries in Niestroy et al. (2021): [Contribution of CEI to UN Agenda 2030 and its implementation in CEI Member States.](#)

²⁰⁶ https://www.kaspermhansen.eu/Work/andersen_hansen_2007.pdf

²⁰⁷ <https://cdd.stanford.edu/tomorrows-europe-the-first-eu-wide-deliberative-poll/>

gridlock regarding certain decisions at stake (most notably the issue of abortion in Ireland), or where there were huge public protests (most notably the ‘yellow vests’ in France). One scholar has highlighted the fact that traditionally state constitutions are deliberated and drafted by legal professionals with participation from the public at the final stage of approval through referenda²⁰⁸.

So-called co-decision processes that directly involve citizens in decision-making processes also has a long tradition most notably in urban planning (see Dienel’s ‘planning cells’ from the 1970s, still in practice today²⁰⁹). These are attempts for an enhanced way of participation that goes beyond more traditional forms of (legally required) consultations or stakeholder participation in strategic processes, most notably in sustainable development processes (see chapter 4.2).

Thus, in the realm of sustainable development, the call for the involvement of the whole of society has not yet gone into formats for direct democracy. Nevertheless, the increasingly “wicked” problems of our “VUCA” world (volatile, uncertain, complex, ambiguous), leading to a world of “poly crises”, most notably the climate crisis, have triggered in recent years quite a number of new examples of citizen deliberation at the EU and national level.

The REAL DEAL project has surveyed the literature related to these various forms of consultative mechanisms. Twelve types of deliberative democratic processes were identified and are described in the table below.

Format	Description
<i>Planning cells</i> (or: Citizen’s panel, citizens’juries)	random selection of citizens, to learn and deliberate on a topic and produce recommendations for decision-making; plus quest for consensus
<i>Focus group</i> (or: study group, community panel)	Semi-structured group discussion with invited persons with the goal of elicitation of different viewpoints
<i>Citizen assembly</i> (or: citizen parliament)	Assembly of citizens based on random selection, get informed and deliberate about a topic, and provide recommendations on policy making and policy
<i>Participatory modeling</i>	Co-creation process engaging stakeholders in bringing in their knowledge into the development of “formalised and shared representation(s) of reality”.
<i>21st Century Town Hall meeting</i>	Public forum where citizens meet at different locations to deliberate simultaneously about a pre-defined issue in small groups; Voting;
<i>Delphi method</i>	Sample of different expert communities giving their opinion on the future development of a relevant topic, calibration of consensus and dissent
<i>Public participation network</i>	Network of local authorities and community groups where local authorities can profit from community and voluntary expertise and civil society members can have their voice heard and provide input into decision-making processes.

²⁰⁸ <https://citizensassemblies.org/wp-content/uploads/2021/09/Constitutional-Assembly-EN.pdf> - This scholar suggests that this could be an appropriate mechanism for the creation of a Belarusian constitution.

<i>Roundtable</i> (or: stakeholder panel, negotiated rulemaking, mediation, arbitration)	assembly of stakeholders, equal powers at the table, consensus or consensus on dissent
<i>Stakeholder Salons</i>	Experts with different backgrounds, experiences and viewpoints enter into creative exchanges and debates about a specific socially relevant topic in a relaxed atmosphere;
<i>Analytic deliberative discourse</i> (or: cooperative discourse)	combination of an expert driven analytic part and a deliberative process
<i>Public-expert hearing</i> (or: public inquiry, panel discussion)	experts as well as public officials representing the various perspectives as panellists, audience for raising questions could be representatives of stakeholders or the affected public

Table 6 Types of deliberative democratic processes

Citizens Assemblies

Citizens Assemblies received quite a bit of attention in connection with the Conference on the Future of Europe (CoFoE). Recommendation 39 of European Citizens' Panel 2 on 'European democracy/values and rights, rule of law, security' recommended that the EU hold periodic Citizens' Assemblies and that EU institutions be required to justify any cases in which they do not follow the proposals reached in the assemblies. The Commission President at the conclusion of CoFoE stated that such mechanisms should become a part of the way that EU policy is made.²¹⁰

Citizens Assemblies are emerging as a popular format for reaching goals of citizen consultation. For example, the European Climate Pact makes specific mention of Climate Citizens' Assemblies. This format can be considered in connection with the OECD's first and second categories (informed citizen recommendations and citizen opinions). Citizen assemblies entail²¹¹. The OECD in 2020 spoke of "catching the deliberative wave", and for the topic of climate change a unique practice and network has been established – the Knowledge Network on Climate Assemblies (KNOCA).²¹² There are cases of citizens' assemblies having led to the introduction of progressive regulation at various levels, better governance and better public satisfaction with policymaking.

The Centre for Blue Democracy, bluedemocracy.pl, is a Polish NGO that promotes citizens assemblies worldwide and advocates for their adoption as binding elements of governance. The NGO suggests that citizens assemblies could be adapted to a Europe-wide mechanism that would enable members of the public to contribute to European activities beyond the five yearly elections of Members of Parliament and voting in referenda on broad EU laws²¹³. Most experiments and practice of citizen deliberation so far have taken place at local and subnational level, but the number of national level cases has increased.²¹⁴

Principles of citizen assemblies

Across multiple organisations, key principles have been developed for actioning citizens assemblies. The OECD has developed guidance on the evaluation of deliberative democracy processes, highlighting the need for independent evaluation, the need to

²¹⁰ See also Commission Communication on CoFoE, "Putting Vision into Concrete Action," COM(2022) 404 final, Brussels, 17.06.2022

²¹¹ <https://www.oecd-ilibrary.org/sites/36f3f279-en/index.html?itemId=/content/component/36f3f279-en>

²¹² KNOCA Knowledge Network on Climate Assemblies <https://knoca.eu/>

²¹³ <https://citizensassemblies.org/wp-content/uploads/2022/05/European-Citizens-Assembly.pdf>

²¹⁴ See, for example, the database <https://participedia.net/>

evaluate the process design, the experience of participants and the potential for impact of the process²¹⁵.

“Involve”, a UK based organisation, has postulated 10 core elements of a Citizen’s Assembly:²¹⁶ These are:

- Clear purpose
- Sufficient time
- Representative
- Inclusive
- Independent
- Open
- Generative learning
- Structured deliberation
- Collective decision-making
- Evaluated

The process must have a clear purpose, allow sufficient time, be representative and inclusive, ensure independence and transparency of the process, it must facilitate generative learning and structured deliberation. The conclusion of the process must be collective decision-making and should be evaluated independently.

For each of these elements, the NGO presents “essential” and “desirable” features. An example of essential features is that representativeness should be ensured through random stratified sampling based on demographic criteria. An example of desirable features in the area of collective decision-making is that a minority report with dissenting views should be produced.

Sortition and representation

Sortition is the selection of participants from the population by targeting persons based on their demographics to ensure a degree of representativeness guaranteeing that particular perspectives are included in the process. There are multiple guides on using sortition to organise deliberative democracy mechanisms. The German ‘Allianz Vielfaelte Demokratie’ highlights the role that sortition plays in increasing the legitimacy of deliberative democracy processes. Sortition facilitates opportunities for engaging communities that are harder to reach or that tend to avoid participation. It eliminates self-selection of those with biases and facilitates a wider range of perspectives which are reflected in society.²¹⁷

The selection process in citizen assemblies still must be carefully managed. Where experts are being selected or submissions from the public are being analysed for discussion by the assembly, it is important to understand and limit the biases of the organising committees, particularly in countries with less transparency or democratic processes. Practices must ensure the inclusion of particular members of society such as women or people with a

²¹⁵ <https://www.oecd-ilibrary.org/sites/10ccbfc-b-en/index.html?itemId=/content/publication/10ccbfc-b-en>

²¹⁶ OECD, Catching the Deliberative Wave, <https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm>, Democracy R&D, Resources, <https://democracyrd.org/resources/> Involve UK, <https://involve.org.uk/resources/knowledge-base/how-do-i-setup-citizens-assembly/standards-citizens-assemblies>

²¹⁷ Bertelsmann Foundation (ed.)(2018): Citizens’ Participation Using Sortition. A practical guide to using random selection to guarantee diverse democratic participation. p.6. https://d3n8a8pro7vhmx.cloudfront.net/sortitionfoundation/pages/448/attachments/original/1641895850/Citizens_Participation_Using_Sortition_mb.pdf?1641895850at

disability and care must be taken to ensure that eligibility criteria are not discriminatory. Assemblies must be attentive to the relative powers and entitlements of majoritarian voices and must give platforms to minority opinions to avoid further embedding marginalisation.

It has been suggested that populism is based on the lack of faith in traditional political and governance structures. However, there are criticisms that outside of the members of the public selected for participation in the assemblies, the rest of the public is largely removed from these mechanisms²¹⁸. Another criticism of the process, while recognising the optimism of citizens assemblies to progress the climate agenda, is that they distract from the more systemic overhaul that is required to realise the changes necessary for climate justice²¹⁹.

The Sortition Foundation has prepared simple guidelines for the organisation of citizens assemblies, from recruitment of participants to the decision-making process²²⁰. The organisation of a citizens assembly is boiled down into five simple steps:

1. Select a broadly representative bunch of people by lottery
2. Bring them together in an assembly, typically at small tables or groups, and let everyone have their say.
3. Have those most knowledgeable about, or affected by, the issue address the assembly, bringing in diverse viewpoints and proposals.
4. Get the participants to discuss, listen and talk to each other – and give reasons for their opinions.
5. Decide! On what is the best way forward.

Sortition does not always work in practical terms – the problem of no-shows leads towards a constellation of participants that may not be that different from the self-selected participatory processes. An excellent series of articles on the pros and cons of sortition can be found in Gastil and Wright (eds.) (2019): *Legislature by Lot: Transformative Designs for Deliberative Governance*.²²¹

Examples of national level citizen assemblies

Irish Citizens Assembly

The Irish Citizens Assembly was established in 2016 to engage the public on pre-determined issues which would influence legal and policy reform. 99 members of the public were selected which are broadly representative of Irish society based on census data, and one independent Chair person was appointed. For more information about the recruitment and implementation process of the Irish Citizens Assembly, please see the Ireland country profile and Factsheet (on www.real.deal.eu). The Irish Citizen's Assembly engaged the principles of openness, fairness, equality of voice, efficiency, respect and collegiality²²². The Assembly met at various intervals over a weekend period. Contributions from the public and experts were provided to the Assembly members to support their technical knowledge of oftentimes legalistic and scientific topics such as abortion and climate change. Compensation for costs incurred in participation is available²²³.

²¹⁸ <https://www.counterfire.org/articles/opinion/20416-the-problem-with-citizens-assemblies>

²¹⁹ <https://www.greeneuropeanjournal.eu/citizens-assemblies-wont-save-us/>

²²⁰ <https://www.sortitionfoundation.org/how>

²²¹ Verso: London and New York. Available at https://serval.unil.ch/resource/serval:BIB_B3E66F4B9E3D.P001/REF.pdf

²²² <https://oecd-opsi.org/innovations/the-irish-citizens-assembly/>

²²³ <https://www.citizensassembly.ie/register/faqs.html>

Spanish Citizens Assembly

A climate specific citizens assembly was established in Spain as a permanent body in 2021. The first process under this body was an assembly conducted between December 2022 and May 2023 comprised of 100 people representing Spanish demographics. Participation was non-compulsory but participants were remunerated a fixed fee for any costs incurred in their participation. For more information see the Spanish country profile and Factsheet (on www.real.deal.eu).

Austria Climate Assembly

Between January and June 2022, a citizen's assembly in Austria was established to consider questions relating to transport, energy and realising carbon neutrality for the country by 2040²²⁴. The assembly met across 6 weekends and was comprised of 100 participants. An advisory board supported the assembly and this consisted of Austrian Federal Economic Chamber, the Austrian Federation of Trade Unions, the Austrian Chamber of Agriculture and the Federation of Austrian Industries. For more information see the Austrian country profile and Factsheet (on www.real.deal.eu).

Example of other mechanisms

Some examples of other mechanisms scrutinised in the REAL DEAL project include citizen panels and citizen chambers. In addition, besides the mechanisms discussed above including requests for information, petitions to the European Parliament, or complaints to the Commission or Ombudsman, the major participatory methods under European law with regard to EU institutions include consultations by the Commission, as well as the European Citizens' Initiative.²²⁵

The European Citizens' Initiative allows at least seven EU citizens coming from seven different Member States to suggest new policy initiatives where the EU has competency, upon the collection of one million signatures in support.

Also at the EU level, the Conference on the Future of Europe (CoFoE) engaged four Citizen's Panels to deliberate on thematic areas. Each panel was comprised of 200 people which reflected Europe's demographic diversity. Panel 3 related to climate change, environment and health. The reports from this panel are available online and its 51 recommendations included those on undertaking reforestation measures across the EU, removal of unsustainable packaging, incentives for longer use of consumer products and promoting investment in production and use of green hydrogen as a fuel²²⁶.

The Polish experience of Citizens Chambers²²⁷, a third body in government comprised of those eligible to vote which has the power to pass Bills, is another interesting example. The Chamber is established on a topic specific basis and members are randomly selected. The Bills passed by the Chamber are drafted by legal experts under guidance of the findings of

²²⁴ <https://www.buergererrat.de/en/news/citizens-assembly-in-austria-makes-proposals-on-climate-policy/>

²²⁵ Article 11(4) TEU and Article 24 TFEU

²²⁶ <https://futureu.europa.eu/en/assemblies/citizens-panels/f/300/>; https://prod-cofe-platform.s3.eu-central-1.amazonaws.com/nxqqase4ows6ozjo3ajx9331xv7u?response-content-disposition=inline%3B%20filename%3D%22P3S3_voted_recommendations_FINAL_v%202022.01.10%2013%2030.pdf%22%3B%20filename%2A%3DUTF-8%27%27P3S3_voted_recommendations_FINAL_v%25202022.01.10%252013%252030.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA3LJJXGZPDFYVOW5V%2F20230131%2Feu-central-1%2Fs3%2Faws4_request&X-Amz-Date=20230131T093449Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=942c66a177c033bd995e7fee6cc75450e2f983b964c6463d71bec8a9e1cf69

²²⁷ <https://citizensassemblies.org/wp-content/uploads/2022/05/Citizens-Chamber-EN.pdf>

the Chamber. The Bills do not require acceptance by the two other houses of government but can be verified for Constitutional compliance.

Other potential mechanisms to securing public participation in environmental issues are outlined in detail by Involve UK although there are not case studies where these have been implemented in relation to the environment on national or European levels²²⁸. The factsheets of formats and the Factsheets of country level cases identified in 1.2 are also useful to consult (see www.realdeal.eu)

Further reading:

- [OECD report](#) Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave
- Citizen assemblies, <https://citizensassemblies.org>
- Climate Pact - https://climate-pact.europa.eu/resources/citizen-engagement/climate-citizens-assemblies-learning-and-europe_en
- KNOCA Knowledge Network on Climate Assemblies <https://knoca.eu/>
- European Parliament, Towards a permanent citizens' participatory mechanism in the EU (2022), [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/735927/IPOL_STU\(2022\)735927_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/735927/IPOL_STU(2022)735927_EN.pdf)
- The Real Utopias Project, "Legislature by Lot," https://serval.unil.ch/resource/serval:BIB_B3E66F4B9E3D.P001/REF.pdf
- Climate Citizens' Assemblies project, <https://www.cca-project.org>

²²⁸ An Appreciative inquiry may be useful in larger countries where smaller groups are used initially to gain consensus on core ideas or topics and these are built upon later by up to 200 people. (<https://involve.org.uk/resources/methods/appreciative-inquiry>)
Citizens summits, <https://involve.org.uk/resources/methods/citizens-summits>
Deliberative mapping: <https://involve.org.uk/resources/methods/deliberative-mapping>

6 Analysis and recommendations

This handbook has gathered perspectives and insights on legal and institutional aspects of citizen engagement and participation in the implementation of the EGD in Europe. Throughout the general part of this handbook above and the country profiles, which are available online, the Handbook presents a comprehensive overview of practical legal and institutional frameworks on citizen and stakeholder participation in the EGD. It has examined citizen engagement through various lenses, including the consideration of consultation versus participation, i.e., public authorities' obligation to consult (draw on knowledge, etc.) versus citizens exercising their right to participate in policymaking processes by drafting recommendations for political decision-making bodies. These two perspectives are, of course, not mutually exclusive in real practice, but the objective is quite different. Another 'lens' is the role of sustainable development as a binding/enabling mechanism for bridging multiple levels of governance.

We have also distinguished between the engagement of stakeholders and the engagement of the public more generally. In practice, this distinction usually corresponds to the differences between the rights-based approach and the consultative approach aimed at engaging with a cross-section of the public including marginalised or disempowered groups, experts, etc. The target audience is an important factor in selecting concepts, formats and tools for participation.

This section sets forth concrete recommendations on how citizen participation and deliberation can be further institutionalised to complement and strengthen representative democracy and existing forms of institutionalised dialogue at the European and Member State levels.

Under the REAL DEAL project, the first output was an analysis of conceptual frameworks that established five groups of high-level criteria with 16 sub-criteria for meaningful citizen participation and deliberation as the basis of citizen involvement in the EGD. These sets of criteria serve as meta-criteria for the whole project and stand as the background for further recommendations including those found here in the Handbook. They are presented as follows:

a. **Be Aware of Power Imbalances**

1. Policymakers should not lose sight of examining who benefits most from the policy, give attention to current and historical power asymmetries, and empower the disempowered.
2. Legislators and policymakers need to consider inequalities (such as racialised group, gender, and class) in the design of the legal framework and deliberative and participative tools.
3. Civil society in the Global North must reflect on its relationship with civil society in the Global South and build movements based on solidarity.
4. Alternative spaces that address power imbalances should be created to foster more equal participation from structurally excluded groups.

b. **Promoting and Ensuring Inclusiveness**

5. While policymakers often need to find a compromise about what citizens deem acceptable, sometimes they need to make difficult decisions to achieve environmental objectives.
6. Citizens should not be left out because they are unable to reason and debate as strongly as others. Group deliberation should not be the only form of participation.

7. While being pragmatic about participation and deliberation on environmental policy is often effective, it is fundamental that the values of citizens are not lost along the way.
 8. The participation of local and indigenous groups - in particular women - within the scientific community should be promoted (their participation is often hindered by structural barriers).
- c. **Work with and Protect Nature**
9. We should not view ourselves as the only thing of moral considerability. The needs of other species and the environment should be recognised within environmental policy.
 10. Non-human organisms, species, and the environment cannot voice their concerns politically, so human citizens need to represent them within a policy that impacts them.
- d. **Collaborating with Bottom-up Activism and Cultivating Environmental Citizenship**
11. Policymakers should incorporate the views of environmentalists in environmental policy.
 12. Bottom-up climate activism initiatives should contribute to political dialogue.
 12. Institutions like the United Nations and the European Union should consult with grassroots groups and promote their full participation in decisions that affect their environment.
 13. Decision-makers need to create the conditions to foster environmental citizenship and to improve the environmental awareness of citizens.
- e. **Transitioning the Economic Model to a Green Economy**
14. Transitions are not only driven by politics and the market. Civic and cultural mobilization should become the main advancing agents of change. Societal groups could create new institutional forms, or new lay-expert modes of, engagement to build new design ecologies.
 15. The role of the individual citizen needs to be extended beyond that of a consumer of the environment, and they need to be involved in active participation based on collective action.
 16. A conceptualisation of well-being that moves away from the current economic focus on growth and instead centres care for people and the planet should be promoted.

The REAL DEAL project continued by building upon the conceptual analysis through a detailed literature review, which in turn evaluated and validated formats (methods, procedures), and tools (techniques, instruments) applied in Europe and abroad. The literature review concluded that citizen engagement can be viewed and evaluated from the perspectives of *outcomes* and *processes*, roughly corresponding to the substantive and procedural dichotomy that can be found in the Aarhus Convention and other legalistic instruments, but with variations specifically relevant to the EGD. The *outcome* and *process* criteria are set forth in the following two tables from the literature review.

Outcomes	
	Effects on policy/government
1	Citizen engagement should help to legitimize governments
2	Citizen engagement should have effects on political or technical decision making
3	Citizen engagement should lead to more public support for policy/government
	Effects on participants
4	Citizen participation should lead to more agreement (or consensus) between citizens about policy decisions
5	Citizen engagement should lead to more mutual understanding between people who have different opinions or who belong to different interest groups
6	Citizen engagement should lead to informed and deliberative citizenry
7	Citizen engagement should empower citizens

	Effects on environment
8	Citizen engagement should have effects on sustainability outcomes (and/or help participants to consider the interests of non-human agents)

Table 7 Outcome criteria

Process	
1	Any citizen participation process should respect normative principles (such as equality, equity, fairness, transparency), which are key to democracy
2	The selection of individuals that will engage in a participation process (the participants) should be representative of the population affected by the topic under consideration
3	Citizen participation should be inclusive: everyone should have the opportunity and ability to equally contribute to the process.
4	Citizen participation should contribute to realising meaningful deliberation
5	Goal of the process should be clearly defined & decision process should be structured (and citizens should have a role in that)
6	Citizen participation should be coupled to policy from the beginning onward/should be integrated into policy
7	Citizen participation strategies should take context into account and accept that there may be contingency
8	Citizen participation procedures should be cost-effective

Table 8 Process criteria

The literature review further identified *inclusion* and *closure* as meta-objectives for consultative forms of citizen engagement.

How does this body of work relate to the legal and institutional frameworks for citizen engagement with the EGD that has been presented above?

In this final chapter, our concrete recommendations are aimed at further institutionalising citizen engagement in two main areas: strengthening the existing legal and institutional framework for participation and consultation and identifying considerations for the possible development of norms that may in the future become embedded in the legal and institutional frameworks for consultative forms of engagement.

The first area has two parts. One, the Aarhus framework is confirmed and validated through practice, yet there are still persistent issues in implementation. Two, attention should be paid to the relationship between innovative consultative mechanisms and participatory rights in a legal sense. That is, the lessons learned from experience with innovative consultative mechanisms may point to how legal and institutional norms should be developed and fashioned. Examples of lessons learned can relate to methodologies for citizen engagement, representativeness and inclusiveness, conflict resolution and establishment of complex procedures, among other matters.

Not all goals related to citizen engagement with the EGD can be achieved through legal and institutional frameworks. This is why, in the second area, consideration should be given to the development of practical norms and principles that will address the potential risks and problems associated with consultative mechanisms. The reader should keep in mind, however, that recommendations in this area can be subject to revision because, although the number of cases of implementation of innovative consultative mechanisms is rising, there is still little empirical data in this area.

6.1 Improving implementation of environmental governance standards

The volume and intensity of initiatives aimed at consultative mechanisms justifies continued attention to the refinement and upholding of the existing legal and institutional standards in the area of public participation as a complement to and foundation for deliberative democracy. The rights-based approach is perfectly suited to ensuring transparency and works effectively in decision-making that is closest to the people affected and concerned. There is now such a substantial body of practice in mechanisms such as EIA and integrated permitting that the framework of the three pillars of the Aarhus Convention – access to information, public participation, and access to justice – is validated repeatedly.

However, some EU and neighbouring countries experience continued gaps in implementation of these standards. The improvement of the EU's Aarhus Regulation has been discussed above, but there is still a slight disagreement between the EU institutions and the Aarhus Convention Compliance Committee about whether the EU has come into full compliance with the Convention. This should be resolved through further dialogue. Also at the EU level, a study by the EU Parliament has identified a possible solution to the multitude of processes and procedures that are sometimes daunting to those who would like to participate. That is a “one-stop shop” to address fragmentation of the EU participatory system, clear menu of participatory choices.

In the area of access to justice, further analysis should be conducted concerning the adequacy of existing institutional arrangements in the EU judiciary system, and in particular further consideration should be given to the examination of examples of specialised environmental courts around the world, with a view towards the possible establishment of a European Environmental Court, taking note of the fact that the last reform of the CJEU kept open the possibility of specialised courts in the EU.

On the national level, based upon the country profiles, there is a wide variety in terms of implementation and practice. In quite a few countries, practices are well advanced, and consultation is relatively sophisticated. However, in about half the countries, certain kinds of issues repeatedly crop up as being obstacles to participation, including:

1. In certain countries, the lack of capacity for the implementation of the Aarhus Convention at all levels of government, especially local ones, combined with inefficient institutional structures.
2. Lack of cooperation between authorities, and problems in coordination of activities between competent authorities and organizations, complicated by overlapping and poorly defined competencies and jurisdictions.
3. Insufficient training of civil servants and administrative staff.
4. Lack of technical equipment necessary for adequate functioning of competent authorities.
5. Chronic understaffing in certain critical authorities.
6. Low participatory literacy on the part of stakeholder and the general public.
7. Poor capacities of CSOs, especially in maintaining public profiles and communications with the public.
8. Insufficient cooperation among NGOs.
9. Weak links between NGOs across borders and inability to coalesce on the European level.

In a time of investment and transition, pressure may be applied to facilitate projects by speeding up the necessary decision making. With careful consideration of public opinion,

those projects that evoke strong reactions also establish ground rules for future projects to follow, increasing their acceptance. However, for participatory processes to be useful and effective, they must follow the kinds of standards that have been developed over time which are discussed in the references referred to above.

Addressing structural disparities (discussed further below) is also important in regard to participatory rights. Unequal access to legal procedures and access to justice undermine legitimacy and deter participation.

Some of these capacity building issues are addressed through the Aarhus Convention Maastricht Recommendations.²²⁹ The implementation of the Maastricht Recommendations should be further supported.

Another important mechanism for enhancing capacities across the board is to ensure that participatory forms, format, methods and tools are taught in schools and are also included in programmes for lifelong learning.

6.2 Institutionalising consultative mechanisms

On the EU level, institutionalisation of consultative mechanisms faces special obstacles. For example, there is no true identity of political parties on a European-wide level that would allow for the development of a cohesive deliberative EU public. Similarly, the EU media space is not conducive to the formation of “EU” publics, but rather a family of Member State-based publics. Discussions have taken place about the institutionalisation of a kind of permanent or semi-permanent series of Citizens’ Panels adjunct to the existing EU institutions. Such a mechanism has been touted as contributing to the democratic legitimacy of the EU.

The EGD presents a unique opportunity. In considering the institutionalisation of citizen consultation mechanisms at the EU level, some of the questions that commonly arise are answered by the EGD itself. For example, the scope and purpose of the deliberative format would be the scope and purpose of the EGD. The size and duration of the EGD, moreover, would help to determine the contours and the duration of one or more deliberative bodies, towards a more permanent body. Practice and trial-and-error would determine where and when in various policy cycles such a body should get involved. Other issues to be determined, however, would be the authority of the deliberative body, especially in conjunction with the powers of the existing EU institutions. For example, would the body examine and criticise the actions of the EU institutions, or could it also help in agenda-setting? There are also a range of issues in connection with the composition of such bodies – not only representativeness, but also whether deliberations would include public authorities, parliamentarians, etc., and if so, at what stages of its proceedings.

A study of the European Parliament has proposed to answer some of these questions through the establishment of a permanent Citizens’ Chamber supplemented by various temporary Citizens’ Panels.²³⁰ The proposal even includes the designation of such panels as having a focus on climate-related issues. According to this idea, the Chamber would be convened by the EU institutions, whereas the Chamber could convene the Panels.

²²⁹ https://unece.org/DAM/env/pp/Publications/2015/1514364_E_web.pdf

²³⁰ European Parliament, Towards a permanent citizens’ participatory mechanism in the EU (2022), [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/735927/IPOL_STU\(2022\)735927_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/735927/IPOL_STU(2022)735927_EN.pdf)

6.3 Safeguards for possible risks/problems of consultative mechanisms

Consultative processes are only as good as those who are included in the consultation processes. Many point to the risk of participatory democratic processes as providing weight to unsubstantiated beliefs and biased opinions²³¹. Organisers of participatory processes must be cognisant of the limitations of their own and their organisation's awareness of other social groups and how they engage with the EGD and how the EGD impacts on them. Some groups will need to be specifically targeted and supported to engage, specifically structurally excluded groups like women in all their diversity, migrant populations, and people with disabilities, among others. On the other hand, organisers must be aware of consultation fatigue – where the same people representing one group are repeatedly consulted, oftentimes as tick box exercises rather than meaningful representation²³². Many of the issues discussed below are inter-connected.

Demographic representation - It is acknowledged that crises affect different members of our societies in different ways²³³ and this is also true for the climate crisis. How people contribute to the climate crisis, how they are prepared to cope with climate change and how they experience climate change will vary based on their gender, race, age, sexuality, their socio-economic status, their geographic location, their disability, family status and ethnicity. Combinations of social and political identity also must be taken into account, which can be achieved by applying a framework of intersectionality to understand multiple overlapping discriminatory categorizations. Waylen recognises that the status quo of 'pale, male and stale' in governance structures is damaging trust in public institutions²³⁴. Conscious effort must be made to remove the socially constructed barriers to the engagement of marginalised groups in participatory democratic processes. Inclusion of all groups must be considered at the planning stages, never as an afterthought. All stages of planning and implementation, from recruitment to evaluation, must recognise and counter barriers to participation. Where selection and recruitment processes are random or anonymous, they must be complemented with additional levels of representation of the society being served. Potential barriers to inclusion include a lack of awareness of the consultation processes taking place, a lack of opportunity to participate, or a lack of confidence or trust to participate. Time and resource constraints prevent people with caring commitments or those with inflexible work situations where the loss of income would be prohibitive. These are disproportionately women in all their diversity. To counter these issues, participation should be scheduled as flexibly as possible and remunerated adequately, including coverage of travel costs. On-site childminding or funding to cover caring costs or loss of income should be made available. Where numbers of participants are restricted, this can prevent people with a disability utilising a personal assistant to participate. Similarly, organisers should be

²³¹ Jeremy K. Ward, Florian Cafiero, Raphael Fretigny, James Colgrove, Valérie Seror, France's citizen consultation on vaccination and the challenges of participatory democracy in health, *Social Science and Medicine* 220 (2019) 73-80.

²³² Socio-economic research group, *Practical Approaches to Participation*, Chapter 5, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.605.4495&rep=rep1&type=pdf>

²³³ Friedman and Satterthwaite, Same storm, different boats: some thoughts on gender, race and class in the time of COVID-19, in Fiona J Green, Andrea O'Reilly, Mothers, Mothering, and COVID-19: Dispatches from the Pandemic (2021).

²³⁴ Waylen, G. (2015). Engendering the 'Crisis of Democracy': Institutions, Representation and Participation. *Government and Opposition*, 50(3), 495-520. doi:10.1017/gov.2015.7

alert to politics within representative groups and impose their own standards about what representative groups must adhere to in order to be included. An example of this is the concept of 'Disabled People's Organisations' as opposed to 'disability service providers.' Disabled People's Organisations are comprised of a majority of disabled people in leadership roles, whereas disability services are typically comprised of health and social care professionals and are not appropriate to represent disabled people. Consider where the organisation receives their funding- are they truly independent or are they influenced by funders with an agenda?

Accessibility – Heavily connected to the addressing of demographic exclusion, accessibility of participatory processes must be carefully constructed. Consider how the process will select and recruit participants. Merely hosting a public event does not mean all members of the public will be able to attend. Awareness about the process will depend on the advertising and call for participants – utilise local and national media (print, radio, social media), alert local community and sports clubs, identify local government structures who can promote the event and factor in timeliness. Many people will need adequate notice to be able to attend due to the need to rearrange obligations. Online and offline forms of communication can attract different kinds of participants.

The location and timing of the consultation process will also dictate who is included. Should the event be during weekends, at daytime or evenings? Is the venue physically accessible for all? Is the venue served by public transport at the time of beginning and ending of the event? Is there appropriate parking options? Are there facilities such as accessible bathrooms and family changing rooms? If the event is online, will all social groups have access to the technology to be able to participate? Accessibility issues must be balanced with skillsets as well as generational preferences and facility.

The OECD has highlighted the limitations of technology in facilitating public consultation, it should be considered a tool rather than an end²³⁵. Have you factored in comfort breaks and refreshments? Offer sign language interpretation and language translation services as standard, rather than requiring it to be requested, which can be a deterrent²³⁶.

All issues of legal, economic, or scientific relevance must be presented in a manner to ensure that the relevant information and materials provided are understood by lay people. Do not assume prior knowledge of the particular topic. Where experts are addressing the participants require them to adjust their language from academic to public and to make their presentations available afterwards for further consideration. Consult representative groups such as intellectual disability services to ensure language meets a basic standard of accessibility through Easy-to-Read documentation²³⁷.

Safe spaces – Individuals and groups may be hesitant to identify themselves as a minority group or to participate in spaces where individuals and groups opposing their beliefs, lifestyles and equality rights will be present. This might include members of the LGBTQI+ community or of ethnic minorities who have experienced homophobia, transphobia and

²³⁵ Regulatory Consultation. A MENA-OECD PRACTITIONERS' GUIDE FOR ENGAGING STAKEHOLDERS IN THE RULE-MAKING PROCESS, at p. 48, <https://www.oecd.org/mena/governance/MENA-Practitioners-Guide-%20EN.pdf>

²³⁶ Human Rights Watch, (2012), I Want to be a Citizen Just like Any Other <https://www.hrw.org/report/2012/05/15/i-want-be-citizen-just-any-other/barriers-political-participation-people>

²³⁷ The UK's National Health Service supports a publicly available Easy to Read preparation resource, <https://www.england.nhs.uk/wp-content/uploads/2018/06/make-it-easy-easy-read.pdf> and Easyonthei, <https://www.learningdisabilityservice-leeds.nhs.uk/easy-on-the-i/>

racism in public spaces previously, or even civil society organisations in general. Where public authorities have taken stances against certain groups, even more has to be done to establish the possibility of dialogue. The content of discussion might also pose dangers for some groups as minorities are often scapegoated for social economic conditions, such as asylum seekers and refugees²³⁸. Consultations must ensure a safe space for discussion is established. This might involve separate consultative mechanisms to ensure a safe space for contributions. Ground rules for engagement can alleviate reluctance to contribute only to an extent. Positive and proactive facilitation is vital to prevent discussions being over-borne by one particular viewpoint or a discriminatory perspective.

The phrasing of questions or discussion topics must be as neutral as possible. The role of facilitation and the importance of establishing ground rules and rules of procedure cannot be underestimated. Experienced facilitators should be adept at tackling issues that arise where power imbalances play a role.

Experience of institutions/policy makers -The literature primarily relates to consultation from the perspective of the consulted²³⁹ but the organisations and institutions seeking to benefit from participatory processes must also be willing to incorporate the new ideas generated to relevant law and policy. The institution or organisation seeking public consultation must be willing and prepared to ensure meaningful consultation and to incorporate feedback into future initiatives. Capacity building should be foreseen for consultation and for deliberation processes²⁴⁰. The aims and objectives of the consultation process must be clear. Sufficient budget and human power should be allocated from the outset. Adequate time should be allowed for advertising and recruitment of participants and organisation of the event itself. The institution should be sensitive to power imbalances between them as organisers and the public, and of power imbalances between participants. Knowledge acquired about accessibility and inclusion processes should be shared across the institution for future uses. Independent and experienced facilitators should be engaged. Anonymity must be ensured for participants and appropriate data protection measures must be implemented. Organisers must seek feedback about their performance from an inclusion and accessibility perspective. Participants must be made aware of how their contributions will be used and how they can gauge the impact their contribution has had on future deliberations or a final initiative. Commitment to improvements and adjusting approaches based on feedback will increase confidence in the consultation process.

Consultative mechanisms which fail to recognise the barriers above will continue to exclude the perspectives of members of society most adversely affected by the three global crises. Further guidance on how to achieve the goals above can be found in publications like “What Works Scotland Evidence Review: ‘Hard to reach’ or ‘easy to ignore’? Promoting equality in community engagement”²⁴¹ Among the paraphrased summary points in this study are:

- Those facing inequalities, sometimes multiple inequalities, are often easy to ignore due to the complexity of their situation, the difficulty of forming a solution and a lack of understanding from governments, organisations and programmes.
- Inequalities faced at large in society – education, confidence, resources, responsibilities (work and caring), language barriers, disabilities – often constitute the key barriers that

²³⁸ M.A. Hersh, Barriers to ethical behaviour and stability: Stereotyping and scapegoating as pretexts for avoiding responsibility, *Annual Reviews in Control*, Volume 37, Issue 2, 2013, Pages 365-381

²³⁹ Jones and Einsedel, Institutional policy learning and public consultation: The Canadian xenotransplantation experience, *Social Science & Medicine*. Volume 73, Issue 5, September 2011, Pages 655-662

²⁴⁰ For example, by the Technical Support Instrument (TSI) of the European Commission (DG Reform)

²⁴¹ <http://whatworksscotland.ac.uk/wp-content/uploads/2017/12/WWSHardToReachOrEasyToIgnoreEvidenceReview.pdf>

prevent people from taking part in community engagement processes in the first instance.

- A focus on enabling access to participation is not enough. People frequently suffer from multiple barriers throughout the process of community engagement once they have managed to gain access.
- Power-sharing relies heavily on trust and openness; people are more open to collaborate in partnerships if they know what is involved and there is a clear shared purpose.
- Recognition includes financial incentives, and also remuneration, for those who need to take time off work and for help with childcare and transport.
- Effective facilitation can make the difference between productive and non-productive engagement.
- Targeted use of digital technology, such as social media, online forums, databases highlighting good practice and recording/streaming processes online, helps to gain insights from those who cannot access face-to-face forums, but also encourages those that could get involved in the future, such as young people. However, digital means of communication may pose challenges to other groups who may be excluded by over-reliance on them.
- There is little evidence on the long-term effects of taking part and not taking part in citizen engagement; more research is required in this area.

6.4 Further activities under REAL DEAL

The REAL DEAL project will use the Handbook in the next phase of the project. In carrying out project activities in which different participatory processes are tested, with the aim to develop good practices that will be embodied in the REAL DEAL Protocol, progress will be made in regard to many of the above considerations. Diversity, gender equality, transparency and citizen empowerment issues are inevitably at the core of the pilot phase of the project. The outcomes of this phase of the project will point towards the beginnings of norm formation in several related areas. The project will confront digital tools and their limitations, will try to find ways to improve representativeness, will seek to increase understanding of power dynamics, and most importantly, there will be follow-up from the activities undertaken to assess the substantive value of their outcomes and the integrity of their processes.

Participants will judge the outcome of processes in widely divergent ways – it is virtually impossible to evaluate a particular complex process based on outcome alone. Therefore, evaluation often depends upon process only, which in turn makes it of critical importance, since a less-than-optimal process may appear to meet all the criteria for citizen engagement but may produce outcomes that perpetuate injustices or harm the environment. The focus therefore should be on improving processes to meet the implementation criteria (normative considerations, biases) identified in the earlier phases of the REAL DEAL.

7 Bibliography

- Amand, A., and Jareño Cuesta, E. (Eds.). (2021). The Future of Environmental Citizenship in the EU. TellUs - EU Environmental Policy Lab. Bruges: College of Europe
- Arif Hasan, Kh Md Nahiduzzaman, Adel S. Aldosary, (2018) Public participation in EIA: A comparative study of the projects run by government and non-governmental organizations, Environmental Impact Assessment Review, Volume 72, 2018, Pages 12-24, ISSN 0195-9255
- Banisar, D. (2011) "Moving from Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice." *Sustainable development law & policy*.
- Bergamaschine Mata Diz, J and Hélio Eduardo de Paiva Araújo In N. Cunha Rodrigues (ed.), Extraterritoriality of EU Economic Law, European Union and its Neighbours in a Globalized World 4, https://doi.org/10.1007/978-3-030-82291-0_15.
- Bertelsmann Foundation (ed.)(2018): Citizens' Participation Using Sortition. A practical guide to using random selection to guarantee diverse democratic participation. p.6. https://d3n8a8pro7vhmx.cloudfront.net/sortitionfoundation/pages/448/attachments/original/1641895850/Citizens_Participation_Using_Sortition_mb.pdf?1641895850at
- Bryson, J. M., Quick, K. S., Slotterback, C. S., & Crosby, B. C. (2013). Designing public participation processes. *Public administration review*, 73(1), 23-34.
- de Apodaca Espinosa, Á. R. (2018). El acceso a la justicia ambiental a nivel comunitario y en España veinte años después del Convenio de Aarhus. *Revista Catalana de Dret Ambiental*, 9(1).
- Dewulf, A. R. P. J., Meijerink, S., & Runhaar, H. (2015). Editorial: The governance of adaptation to climate change as a multi-level, multi-sector and multi-actor challenge: a European comparative perspective. *Journal of Water and Climate Change*, 6(1), 1-8. <https://doi.org/10.2166/wcc.2014.000>
- Eckert, Eva, and Oleksandra Kovalevska. (2021). "Sustainability in the European Union: Analyzing the Discourse of the European Green Deal" *Journal of Risk and Financial Management* 14, no. 2: 80. <https://doi.org/10.3390/jrfm14020080>. See <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/neighbourhood-development-and-cooperation-instrument>.
- Ernst, A. (2019). How participation influences the perception of fairness, efficiency and effectiveness in environmental governance: An empirical analysis. *Journal of Environmental Management*, 238, 368-381
- Fraussen, B., Albareda, A. & Braun, C. Conceptualizing consultation approaches: identifying combinations of consultation tools and analyzing their implications for stakeholder diversity. *Policy Sci* 53, 473–493 (2020). <https://doi.org/10.1007/s11077-020-09382-3>
- Friedman and Satherwaite (2021) Same storm, different boats: some thoughts on gender, race and class in the time of COVID-19, in Fiona J Green, Andrea O'Reilly, Mothers, Mothering, and COVID-19: Dispatches from the Pandemic
- Gastil and Wright (eds.) (2019): Legislature by Lot: Transformative Designs for Deliberative Governance. Verso: London and New York. Available at https://serval.unil.ch/resource/serval:BIB_B3E66F4B9E3D.P001/REF.pdf
- Gauthier, M Louis Simard, Jean-Philippe Waaub, Public participation in strategic environmental assessment (SEA): Critical review and the Quebec (Canada) approach, Environmental Impact Assessment Review, Volume 31, Issue 1, 2011, Pages 48-60
- Giles Carnero, R. M. 2021. "La oportunidad de una cláusula ambiental de elementos esenciales en acuerdos comerciales de la Unión Europea con Estados terceros: a propósito del Acuerdo Unión Europea-Mercosur", *Documento de Trabajo*, 44. <http://hdl.handle.net/10272/19489>
- Hadjiyianni. I (2017). "The Extraterritorial Reach of EU Environmental Law and Access to Justice by Third Country Actors" *European Papers* 2, 519-542.

- Hadjiyianni, I (2021). "The CJEU as the gatekeeper of international law: The cases of WTO and the Aarhus Convention" *International and Comparative Law Quarterly*, 70, 895-933
- Hartley, N., & Wood, C. (2005). Public participation in environmental impact assessment—implementing the Aarhus Convention. *Environmental impact assessment review*, 25(4), 319-340.
- Hedemann-Robinson, M. (2022). Access to Environmental Justice and European Union Institutional Compliance With the Aarhus Convention: A Rather Longer and More Winding Road than Anticipated. *European Energy and Environmental Law Review*, 31(3).
- Hogl, K., Kvarda, E., Nordbeck, R., & Pregernig, M. (Eds.). (2012). Environmental governance: The challenge of legitimacy and effectiveness. Edward Elgar Publishing.
- Holzinger, K., & Sommerer, T. (2014). European environmental policy. Greening the world? *EU Policies in a Global Perspective*, London: Routledge, 111-132.
- Jeremy K. Ward, Florian Cafiero, Raphael Fretigny, James Colgrove, Valérie Seror, France's citizen consultation on vaccination and the challenges of participatory democracy in health, *Social Science and Medicine* 220 (2019) 73-80.
- Jessop, B. (2004). Multi-level governance and multi-level metagovernance (pp. 49-74). Multi-level governance. Oxford: Oxford University Press.
- Jones and Einsedel, Institutional policy learning and public consultation: The Canadian xenotransplantation experience, ***Social Science & Medicine***. Volume 73, Issue 5, September 2011, Pages 655-662
- Karliuk, M. (2019). The Influence of CJEU Judgments on the legal order of the Eurasian Economic Union. The Impact of the European Court of Justice on Neighbouring Countries, edited by Arie Reich and Hans Micklitz (Oxford University Press, 2020).
- Keller, M. EU Environmental Impact Assessment: frequently asked questions by domestic legal practitioners. *ERA Forum* 19, 551–560 (2019). <https://doi.org/10.1007/s12027-018-0542-3>
- Krämer, Ludwig. (2018). Citizens rights and administrations' duties in environmental matters: 20 years of the Aarhus Convention. *Revista Catalana de Dret Ambiental*. 9. 10.17345/2408.
- Krämer, L. (2020). To justify the ways of God to men. Limits to the Court's powers of interpretation, *Journal for European Environmental & Planning Law*, 17(1), 99-104.
- Kuhlmann, S., & Wollmann, H. (2019). Introduction to comparative public administration: Administrative systems and reforms in Europe. Edward Elgar Publishing.
- Lee, Norman, and Christopher Wood. "EIA—A European Perspective." *Built Environment* (1978-), vol. 4, no. 2, 1978, pp. 101–10. JSTOR, <http://www.jstor.org/stable/23284627>. Accessed 14 Oct. 2022.
- Leonelli, S., & Tempini, N. (2021). Where health and environment meet: the use of invariant parameters in big data analysis. *Synthese*, 198(10), 2485-2504.
- M.A. Hersh, Barriers to ethical behaviour and stability: Stereotyping and scapegoating as pretexts for avoiding responsibility, *Annual Reviews in Control*, Volume 37, Issue 2, 2013, Pages 365-381
- Meuleman, L. (2018). Metagovernance and Sustainability: A Framework for Implementing the SDGs. London: Routledge.
- Morrow, K (2019). The ECHR, Environment Based Human Rights Claims and the Search for Standards. In S. Turner, D. Shelton, J. Razzaque, O. McIntyre, & J. May (eds.) *Environmental Rights: The Development of Standards* (pp. 41-59). Cambridge: Cambridge University Press.
- Niestroy, I., Hege, E., Dirth, E., & Zondervan, R. (2019). Europe's approach to implementing the Sustainable Development Goals: good practices and the way forward. Study commissioned by the European Parliament's Committee on Development. ISBN: 978-92-846-4578-7 (pdf). [https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU\(2019\)603473](https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2019)603473)

- Niestroy, I. (2021). SDGs as a compass for pathways to sustainability, and framework for cooperation of Civil Society Organisations. Presentation at the Dialogue for Future 2021- Networking conference of the program 'Expanding Cooperation with Civil Society in the Eastern Partnership Countries and Russia'
<https://civilsocietycooperation.net/>
- Osborne, David and Ted Gaebler (1992): Reinventing government: how the entrepreneurial spirit is transforming the public sector. Reading, Mass.:Addison Westley.
- Pallàs Secall, P "PERSPECTIVA DEL DERECHO DEL MEDIO AMBIENTE Y DE LAS POLÍTICAS AMBIENTALES DE LA UNIÓN EUROPEA" REVISTA CATALANA DE DRET AMBIENTAL Vol. XII Núm. 2 (2021): 1 – 29
- Pedersen, W. O (2020) "Human Rights in a changing environment" in Research Handbook on Transnational Environmental Law, Veerle Heyvaert and Leslie-Anne Duvic-Paoli eds. (Chentelham: Edward Elgar.
- Peters, B. (2018). Unpacking the diversity of procedural environmental rights: the European Convention on Human Rights and the Aarhus Convention. *Journal of Environmental Law*, 30(1), 1-27.
- Preston, B. J. (2014). Characteristics of successful environmental courts and tribunals. *Journal of Environmental law*, 26(3), 365-393
- Pring G & Catherine (Kitty) Pring. (2016) Environmental Courts & Tribunals: A Guide for Policy Makers, United Nations Environment Programme, available at: <https://www.unep.org/resources/report/environmental-courts-tribunals-guide-policy-makers> Last access on 18 October 2022
- Raadschelders, Jos CN, and Mark R. Rutgers. 1996. 'The Evolution of Civil Service Systems'. *Civil service systems in comparative perspective*: 67–99.
- Reitan, (1998), Pragmatism, Environmental World Views, and Sustainability, *Electronic Green Journal*, 1(9), <https://escholarship.org/uc/item/0th496m4>
- Renn, O., & Schweizer, P.-J. (2009). Inclusive risk governance: Concepts and application to environmental policy making. *Environmental Policy and Governance*, 19(3), 174–185. <https://doi.org/10.1002/eet.507>
- Renn, O., & Schweizer, P.-J. (2020). Inclusive governance for energy policy making: Conceptual foundations, applications, and lessons learned. In O. Renn, F. Ulmer, & A. Deckert (Eds.), *The Role of Public Participation in Energy Transitions* (pp. 39–79). Academic Press. <https://doi.org/10.1016/B978-0-12-819515-4.00003-9>
- Rhodes, R.A.W. (2007): Understanding Governance – Ten years on. *Organization Studies* Vol. 28, pp 1243-1264.
- Ruiz Garcia, E (2018) "El medio ambiente sano: La consolidación de un derecho", *Iuris Tantum, Revista Boliviana de Derecho*, 25, http://www.scielo.org.bo/scielo.php?pid=S2070-81572018000100019&script=sci_arttext
- Schilling-Vacaflor, A., Gustafsson, M. T., Cotta, B., Lenschow, A., Soendergaard, N., Inoue, C., & Challies, E. How Policy Dismantling Undermines Transnational Sustainability Governance: The Case of Agro-Commodity Chains from Brazil.
- Schroeter, R., Scheel, O., Renn, O., & Schweizer, P. J. (2016). Testing the value of public participation in Germany: Theory, operationalization and a case study on the evaluation of participation. *Energy research & social science*, 13, 116-125.
- Sconfienza, U. (2015). The narrative of public participation in environmental governance and its normative presuppositions. *Review of European, Comparative & International Environmental Law*, 24(2), 139-151.
- Sidi, M. (2020). "The European Green Deal assessing its current state and future implementation" *FIA Working Paper* 114. <http://hdl.handle.net/11584/313484>
- Torfig, J. (2016). Metagovernance. In C. Ansell & J. Torfig (Eds.), *Handbook on Theories of Governance* (pp. 525–537). Edward Elgar Publishing
- Waylen, G. (2015). Engendering the 'Crisis of Democracy': Institutions, Representation and Participation. *Government and Opposition*, 50(3), 495-520. doi:10.1017/gov.2015.7

Wollmann, Helmut (2000): Comparing institutional development in Britain and Germany: (Persistent) divergence or (progressing convergence? In: Wollmann, Helmut and Eckhard Schröter (eds.) (2000): Comparing Public Sector Reform in Britain and Germany, pp 1-26.

8 Annex – Country Profiles

Austria

1. Overview

Austria is a federal republic consisting of nine federal states. Certain aspects of the European Green Deal Implementation are federal competence, but certain other aspects are the competence of the states. This goes hand in hand with devolved public consultation and deliberation responsibilities. In practice this means that the actual application and fulfilling of legal obligations to consult the public on environmental and sustainability matters happens via a complex system at both levels.

At the very outset, it has to be emphasised that Austrian federal constitutional law does not provide for a fundamental or basic right to live in a healthy environment. Therefore, environmental law in Austria is intrinsically linked with a host of different constitutionally guaranteed rights such as the right to life or the freedom of assembly. Similarly, the Austrian Federal Constitutional law landscape does not have one single uniform environmental law act but rather has many different acts for specific policy areas as well as a multitude of acts at the regional level.

Therefore, the basis of Austrian environmental policy is the act on Sustainability, Animal Welfare, Comprehensive Environmental Protection, Securing Water and Food Supply and Research [BGBI. I Nr. 111/2013](#). While not a basic right, the act does turn environmental protection into a federal objective. This falls short of a constitutionally enforceable subjective public right but does confer an obligation and a mandate on federal and state organs.

The vast majority of legal obligations to consult citizens on environmental or sustainability matters fall into the remit of the Austrian Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK). Similar to other EU Member States, the Austrian implementation and transposition of the principles of the Aarhus Convention has largely been carried out via the implementation of specific EU laws (mainly Directives 2003/4/EC and 2003/35/EC) into national and, where relevant, state laws.

2. Dimensions of environmental governance

For decades, the Austrian political landscape had been considered as comparatively stable and so has been the cultural value attributed to the environment, in particular, in the tourism sector. In recent years, Austria has been increasingly subjected to electoral volatility and polarisation. While it is still too early to tell what the long-term effects of these developments will be on the culture of participation and the value attributed to environmental protection, is clear that the political unpredictability carries risks for the standards of environmental democracy in Austria.

While ecological values have been embraced by all political parties, the interplay with the value attributed to economic growth varies significantly. Where environmental protection is not an immediate threat to economic growth, recent governments have embraced it. Globally, Austria likes to position itself as a frontrunner in global climate governance, but it is difficult to align these ambitions with the domestic performance on environmental protection.

Austria's geographical location makes it a transit country for a lot of industry and trade. The recent governments have had difficulties meeting emission reduction targets. Austria's greenhouse gas emission levels, both per capita and nationwide, are exceptionally high for a country its size and Austria was one of the few EU members states having failed to meet the Kyoto Protocol objectives. Strong participation by the industry lobby can be identified as a major contributing factor to the Austrian failure to adequately control the market of carbon emission certificates.

The Austrian understanding of what constitutes solid standards for public participation were developed at the federal level in the early 2000s including codes of conducts for administrative bodies, good practice recommendations, as well as practical guidelines. However, there do not seem to have been any updates to these soft law approaches in over a decade.

2.1 Transparency (access to information)

In a broad sense, Austria's access to information legislation is different from most European counterparts as constitutionally guaranteed state secrecy is still the norm. There is no general freedom of information act and access to document regimes are either non-existent or weak. Austria still does not have a general freedom of information act and the current legislative proposal is stuck in negotiations at the time of writing. This makes access to information difficult in Austria, although there are certain special avenues for access to environmental information.

Policymaking (European Commission, "Public Administration and Governance: Austria (2020)") is considered informal and lacking in overall transparency, due to many government levels and interest groups being involved in social and economic decision- and law-making processes.

In order to comply with the Aarhus Convention obligations and EU directive 2003/4/EC, Austria amended its Environmental Information Act (Federal Law Gazette No. 495/1993). Similarly, the state legislations were adapted as well. There is an Environmental Information Act for each of the nine federal states (Landes-Umweltinformationsgesetze – L-UIGs), so, citizens have to invoke different laws depending on the type of information (e.g., nature protection falls within the competence of the federal states). Through the federal act, there does exist an *actio popularis* for requests of environmental information.

Following an Aarhus Convention Compliance Committee finding and decision V/9b by the Convention, Austria was obliged to amend the Environmental Information Act so that any refusal or partial refusal to grant access to information is concluded by an official decision or decree that can then be appealed.

Austria implemented, in 2016, the data sharing obligation under the INSPIRE directive.

Proactive publication

Duties for proactive publication can be found in article 9 of the Environmental Information Act. These include for example plans and programmes, reports on the state of the environment, and environmental impact assessments. Besides the usual online resources available via federal and state ministry platforms, Austria also has a federal environment agency which publishes a detailed report on the state of implementation of environmental control every three years.¹

¹ <https://www.umweltbundesamt.at/studien-reports/umweltkontrollbericht>

2.2 Participation

Public participation in decisions on environmental matters guaranteed by article 6 of the Aarhus Convention and Directive 2003/35/EC is implemented in Austria via the federal and provincial level. Its obligations are contained in the Austrian federal and provincial acts on environmental impact assessment, trade, and hazardous activities laws.

The general decision-making procedure including on environmental policy and the public participation possibilities thereof are regulated via the General Administrative Procedure Act. Through that law, a distinction is made between parties and participants to proceedings. A party is entitled to the full procedural rights, whereas participants are limited to oral proceedings and specific rights granted on them. In the case of environmental NGOs, party rights are usually granted subject to the ministries' recognition of a particular NGO.

Austria has transposed the Aarhus Convention's public participation requirements with regard to Environmental Impact Assessments via Federal Act (Law Gazette No. 80/2018). This act also grants special status to a list of environmental organisations, subject to approval. If recognised under the act, a civil society organisation can obtain third party rights during the process of an environmental impact assessment. This means that an NGO can formally intervene and submit documents in the assessment process and thus exercise privileged rights of participation which are not available to the regular citizen.

There are further specific public participation obligations throughout many different federal pieces of legislation ranging from the Austrian federal industry act, to the federal act on forest and pastures usage rights. Special procedural particularities are common in Austrian forestry, nature conservation, and water authority decision-making.

Some of the federal states and the federal government itself have through their transposition of the EU Environmental Impact Assessment Directive, the Strategic Environmental Assessment Directive, and the Public Participation Directive 2005/35/EC developed additional Guidelines to steer public authorities towards greater compliance of public participation obligations.

While the legal minimum requirements for public participation in environmental matters seem to be largely met, Austria has done little in the form of actively encouraging participation and no statistical data or government issued report on the levels and degrees of participation in environmental decision-making processes are available. A dedicated website (see below under Helpful resources) has been created but it is not focussed on environmental policies in particular, and does not have a strong enough link to environmental impact assessments. Participation in Environmental Impact Assessments and Strategic Environmental Assessments should be further encouraged and information more accessibly published. Standardised and transparent processes of public involvement during the regulatory process (i.e., systematic stakeholder involvement, consultations, etc) are not established, and settings that admit the direct participation of citizens are very rare ([European Commission \(2020\)](#))

Standards of inclusivity (Gender analysis etc)

While the Austrian legal framework contains the main non-discrimination principles, the authors were unable to find any specific legal obligations relating to inclusivity standards for public participation.

Helpful resources:

- <https://partizipation.at/>
- <https://www.strategischeumweltpruefung.at/sup-grundlagen/sup-oeffentlichkeit>

2.3 Access to Justice

Austria has implemented the access to justice requirements as well via the Federal Environmental Information Act and several pieces of state legislation (predominantly state laws on nature conservation areas or specific Aarhus Participation acts). Any final decision or decree can be brought in front of the Austrian administrative courts for appeal at which point the Austrian general administrative procedure act will take force. A particularly relevant piece of legislation is the Aarhus participation law (BGBl. I Nr. 73/2018) which regulates access for affected individuals and NGOs specifically in the areas of water, waste, and air quality law. Overall, there is plenty of room for improvement for access to justice and especially with regard to limiting standing requirements and an issue of decisions not being taken in the form of a reviewable final legal act². Austria is currently subject to an infringement proceeding at EU level for failure to offer sufficient standing to the public concerned.

In practice the main source for requirements for NGOs as parties to proceedings are to be found in the Austrian Federal Environmental Information Act. Section 19 details, that in order to qualify as an environmental NGO which benefits from standing as an automatically recognised interested party, the organisation must fulfil the following requirements. Firstly, the organisation must have been a non-profit organisation for at least 3 years; secondly, it must have at least 100 members; and thirdly, it must have environmental protection as its main objective. Organisations which are structured as federations must comprise at least five member associations. Additional to these substantive requirements, organisations must also prove their compliance with these conditions every three years.

Due to the fact that Austrian law does not have a horizontal general obligation to grant access to courts, most review possibilities are limited to final decisions such as laws and ordinances. This is particularly concerning with regard to plans and programmes on environmental policy which are effectively impossible to review on procedural grounds such as ineffective or missing public participation during the decision-making process.

With regard to the general requirement for access to justice under article 9(3) of the Aarhus Convention, Austrian law sees several different general legal avenues. Relevant for access to the courts is the Austrian Civil Code which spells out which review procedures within the federal and state authorities have to be exhausted first before an applicant turn to court. A relevant list of authorities which serve as first instance review bodies can be found in the procedural law on administrative litigation ([BGBl. I Nr 51/2012](#)).

The costs for accessing justice in Austria have not been subject to much criticism. Many instances do not oblige parties to be represented by a lawyer and the nominal access fees to court proceedings are generally non-prohibitive. Applications for financial support are possible in most instances.

Helpful resources:

- RIS- Rechtsinformationssystem des Bundes/ Legal Information System of the Republic of Austria <https://www.ris.bka.gv.at/defaultEn.aspx>
- Applications for financial support.
 - o https://www.bvwg.gv.at/verfahren/verfahrenshilfe_start.html

² EIR 2022 p 40

- <https://www.vfgh.gv.at/downloads/verfahrenshilfe/VH-Formular-2015.pdf>
- https://www.vwgh.gv.at/verfahren/verfahrenshilfe/RFormE30_und_merkblatt.pdf?5teg51

2.4 Compliance assurance, accountability, and effectiveness

Annual environmental inspection reports are drafted per state and available on the federal ministry's website. The reports, however, lack information on follow-ups to non-compliance. The private reporting of alleged non-compliance by individuals or companies varies significantly depending on the state or subject matter. The system of Ombudsman and environmental Ombudsman services, however, is extensive and the relative authority of their findings and decisions is high.

The Austrian federal environmental agency has created a national environmental inspection plan which is used at the state level for routine environmental inspections. While detailed information about specific inspections is available, aggregated data is lacking. Public interaction with this inspection data is difficult.

Burgenland wind energy example.

Austria is home to a useful example of a public participation and deliberation process which is relevant to highlight here because of its exceptional success and its reference in many academic studies on public participation. The Burgenland in Austria carried out a shift to regional, renewable energy to inter alia meet climate goals and reduce the dependence on energy imports. The project had to respect several nature protection sites, protected species, the concerns of stakeholders including the local tourist and industry sectors. Starting in 2013 and 2014 and continuing to this day, the Burgenland managed to actively engage environmental organisations and regional residents in order to obtain both the goal of setting up a high number of wind power units and limiting the local environmental impact. The project involved early and proactive publication of relevant environmental information, active reaching out and involvement of different stakeholders, taking into account of citizen science, and a decision-making process that took the voiced opinions into account.

3. Institutional context

Due to Austria's federal structure and lack of an overarching single environmental law act, environmental policy including the participation therein, is the competence of different administrative authorities, the federal and state ministries, and local government. These competences are largely governed by articles 10 – 15 of the federal constitutional law (B-VG).

There are three different levels of devolution of powers in Austria regulated by the federal constitutional law: firstly, legislative power is federal, and enforcement is state power. Secondly, policy setting power is federal and implementing legislation and enforcement is state power. Thirdly, both legislative and enforcement is state power. Many environmental policies and their public participation requirements fall under the third category in Austria.

The Austrian federal environmental agency's mandate is detailed in the Environmental Control Act. With little executive and enforcement power, the agency's work is focussed on providing analyses and data collection, policy recommendations, development of strategies, and coordination of several international environmental programmes in Austria.

The institutional context in Austria is characterized by a particularly strong relationship with recognized social partners. These comprise the Federal Chamber of Commerce (WKO), the Chamber of Agriculture (LKO), the Federal Chamber of Labour (BAK) and the national trade union federation (ÖGB) as well as the Federation of Austrian Industry (IV). While the influence of these social partners is slowly declining, they remain influential actors in environmental policy. Their participation in decision-making processes as de facto guaranteed.

In addition, Austria has a system of state Ombudsman institutions specifically mandated with environmental matters. These [Ombudsman services](#) are independent offices of the nine individual states. Their mandate extends to the compliance with environmental **interests** and the informing of the public on environmental matters. In some cases, they are able to partake as a party in administrative court proceedings and to lodge complaints with these administrative courts. The connection to civil society varies but one of the nine state environmental ombudsman is actually elected by the local environmental NGOs.

Helpful resources:

- Aarhus National Focal Point emails can be found here <https://unece.org/environment-policy/public-participation/national-focal-points-and-contact-points>

4. Role of Civil Society

Sustainable development.

Within the area of sustainable development, the Austrian government under the legal obligation of the Federal Act on Development Cooperation from 2003, has instructed its ministries from 2016 onwards to integrate the 2030 Agenda and the Sustainable Development Goals in their future strategies and plans. Practically, these commitments take the form of three-year programmes. The drafting of these programmes and strategies relies on stakeholder groups and consultative processes. Influenced by these policy developments and corresponding deliberative approaches, SDG Watch Austria was established in 2017.

Cooperation at EU level

Austria has an established practice of consulting civil society ahead of coordination meetings preceding formal EU council of Ministers meetings.

CSOs active in this area

Austrian NGO ÖKOBÜRO has been one of the main NGOs focussed on Austria's compliance with the obligations under the Aarhus Convention, including those on Austria's legal obligations to consult the public on environmental and sustainability matters.

Sources:

- Aarhus report:
https://www.bmk.gv.at/themen/klima_umwelt/eu_international/aarhus/umsetzungsbericht.html
- Beteiligung der Öffentlichkeit nach geltendem Umweltrecht in Österreich, Praxisratgeber
<https://www.umweltdachverband.at/assets/Umweltdachverband/Publikationen/Eigene-Publikationen/Praxisratgeber-web.pdf>
- https://www.sgi-network.org/docs/2020/country/SGI2020_Austria.pdf
- Development of an assessment framework on environmental governance in the EU Member States No 07.0203/2017/764990/SER/ENV.E.4 Environmental Governance Assessment Austria t

- BERTELSMANN STIFTUNG Sustainable Governance in the Context of the COVID-19 Crisis Austria Report (2021)
<https://www.bertelsmann-stiftung.de/de/publikationen/publikation/did/austria-report-en>

Legal sources:

All legislation referred to in the text above can be found on the Austrian directory of laws. Rechtsinformationssystem des Bundes <https://www.ris.bka.gv.at/defaultEn.aspx>

Official websites:

- <https://www.bmk.gv.at/>
- <https://www.strategischeumweltpruefung.at/sup-grundlagen/sup-oeffentlichkeit>

Denmark

1. Overview

The Kingdom of Denmark is a constitutional monarchy and parliamentary democracy.¹ The **country is a unitary State organised on a decentralised basis**. It has three levels of governance: central, regional and municipal. Danish territorial organisation consists of the State, **five regions** (*regioner: Nordjylland, Midtjylland, Syddanmark, Sjælland and Hovedstaden*) and 98 municipalities (local authorities). **Besides, Denmark has two special autonomous regions: the Faroe Islands and Greenland** which are not members of the European Union (EU).²

In 2007, Denmark experienced a major structural-territorial reform that reduced the number of regional and local authorities and changed their responsibilities and financing.³ Local and regional authorities are responsible for matters of their interest which are not expressly conferred to the State. The regions and the municipalities do not hold legislative powers and must act within the confines of the applicable law. There is no hierarchy between the regions and the municipalities.⁴

Environmental legislation is primarily administered by the Danish national government. The Environmental Protection Agency, ("EPA") is responsible for legislation and is the authority in charge of major national tasks as well as particularly complex tasks. In this sense, the EPA prepares legislation and guidelines and grants authorisations in several areas. Further duties include the monitoring of chemicals and offshore platforms. The municipalities are responsible for granting permits and inspection of other enterprises and carry out most specific public sector duties. The municipalities are typically the point of contact for the public and for companies wishing to access information on the environment.⁵ The Danish Regions are charged with the generation of regional development plans. They undertake special tasks in the areas of soil contamination and raw materials. The Nature Protection and Environmental Board of Appeal deals with complaints within the remit of the Ministry of the Environment of Denmark.⁶

2. Dimensions of environmental governance

Denmark has a well-functioning environmental governance and management system characterised by high levels of co-operation and consensus. Strengths include an informal system of cross-party political agreements, strong participation of civil society in policy making and high quality independent advisory bodies. The country has a comprehensive

¹ See the Constitutional Act of Denmark, The Danish Parliament, <https://www.thedanishparliament.dk/en/democracy/the-constitutional-act-of-denmark>

² European Committee of the Regions, Divisions of Power, Denmark, <https://portal.cor.europa.eu/divisionpowers/Pages/Denmark-Introduction.aspx>

³ Vrangbæk, K 2010, 'Structural reform in Denmark, 2007-09 Central reform processes in a decentralized environment.', *Local Government Studies*, vol. 36(2): pp. 205-221..

⁴ European Committee of the Regions, Divisions of Power, Denmark, <https://portal.cor.europa.eu/divisionpowers/Pages/Denmark-Introduction.aspx>

⁵ Ministry of Environment Denmark, Environmental Protection Agency, Cooperation Between Environmental Authorities, <https://eng.mst.dk/about-us/tasks-and-cooperation-between-environmental-authorities/cooperation-between-environmental-authorities/>

⁶ Ibid

risk-based inspection system covering large, medium and small installations and enterprises.⁷

2.1 Transparency (access to information)

The access to information on environmental matters is specifically developed and channelised by the Act on Access to Information Relating to the Environment (Environmental Information Act) supplements the Public Administration Act and the Access to Public Administration Files Act regarding information on the environment.⁸ The Access to Public Administration Files Act contains the general regulations on when a public administrative authority is obliged to allow access to documents received or prepared by an administrative authority as part of its administrative case processing. The Act applies for anyone who requests access to specific documents or documents in specific cases. The authority must always consider allowing access to documents to a greater extent than that stipulated in the Public Administration Files Act, unless otherwise provided for in other regulations, such as regulations on the duty of confidentiality etc.⁹

The Ministry of Environment (MIM) is constantly working to ensure citizens access to information on environmental issues in many areas, for example on the Ministry's websites. Printed material is issued when considered appropriate to reach the relevant target groups for a given environmental message. Furthermore, the Ministry has provided the opportunity to take part in the decision-making process by sending bills, proposed statutory orders, guidelines, plans and programs for hearing to a large cross section of interested parties, as well as making proposals available on the Internet.¹⁰

In terms of transparency and access to information it is necessary to note the MIM's strategy "Active Environmental Dialogue – Open Ministry". Under the auspices of this strategy, groups of interest are invited to engage actively in a direct dialogue with the ministry as part of the work within the ministry regarding new policies and strategies linked to a specific field of expertise, but also in the ongoing bilateral dialogue with groups of interest.¹¹

The Open Administration Act requires national, regional and local authorities to communicate actively about their activities on their websites. Every four years, MEF issues an Environmental Status Report on Denmark's nature and the environment.¹² The latest such report was issued in 2015. In November 2018, Danish authorities said they expected the next Environmental Status Report to be published in 2019. NOVANA makes national monitoring data available to the public on environmental impacts, status and trends with regard to nature and the environment. Aarhus University publishes a yearly summary of these technical documents as a more accessible supplement.¹³

2.2 Participation

⁷ Organisation for Economic Cooperation and Development, OECD Environmental Performance Reviews: Denmark 2019, Chapter 2. Environmental governance and management, <https://www.oecd-ilibrary.org/sites/3a03e006-en/index.html?itemId=/content/component/3a03e006-en>

⁸ Miljoministeriet, Danmarks 6. rapport om Århuskonventionen <https://aarhusclearinghouse.unece.org/sites/default/files/2021-05/National%20Report%202021%20-%20Denmark%20%28danish%20clean%29.pdf>

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² <https://danskelove.dk/forvaltningsloven>

¹³ <https://www.oecd-ilibrary.org/sites/3a03e006en/index.html?itemId=/content/component/3a03e006-en>

Denmark provides for excellent public participation in environmental matters, according to the European Commission (EC, 2017). Across policy areas, the OECD regulatory policy and governance indicator shows Denmark to be slightly above the OECD average in terms of stakeholder engagement in development of legislation (OECD, 2017). Stakeholder engagement is more comprehensive in primary legislation (laws) than in subordinate regulations (statutory orders). This follows the same pattern as EIA, possibly because some statutory orders are simply application decrees of primary laws. The government aims to have four weeks of public consultation on both primary laws and statutory orders, although it is not a legal requirement. The aim is generally respected on primary laws and, when practical, on statutory orders.¹⁴

The implementation of public participation in decisions on environmental matters guaranteed in 2004 by an act adopted on environmental assessment of plans and programmes. The MIM places priority on public participation in connection with establishing policies, plans and programmes related to the environment. In establishing policies and strategies, preliminary idea meetings and workshops are extensively utilised where the public has an opportunity to have a say in the decision-making process.¹⁵

Article 6, paragraph 1 of the Convention has been implemented in Denmark via the EIA regulations in the Planning Act. These regulations imply in part a compulsory EIA procedure with advance public participation for a large number of other activities than those listed in annex 1 of the Convention. In part they also mean that a large number of other activities are covered by the so-called screening system in the Planning Act, which means that these activities are also covered by the EIA regulations, if, following a specific assessment, they are deemed to have significant environmental impacts.¹⁶

Local Agenda 21

Changes are stimulated through, for instance, Local Agenda 21 work, which comprises activities under the auspices of municipalities and counties and activities undertaken in local areas by companies, organisations and citizens. These activities relate to issues such as resource consumption, waste management and environment-friendly behaviour in conjunction with municipal services, corporate production and citizens' everyday lives.¹⁷

Local Agenda 21 activities take place to some extent in most of Denmark's municipalities and counties. In 2000 the Danish parliament amended the Planning Act and imposed an obligation on counties and municipalities to report on their Local Agenda 21 strategies at least every four years.

The popular commitment is also supported by advice and knowledge on sustainable solutions, for example from green guides, nature guides and environment and energy offices around Denmark. Direct cooperation between NGOs and companies can also contribute to the development of sustainable solutions, for instance environmental management or the use of new biotechnology by companies.

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ The Danish Government, Denmark's national strategy for sustainable development prudent development – a shared responsibility, ISBN 87-7944-873-9 https://www2.mst.dk/udgiv/publications/2001/87-7944-872-0/html/kap17_eng.htm

2.3 Access to Justice

The Environment and Nature Appeal Board was an independent authority examining appeals against administrative decisions on environment, nature and spatial planning. On 1 February 2017, the board's responsibilities were split between a new Environment and Food Appeal Board for environment and nature and a separate body for spatial planning appeals. The structure mirrors the division of responsibilities between MEF and MIBFA. An Energy Appeal Board also exists.¹⁸

The Environment and Food Appeal Board is now the top administrative appellate body for decisions made under MEF. Its membership consists of a president, judges nominated by courts, experts nominated by relevant non-government organisations and business associations; and lay members nominated by Parliament. The composition of the panel examining a given appeal depends on the nature of the appeal, but the president and judges are members of all panels. The president may decide on behalf of the board in cases that do not raise questions of major importance or precedence. A plaintiff unsatisfied with a board decision may appeal it through the regular court system.¹⁹

An ombudsman's office was established in 1955 as an independent legal institution under Parliament to which citizens can file complaints against decisions by public authorities. The ombudsman is elected by Parliament and must be a law graduate. The ombudsman may proffer criticism and recommend that authorities reopen cases and consider changing their decisions. Although the ombudsman cannot make decisions as such, public authorities generally act on the office's recommendations. The ombudsman has issued opinions on authorities' application of the Environmental Information Act, sometimes recommending expansion of its application in specific cases.²⁰

2.4 Compliance assurance, accountability, and effectiveness

Denmark is considered to be a front-runner in terms of its environmental policy. According to the 2022 Climate Change Performance Index of the Climate Action Network Europe, Denmark is the highest ranked country. Climate and environmental policies have taken centre stage in recent policy discussions, and a wide range of aspects concerning sustainable living and production have been discussed.²¹

The Scandinavian country is actively promoting environmental protection through the European Union, relevant UN bodies and global conferences, including the Conference of the Parties (COP) under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC).²² In this sense, Denmark, is at the forefront of sustainable development according to the SDSN and has successfully implemented numerous Sustainable Development Goals.²³

Denmark is in a strong position in relation to many SDGs, especially in terms of health and well-being, education, sustainable energy, peace, justice and strong institutions. Denmark's key challenges relate to responsible consumption and production as well as climate action,

¹⁸ Danish Energy Agency, Heat, <https://ens.dk/en/our-responsibilities/heat>.

¹⁹ Ibid

²⁰ Ibid

²¹ Sustainable Governance Indicators, Denmark, Environmental Policies, https://www.sgi-network.org/2018/Denmark/Environmental_Policies

²² Ibid

²³ Sustainable Development Goals, Knowledge Platform, Denmark <https://sustainabledevelopment.un.org/memberstates/denmark>

and further attention is needed to improve life in the ocean and life on land. As a nation with an ambitious green agenda, Denmark feels significantly responsible contributing to the green transition as well as assuming global responsibility and collaborate on long-term sustainable solutions with other countries.²⁴

3. Institutional context

Denmark has a decentralised environmental governance system in which jurisdiction on environment is shared among the national, local and to a lesser extent the regional levels.

In 2007 (when the territorial system was reviewed), a Ministry of Climate and Energy was established. Previously, climate change had been part of the Ministry of Environment. The rationale for a separate climate ministry was mainly the need to prepare for the 15th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Copenhagen in December 2009.²⁵

In 2015, the Ministry of Environment and Ministry of Food and Agriculture were merged into the Ministry of Environment and Food (MEF) to help balance the sometimes-competing interests of the environment and agricultural policy. At the same time, the Ministry of Industry, Business and Financial Affairs (MIBFA) took on responsibility for the Danish Planning Act and national guidelines for spatial planning.²⁶ Also in 2015, the government set up an EU Implementation Committee. It discusses business-related EU legislation. The aim is to ensure that implementation of EU rules does not put more burdens on Danish companies than EU law requires unless important considerations such as consumer protection justify it.²⁷

The Danish Environmental Protection Agency (EPA) is a technical agency in charge of environmental policy implementation, monitoring, permitting and inspections.

- At the subnational level, The Constitution guarantees municipalities the right to decide their own affairs under state supervision. After 2007, local governments are responsible of Most public administration functions under Danish environmental legislation and citizen-related duties
- Preparation of action plans under the Environmental Objectives Act (protected areas), wastewater management plans, water supply plans and municipal waste management plans
- Maintenance of watercourses to allow free passage of water
- Municipal and local spatial planning²⁸

4. Role of Civil Society

In Denmark, global environmental protection is broadly perceived as an international issue. Being a front-runner in this regard is also broadly seen as important in inducing global action. Danish civil society is very active in pressuring politicians with regard to

²⁴ Ibid

²⁵ OECD Library, <https://www.oecd-ilibrary.org/sites/3a03e006en/index.html?itemId=/content/component/3a03e006-en>

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

environmental protection policy issues. In domestic policy discussions, there is increasing debate about whether current policies are sufficiently ambitious, with particular focus being placed on alternative energy sources and reductions in CO2 emissions.²⁹

The global P4G platform, which was initiated by the Danish prime minister, held a summit in Copenhagen in October 2018, with more than 800 participants developing public-private partnerships aimed at achieving the Sustainable Development Goals.³⁰

Civil society partners plan and implement activities in cooperation with local partners in developing countries in order to contribute to the implementation of Denmark's development policy strategy and the promotion of the UN Sustainable Development Goals and the Paris Agreement.³¹

Denmark leads the way in establishing innovative partnerships with civil society, the business community and public authorities. Denmark has also been ahead of the game with the establishment of the Danish SDG Investment Fund and Denmark's Green Future Fund.³²

²⁹ Sustainable Governance Indicators, Denmark, https://www.sgi-network.org/2018/Denmark/Environmental_Policies

³⁰ Ibid

³¹ Ministry of Foreign Affairs Denmark, <https://um.dk/en/danida/partners/civil-society-organisations>

³² Ministry of Foreign Affairs Denmark, The World We Share, Denmark's Strategy for International Cooperation, <https://um.dk/en/-/media/websites/umen/danida/partnerships/denmarks-strategy-for-development-cooperation-the-world-we-share-1-.ashx>

Germany

1. Overview

Germany is a federal republic with 16 individual federal states. Many elements of the implementation of the European Green deal are federal competence and the responsibility of the federal ministry of environment. However, in principle the federal states carry the main legislative power as the German Basic Law (constitution) dictates that all legislative powers lie with the state unless the Basic Law specifically lists it as a federal competence in either articles 71, 72 (exclusive competence) or article 73, 74 (concurring competence). The division of competence in the areas relevant for the European Green deal are complex but as a rule of thumb goes that the federal level interacts with EU law and the state level has competence whenever the federal level did not legislate in a specific area.

Environmental and animal protection is part of German constitutional law via article 20a of the basic law which grant both environmental protection and sustainability policies constitutional backing. While there had been efforts to collate all relevant environmental laws into one environmental code, these failed and German environmental law relevant for access to information, public participation, and access to justice are found in different sectoral and state legislations.

2. Dimensions of environmental governance

According to the German national sustainable development strategy, the federal public authorities are supposed to further sustainable and environmentally friendly policies. The importance, society attributes to environmental protection has been recognisable in recent elections. The German Green party has been in coalition governments at the federal and state level and environmental values have been embraced by all major political parties to varying degrees.

One particularly polarising topic has been the public debate on nuclear power. The intensity and outcomes of this debate are unique within the European context and have increased the political profile of other environmental conservation concerns as well.

The degree of public participation has long been an important political debate in German society. The federal nature of politics enables public participation at the local and regional level but can have a dampening effect on public participation in national level politics. The environmental ministry has a dedicated unit which is tasked to foster public participation via the production of guidelines, scientific research, and the innovation of new and informal ways of public participation.

Transparency and access to information are guiding principles of the German public authorities but are often in conflict with the importance German culture attributes to personal privacy. While the transparency of public authorities should theoretically not conflict with the protection of personal privacy, there have been spill over effects which have resulted in confidentiality being applied to areas which do not concern personal privacy but rather public policy.

Helpful sources

- https://www.umweltbundesamt.de/sites/default/files/medien/376/publikationen/19072_2_uba_lf_environadmin_21x21_bf.pdf

2.1 Transparency (access to information)

Legally speaking, access to environmental information in Germany is following the spirit of article 4 of the Aarhus Convention both at federal and state level, however the culture of administrative service presupposes a starting position of keeping information non-public unless there is a reason to publish it, rather than a starting position of proactive transparency. The German state does not keep reliable statistics on the access to information requests which makes a proper assessment of the right in Germany difficult¹. Evaluations which have been carried out of the right to access environmental information have occasionally shown deficits in the assessment and replies by public authorities and there are a host of court judgments on disputes in this matter.

Article 3.1 of the German federal environmental information law (UIG) grants every person the right to free access to environmental information without having to prove a specific interest. Article 25 of the Federal Administrative Procedure Act (VwVfG) provides for a general obligation for public authorities to offer advice and access to information about their obligations and opportunities of public participation in their decision-making processes. Similar obligations exist in all German federal states.²

Separately with regard to environmental matters, the German federal environmental information law also obliges public authorities to provide information about legal remedies and access to justice to citizens. Similar obligations can also be found in several sectoral pieces of legislation on public participation and emissions.

Administrative costs to be paid by the requestee may not exceed 500 euros as per a specific procedural regulation (UIGGebV) of the UIG. This is a comparatively high threshold.

Geospatial data availability requirements under the EU's INSPIRE directive are well implemented but the progress on making data more widely accessible and prioritisation of important data sets over less important ones has been slow³.

Proactive publication:

Up until 2014, Germany had a one-stop-shop for environmental information, "PortalU", but the project was not renewed and environmental information is now hosted solely on the official websites of the respective government authorities. The "GovData" portal serves as a semi-substitute but is not limited to environmental information. Additionally, the federal structure of the country makes access to published information and data confusing and user unfriendly. Information on environmental impact assessments is usually more easily accessible at federal and state level⁴.

¹ P. 22 Aarhus Convention national Implementation report, Germany

² P. 2 Aarhus Convention national Implementation report, Germany

³ P. 41, Environmental Implementation Review 2022 Country Report, Germany, SWD(2022) 265 final

⁴ P. 2 Development of an Assessment Framework on Environmental Governance in EU Member States, country fiche Germany, 2019,
https://ec.europa.eu/environment/environmental_governance/pdf/country-fiches-2019/DE%20EGA%20fiche%20final.pdf

In the area of education, the German federal nature protection law (BNatSchG) recognizes the special status and mission of environmental organisations and there are several pieces of soft law of the German ministry of the environment that further environmental education.

Helpful resources:

- <https://www.bmu.de/themen/bildung-beteiligung/umweltinformation/aarhus-konvention/>
- www.govdata.de/

2.2 Participation

There is no overarching piece of legislation regulating all public participation requirements in environmental decision making. The different requirements and obligations under the Aarhus Convention and EU law are to be found in separate pieces of sectoral legislation. There is, however, a default back to the federal environmental impact assessment act in case of silence in the law or outdated or less strong sectoral legislation⁵.

A large part of the transposition of the public participation requirements for specific projects of article 6 of the Aarhus Convention are to be found in the federal emissions protection law (BImSchG) as part of the permitting procedures for industrial activities. Similar obligations exist in other sectoral pieces of legislation such as the construction law (BauGB) and the permitting obligations in the law on Environmental Impact Assessments (UVP) as well as regulations on nuclear activity and nuclear waste. The overarching procedural rules can be found in the German federal administrative procedure act (VwVfG).

An interesting initiative has been the German voluntary mediation project “IMPEL-Projekt” which focusses on informal solutions of neighbourhood environmental conflicts via dialogue. While not strictly speaking a question of public participation – especially with regard to public authority decision making – it is nevertheless a fascinating initiative.

Regarding public participation in the spirit of article 7 of the Aarhus Convention, German law has transposed the relevant EU directives in three pieces of legislation. The law on strategic environmental assessments (SUPG), an amendment to a construction law (EAG Bau) and the federal law on public participation. Plans and programmes on the state level are subject to similar state laws on public participation.

The public participation in legislative procedures obligations of article 8 of the Convention are scattered over numerous different laws. In the German context it is clear that targeted public consultations are much more common than open public consultations. The extent to which stakeholder involvement represents balanced interests or is taken into account in the final decision-making process is not transparent in Germany.

The state of Baden-Württemberg has created a participation portal which is a progressive initiative explaining all possible public participation possibilities in one place⁶.

Civil society representatives are lamenting an alleged systematic attempt of weakening the public participation opportunities and rights over the last years. Acts expediting permitting

⁵ P. 3 P. 2 Development of an Assessment Framework on Environmental Governance in EU Member States, country fiche Germany, 2019, https://ec.europa.eu/environment/environmental_governance/pdf/country-fiches-2019/DE%20EGA%20fiche%20final.pdf

⁶ Part of the Land, Beteiligungsportal, <https://beteiligungsportal.baden-wuerttemberg.de/de/startseite>

procedures and the lack of digitalisation of public participation is criticized as an organized limitation of public participation in Germany⁷.

Helpful resources:

- <https://www.bmu.de/themen/bildung-beteiligung/umweltinformation/aarhus-konvention/>
- www.bmu.de/WS810
- <https://www.bmu.de/download/leitfaeden-zu-uvp-und-sup/>
- <https://beteiligungsportal.baden-wuerttemberg.de/de/startseite>

2.3 Access to Justice

There are no specialised environmental courts in Germany, environmental matters are dealt with by administrative, criminal, and civil courts with the administrative courts being in charge of claims against decision making procedures of public authorities. Many courts do, however, have chambers in charge of environmental law. Jurisdiction is divided between federal and state courts.

Germany has implemented the main access to justice requirements via its general administrative law code (VwGO) and the environmental appeals act (UmwRG), which transposes the access to justice part of the EU Directive on public participation (2993/35/EC). The internal administrative appeal is the first and most common instance for access to justice. Due to several limitations in the German system of access to justice in environmental matters, the act on the adaptation of the environmental legal remedies act and other provisions to European and International legal requirements was passed in 2017. The main issue was firstly the Aarhus Convention Compliance Committee Case (ACCC/C/2008/31) on the limitation of the right to complain concerning laws that are intended to protect the environment. Secondly, the Court of Justice of the European Union case C-137/14 had ruled certain preclusions of objections of a factual nature in court proceedings were in breach of EU law.

NGOs are granted special legal standing under the environmental appeals act and the federal nature conservation act (BNatSchG) including some state acts provide automatic legal standing to registered nature conservation organisations. However, German state recognition of NGOs causes problems which exclude overarching environmental organisations such as Greenpeace and WWF from benefitting from the privileged standing requirements granted to NGOs. It is questionable whether these limitations of personal scope are in line with the obligations under the Aarhus Convention.

Additionally, there are issues with regard to the material scope of the access to justice rights, specifically with regard to plans and programmes. The environmental appeals act limits the type of acts which can be subject to appeal under its law. This means that there are certain national regulatory acts which can only be challenged via a complicated and not yet fully developed system of legal workarounds.

In contrast to the rather accessible system of filing complaints about compliance, the accessibility of access to justice against public authorities is hampered by lack of readily available information which the public can access. The German legal tradition is well known for its depth and level of detail but those need to go hand in hand with better information to

⁷ P. 2 Stellungnahme zum Entwurf des Nationalen Umsetzungs-bericht der Bundesregierung zur Umsetzung der Aarhus-Konvention in der Bundesrepublik Deutschland 202, DNR, UfU

the public about their access to justice rights. Simple references to relevant court judgment portals were identified as a priority⁸.

Helpful resources:

- financial support for legal costs. Instrument for legal aid (article 114 and following ZPO)

2.4 Compliance assurance, accountability, and effectiveness

With regard to the EU's industrial emissions directive, inspection duties fall upon the state level and not the federal level. In general inspection plans and results are being published at state level but similar to access to documents requests also with regard to inspections no Germany wide annual statistical reports are available which make evaluations difficult.

Similar lack of data issues exists with general enforcement of environmental law. The only statistically relevant data is being recorded in the area of criminal law.

The German legal culture does not include advanced Ombudsman institutions and as a federal state there is no central complaint-handling authority or one size fits all complaint mechanism. Regardless, filing a complaint is generally comparatively simple⁹.

There have been attempts in Germany to collate environmental law in one single code of environmental law, but those efforts have so far not been fruitful.

3. Institutional context

German environmental administration is comparatively complex due to the national culture of public service, the legal tradition, and the federal structure of the public authorities. In Germany's federal government, the responsibility for environmental protection lies with the federal ministry for the environment, nature protection, nuclear safety, and consumer protection. All the 16 states have their own ministries charged with environmental matters. The implementation and enforcement of environmental policy varies greatly between states with different public authorities and different systems of devolution.

Besides the state autonomy and legislative prerogatives, the local level also exercises considerable power. The self-government principle means that in general local governments have the autonomy to handle all issues which do not directly touch upon issues regulated by federal or state regulations. Prominent examples of this far ranging self-governing are land use plans, road management and green areas, waste and wastewater disposal, and energy supply¹⁰.

The federal ministry of environment has four associated federal agencies. Two are working exclusively on nuclear topics (BfS and BASE). The German federal environmental agency (UBA) is in essence a scientific body that measures and analyses environmentally relevant data. But it also advises the political level in environmental decision-making processes and

⁸ P. 42 Commission Staff working document, SWD (2022) 265 final, Environmental Implementation Review 2022, Country Report, Germany

⁹ Development of an assessment framework on environmental governance in the EU Member States No 07.0203/2017/764990/SER/ENV.E.4 Environmental Governance Assessment Germany, February 2019

¹⁰ P 38, A Guide to Environmental Administration in Germany, German Environmental Agency, 2019

legislation, whereas the German federal agency for environmental protection (BfN) is in charge of distributing and overseeing scientific projects.

Helpful resources

- Aarhus National Focal Point contacts can be found here <https://unece.org/environment-policy/public-participation/national-focal-points-and-contact-points>

4. Role of Civil Society

Germany is home to a well-established civil society environment with decades of experience. There are several Civil Society Organisations which span the whole country via memberships in all federal states and sub-organisations at local level as well as representations in European and International political processes. The recent years have been characterised by an increase in the number of NGOs and their influence in environmental policy. However, there are also new voices criticising the role of NGOs, state funding of some organisation, and even undermining the legal registration of certain organisations as NGOs.

Environmental NGOs have been particularly active in the debate around nuclear power and the protection of certain areas from lignite mining activities. NGO organised public protests are common and powerful but German civil society has also established itself as a serious lobbying force at national, European and international level and as a partner in implementing environmental and climate policies on the ground.

While NGO influence is strong overall, Germany has no dedicated system of social partners through which certain civil society organisations would have privileged access to decision making and decision makers. The influence and impact of civil society actors depends on their own political power and resources.

Largest CSOs active in this area

- Bund für Umwelt und Naturschutz
- Deutsche Umwelthilfe
- Deutscher Naturschutzring
- Greenpeace
- NABU – Naturschutzbund Deutschland
- Robin Wood
- WWF Deutschland

Greece

1. Overview

Greece, the Hellenic Republic, is a unitary parliamentary republic. The Government is comprised of 300 members led by the Prime Minister¹. Greece also has a President as Head of State with limited powers. Greece is a country of 10.2 million population², a coastal state situated in the southeast of Europe. It includes within its border over 1,000 islands³. Greece ratified the Aarhus Convention in 2005 through Law 3422/12-12- 2005 (Official Journal of the Government (OJG) A 303 /2005⁴).

The Ministry of Environment, Energy and Climate Change is the most relevant state department in regards to sustainability. Within their remit is the monitoring and prevention of harm to nature and ecosystems. The link between quality of life and nature such as air pollution is noted as a priority as well as adaptation to climate change and environmental governance. The Ministry of Environment, Energy and Climate Change is also tasked with embedding sustainability into the economy and management of natural resources in accordance with international law ⁵.

Since 1 January 2011, governance in Greece is comprised of seven decentralised administrative areas, thirteen regions and 325 municipalities. Decentralised administrative areas are responsible for decision making within their region. The regions and municipalities are two tiers of local governance. Regions devise and implement policies at regional level with due regard to national and European policies. Municipalities are responsible for local issues in line with principles of improving quality of life for residents.

2. Dimensions of environmental governance

Within the Greek 1975 Constitution, Article 24 asserts that the protection of the environment is the responsibility of the state, that there is a right to culture connected to the environment and to ownership of natural resources⁶.

There are multiple legislative provisions pertaining to environmental protection in Greece. The laws have not been found in English language but are available in Greek. Summaries of the laws in English language have been used for the purposes of this research. These include Law 3937/2011 relating to biodiversity protection, Law 4014/2011 requires environmental impact assessment studies to be conducted, Law 4042/2012 regulates waste disposal mechanisms nationally.

¹ European Committee of the Regions, Division of Powers, Greece, <https://portal.cor.europa.eu/divisionpowers/Pages/Greece.aspx>

² WorldOMeter, Greece Population, <https://www.worldometers.info/world-population/greece-population/>

³ BBC, Greece Country Profile, 28 November 2022, <https://www.bbc.com/news/world-europe-17372520>

⁴ Aarhus Convention National Implementation Report of Greece (2017) https://ypen.gov.gr/wp-content/uploads/2020/11/Aarhus_original_reportplan.pdf

⁵ Aarhus Convention National Implementation Report of Greece (2017) https://ypen.gov.gr/wp-content/uploads/2020/11/Aarhus_original_reportplan.pdf

⁶ Constitution Project, Greece's Constitution of 1975 with Amendments through 2008, https://www.constituteproject.org/constitution/Greece_2008.pdf?lang=en

Law 4269/2014 (amended in 2016) reforms the planning frameworks to ensure adherence to environmental sustainability principles. Law 4495/2017 launched a new legal framework on monitoring the building environment. Law 4759/2020 updated the previous law from 2017 and includes regulations for renewable energy projects within urban and spatial planning⁷.

The most recent and most relevant climate law was passed in May 2022. Law 4936/2022 (GG A/105/27.05.2022⁸) This law sets targets for reductions in emissions. The legislation sets interim targets for Greece to cut greenhouse emissions by at least 55% by 2030 and by 80% by 2040 before achieving zero-net emissions by 2050.

It also encourages the country to cut dependence on fossil fuels, including weaning off indigenous lignite or brown coal - once the main source of energy - in electricity production from 2028 onwards. This target might be brought forward to 2025, taking into account security of supplies⁹. The law requires national plans to be formulated and implemented but there is criticism that the law focuses excessively on energy supply, rather than energy use reduction strategies¹⁰. The law amends previous laws to clarify waste regulation, introduce administrative sanctions for potential harm to humans and the environment by industry, formalises employment within the National Environment and Climate Change Organisation and the Ministry for Climate Change and Civil Protection, provides for protection of natural resources and increases resources for day-to-day innovations to map and respond to climate change issues¹¹.

2.1 Transparency (access to information)

Article 5A of the Greek Constitution stipulates that individuals have a right to information, subject to limitations based on criminal activity. There is explicit reference to the provision of information which is available online.

Further, Administrative Procedure Code” (Law N. 2690/1999(A 45) regulates requests from the public for any information from public service sources. There is special provision for requesting and receiving any information held by public services relating to an individual, but this is limited by breaches of privacy of other individuals. Any refusal to provide relevant information should be in line with the legal provisions restricting access to certain information and the rationale for refusal must be provided within a month of submitting the request for information¹².

Article 10 of the Constitution also obliges relevant authorities to respond to requests for information and provision of documentation within a maximum of a 60-day period. Where these requests are unlawfully denied, financial compensation must be paid.

⁷ English summary of the law: <https://climate-laws.org/geographies/greece/laws/law-4759-2020-on-the-modernisation-of-spatial-and-urban-planning-legislation-and-other-provisions>; Greek version of the law

⁸ Greek version of the law: <https://faolex.fao.org/docs/pdf/gre212045.pdf>

⁹ Reuters, Greece passes first climate law, vows to cut dependence on fossil fuels, May 26 2022, <https://www.reuters.com/business/environment/greece-passes-first-climate-law-vows-cut-dependence-fossil-fuels-2022-05-26/>

¹⁰ Haris Doukas and Vlasios Oikonomou, Greek Climate Law: from climate pioneer to laggard <https://www.euractiv.com/section/energy-environment/opinion/greek-climate-law-from-climate-pioneer-to-laggard/>

¹¹ Food and Agricultural Organisation of the United Nations, FAOLEX Database <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC212045/>

¹² Aarhus Convention National Implementation Report of Greece 2017. https://ypen.gov.gr/wp-content/uploads/2020/11/Aarhus_original_reportplan.pdf

The Greek National Action Plan for Open Government was devised in collaboration with civil society organisations and seeks to increase public participation in government. The plan relates to government department having processes in place for open access to listed information relating to that department¹³.

2.2 Participation

Municipalities are responsible for consultation with the public and stakeholders¹⁴.

In line with the Aarhus Convention, Greece introduced laws on compulsory public consultation on all legislative proposals under Law 4622/2019. While there is a dedicated online consultation mechanism facilitated through an open portal organised by the government¹⁵, submissions on laws can be made by any person in any manner. Further, where a law is proposed in Parliament, a report on the public consultation process must be included.

There is further public participation embedded in the mechanisms for Environmental Impacts Assessments and Strategic Environmental Assessments, as provided for in the above outlined legislations. Stakeholder and public participation in the decision making is also ensured by national legislation.¹⁶

Despite Greece having historical connections to citizens assembly style mechanisms of government, there has been no reference to a nationally organised processes relating to environment in Greece currently. At municipality level in Athens, in collaboration with private stakeholder Impact Hub, Athens municipality has facilitated public consultation on how the area is affected by climate change and how to prioritise actions to address it¹⁷.

2.3 Access to Justice

The Greek justice system is based on the 1975 Constitution and is comprised of two branches. the administrative branch and civil/criminal branch¹⁸. Cases relating to the environment may be relevant under both branches.

The Constitution under Article 10 outlines a right of individuals to petition courts on civil and criminal matters, with due process to be respected.

¹³ Hellenic Republic Ministry for Administrative Reconstruction and Open Government Partnership, 4th National Action Plan on Open Government 2019-2021, https://www.opengovpartnership.org/wp-content/uploads/2019/05/Greece_Action-Plan_2019-2022_Update_EN.pdf

¹⁴ European Committee of the Regions, Division of Powers, Greece, <https://portal.cor.europa.eu/divisionpowers/Pages/Greece-Environment.aspx>

¹⁵ Ministry of Administrative Reform and E-Governance, National Centre for Public Administration and Local Government (E.K.D.D.A.), <http://opengov.gr>, accessed 9 January 2023

¹⁶ Hellenic Ministry of Environment and Energy, Directorate of International and European Activities , <https://www.ohchr.org/sites/default/files/2021-11/GRECE.docx>

¹⁷ Days of Art in Greece, Arts, Letters, Culture in Greece, February 2022, <https://daysofart.gr/en/news/city/the-municipality-of-athens-calls-for-public-consultation-on-the-issue-of-climate-crisis/>

¹⁸ Hellenic Republic, Greece in the World, 16 December 2022. <https://www.mfa.gr/missionsabroad/en/about-greece/government-and-politics/judicial-power.html>

Greece has been taken to the European Court of Justice on multiple occasions due to the failure to adequately implement European Directives related to waste management¹⁹ and more recently to adequately regulate Environmental Impact Assessments²⁰. No domestic litigation relating to the environment since 2010 was found during the preparation of this profile.

2.4 Compliance assurance, accountability, and effectiveness

A complaint was made to the Aarhus Monitoring mechanism relating to a Greek power company which were using highly polluting lignite mines and large combustion plants. WWF sought information about the licencing and regulation of this company for their activities but information was withheld on the basis of public safety as well as intellectual property issues. Another case related to WWF seeking a copy of the report of a Special Committee which was tasked with conducting research in on shale gas/black shale formations and bituminous shales in Greece. After much delay WWF sought the Director General to compel the Special Committee release the report, but this was not within their remit. Finally, an insufficient and incomplete version of the report was released.

The most recent Environmental Implementation Review is from 2019²¹. The review indicates that while there are good policies in place to address waste management, biodiversity and waste water pollution, actions must be taken to realise the aims of these policies. There remains a gap in plans to address health implications and deaths arising from air pollution. The review is critical of the lack of practical information provided to farmers regarding their obligations towards nature in their work.

Greece utilised their national statistics infrastructure - The Hellenic Statistical System (ELSS)- to develop a set of indicators to monitor progress on the realisation of the Sustainable Development Goals. These indicators were formulated in a consultative manner. These indicators have been useful in shaping government agenda by identifying gaps to be addressed in national laws and policies.

At domestic level, environmental NGOs have experience of seeking access to information relating to licencing of power plants and significant delays to the provision of information which was fragmented and unsatisfactory.

The OECD performance review of Greece from 2020 notes that while some progress has been made at reducing emissions issues remain with waste management²².

Considering the criticisms of the climate law, and the failure to incorporate the suggestions made by civil society organisations to address the shortcomings, the effectiveness of public participation on laws is questionable. Engagement with civil society organisations in the

¹⁹ UN Environment Programme, Law and Environmental Assistance Platform, CCommission of the European Communities v. Republic of Greece, <https://leap.unep.org/countries/eu/national-case-law/commission-european-communities-v-republic-greece>

²⁰ European Commission, Environmental impact assessment: Commission takes GREECE to the Court of Justice of the European Union
https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3886

²¹ The Environmental Implementation Review 2019, Country Report Greece,
https://ec.europa.eu/environment/eir/pdf/report_el_en.pdf

²² OECD Library, OECD Environmental Performance Reviews: Greece 2020, <https://www.oecd-ilibrary.org/sites/cec20289-en/1/3/3/2/index.html?itemId=/content/publication/cec20289-en&csp=f78b6fdf8ec3ba726ca305d6c10debcf&itemIGO=oecd&itemContentType=book#section-d1e9851>

preparation of the 2018 VNR has been criticised²³. Further, WWF have submitted to the UNECE that environmental policies have been adopted without public consultation. Instead, technical committees were established to draft a plan relating to limiting emissions from large combustion plants²⁴.

3. Institutional context

The financial crisis of 2010 to 2013 has resulted in decreased financial investment in environmental governance²⁵. Migration is a significant issue among politicians and civil society organisation activities²⁶. Agriculture, fisheries, transport and tourism are central to economic stability for the country²⁷. Greece has experienced first-hand the dangers of increasing global temperatures²⁸. The municipality of Athens in particular is attempting to provide solutions and strategies²⁹ to protect from the harms of heatwaves through evidence-based policies relating to health risks and planning trees and other nature-based solutions to capture heat³⁰.

The Greek National Commission for Human Rights is the National Human Rights Institution and it is considered to serve as a bridge between civil society and national government administration. The GNCHR includes the environment as a thematic area to monitor but the most recent position statement relating to the environment dates back to 2014. This position notes the right to water and outlines the Commission's recommendations on safeguarding this right³¹.

-
- 23 Hellenic Foundation for European and Foreign Policy, Civil Society Network in the Context of UN's Sustainable Development Goals in Greece <https://www.eliamep.gr/en/project/%CE%B4%CE%B7%CE%BC%CE%B9%CE%BF%CF%85%CF%81%CE%B3%CE%AF%CE%B1-%CE%B4%CE%B9%CE%BA%CF%84%CF%8D%CE%BF%CF%85-%CF%81%CE%B3%CE%B1%CE%BD%CF%8E%CF%83%CE%B5%CF%89%CE%BD-%CE%BA%CE%B1%CE%B9-%CE%BF%CE%BC%CE%AC/>
- 24 Hellenic Ornithological Society and WWF, Report submitted by Greek NGOs to the Aarhus Convention Secretariat, 2021 Reporting Cycle, https://unece.org/sites/default/files/2021-06/WWF-HOS_report_Aarhus_Convention_Secretariat_2021_Reporting_Cycle.pdf, 11.
- 25 OECD Library, OECD Environmental Performance Reviews, Greece 2020, <https://www.oecd-ilibrary.org/sites/566a8cb2-en/index.html?itemId=/content/component/566a8cb2-en>
- 26 European Council on Refugees and Exiles, Greece: Civil Society Organisations Demand EU Action on Third Country Concept, Pushbacks Continue with Frontex Involvement, Ukrainians Receive Access to Housing, Medical Care and Work While Regular Reception Remains Dire, 11 March 2022 <https://ecre.org/greece-civil-society-organisations-demand-eu-action-on-third-country-concept-pushbacks-continue-with-frontex-involvement-ukrainians-receive-access-to-housing-medical-care-and-work-while-regular-re/>
- 27 OECD, Environmental Performance Reviews Greece 2020, <https://www.oecd-ilibrary.org/sites/cec20289-en/index.html?itemId=/content/publication/cec20289-en>
- 28 International Energy Agency, Greece climate resilience policy indicator, <https://www.iea.org/articles/greece-climate-resilience-policy-indicator>
- 29 Tsoni, Athens Leads Global Initiative Against Extreme Heat, Greek Reporter, 13 August 2022, <https://greekreporter.com/2022/08/13/athens-leads-global-initiative-against-extreme-heat/>
- 30 C40 Cities, In the municipality of Athens, a whole department for developing resilience, https://www.climate-chance.org/wp-content/uploads/2022/04/bt2022_cas-detude_grece_athenes_eng.pdf
- 31 Hellenic Republic, Greek National Commission for Human Rights, The Right to Water, https://www.nchr.gr/images/English_Site/PERIVALLON/GNCHR_Right_to_water.pdf

The Ministry for Climate Crisis and Civil Protection was introduced in 2004. The website is predominantly in Greek language³² but information in English indicates that it has within its remit the organisation and coordination of preventative and responsive actions to climate related emergencies at national level³³. It must also utilise scientific data to coordinate emergency responses and restoration in the aftermath of emergency.

The Natural Environment and Climate Change Organisation is a national body supervised by the Ministry of Environment and Energy. It provides technical expertise on environmental and sustainable development issues and supports the Ministry's reporting obligation to the European Commission and the Environmental Agency. It also has a role in raising awareness among the public of environmental issues.³⁴

4. Role of Civil Society

The Greek National Action Plan for Open Government was devised in collaboration with civil society organisations and seeks to increase public participation in government. The plan relates to government department having processes in place for open access to listed information relating to that department³⁵.

Greek civil society related to environmental has been recognised by VNR in 2018 as requiring significant support to perform effectively. In order to address this, a project, "Civil Society Network in the Context of UN's Sustainable Development Goals in Greece," is funded under the Active citizens fund in Greece by the Hellenic Foundation for European and Foreign Policy (ELIAMEP) and their international partner, the Icelandic Human Rights Center (ICEHR).

The Active citizens fund in Greece is supported through a € 13.5 m grant from Iceland, Liechtenstein and Norway as part of the EEA Grants 2014 – 2021. The programme aims to develop the sustainability and capacity of the civil society sector in Greece, and to strengthen its role in promoting and safeguarding democratic procedures, active citizenship and human rights³⁶. The Fund Operator for the Active citizens fund in Greece is Bodossaki Foundation in consortium with SolidarityNow³⁷.

³² Ministry for Climate Crisis and Civil Protection, <https://www.civilprotection.gr/el>

³³ Development Aid, Funding Agencies, Ministry for Climate Crisis and Civil Protection (Greece) <https://www.developmentaid.org/donors/view/424952/the-general-secretariat-for-civil-protection>

³⁴ Natural Environment & Climate Change Agency, <https://necca.gov.gr/>

³⁵ Hellenic Republic Ministry for Administrative Reconstruction and Open Government Partnership, 4th National Action Plan on Open Government 2019-2021 https://www.opengovpartnership.org/wp-content/uploads/2019/05/Greece_Action-Plan_2019-2022_Update_EN.pdf

³⁶ Hellenic Foundation for European and Foreign Policy, Civil Society Network in the Context of UN's Sustainable Development Goals in Greece <https://www.eliampep.gr/en/project/%CE%B4%CE%B7%CE%BC%CE%B9%CE%BF%CF%85%CF%81%CE%B3%CE%AF%CE%B1-%CE%B4%CE%B9%CE%BA%CF%84%CF%8D%CE%BF%CF%85-%CF%81%CE%B3%CE%B1%CE%BD%CF%8E%CF%83%CE%B5%CF%89%CE%BD-%CE%BA%CE%B1%CE%B9-%CE%BF%CE%BC%CE%AC/>

³⁷ The Active citizens fund in Greece is supported through a € 13.5 m grant from Iceland, Liechtenstein and Norway as part of the EEA Grants 2014 – 2021. Philanthropy Europe Association, The Active Citizens Fund In Greece, a new grants program operated by the Bodossaki Foundation has been launched, <https://philea.eu/the-active-citizens-fund-in-greece-a-new-grants-program-operated-by-the-bodossaki-foundation-has-been-launched/>

Hungary

1. Overview

Hungary is a republic on a decentralized basis with three levels of governance: central, regional and local.³⁸ Hungary is a parliamentary democracy with its parliament being the National Assembly (Országgyűlés).³⁹

While the main sources of Hungary's energy supply were historically fossil fuels, Hungary now produces 45% of its domestic power generation from the Paks nuclear power plant. Coal reliance has decreased, but with natural gas and oil, hydrocarbons make up 35% of Hungary's energy production and a large proportion of Hungary's imported energy comes from fossil fuels.⁴⁰ As of 2020, while Hungary's greenhouse gas emissions have decreased 33.24% from 1990 levels, this is due to a transition away from a carbon-intensive economy rather than a push for cleaner energy sources, as renewables such as wind and solar make up just over 2% of the energy supply.⁴¹ Due to Hungary's historical and contemporary energy makeup, air pollution is a key issue, though the government has taken measures such as its submission of a national air pollution control programme (NAPCP) to the Commission in 2020.⁴² This furthermore highlights why a large component of Hungary's 2021-2030 National Energy and Climate Plan focuses on increasing renewables.

Hungary's present constitution came into force as the Fundamental Law on 1 January 2012, replacing the former Hungarian constitution of 1949, which was substantially revised in the early 1990s.⁴³ Articles XX and XXI of the Fundamental Law are most pertinent to environmental legislation by ensuring a right to physical health, protection of the environment, the right to a healthy environment and consequences for those who damage the environment.⁴⁴ The Fundamental Law additionally highlights the importance of protecting the environment and resources for future generations as part of Hungary's heritage and culture.⁴⁵ Environmental legislation based on the constitutional rights outlined in the Fundamental Law is specified in Act LIII of 1995 as amended.⁴⁶

2. Dimensions of Environmental Governance

2.1 Transparency (access to information)

³⁸ European Commission of the Regions, "Hungary," accessed March 30, 2023, <https://portal.cor.europa.eu/divisionpowers/Pages/Hungary-Intro.aspx>.

³⁹ Ibid

⁴⁰ International Energy Agency, "Hungary," IEA, accessed March 30, 2023, <https://www.iea.org/countries/hungary>.

⁴¹ Ibid

⁴² Directorate-General for Environment, "Country Report - Hungary" (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

⁴³ Ministry of Justice, "The Fundamental Law of Hungary" (2012), <https://njt.hu/jogszabaly/en/2011-4301-02-00>.

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

Government transparency and public access to information is guaranteed under Article VI and 38 of Hungary's Fundamental Law.⁴⁷ In accordance with this article, Section 26 of Act no. CII/2011 on the right to informational self-determination and on the freedom of information specifies both the right to access and the parameters for the free access to data of public interest.⁴⁸ The National Authority for Data Protection and Freedom of Information (NAIH) was created to ensure the right to access such information.⁴⁹ The NAIH is designed to be a state organization operating independently of other state entities to combat corruption.⁵⁰ The NAIH submits a yearly report on its activities to the National Assembly.

Environmental Information

The National Environmental Information System is an online web portal for accessing environmental information.⁵¹ Additionally, Hungary hosts informational web sources such as the website of the National Institute of Environmental Health (OKIR)⁵² and the National Adaptation Geo-information System (NAGiS).⁵³

The Commission's 2022 Environmental Implementation Review for Hungary criticized Hungary's implementation of the INSPIRE Directive, citing their progress in publicly accessible information as poor.⁵⁴ Access to information was also a key criticism of the Commission of Hungary's Recovery and Resilience Plan (RRP), adopted in response to the pandemic as part of the EU Recovery and Resilience Facility.⁵⁵ Hungary responded to such criticism in their RRP, noting the relevance of the National Anti-corruption Strategy 2020-2022 and the National Digitisation Strategy to address such concerns.⁵⁶

2.2 Participation

The basis for participation in normative acts and policies in Hungary is Act CXXX of 2010 on law-making⁵⁷ and CXXXI of 2010 on public participation in the preparation of legislation. On a scale of 0 to 4, Hungary ranked 1.2 on the OECD Better Life Index scale on the level of stakeholder engagement in developing regulations.⁵⁸ The Sustainable Governance Indicators similarly rated Hungary as a 2.0 or "rarely consults with any societal actors" out of

⁴⁷ Ministry of Justice, "The Fundamental Law of Hungary" (2012), <https://njt.hu/jogszabaly/en/2011-4301-02-00>.

⁴⁸ Ministry of Justice, "Act CXII" (2011), <https://njt.hu/jogszabaly/en/2011-112-00-00>.

⁴⁹ The National Authority for Data Protection and Freedom of Information, "About the Authority," accessed March 30, 2023, <https://www.naih.hu/about-the-authority>.

⁵⁰ The National Authority for Data Protection and Freedom of Information, "About the Authority," accessed March 30, 2023, <https://www.naih.hu/about-the-authority>.

⁵¹ Directorate-General for Environment, "Country Report - Hungary" (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

⁵² National Environmental Information System, "What Is OKIR?," <http://okirweb.dev.deltha.hu/en/>.

⁵³ Mining and Geological Survey of Hungary, "Brief on the National Adaptation Geo-Information System," accessed March 30, 2023, <https://nater.mbfisz.gov.hu/en/node/161>.

⁵⁴ Directorate-General for Environment, "Country Report - Hungary" (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

⁵⁵ European Commission, "Commission Finds That Hungary Has Not Progressed Enough [Press Release]," Text, European Commission - European Commission, November 30, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7273.

⁵⁶ European Commission, "Recovery and Resilience Plan for Hungary," https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility/recovery-and-resilience-plan-hungary_en.

⁵⁷ Ministry of Justice, "Act CXXX" (2010), https://ial-online.org/wp-content/uploads/2019/09/J2010T0130P_20180518_FIN.pdf.

⁵⁸ The Organization for Economic Cooperation and Development, "Hungary," March 9, 2020, <https://doi.org/10.1787/9870c393-en>.

10.0 on public consultation.⁵⁹ The justification for this rating was a rare and selective stakeholder consultation, and the utilization of national consultation letters viewed as a political marketing tool rather than a move to increase public access to decision making.⁶⁰ In several responses to Hungary's RRP, Hungary was criticized for its public participation and engagement. In November 2022 an assessment on behalf of the Commission noted a failure to adopt the necessary reforms to make Hungary eligible for the Recovery and Resilience funding.⁶¹ In the Council's resulting implementation decision, though the assessment was approved, Hungary was reminded of the numerous recommendations from 2019 to 2022 to strengthen its involvement of social partners and stakeholders in the policy-making process.⁶² These recommendations were addressed in Hungary's most recent RRP. Under Governance and Public Participation, Hungary acknowledges Reform 25., *Improving the quality of law-making and effective involvement of stakeholders and social partners in decision-making*.⁶³ In the RRP, Hungary resolves to amend Act CXXXI of 2010 by 31 December 2022 to ensure public consultations, impact assessments and their summaries are carried out and prepared for public access going forward.⁶⁴ The RRP additionally resolves to abolish section 5(5), thus reducing the list of exceptions.⁶⁵ The amendment to CXXXI of 2010 was published as Bill T/705 in October 2022.⁶⁶ Though the amendment was put forth to reach an agreement with the Commission, the Hungarian Environmental Partnership Foundation (Ökotárs) in a press release noted the historical weakness of Hungarian public participation wasn't due to legislation, but rather a deficit between law and action.⁶⁷

Environmental Impact Assessment

For Hungary, EIA and public participation related to EIA procedures are grounded in Act No. LIII of 1995.⁶⁸ The act necessitates the carrying out of an EIA prior to any activity that will bear significant environmental impacts. The act furthermore details varying needs of public participation and informing. Through OECD, Hungary additionally operates through the Strategic Environment Assessment (SEA) framework consisting of a variety of tools and approaches to increase participation in environmental initiatives.⁶⁹ The OECD 2022 EIR for

⁵⁹ Sustainable Governance Indicators, "Hungary," 2022, https://www.sgi-network.org/2022/Hungary/Executive_Capacity.

⁶⁰ OECD "Hungary," March 9, 2020, <https://doi.org/10.1787/9870c393-en>.

⁶¹ European Commission, "Commission Finds That Hungary Has Not Progressed Enough [Press Release]," Text, European Commission - European Commission, November 30, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7273.

⁶² The Council of the European Union, "COUNCIL IMPLEMENTING DECISION on the Approval of the Assessment of the Recovery and Resilience Plan for Hungary," December 5, 2022, <https://data.consilium.europa.eu/doc/document/ST-15447-2022-INIT/en/pdf>.

⁶³ Government of Hungary, "Hungary's Recovery and Resiliency Plan," 2022, <https://www.palyazat.gov.hu/helyreallitasi-es-ellenallokepessegi-eszkoz-rrf>.

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Hungarian Parliament, "T/705," Országgyűlés, accessed March 30, 2023, <https://www.parlament.hu/felszolasok-keresese>.

⁶⁷ Ökotárs Foundation, "The Government's Bill on Public Consultation Does Not Offer Real Solutions [Press Release]," Ökotárs Alapítvány, July 27, 2022, <https://okotars.hu/en/governments-bill-public-consultation-does-not-offer-real-solutions>.

⁶⁸ Hungarian Parliament, "Act LIII" (1995), <https://faolex.fao.org/docs/html/hun6567E.htm>.

⁶⁹ Directorate-General for Environment, "Country Report - Hungary" (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

Hungary notes, however, the need for improvement in encouraging public participation through these frameworks and recommends a statistical database on public participation.⁷⁰

Special Measures due to Covid-19

Through Act XII of 2020 on the containment of coronavirus, the Hungarian government was authorized by the Parliament to rule by decree in light of the Covid-19 pandemic.⁷¹ Act XII gained criticism internationally due to its suspension of by-elections, referendums and, thus, ability for the public to participate in governance.⁷² Furthermore, the act was criticized due to its provision that provides for punishment for individuals who in front of large audiences, state “any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection.” The Act was also the justification for measures adopted to prevent teachers from effectively exercising their constitutional right to strike in 2022.

2.3 Access to Justice

Hungary does not have special courts on environmental matters.⁷³ Thus, environmental proceedings are brought to administrative and labor courts, or private law courts. Though individuals and organizations can bring complaints to the Constitutional Court, this is rare.⁷⁴ In addition to members of the public, NGOs can bring an action to court if an administrative activity has directly impacted their operation. The Ombudsman for Future Generations has the ability to participate in administrative court cases as a concerned party, and initiate and participate in examinations of the Ombudsman for Fundamental Rights.⁷⁵ The Prosecutor General and Prosecution service additionally have the right via Act CLXIII of 2011 on the Prosecution Service to act or file lawsuits in the public's interest.⁷⁶

2.4 Compliance assurance, accountability, and effectiveness

Hungary operates based on the ‘polluter pays’ principle, using the Environmental Liability Directive as a framework to prevent and address environmental degradation.⁷⁷ At the national level, the minister responsible for nature conservation and the Government Office of Pest County oversee competence. At the regional level, County Government Offices are

⁷⁰ Directorate-General for Environment, “Country Report - Hungary” (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

⁷¹ Ministry of Justice, “Act XII” (2020), <https://berlin.mfa.gov.hu/assets/77/49/43/cc3672166e33b2cf015ce4371aeeedf19417c2710.pdf>.

⁷² Milieu Consulting SPRL, “Coronavirus Pandemic in the EU – Fundamental Rights Implications: Hungary” (European Union Agency for Fundamental Rights, June 3, 2020), https://fra.europa.eu/sites/default/files/fra_uploads/hu_report_on_coronavirus_pandemic_june_2020.pdf; Ungváry Krisztián, “Valós Tény És a Büntethetőség,” March 25, 2020, https://index.hu/velemeney/2020/03/25/szolasszabadsag_remhirterjesztes_ungvary_krisztian/.

⁷³ European E-Justice Portal, “Access to Justice in Environmental Matters - Hungary”, https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters?HUNGARY&action=maximizeMS&clang=en&idSubpage=2&member=1.

⁷⁴ Ibid

⁷⁵ European E-Justice Portal, “Access to Justice in Environmental Matters - Hungary,” § 1.1. Legal order – sources of environmental law, https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters?HUNGARY&action=maximizeMS&clang=en&idSubpage=1&member=1.

⁷⁶ Ibid

⁷⁷ Directorate-General for Environment, “Country Report - Hungary” (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

most often the environmental authority in administrative cases. Inspections are scheduled and done at the county level, with previous inspection results available in the National Environmental Database (OKIR).⁷⁸

With the introduction of Hungary's RRP, one of its largest upcoming sustainability initiatives, compliance measures were detailed to ensure implementation. For RRP implementation, the FAIR-EUPR monitoring and information system will be utilized.⁷⁹ This system is comprised of a structured workflow and checklists that outline monitoring, auditing and reporting for each National Authority responsible for the nine sub-groups of the Recovery and Resilience Facility.

For accountability, the Hungarian police website details various environmentally targeted projects indicating a push to reduce organized environmental crime. For example, through the Ministry of Interior, a working group for Hungarian Environmental Safety began in 2018 and was finalized in 2021.⁸⁰ Additionally environmental crimes can be reported on the police website.

The Yale Environmental Performance Index gave Hungary an overall government effectiveness score of 55.10 out of 100.⁸¹ The Commission's 2022 EIR noted an improvement in implementation, but mentioned the continued need for increased administrative effectiveness, particularly in terms of air quality and water management. The 2022 EIR specifically noted the need for increased capacity and coordination at the national level, referring to the fact that environmental matters are jointly overseen across three main ministries, as opposed to just one single ministry.⁸²

The National Council for Sustainable Development (NCDC) was created by the government in 2008 with the intent of ensuring successful sustainable development.⁸³ Between 2010 and 2012 the National Framework Strategy on Sustainable Development (NFSSD) for 2012-2024 was created to aid in this endeavor.⁸⁴ The NCDC additionally oversees the definition and development of Hungary's SDGs since their adoption in 2015.⁸⁵ The NCDC published a yearly progress report between the years 2013 and 2020. Though the NFSSD is for the years 2012-2024, the NCDC site is missing reports after the 2019-2020 year, making effectiveness difficult to quantify. In 2018 Hungary's Ministry of Foreign Affairs and Trade submitted a Voluntary National Review related to their SDGs with effectiveness.⁸⁶

⁷⁸ Directorate-General for Environment, "Country Report - Hungary" (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

⁷⁹ Government of Hungary, "Hungary's Recovery and Resiliency Plan," 2022, <https://www.palyazat.gov.hu/helyreallitasi-es-ellenallokepessegi-eszkoz-rrf>.

⁸⁰ Rendőrség, "A Magyarországi Környezeti Biztonsági Munkacsoport Megalapítása | A Magyar Rendőrség Hivatalos Honlapja," accessed March 30, 2023, <https://www.police.hu/index.php/hu/a-rendorsegrol/europai-tamogatasok/belugyi-alapok/a-magyarorszagi-kornyezeti-biztonsagi-0>.

⁸¹ Environmental Performance Index, "Hungary," accessed March 30, 2023, <https://epi.yale.edu/epi-results/2022/country/hun>.

⁸² Directorate-General for Environment, "Country Report - Hungary" (European Union, September 8, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ASWD_2022_0259_FIN.

⁸³ National Council for Sustainable Development, "National Council for Sustainable Development," NCSD, <https://www.parlament.hu/web/ncsd/national-council-for-sustainable-development>.

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ministry of Foreign Affairs and Trade, "Voluntary National Review of Hungary on the Sustainable Development Goals of the 2030 Agenda," 2018, https://sustainabledevelopment.un.org/content/documents/20137Voluntary_National_Review_of_Hungary_v2.pdf.

3 Institutional Context

The majority of implementation of environmental legislation is handled at the national level.⁸⁷ Environmental affairs used to be predominantly handled by the Ministry of Environment and Water, however the ministry was merged into the Ministry of Rural Development that, since 2014, has been renamed as the Ministry of Agriculture.⁸⁸ The Ministry of Agriculture is currently the main ministry handling environmental affairs, overseeing nature conservation, forests and land affairs, and agriculture and rural development. With that said, other ministries oversee projects pertaining to environmental goals such as the Ministry of Energy overseeing renewable energy projects and the Ministry of Innovation and Technology that oversaw the creation of Hungary's 2021-2030 National Energy and Climate Plan.⁸⁹ The Ministry of the Interior also oversees climate change and sustainability projects mainly in the form of water management. An example is the recent LIFE LOGOS 4 WATERS project where 14 municipalities received grant support for climate-conscious watershed management proposals.⁹⁰ Hungary additionally was one of the first countries in the world to have an Ombudsman for Future Generations, elected by parliament with the goal of ensuring the protection of resources and culture for future generations.⁹¹ Subsequently a separate ombudsman for future generations was abolished and their competencies were merged into the general ombudsman's office, which is established by Hungary's Fundamental Law. The Ombudsman Office still maintains the ability to examine legislative actions, proposals and policy developments at the national and local levels acting as a safeguard for future generations.

At the local level, Hungary is comprised of 19 counties and 3154 municipalities.⁹² Though environmental legislation is predominantly seen at the national level, there is both regional and local environmental governance, as demonstrated by a list taken from the European Committee of the Regions Website:

Regional

- Preparing environmental programmes coordinated with the municipal local authorities;
- Giving their preliminary opinions on the municipal environmental programmes or may initiate the preparation thereof;
- Taking a stand on the draft municipal by-laws of municipal local authorities affecting environmental protection;
- Making recommendations for the foundation of municipal environmental associations.

Local

- Protection of the local environment and nature;

⁸⁷ OECD Environmental Performance Reviews: Hungary 2018, [oecd-ilibrary.org](https://read.oecd-ilibrary.org/environment/oecd-environmental-performance-reviews-hungary-2018/environmental-governance-and-management_9789264298613-9-en), 2018, https://read.oecd-ilibrary.org/environment/oecd-environmental-performance-reviews-hungary-2018/environmental-governance-and-management_9789264298613-9-en.

⁸⁸ Ibid

⁸⁹ Ministry of Innovation and Technology, "National Energy and Climate Plan," 2022, https://energy.ec.europa.eu/system/files/2022-08/hu_final_necp_main_en.pdf.

⁹⁰ Ministry of the Interior, "A LIFE LOGOS 4 WATERS Projektben 14 Önkormányzat Nyert Támogatást," September 20, 2022, <https://bmprojektek.kormany.hu/a-life-logos-4-waters-projektben-14-onkormanyzat-nyert-tamogatast>.

⁹¹ OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY, "The Role of the Ombudsman," AJBH-EN, accessed March 30, 2023, <https://www.ajbh.hu/web/ajbh-en/the-role-of-the-ombudsman>.

⁹² European Committee of the Regions, "Hungary - Environment & the Fight against Climate Change," <https://portal.cor.europa.eu/divisionpowers/Pages/Hungary-environment.aspx>.

- Environmental health (Refuse collection; Sanitation of urban environment; Control of pest and rodents);
- Water management;
- Treatment, collection, drainage and purification of municipal sewage,
- Preventing flood damages;
- Drinking water supply;
- Canalisation.⁹³

4. Role of Civil Society

According to the Institute for Democracy and Electoral Assistance, Civil Society Participation was ranked at 0.45 for 2021, ranking it at the bottom-end of the spectrum of mid-range performance.⁹⁴ The 2021 CSO Sustainability Index for Hungary cites barriers to formal and informal civil engagement, claiming that most decisions fail to properly acknowledge or engage relevant stakeholders, thus rating advocacy at a 4.3 out of 7 where 7 is described as 'sustainability impeded'.⁹⁵ One possible explanation for the lack of civil societal engagement is a lack of open governance allowing for participatory competence, as reviewed by the Sustainable Governance Indicators. Hungary was ranked 3 out of 10 claiming that the lack of transparent and easily accessible data from the government inhibits the public from accessing the tools and information needed to better engage.⁹⁶

With that said, Hungary has seen larger efforts for civil society engagement, primarily through citizens' assemblies. In 2020 Budapest held its first citizens' assembly where 50 randomly chosen individuals were invited to City Hall to engage in a climate assembly, demonstrating a collaboration between the Council of Budapest and various stakeholders such as CSOs.⁹⁷ The citizens' assembly was continued in 2021⁹⁸ and 2022⁹⁹. Most recently in 2022, assembly participants concluded the event by voting on a proposal package, highlighting direct engagement and participation.¹⁰⁰ For Budapest specifically, citizens' involvement and participation is a large component of their 2030 Sustainable Energy and Climate Action Plan with measures including public surveys, thematic working groups with NGOs and participatory budgeting.¹⁰¹

⁹³ European Committee of the Regions, "Hungary - Environment & the Fight against Climate Change," <https://portal.cor.europa.eu/divisionpowers/Pages/Hungary-environment.aspx>.

⁹⁴ Institute for Democracy and Electoral Assistance, "The Global State of Democracy Initiative - Hungary," The Global State of Democracy initiative, <https://www.idea.int/gsod-indices/countries-regions-profile?covid19=0>.

⁹⁵ United States Agency for International Development, Bureau for Democracy, Conflict and Humanitarian Assistance, and Center of Excellence on Democracy, Human Rights and Governance, "2021 Civil Society Organization Sustainability Index - Hungary," October 2022, https://okotars.hu/sites/default/files/downloads/hungary_2021.pdf.

⁹⁶ Sustainable Governance Indicators, https://www.sgi-network.org/2022/Good_Governance/Executive_Accountability/Citizens%E2%80%99_Participatory_Competence/Open_Government.

⁹⁷ Demnet, "Citizens' Assembly on climate, Budapest, 2020," DemNet, November 14, 2020, <https://demnet.hu/en/citizens-assembly-in-budapest-2020/>.

⁹⁸ DemNet, "Levegőt! Miskolci Községi Gyűlés - 2021," 2021, <https://kozossegyules.demnet.hu/kozossegi-gyules-miskolc-2021/>.

⁹⁹ DemNet, "Utak és kiutak - Az Érdi Községi Gyűlés szakmai összefoglalója," DemNet, 2022, <https://demnet.hu/en/kiadvanyaink/erdi-kozossegi-gyules-jelentes-2022/>.

¹⁰⁰ Ibid

¹⁰¹ The Municipality of Budapest, "Sustainable Energy and Climate Action Plan of Budapest," March 2021, https://budapest.hu/sites/english/Documents/BP_klimastrategia_SECAP_EN_final.pdf.

Ireland

1. Overview

Republic of Ireland is a small country with national governance through a democratic, multi-party political system. Government responsibilities are divided across multiple national departments. As an island nation, Ireland has been heavily reliant on the import of fossil fuels and has a significant agricultural and fishing industry. Transitioning to less climate intensive industries has met significant opposition due to the reliance on income generated for a large part of the population. Due to the weather experienced in Ireland, there is significant potential for harnessing wind and wave energy but these have not yet been fully exploited to date. Ireland ratified the Aarhus Convention in 2012. Transposition of the Aarhus Convention has been achieved through more than 60 separate pieces of legislation.

The Climate Action and Low Carbon Development Act 2015 has been in force since 2016. It mandates the production of national plans and enforcement frameworks to transition to lower carbon emissions and initiatives on climate change. The law permits due regard to be had to any EU obligations¹⁰². Every five years the relevant Minister must prepare a national plan and in the process is obliged to invite perspectives of the public¹⁰³.

This consultation period is restricted to two months and requires notification in at least one print media outlet and online. The Climate Change Advisory Council is established under the Act. The remit of this Council is to provide advice and reporting on Ireland's progress towards meeting domestic national policy goals and to meeting requirements on greenhouse gas emissions under the European Union¹⁰⁴.

The Climate Action Plan 2021¹⁰⁵ has been developed with Ireland's international obligations in mind as well as the feedback from the public consultation process of the National Dialogue on Climate Action¹⁰⁶.

2. Dimensions of environmental governance

2.1 Transparency (access to information)

Under the Climate Action and Low Carbon Development Act 2015, Section 4 (8) (b) the relevant Minister must *'publish a notice on the internet and in more than one newspaper circulating in the State inviting members of the public and any interested parties to make submissions in writing in relation to the proposed national mitigation plan within such period (not exceeding 2 months from the date of the publication of the notice) as may be specified in the notice.'*

The Freedom of Information Act 2014 establishes the right to access official government records held by public bodies, the right to publicly held information which relates to an

102 Section 3,

103 Section 4(8) (b) publish a notice on the internet and in more than one newspaper circulating in the State inviting members of the public and any interested parties to make submissions in writing in relation to the proposed national mitigation plan within such period (not exceeding 2 months from the date of the publication of the notice) as may be specified in the notice, and

104 Climate Change Advisory Council, About the Council, <https://www.climatecouncil.ie/aboutus/>

105 Department of the Environment, Climate and Communications; Department of the Taoiseach, Climate Action Plan 2021, <https://www.gov.ie/en/publication/6223e-climate-action-plan-2021/>

106 This is discussed further below under civil society participation.

individual seeking the information, the right to have that information corrected and updated and to be provided with reasons for decision taken by public bodies relating to the individual. This can be relevant to information relating to the environment regarding planning decisions, applications for social welfare or public monies and statistics held by public bodies.

Further, a member of the public can make an application for environment specific information under the S.I. No. 133/2007 - European Communities (Access to Information on the Environment) Regulations 2007. This law obliges public authorities to make environmental information available to the public. The public authority must furnish the applicant with the relevant environmental information within one month, or where the request is too onerous to complete within one month, or cannot be completed by that public body the public body will notify the applicant of the most relevant public body, if they are aware of it¹⁰⁷.

The Public Sector Duty is provided for under Section 42 of the Irish Human Rights and Equality Commission Act 2014. It requires all public bodies to consider the impact of their work on the human rights and equality of anyone involved in the provision or receipt of their services. The Public Sector Duty must be considered in any consultation processes undertaken by public bodies on any aspect of their work¹⁰⁸. Where this will be relevant to climate issues could be a public consultation by the DCCEC which must be fully accessible to all members of the public. To fail to undertake accessibility measures, for example Easy to Read versions of documents or lack of sign language.

The Department of Housing, Planning and Local Governance is the national focal point for implementing the INSPIRE Directive. Ordnance Survey Ireland is also involved in the implementation of the INSPIRE Directive, which has been in force since 2007 but not fully operational until 2019.

2.2 Participation

Ireland's S.I. No. 352/2010 - European Communities (Public Participation) Regulations 2010 transposes the EU Directive 2003/35/EC. This act amends domestic legislation relating to draining, dumping, commercial development, property planning, transport, land zoning, provision of fuel and related amenities to require public notification of any activities that are relevant to the environment and to allow for public consultation on the same.

Public Participation Networks were established in Ireland in 2014¹⁰⁹. The role of these networks is to provide avenues for engagement with local authorities by local community groups¹¹⁰. The community groups involved must be registered to participate in the PPN and will have as their focus the environment, excluded/marginalised groups and voluntary organisations such as sports clubs.

Ireland has had two recent national mechanisms for public participation in Constitutional and legal reform. The Constitutional Convention was provided for by a resolution of both houses of government in 2012 and was mandated to make recommendations for specific proposals on Constitutional issues. These issues included same sex marriage, the role of women in

¹⁰⁷ Section 5 of S.I. No. 133/2007 - European Communities (Access to Information on the Environment) Regulations 2007

¹⁰⁸ O'Herlihy Access Consultancy, [Irish Human Rights and Equality Commission publish information leaflet on public sector duty](https://www.accessconsultancy.ie/Irish-Human-Rights-Equality-Commission-leaflet-Public-Sector-Duty), <https://www.accessconsultancy.ie/Irish-Human-Rights-Equality-Commission-leaflet-Public-Sector-Duty>

¹⁰⁹ The Local Government Reform Act 2014 established PPNs.

¹¹⁰ [Department of Rural and Community Development](https://www.gov.ie/en/policy-information/b59ee9-community-network-groups/), Public Participation Networks, <https://www.gov.ie/en/policy-information/b59ee9-community-network-groups/>

society, the status of blasphemy in the Convention and reduction in voting age, among others. Between 2013 and 2014, 66 randomly selected citizens were joined by 33 parliamentarians, political representatives and an independent Chairperson to deliberate on the issues. Recruitment for the 66 members of the public was conducted by an independent organisation and sought gender balance and a mix of geographic backgrounds. Quotas were also set in relation to race and socio-economic background¹¹¹. Submissions on topics were received from the public and specific experts were invited in accordance with the Convention's Terms of Reference¹¹². Based on recommendations of the Convention, the government has held referenda or established statutory agencies to further consider the issues within the remit of the Convention.

The Citizen's Assembly was established in 2016 and has been convened at various stages since then to discuss issues such as abortion, the process of referenda, ageing populations and climate issues¹¹³. The Citizen's Assembly is comprised of 99 members of the public and an independent Chairperson. Recruitment for previous assemblies was designed to ensure representation across age, gender, social class and geographic spread¹¹⁴. An independent company secured the contract to conduct the recruitment and census data was utilised to ensure representation¹¹⁵. Submissions from members of the public and experts are facilitated and the Secretariat to the Assembly groups these submissions thematically for review. During 2017 a specific Citizens Assembly on How the State Can Make Ireland a Leader in Tackling Climate Change. The discussions focused on energy, transport, agriculture and what leadership in climate change would entail. The report was published in 2018 and among the recommendations were the establishment of a statutory body tasked with embedding climate initiatives across public law and policy¹¹⁶, increased carbon taxes¹¹⁷, assessing existing vulnerable infrastructure¹¹⁸, adopting legislation to enable selling back renewable energy by private individuals to the grid¹¹⁹, community ownership of renewable energy suppliers¹²⁰, the termination of subsidies for peat extraction and redirection towards peat restoration and support for those whose livelihoods are affected¹²¹, increase public transport and cycling infrastructure¹²². Participants of the Assemblies have accommodation and meals provided as well as €500 on completion of their contribution to the Assembly in recognition of their public service¹²³.

¹¹¹ Constitutional Convention, Behaviours and Attitudes,
<https://www.constitutionalconvention.ie/Documents/BehaviourAndAttitudes.pdf>

¹¹² Constitutional Convention, Terms of Reference,
https://www.constitutionalconvention.ie/Documents/Terms_of_Reference.pdf

¹¹³ Citizen's Assembly, <https://www.citizensassembly.ie/en/previous-assemblies/2016-2018-citizens-assembly/>

¹¹⁴ Citizen's Assembly, <https://2016-2018.citizensassembly.ie/en/About-the-Citizens-Assembly/>

¹¹⁵ E Full methodology of recruitment process used by the independent company is here: <https://2016-2018.citizensassembly.ie/en/About-the-Citizens-Assembly/Who-are-the-Members/Red-C-Methodology-Document.pdf>

¹¹⁶ Recommendation 1, p 20, <https://2016-2018.citizensassembly.ie/en/How-the-State-can-make-Ireland-a-leader-in-tackling-climate-change/Final-Report-on-how-the-State-can-make-Ireland-a-leader-in-tackling-climate-change/Climate-Change-Report-Final.pdf>

¹¹⁷ Recommendation 3, p 25, *ibid*

¹¹⁸ Recommendation 4, p 27, *ibid*

¹¹⁹ Recommendation 5, p 29, *ibid*

¹²⁰ Recommendation 6, p 31, *ibid*

¹²¹ Recommendation 7, p 34, *ibid*

¹²² Recommendation 8, at p35, *ibid*

¹²³ Citizen's Assembly, <https://www.citizensassembly.ie/register/faqs.html>

During 2022 a Citizens Assembly focusing on biodiversity loss is tasked with considering the threats of biodiversity loss and potential actions on legislative and policy bases¹²⁴. As the work of this Assembly is ongoing the recommendations are not yet available. Going forward participation in citizens' assemblies will not be restricted to those on the electoral register but rather random postal invitations. This will ensure that harder to reach communities such as refugees and immigrants who are not registered to vote will have an opportunity to contribute.

The DCCE, responsible for climate change initiatives, established the National Climate Stakeholders Forum which met in July 2022. The forum was comprised of policy makers, civil society organisations, trade unions, and industry members. The remit of this group was to consider options for government action on climate initiatives in a consultative manner.

2.3 Access to Justice

The Irish Constitution was adopted in 1937. The Constitution is the basis of law in Ireland and can be amended through referenda. As a dualist state, the Constitution is the primary source of law and where international law contradicts a Constitutional right, it is not valid in Ireland. International law must be in accordance with Constitutional rights and must be transposed into Irish law directly in order to be effective. This is achieved through passing of laws through both houses of the government - the Dail and the Seanad, and being signed into law by the President.

There is no explicit reference to environmental rights within the Constitution. Since the 2020 case of Friends of the Earth, there also exists no unenumerated rights to a healthy environment. Unenumerated rights have been found through the Constitution to exist in Ireland as to give effect to other explicit rights. They have been used in relation to rights to privacy, to earn a livelihood, to marry, and to bodily integrity. Generally, where there will be a demand on the public purse or encroach on policy making, the court system is slow to find for socio-economic rights, and this is the nature of climate related litigation. However, as was seen in the Friends of the Irish Environment case, the courts can declare existing climate policies to be insufficient and therefore unlawful¹²⁵. The arguments by Friends of the Irish Environment included the Constitutional right to life and to bodily integrity, as well as violations under the European Convention on Human Rights Article 2 and 8¹²⁶.

2.4 Compliance assurance, accountability, and effectiveness

The Environmental Protection Agency is responsible for protecting the environment and humans from activities and practices which can be harmful to health and wellbeing. Ireland has been found to be non-compliant with Aarhus Convention in three instances brought by members of public to the Aarhus Convention Compliance Committee between 2014 and 2021¹²⁷. These violations involved the failure to conduct public consultation relating to extending operations of a quarry¹²⁸, the failure to have processes in place to

¹²⁴ Citizen's Assembly, <https://www.citizensassembly.ie/en/assembly-on-biodiversity-loss/about/about.html>

¹²⁵ White and O'Callaghan White, Taking Governments to Court Climate Litigation and its Consequences, IIEA, July 2021, https://www.iiea.com/images/uploads/resources/Taking-Governments-to_Court_1.pdf

¹²⁶ Courts.ie, https://www.courts.ie/view/judgments/681b8633-3f57-41b5-9362-8cbc8e7d9215/981c098a-462b-4a9a-9941-5d601903c9af/2020_IESC_49.pdf/pdf, Section 5 of judgement.

¹²⁷ Department of the Environment, Climate and Communications, 15 June 2020, <https://www.gov.ie/en/publication/b3b1a-aarhus-convention/>

¹²⁸ United Nations Economic Commission for Europe, Environmental Policy, Public Participation, https://unece.org/env/pp/cc/accc.c.2013.107_ireland [ACCC/C/2013/107 Ireland](https://unece.org/env/pp/cc/accc.c.2013.107_ireland)

ensure timely provision of environmental information¹²⁹ and refusing to provide environmental information pertaining to renewable energy plans¹³⁰.

The most recent EIR report for Ireland relates to 2022¹³¹. The concerns relating to previous EIRs include unsatisfactory water treatment, the burdensome cost of accessing justice for climate issues, the low levels of environmental related taxation. Positive progress includes increased conservation of nature sites, reductions in harmful emissions and improvements in waste reduction and the circular economy¹³². It is reported that Ireland has 16 active infringements of their EU environmental obligations include failure to transpose fully Directives relating to air quality, water pollution and single use plastics¹³³.

Ireland has a long history of burning peat turf for heat in residential settings. Peat bog covers approximately 1/6 of the country's land mass, over 1,200,000 hectares¹³⁴. The process of retrieving turf has historically been an important aspect of rural Ireland's culture and it is accompanied by cultural activities such as song and dance. It is considered an asset to own peat bog and the rights to cut turf for personal consumption have been highly contested. Bord na Mona has been the statutory agency responsible for commercial turf supply but they are redirecting their activities towards peat bog regeneration. This project attempts to fairly transition those employed in turf provision to more sustainable energy provision employment. Through peat regeneration, the bog is supported to absorb carbon from the atmosphere. This is being achieved through the Peatlands Action Climate Scheme¹³⁵. Restoration of peatlands also promotes biodiversity and serves as outdoor cultural and health related amenities for members of the public (nature walks, education initiatives). The project has been in operation since 2021 and in that time has restored 7,200 of the 8,100 hectares to be restored. Bord na Mona is obliged to conduct public consultation in the preparation of their plans for restoration of each bogland¹³⁶.

While the movement away from using peat as a heat source is a positive step in tackling climate change, it disproportionately affects people who were reliant on this fuel for heat. There has not been sufficient investment in alternative heat sources, particularly in rural areas. This is also true of taxes on vehicle fuel costs. People in rural areas are reliant on private transportation due to a lack of appropriate public transport alternatives and are being penalised heavily financially because of this.

¹²⁹ United Nations Economic Commission for Europe, ACCC/C/2016/141
, https://unece.org/sites/default/files/2022-02/Decision_VII.8i_eng.pdf

¹³⁰ United Nations Economic Commission for Europe, ACCC/C/2014/112,
https://unece.org/sites/default/files/2022-02/Decision_VII.8i_eng.pdf

¹³¹ European Commission, Environmental Implementation Review, Country Report Ireland, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022SC0260&from=EN>

¹³² Publications Office of the European Union, The environmental implementation review, Ireland,
<https://op.europa.eu/en/publication-detail/-/publication/4f350097-2cc0-11ed-975d-01aa75ed71a1/language-en>

¹³³ Environmental Infringements Interactive Map,
<https://app.powerbi.com/view?r=eyJrljoiNzZiNDZjYjYjM2ZS00MTIxLWl2Y2MtNzFIYWQ5NzJlZDVhliwidCI6ImlyNGM4YjA2LTUyMmMtNDZmZS05MDgwLTcwOTI2ZjhhZGRiMSIsImMiOiJh9>

¹³⁴ Abbot, Travel through the Ireland Story, Ireland's Peat Bogs,
<https://www.wesleyjohnston.com/users/ireland/geography/bogs.html>

¹³⁵ Bord na Mona, 100 million tonne carbon store secured under major Peatland Restoration Plan
<https://www.bordnamona.ie/100-million-tonne-carbon-store-secured-under-major-peatland-restoration-plan/>

¹³⁶ [Department of the Environment, Climate and Communications](#), Bord na Mona, Bog Rehabilitation Scheme, 3 December 2020, <https://www.gov.ie/en/publication/136a7-bord-na-mona-bog-rehabilitation-scheme/>

3. Institutional context

National

The Republic of Ireland is a 26 county country with national governance through a democratic, multi-party political system. Government responsibilities are divided across multiple national departments. Currently the Department of Climate Change, Environment and Communications is responsible for developing and implementing laws and policies related to climate change. The work of the Department of Housing, Planning and Local Government, The Department of Agriculture, Food and the Marine (Common Agricultural Policy (CAP) implementation, seafisheries and aquaculture), The Department of Housing, Planning and Local Government ((DHPLG) (water, planning), The Department of Culture, Heritage and the Gaeltacht (landscape, biodiversity) also engages environmental concerns frequently. This can be achieved through the work of statutory agencies, developing standards of practice, work of local authorities and law enforcement. This includes the Environmental Protection Agency, An Bord Pleanála (Planning Board) and Bord na Mona (Turf board).

The Irish Human Rights and Equality Commission is Ireland's national human rights and equality monitoring mechanism. Under IHREC's strategic plan, advocacy for the human rights engaged by climate change is included within their remit¹³⁷. IHREC has a role in promoting awareness of rights and supporting litigation on human rights, either as a party or as *amicus curiae*, *friend of the court*. There is potential in the future for IHREC to support climate related actions.

Local

There are 31 local authorities in Ireland in which over 900 democratically elected local councillors serve. The role of local authorities is the administration of housing, planning, roads, environment, fire and refuse services, libraries register of electors and animal control¹³⁸.

There are also four Climate Action Regional Offices within Ireland to support the implementation of national climate action plans at by local authorities.¹³⁹ Potentially, PPNs could be included in the work of the CAROs.

4. Role of Civil Society

Public Participation Networks, discussed above, enable civil society organisations to contribute to decisions and to challenge activities of local authorities.

Climate Conversations are a mechanism which has been utilised by the DCCEC to invite the opinions of members of the public on climate issues in Ireland. The results of the 2021 Conversation received over 4,000 contributions through individual online surveys, PPN discussions in 16 local authority areas, 12 youth discussions and 3 in-depth focus groups.

¹³⁷ Irish Human Rights and Equality Commission, Strategy Statement 2022 - 2024, https://www.ihrec.ie/app/uploads/2022/02/IHREC_StrategyStatement_FA-v2.pdf

¹³⁸ Citizens Information, Government in Ireland, https://www.citizensinformation.ie/en/government_in_ireland/national_government/local_and_regional_government/functions_of_local_authorities.html#lc589d

¹³⁹ Observatory of Public Sector Innovation, Establishment of 4 Climate Action Regional Offices – Dublin Metropolitan, East & Midlands, Atlantic Seaboard North, Atlantic Seaboard South <https://oecd-opsi.org/innovations/establishment-of-4-climate-action-regional-offices-dublin-metropolitan-east-midlands-atlantic-seaboard-north-atlantic-seaboard-south/>

The emerging priorities were travel, energy, consumption, just transition, community engagement, youth voices and food¹⁴⁰.

Some civil society organisations engaged on climate change and environmental issues receive financial support depending on their activities, for example if there is an educational element that can be supported through various government Departments¹⁴¹. In March 2022, the DCCE established a National Climate Stakeholder Forum to advise the Department on their work¹⁴². The forum meets three times a year and is comprised of up to 120 civil society organisations. The work of the Forum will feed into the annual climate action plans and operational plans for other Departments.

Helpful resources:

<https://oecd-opsi.org/innovations/establishment-of-4-climate-action-regional-offices-dublin-metropolitan-east-midlands-atlantic-seaboard-north-atlantic-seaboard-south/>

¹⁴⁰ Department of the Environment, Climate and Communications, Climate Conversation - Climate Action Plan 2021, 23 March 2021; <https://www.gov.ie/en/consultation/5bd95-climate-conversation-climate-action-plan-2021/>

¹⁴¹ An Taise, FAQs, <https://www.antaisce.org/Pages/FAQs/Category/advocacy-faqs>

¹⁴² Department of the Environment, Climate and Communications, Climate Conversation - Climate Action Plan 2021, 23 March 2021; <https://www.gov.ie/en/publication/1aecf-national-climate-stakeholder-forum-ncsf/>

Italy

1. Overview

Italy is a democratic republic composed of Municipalities, Provinces, Metropolitan Cities, Regions, and the State, with these subnational units as “autonomous entities having their own statutes, powers and functions,” and have some significant degree of decentralized regionalism.

The power to legislate on environmental matters falls within the exclusive competence of the State (Art. 117.2 Italian Constitution). However, Art. 117.3 of the Italian Constitution gives Regions concurrent legislative competence in many areas relating to the environment, such as urban planning, health, civil protection, production, transportation and energy distribution. Furthermore, several provisions of the Environmental Code (Legislative Decree 152/2006, or the “EC”), allow Regions to maintain or introduce more stringent protective measures. Rules enacted at the regional level have however a limited impact on matters regulated by the EC, as they usually reproduce State legislation. For example, legal standing, including in environmental matters, is an area falling under the exclusive competence of the State. National rules on standing thus apply to the entire territory of the State.¹ The EC as amended by decree 128/2010 transposed Directive 2001/42 and started the reorganisation of the Italian legislation allowing the former integration of the environmental acquis communautaire.

The reform was also subject to criticism insofar as its final version was less comprehensive and far-reaching than expected. For example, several commentators have criticized the limited reach of this reform, including the missing explicit reference to the fight against climate change. Yet this reform is important as it finally embeds environmental protection as one of the key fundamental principles of the Italian legal system. Moreover, the amended text of Article 41 provides a unique legal provision insofar as it explicitly orients economic activities towards, among other things, the achievement of the overarching environmental objectives set out in the international and EU environmental and climate change regimes.²

2. Dimensions of environmental governance

In Italy, the environment is fully recognised as an autonomous discipline since the constitutional reform of 2001 that revised the text of Article 117 on the divisions of competences between the state and the regions, containing specific mention of the “protection of the environment and the ecosystem.” Later in 2016, the country adopted the Italian National Plan on Business and Human Rights for 2016-2021, undertaking the

¹ European Justice, Access to justice in environmental matters
https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters?ITALY&action=maximizeMS&clan g=en&idSubpage=1&member=1

² Tigre, Guest Commentary: New Italian Constitutional Reform: What it Means for Environmental Protection, Future Generations & Climate Litigation, Columbia Law School, 8 April 2022, <https://blogs.law.columbia.edu/climatechange/2022/04/08/guest-commentary-new-italian-constitutional-reform-what-it-means-for-environmental-protection-future-generations-climate-litigation/>

implementation of the United Nations 17 Sustainable Development Goals and encouraging companies to realise the goal of decent work for all and to enhance the use of indicators of quality, sustainable development, equality and gender.³

The constitutional law 1/ 2022 confirmed this epistemological autonomy of environment and proves the efforts to promote environmental sustainability, to reduce social inequality and reform Italy's economic development model. Ecological values have been embraced by some political parties of the spectrum, however, the right-wing coalition (Brother of Italy and the League) that won the elections of 26 September 2022 were totally absent from the "go green" debate and proposal of the former government (with the exception of their sporadic warnings about the huge social and economic consequences of implementing the Green Deal).⁴

2.1 Transparency (access to information)

The regulation concerning environmental information can be found in the internal system, starting from the Law 8 July 1986, n. 349 (established by the Ministry of the Environment), which in art. 1, paragraph 3, provides that the Ministry adopts, with the media, the appropriate initiatives to raise public awareness of the needs and problems of the environment.⁵ With regard to environmental information, it is necessary to mention the Legislative Decree 195/2005, in particular, which is aimed at guaranteeing the right of access to environmental information by establishing the terms, conditions and methods of exercise, and ensuring, for the purposes of broader transparency, that the information itself is made available to the public and also disseminated using technological channels.⁶

The Legislative Decree 14 March 2013, n. 33 (so-called Transparency code) has reorganized the regulations concerning the obligations of publicity, transparency, and the dissemination of information by public administrations. Article 40 provides for the obligation for public administrations to publish environmental information on their institutional sites, which they hold for the purposes of their institutional activities, giving specific emphasis within a specific section called "Environmental Information".⁷

Regarding the collection and monitoring of environmental information, the main hub is the SINA (National Environmental Information System). The access to this network data is guaranteed to all citizens regardless of the existence of a legally relevant interest.

For the implementation of correct and transparent information to the public, *the Ministero della Transizione Ecologica* (Ministry of Ecological Transition) drew up the 2021 Communication Plan, whose operational objectives are: • Provide complete, fully accessible information on environmental priorities and key issues. • Make people aware of the importance of environmental policies as tools for improvement not only for the environment but also for society and the economy, and of the fact that failure to implement them and the worsening of environmental threats pose a serious risk to well-being, health and economic

³ ICLG, Practice Areas, Environmental Governance and Social Law, Italy, <https://iclg.com/practice-areas/environmental-social-and-governance-law/italy>

⁴ Teresa Coratella, "The European Green Deal: a political opportunity for Italy", European council for foreign relations, available at: https://ecfr.eu/article/commentary_the_european_green_deal_a_political_opportunity_for_italy/

⁵ Luca Menghini, "Access to information in environmental matters: European and Italian perspectives", Thesis, available at https://tesi.luiss.it/25400/1/634682_MENGHINI_LUCA.pdf last access on 27 October 2022.

⁶ ibid

⁷ Ibid

development. • Involve a diverse public, highlighting the role of individual citizens, in order to make them more responsible and engaged in a process that aims to spread the culture of sustainability throughout the country.⁸

2.2 Participation

Public participation in decisions on environmental matters and activities established in article 6 of the Aarhus Convention is mainly implemented by Legislative Decree no. 152/2006 as amended by Italian Legislative Decree no 91/2014 (converted into Italian Law 116/2014) and Ministerial Decree 30/03/2015 (regarding projects under the responsibility of the Regions and Autonomous Provinces). In fact, in part II Italian Legislative Decree 152/2006 regulates the procedures for the *Valutazione Ambientale Strategica* (Strategic Environmental Assessment), the Environmental Impact Assessment and the Integrated Environmental Authorisation providing for consultation mechanisms with all social stakeholders.⁹

The principles underlying the SEA are the principle of sustainable development, the principle of prevention, the principle of participation and the right of access to information. With the principle of participation, direct interference by the public interested in the procedure. A good participation in the procedure therefore presupposes a right of access to information, above all because the interested party can make his own observations when they take place consultations, a typical phase of the EIA. Consultations therefore play a central role, as they are a guarantee of transparency of the entire procedure.¹⁰

The application of the SEA process through the specific components of the process, such as the verification of the sustainability of the plan objectives, the analysis of the significant environmental impacts of the plan measures, the construction and evaluation of reasonable alternatives, the participation in the process of the subject interested parties and the monitoring of the environmental performance of the plan, represents a support tool for both the proponent and the decision-maker for the definition of guidelines and choices of sustainable planning.¹¹

Important, then, was the transposition at national level of Directive 2003/4, again on the subject of public access to environmental information, which took place by the Legislative Decree lgs. n. 195 of 19 August 2005 which, in Article 1, states the objective of "guaranteeing the right of access to environmental information held by public authorities" by setting the terms, the basic conditions and the relative methods of operation. The latter has implemented a kind of revolution in relation to the role of the Public Administration which, from a simple passive provider of information, becomes a provider of the same. In Article 3, relating to "access to environmental information on request", the provisions set out in Article 8 on "dissemination of environmental information" are added.¹²

⁸ Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY 2021, available at https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_Italy_NIR_clean_EN.pdf last access on 27 October 2022.

⁹ Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY 2021, available at https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_Italy_NIR_clean_EN.pdf last access on 28 October 2022.

¹⁰ Francesca Giardini, Giorgia Marini, La valutazione di impatto ambientale in Italia: applicazione al caso Expo 2015, 2018, http://www.direlveneto.it/it/attachments/article/401/OssAIR_Giardini-Marini_VIA-EXPO_P1-2018.pdf

¹¹ Ibid

¹² <https://www.diritto.it/diritto-di-partecipazione-ai-procedimenti-ambientali-e-del-diritto-alle-informazioni-ambientali/>

Article 5 (q) of the ED defines “public” as one or more natural or legal persons, as well as, pursuant to the legislation of national practice, associations, organizations or groups of such persons, in the previous paragraph (p) consultation is defined as all forms of participation, including direct, of the others administrations and the public interested in the collection and evaluation of data and information that constitute the necessary cognitive framework to express the compatibility with the environmental judgment of a specific plan or program or of a specific project.¹³

Public awareness of SEA procedures is ensured by the competent authority (Ministry of Ecological Transition or regional competent authorities), which for the duration of the public consultation phase envisaged by the regulation publishes on its website an announcement of commencement of the procedure, the proposal of the plan or programme and the environmental report, as well as the procedure for submitting comments. The competent authority is responsible for publishing a notice in the Official Journal of the Italian Republic or in the Official Journal of the region or autonomous province concerned.¹⁴

Italian Legislative Decree no. 152/2006 and subsequent amendments (see in particular Italian Legislative Decree no. 128/2010) “Environmental regulations” transposes EU Directive 2001/42 and reorganises the Italian legislation on the environment, updating it with the regulations deriving from the relevant European directives. Part Two, Title II regulates SEA, which can be considered the primary instrument for public participation in policy-making processes. At the local level, public participation is also promoted through numerous legislative and/or statutory provisions. One example is the Regional Law of Emilia Romagna no. 3/2010, art. 6 which establishes various instruments for promoting participation, for example through “a special annual session on the participation of the Legislative Assembly” and a “report on participation in the territory of the region”.¹⁵

2.3 Access to Justice

Public interest lawsuits for the protection of the environment fall exclusively under the jurisdiction of the administrative courts, comprised of the Tribunale Amministrativo Regionale at first instance and the Consiglio di Stato on appeal. These courts provide remedies in relation to acts and omissions of the public administration.¹⁶

Any individual or group of individuals may take legal action against a decision or omission of the public authority that infringes their legitimate right or interest. Furthermore, Italian Law 349/1986 gives environmental protection associations, recognised by MiTE according to the criteria established by Article 13 of the same law, the right to file appeals with administrative courts for the annulment of administrative acts harmful to the environment, and to intervene in proceedings for environmental damages.

Established case law also gives environmental protection associations that are not recognised pursuant to Article 13 of the aforementioned law standing to bring suit based on an actual and non-occasional commitment to environmental protection as an institutional task of the association. Specific rules apply for the compensation of environmental damages.

¹³ Decreto Legislativo 3 aprile 2006, n. 152 Norme in materia ambientale (G.U. n. 88 del 14/04/2006 - S.O. n. 96)

¹⁴ Ministry of Ecological Transition, Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY 2021, https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_Italy_NIR_clean_EN.pdf last access on 27 October 2022.

¹⁵ *ibid*

¹⁶ Morgan Eleanor Harris, “Access to Justice for Environmental Associations in Italy”, *Federalismi, Rivista di diritto pubblico Italiano, Europeo e comparato*, aprile, 2018.

Italian Legislative Decree no. 152/2006 and subsequent amendments attributes the right to act for compensation for environmental damages to MiTE.¹⁷

2.4 Compliance assurance, accountability, and effectiveness

Italy's environmental policy is based, amongst others, on the principles of sustainable development, prevention, precaution and the "polluter pays" principle. An important role is played by the MiTE and important administrative are also assigned to regional and local authorities. Technical surveys and assessments are carried out by technical organisations, such as the Institute for Environmental Protection and Research which provides back-up for the MiTE and coordinates the regional and provincial environment agencies.¹⁸

The protection of legitimate rights and interests is guaranteed through access to judicial remedies that provide for two degrees of judgement. Inspections, sanctions, and other restrictive measures are allowed only to the extent envisaged by law and in compliance with constitutionally guaranteed rights of freedom and fairness.¹⁹ Environmental regulations are mandatory and enforced through criminal and/or administrative sanctions. Investigations are conducted by the public officers of the relevant supervising administrative body and the environmental police. Criminal proceedings are initiated by the public prosecutor. Criminal sanctions were extended to companies by Legislative Decree no 231/2001.²⁰

An environmental association has lodged a complaint with the Aarhus Convention Compliance Committee regarding the onerous costs that non-profit associations must bear in order to bring an action before the Italian Environmental Judicial Authority. After considering the issue raised to be admissible and not irrelevant (ACCC/C/2015/130 of 3.7.2015), the Compliance Committee proceeded with a series of requests for clarification, documentation and direct discussion with the parties to reach the final findings and recommendations.

In the Italian system the problems related to procedural costs can essentially be traced back to three points: - The unified registration fee, which is a fee to be paid to start a trial. - The legal costs that the Party that has initiated a legal dispute must reimburse to the other party, the winner in the proceedings. - The recognition of free legal aid only to entities and individuals with an income not exceeding about €11,000. The issue of reducing procedural costs is under consideration by this Ministry, which is seeking to coordinate with other competent administrations in the field (Ministry of Justice and Ministry of Economy and Finance).

¹⁷ Ministry of Ecological Transition Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY 2021 last access on 27 October 2022. https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_Italy_NIR_clean_EN.pdf last access on 27 October 2022.

¹⁸ ICLG.com, Practice Areas, Environment and Climate Change Law, Italy, <https://iclg.com/practice-areas/environment-and-climate-change-laws-and-regulations/italy>

¹⁹ Ministry of Ecological Transition Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY 2021 https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_Italy_NIR_clean_EN.pdf last access on 27 October 2022.

²⁰ Maschietto, **Environmental Law and Practice in Italy: Overview**, [https://uk.practicallaw.thomsonreuters.com/1-503-2608?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-503-2608?contextData=(sc.Default)&transitionType=Default&firstPage=true)

3. Institutional context

The state has exclusive competence in environmental regulation (*Italian Constitution*). The principal national authority is the Ministry of Ecological Transition (*Ministero della Transizione Ecologica*)

Other national regulatory authorities include the:

- Ministry of Health (*Ministero della Salute*).
- Ministry of Economic Development (*Ministero dello Sviluppo Economico*).
- Ministry of Cultural and Landscape Heritage (*Ministero dei Beni Culturali e Ambientali*).
- Interministerial Committee for Ecological Transition (*Comitato Interministeriale per la Transizione Ecologica*) (CITE).
- Scientific agencies with a regulatory role including the:
 - National Institute for Environmental Protection and Research (*Istituto Superiore per la Protezione e la Ricerca Ambientale*) (ISPRA); and
 - Superior Health Institute (*Istituto Superiore di Sanità*) (ISS).

Where they have delegated legislative powers, the regions can issue environmental regulations. Local authorities have the power to grant permits. These authorities include the:

- Regions, provinces and metropolitan cities.
- Ambit Authorities (*Autorita' d'Ambito*) (ATO) (which organise and govern integrated water supply).
- Regional Environmental Protection Agencies (*Agenzia Regionale per la Protezione Ambientale*) (ARPA).
- Local Health and Safety Agencies (*Agenzie di Tutela della Salute*) (ATS).²¹

4. Role of Civil Society

“Partecipa” <https://partecipa.gov.it/?locale=en> is the digital platform of the Italian government devoted to the processes of public participation and consultation. In Partecipa people can participate and decide on different topics, through the spaces you see in the top menu: Processes, Assemblies, Initiatives, Consultations. Within each one you will find different options to participate: make proposals - individually or with other people-, take part in debates, prioritize projects to implement, attend face-to-face meetings and other actions (including environmental matters).²²

Sustainable development.

The National Strategy for Sustainable Development (SNSvS) provides that the Ministry of Ecological Transition ensures the functioning of a multi-actor Forum, open to civil society, non-state actors and experts in various subjects, to be involved through multilevel consultations. To this end, the Ministry has facilitated the construction of the National Forum for Sustainable Development intended as a shared work space, based on the meeting of public policies with social energies, in which to bring out and affirm sustainability subjects and practices.²³

²¹ Maschietto, Environmental Law and Practice in Italy: Overview
[https://uk.practicallaw.thomsonreuters.com/1-503-2608?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-503-2608?contextData=(sc.Default)&transitionType=Default&firstPage=true)

²² Partecipa, General Help, <https://partecipa.gov.it/pages/help?locale=en>

²³ Partecipa, Forum Nazionale per lo Sviluppo Sostenibile; <https://partecipa.gov.it/assemblies/forum-nazionale-sviluppo-sostenibile>

This space is based on the principles of Open Government and intends to experiment with the activation of new participation models.²⁴

The Sustainable Development Forum, has the function of ensuring the active involvement of civil society in the implementation of the Strategy, also has a specific working group on education for sustainable development.

The Ministry also organised a public event open to civil society and the private sector at La Spezia entitled "Achieving the objectives of the Paris Agreement: a global challenge that passes through a local commitment", open to delegates participating in the workshop and to Italian civil society, involving representatives of both the private sector and subnational governments, with the aim of reasoning about what the country is doing in terms of climate action with particular reference to the voluntary actions of non-state actors and their essential contribution to achieving the objectives of the Paris Agreement.²⁵

Cooperation at international level

Italy regularly promotes intra- and inter-ministerial coordination to align its position within the framework of the international forums it participates in. On these occasions, the principles of the Aarhus Convention and the Almaty Guidelines are considered. Periodically conferences called "General Assemblies" are organised with the aim of listening to civil society on hot topics such as climate change. Information about international forums is increasingly circulated through electronic channels, specifically social media (especially Twitter and Facebook) and portals managed by public administrations, civil society and private sector organisations.²⁶

Particularly noteworthy is the activation of a Twitter account in view of the Pre-COP and the youth event. There have also been several initiatives to promote public participation in international forums. As part of the UNFCCC climate negotiations, Italy continues its practice of accrediting at least one NGO representative in the official delegation. Moreover, in order to facilitate broad participation in COPs, where possible Italy also accredits representatives of the press and other governmental and non-governmental actors who have requested it as "overflow".²⁷

²⁴ Ibid

²⁵ Ministry of Ecological Transition Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY 2021 https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_Italy_NIR_clean_EN.pdf last access on 27 October 2022.

²⁶ Ibid

²⁷ Ibid

Lithuania

1. Overview

Lithuania is a parliamentary democracy since its independence in 1991, adopting its current Constitution in 1992. The country joined the EU in 2004. Lithuania is a small unitary state with its territory divided into 60 municipalities and a strong central government, and has been improving its practices in environmental regulation, compliance monitoring and environmental democracy. Nevertheless, the OECD 2021 Environmental Performance Review²⁸ has found that non-compliance remains a challenge, and compliance promotion and enforcement tools are underused. Lithuania has been a party to the Aarhus Convention since 2002 and ranked first on the 70-country Environmental Democracy Index in 2015 in recognition of the country's well-developed regulatory framework for access to information, public participation in decision making and access to justice in environmental matters.²⁹

Lithuania is highly centralised, with local governments having little capacity to develop and implement their own policies. While, legally, municipalities are given numerous autonomous functions, local governments have few tax revenues of their own and rely heavily on transfers from the central government, in practice. In 2020, Regional Development Councils were established as platforms for inter-municipal co-operation, and they co-ordinate implementation of economic development policies and provision of public services in the region.³⁰ When it comes to the environment specifically, the Ministry of Environment³¹ (MoE) is responsible for policy making and regulation on the entire spectrum of environmental matters.

2. Dimensions of environmental governance

2.1 Transparency (access to information)

As per the 2019 EU Environmental Implementation Country Report, Lithuania has a centralized approach to disseminating environmental information. Information on most areas of environmental policy can be accessed through the main environmental portal of the [national protection agency](#), with the exception of information on the Habitats Directive. In cases where information related to EU legislation is not available on the main environmental portal, it was provided via the Ministry of Environment website. The Environmental Protection Agency (EPA) is the main authority for environmental impact assessment (EIA) and environmental permitting, and monitors air quality, status of surface water bodies, wildlife and ecosystems. It also collects, maintains and provides information on the state of the environment and pollution releases³². The EPA's annual indicator-based assessment "State of the Environment. Only Facts" was last published in 2014, and the last in-depth state of the environment report came out in 2013. These publications were discontinued,

²⁸ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2. Environmental governance and management, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

²⁹ *ibid*, Chapter 2.5 Promoting environmental democracy.

³⁰ *ibid*, Chapter 2.2 Institutional framework for environmental governance.

³¹ [Ministry of Environment of the Republic of Lithuania](https://am.lrv.lt/en/)
<https://am.lrv.lt/en/>

³² OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.2.1 Central government and horizontal co-ordination, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

largely due to a lack of resources and, since 2015, environmental information has been published exclusively on the relevant authorities' websites. A catalogue of references to environmental information maintained by different institutions is available on the MoE website, but, this fragmentation was found to make it more difficult for users to find and navigate environmental data.³³

Lithuania's performance on implementing the INSPIRE Directive was found to want some improvement, based on its 2016 implementation report³⁴ and most recent monitoring data from 2017³⁵.

The Lithuanian Ministry of Environment has addressed transparency issues and corruption risks and implements a comprehensive program for fighting corruption. The website of the ministry contains a special "Hotline" section on its home page, which provides information on how to submit a complaint about an environmental damage or corrupt behaviour of government officials, in a one-stop-shop approach. Lithuania seems to have implemented a one-stop-shop relating to environmental administration, as the Government introduced in 2007 the one-stop-shop principle into public administration generally by adopting Resolution No. 875 "On Approval of the Examination Order of Applications of Individuals and their Servicing at Institutions, Agencies and Other Public Administration Establishments". This obliges State and municipal institutions to follow this principle in serving individuals and examining their requests and complaints.³⁶

2.2 Participation

In Lithuania³⁷, public participation in environmental decision making is regulated by several legal acts, in particular the Law on Environmental Protection and the Law on Environmental Impact Assessment of Proposed Economic Activity (the EIA Law). Moreover, there are general regulations on public information, consultation and participation in decision making in spatial planning and several specifications addressing these issues.

The Ministry of Environment website does not have a dedicated section for public consultations, but anyone can submit a proposal on a draft legal act via the dedicated website of the Lithuanian Parliament. In 2018, the government issued a methodology for public consultation with the aim of expanding public engagement. The MoE routinely provides drafts of new or amended legislation for comment to relevant government stakeholders, social and economic partners, associations and the public. In every round of consultation, the draft project is published on the electronic information system where interested institutions and the public can provide comments. After every consultation period, the Ministry usually arranges a meeting to discuss comments but is not required to do so.³⁸ The Ministry of Environment has also established a panel in which representatives of environmental NGOs, environmental officials and representatives of science and education

³³ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.5.2 Access to environmental information, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

³⁴ INSPIRE LT country sheet 2017

³⁵ INSPIRE monitoring dashboard

³⁶ [Development of an assessment framework on environmental governance in the EU Member States - Final report, May 2019](#), page 74, 94; Report on Public Administration Reform Trends and Reform Dynamics in Lithuania, report prepared for DG EMPL of the European Commission, p. 10

³⁷ Ministry of Environment of the Republic of Lithuania, Aarhus Convention implementation report of Lithuania, 2016, p. 2-3.

³⁸ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.5.1 Public participation in environmental decision making, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

institutions have equal participation^{39[OBJ]}. The National Commission on Sustainable Development and the National Committee on Climate Change also include NGO representatives.

Nevertheless, the Aarhus Convention Implementation Report (2016) mentions challenges such as the lack of public involvement in the early stages of the legislative process, generally low response rates and late submissions of comments. Actual public involvement in the environmental law and policy making is low (EC, 2019a)⁴⁰. There is no active dialogue with civil society on key environmental policy priorities, particularly at the local level. Often, NGOs learn about regulatory initiatives belatedly, or may only be allowed to submit comments in writing, without a discussion.⁴¹ The same was found to be true for public consultation on specific projects. Information about IPPC permit applications is provided in the local, regional or national press and the EPA considers proposals from the public when preparing an IPPC permit and informs the public about decisions. Public hearings are supposed to be part of every EIA process but normally, however, few comments are received during the EIA process⁴². Over 70% of surveyed communities indicated that the legal deadlines for accessing EIA documents are too short (NAO, 2020)⁴³.

When it comes to public participation in land-use planning, there are also significant problems. All spatial planning documents must also undergo public consultation, but it is often superficial: 79% of complaints received by the State Territorial Planning and Construction Inspectorate concern public announcement rules (NAO, 2019)⁴⁴.

2.3 Access to Justice

Lithuanian legal acts, in general, ensure broad access to justice in environmental cases for individuals and non-governmental organizations and the review and the administrative court's jurisdiction cover procedural and substantive legality of an action⁴⁵. There are no restrictive standing rules in Lithuania and the costs for bringing a case to a court are relatively low⁴⁶. The 2019 EU Environmental Implementation Country Report found that significant progress is still needed to inform the general public about effective remedies for

³⁹ Ministry of Environment of the Republic of Lithuania, Aarhus Convention implementation report of Lithuania, 2016, p. 6-7, 31-34

⁴⁰ EC (2019a), "The EU Environmental Implementation Review 2019, Country Report – Lithuania", Commission Staff Working Document, SWD(2019) 125 final, European Commission, Brussels, https://ec.europa.eu/environment/eir/pdf/report_lt_en.pdf.

⁴¹ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.5.1 Public participation in environmental decision making, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁴² Kazakevicius, E. (2019), "Development of an assessment framework on environmental governance in the EU Member States", Environmental Governance Assessment: Lithuania, No 07.0203/2017/764990/SER/ENV.E.4, Institute for European Environmental Policy, Brussels, <https://circabc.europa.eu/ui/group/cafdbfbb-a3b9-42d8-b3c9-05e8f2c6a6fe/library/f3197930-f1b7-4486-b8b4-64219644d04e/details>. Out of 20 EIA reports submitted in 2017, only 4 reported having received comments, questions or suggestions from the public.

⁴³ NAO (2020), Efficiency and effectiveness of environmental protection and pollution prevention activities, No. VAE-3, 4 May, National Audit Office of Lithuania, www.vkontrole.lt/audito_ataskaitos_en.aspx?tipas=15.

⁴⁴ NAO (2019), Territorial planning, No. VA-3, 17 June, National Audit Office of Lithuania, www.vkontrole.lt/audito_ataskaitos_en.aspx?tipas=15.

⁴⁵ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.5.3 Access to justice, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁴⁶ [Development of an assessment framework on environmental governance in the EU Member States - Final report, May 2019](#), page 72

individuals and environmental associations in relation to access to justice in environmental matters under Lithuanian and EU law. This could be ensured, for instance, by providing detailed guidelines with information on how to take practical steps in accessing justice.

In accordance with the Law on Public Administration, an individual act must specify the appeal procedure, but this does not apply to general administrative acts. For those acts, in particular, it is important that information is easily available and user-friendly, but this was not found to be the case, currently. People have the right to approach a municipality for additional information on the administrative and judicial procedures (according to their declared place of residence), and the municipality must provide legal assistance free of charge. Although this is very positive, it cannot replace structured and user-friendly information available from public authorities online.

Individuals or public bodies concerned have the right to bring actions directly in court to protect themselves against an activity, either by challenging the decision allowing such activity, or by claiming compensation of damage suffered because of the activity (Article 7 of the Law on Environmental Protection). The Supreme Administrative Court of Lithuania has confirmed that the Aarhus Convention grants community-based organisations the right to defend the public interest in the environmental sphere. However, there is a lack of clarity on whether NGOs have the right to contest the lawfulness of provisions of a normative legal act before a court⁴⁷. Lithuania applies the ‘loser pays’ principle, which means that unsuccessful litigants may be ordered to provide remuneration for legal services and litigation costs incurred by the other party if awarded by the court. These costs might include the paid stamp duty, representation expenses, costs connected with the investigation of the case, and transport costs, among others and may have a deterring effect. Legal aid available to the public can be primary (legal information and legal consultations outside the judicial procedure) or secondary (preparation of procedural documents, representation in courts).

There are two “legal clinics”, at Vilnius University and Mykolas Romeris University, that provide primary legal aid (European e-Justice Portal, 2020)⁴⁸. People have the right to approach a municipality for additional information on the administrative and judicial procedures, and the municipality must provide legal assistance free of charge. However, the information on access to justice is not readily available online (EC, 2019a). The secondary legal aid is granted through five special services (in Vilnius, Kaunas, Klaipėda, Panevėžys and Šiauliai), which are accountable to the Ministry of Justice (European e-Justice Portal, 2020)⁴⁹. No legal aid is available to NGOs, however.

Lithuanian Courts’ internet portals provide user-friendly information about access to justice in general⁵⁰, but do not provide specific information for environmental cases. Judicial training and capacity building are also an important part of environmental justice and governance. Lithuania takes proactive measures to ensure judicial capacity building is prioritised, since the court system seems to support continuing education. This means that judges are expected to take part in compulsory training required by the relevant legislation, which

⁴⁷ [The EU Environmental Implementation Review 2019, Country Report Lithuania, European Commission](#), page 28

⁴⁸ European e-Justice Portal (2020), “Access to Justice in Environmental Matters – Lithuania” webpage, https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-lt-en.do?member=1

⁴⁹ Ibid

⁵⁰ Lietuvos teismai, <http://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/aktuali-informacija-teismulankytojams/107>, <https://e.teismas.lt/lt/public/home/>

includes environmental law topics. The training is provided by specialised judicial academies and training institutes in environmental matters primarily focusing on environmental crimes.⁵¹

The Seimas (parliamentary) Ombudsman's Office provides for another recourse for public complaints on environmental issues. This office deals with complaints about misconduct in public administration, including public authorities' failure to fulfil their environmental duties, but only about 10% of such complaints refer to environmental issues (Kazakevicius, 2019)⁵².

2.4 Compliance assurance, accountability, and effectiveness

In Lithuania, the Environmental Protection Department (EPD) under the Ministry of Environment, created in 2018 by a merger of regional EODs, carries out compliance assurance functions regarding environmental regulations. It has four territorial environmental quality control divisions and four territorial accounting and tax control divisions and, as of July 2021, the EPD expanded its remit to cover forests and protected areas.⁵³ The 2018 merger of eight regional EPDs has improved the efficiency and co-ordination of environmental policy implementation and harmonised the interpretation of regulatory requirements across the country and established common competence standards for compliance monitoring and enforcement, reducing the administrative burden for businesses.⁵⁴

EPD staff carry out inspections, and sometimes they work with other authorities such as the Police Department (with whom they signed a cooperation agreement in 2020). This work comprises investigating administrative misconduct and criminal offences in the environmental field, organising joint educational seminars to promote compliance and conducting training courses for respective staff. Public complaints are managed by the Notification Division of the EPD and its territorial units. Most complaints concern industrial activities, forestry and nature protection, and almost 40% of complaints are addressed through EPD inspections (drawing resources away from planned site visits), while the rest are referred to other competent authorities. The MoE website includes a special hotline that explains how to submit a complaint about an environmental nuisance or environmental damage.⁵⁵

The EPD online reports of annual inspection plans and quarterly inspection have limited information. Most inspection reports indicate only the number of inspections but offer no details on follow-up actions and penalties (Kazakevicius, 2019)⁵⁶. Individual inspection

⁵¹ [Development of an assessment framework on environmental governance in the EU Member States - Final report, May 2019](#), page 69

⁵² Kazakevicius, E. (2019), "Development of an assessment framework on environmental governance in the EU Member States", Environmental Governance Assessment: Lithuania, No 07.0203/2017/764990/SER/ENV.E.4, Institute for European Environmental Policy, Brussels, <https://circabc.europa.eu/ui/group/cafdbfbb-a3b9-42d8-b3c9-05e8f2c6a6fe/library/f3197930-f1b7-4486-b8b4-64219644d04e/details>.

⁵³ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.2.1 Central government and horizontal co-ordination, <https://doi.org/10.1787/48d82b17-en>.

⁵⁴ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.4 Compliance Assurance, <https://doi.org/10.1787/48d82b17-en>.

⁵⁵ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, Chapter 2.4.1 Environmental inspections, <https://doi.org/10.1787/48d82b17-en>.

⁵⁶ Kazakevicius, E. (2019), "Development of an assessment framework on environmental governance in the EU Member States", Environmental Governance Assessment: Lithuania, No 07.0203/2017/764990/SER/ENV.E.4, Institute for European Environmental Policy, Brussels,

reports, even for IPPC installations, are not available to the public. In 2016-20, an average of 63% of environmental inspections detected at least one violation, which is a high level of non-compliance. An average of 35% of these infringements were found to be committed in the field of nature protection and 22% were related to waste management. Around 5% of the detected infringements resulted in environmental damage.⁵⁷

The Lithuanian Code of Administrative Offences (Chapter 18) contains about 100 articles providing for administrative sanctions for environmental misconduct by physical persons, and the Law on Environmental Protection sets penalties for legal persons. Most of these sanctions are fines, and the maximum fine for environmental infringements by companies is more than EUR 200 000, but the average fine in 2020 was only EUR 1 045, which the OECD find to be too low to have a deterrent impact. The Lithuanian Criminal Code establishes penalties for environmental crimes, including fines and imprisonment. Namely, violations that entail serious damage to the environment are punishable by up to six years in prison, and almost all criminal environmental cases referred by the EPD to the Public Prosecutor's Office are pursued in court. However, in 2015-19, the regular courts heard an average of 18 criminal environmental cases, with roughly half of them resulting in convictions.⁵⁸

Guidance on good environmental practices is largely lacking, but Lithuania was found to increasingly recognise the need to provide consultation and advisory support to operators to increase voluntary compliance⁵⁹. There are some financial measures under the Eco-Innovation LT programme to encourage small and medium-sized enterprises to adopt an EMS, carry out production technology and environmental audits or install eco-innovative technology.

The annual volume of imposed administrative fines dropped by more than half over 2016-20. Moreover, only about two-thirds of the amount of imposed fines was collected in 2016-19; this share was up to 83% in 2020. Most of the 200-300 cases concerning environmental violations heard in the country's administrative courts are initiated by operators contesting the inspector-imposed sanctions. Operators are often successful in reducing the already low fines due to the poor preparation of EPD cases before the courts. This diminishes the effectiveness of administrative fines even further.⁶⁰ Revenues from administrative and criminal fines are channeled to the state treasury and are earmarked to the Environmental Protection Support Programme administered by the MoE⁶¹.

Strategic environmental assessment (SEA) is carried out for plans and programmes prepared by governmental or municipal institutions that are likely to have a significant impact on the environment. Recent SEAs at the national level include those of the National Air

<https://circabc.europa.eu/ui/group/cafdbfbb-a3b9-42d8-b3c9-05e8f2c6a6fe/library/f3197930-f1b7-4486-b8b4-64219644d04e/details>.

⁵⁷ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, Chapter 2.4.3 Enforcement, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁵⁸ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, Chapter 2.4.3 Enforcement, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁵⁹ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, Chapter 2.4.4. Promotion of compliance and green practices, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁶⁰ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, Chapter 2.4.3 Enforcement (Figure 2.1), OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁶¹ For example, fines for environmental violations, pollution charges for exceedance of permitted emission and effluent limits, infringements of building regulations, and compensation for environmental damage.

Pollution Reduction Plan in 2019 and of the National Comprehensive Plan of the Territory of Lithuania in 2019-20.⁶²

Lithuania transposed the EU Environmental Liability Directive (ELD, 2004/35/EC) through the Law on Environmental Protection in 2010 and this law defines environmental damage as adverse change to all elements of the environment, including air – a boarder definition than the one in the ELD.

3. Institutional context

Apart from the Ministry of Environment, several other ministries have environment-related responsibilities, such as the Ministries of Energy; Economy and Innovation; Agriculture; Transport and Communications; Health; and Education, Science and Sport.

The Ministry of Energy, for example, has a dedicated Climate Change Management Policy Group; and the Ministry of Transport and Communications has a Future Mobility Policy Group. To ensure co-ordination between these ministries on environment-related matters, Lithuania has established a consultative National Commission on Sustainable Development, which is chaired by the prime minister. Members of this Commission are high-level representatives of the Ministries of Environment, Economy and Innovation, Finance, Social Security and Labour, Energy, Agriculture, Education Science and Sport, Transport and Communications, Interior, Culture, Health, Foreign Affairs, the Statistics Department, the Association of Local Authorities, scientists, and representatives of non-governmental organisations (NGOs) and business associations. In addition, the National Committee on Climate Change was set up in 2001 and renewed in 2018, and it also includes representatives of relevant ministries, municipalities, NGOs and academia.

Inter-institutional working groups collaborate on legislation and strategic documents (e.g. a working group to prepare an Environment Protection and Climate Change Management Plan), as well as on joint initiatives such as the National Plan for Decreasing Ambient Air Pollution and the State Plan for Waste Management. One such working group has been set up at the level of vice ministers. In 2020, the prime minister established a government working group to better co-ordinate the implementation of the National Energy and Climate Plan and address topics on the EU's Green Deal agenda (Chapter 3). In addition, there are many inter-institutional advisory expert groups, including the Co-ordination Council for Forest Sanitary Protection, the Fisheries Board, the Hunting Advisory Board and the working group on food waste.

4. Role of Civil Society

The Eurobarometer figures from 2017 show that people in Lithuania agree relatively strongly (80 % of respondents) that an individual can play a role in protecting the environment⁶³. In Lithuania, representatives of the public can participate in institutions such as committees or working groups that have been set up to accompany processes such as the development of

⁶² OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, 2.3.1. Regulatory and policy evaluation, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

⁶³ Eurobarometer: Attitudes of European citizens towards the environment (2017), Lithuania Factsheet, European Commission <https://europa.eu/eurobarometer/surveys/detail/2156>

water basin management plans.⁶⁴ However, to improve civic engagement⁶⁵, Lithuania needs to move beyond formal compliance with legal requirements and procedures, and focus instead on achieving genuine impact (OECD, 2015)⁶⁶

Environmental awareness in Lithuania is lower than the EU average, with only 40% of its citizens considering protecting the environment to be “very important” (the average is 53% across the European Union). The growing levels of waste generation and air pollution are key issues of concern for Lithuanians. For respondents, the main solutions are changing consumption patterns (35%), providing more information and education (30%), changing production patterns (30%) and improving enforcement (29%) (EC, 2019b⁶⁷). Additionally, awareness of biodiversity and the need to protect it have risen in the last five years (EC, 2018⁶⁸).

Environmental education is a priority in the National Sustainable Development Strategy (2011). The MoE promotes environmental education activities with support of EU structural funds; raising public awareness of the environment was one of its 2014-20 priorities. Under the NECP, the education ministry is obliged to integrate climate change issues into primary and secondary education curricula. Additionally, environmental education in secondary schools relies mostly on integration of sustainable development aspects into natural science courses, but there is no consistent approach to teaching these subjects. However, several Lithuanian NGOs⁶⁹ are active in environmental education, complementing government efforts.⁷⁰

Sources:

- [The EU Environmental Implementation Review 2019, Country Report Lithuania, European Commission](#)
- [Development of an assessment framework on environmental governance in the EU Member States - Final report, May 2019](#), European Commission and Instituto for European Environmental Policy

⁶⁴ [Development of an assessment framework on environmental governance in the EU Member States - Final report, May 2019](#), page 57

⁶⁵ For example, Transparency International Lithuania was been invited to present ideas and recommendations on the National Anti-Corruption Programme 2015-2025. OECD (2015), Lithuania: Fostering Open and Inclusive Policy Making, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264235762-en>.

⁶⁶ OECD (2015), Lithuania: Fostering Open and Inclusive Policy Making, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264235762-en>.

⁶⁷ EC (2019b), “Attitudes of European citizens towards the environment”, Special Barometer 501, European Commission, Brussels, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getSurveydetail/instruments/special/surveyky/2257>.

⁶⁸ EC (2018), “Attitudes of Europeans towards biodiversity”, Special Barometer 481, European Commission, Brussels, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/biodiversity/surveyky/2194>.

⁶⁹ Such as the Lithuanian Fund for Nature, the Lithuanian Green Movement, and the Lithuanian Children and Youth Centre's Sustainable Schools programme.

⁷⁰ OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, 2.5.4. Environmental education, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.

- OECD (2021), OECD Environmental Performance Reviews: Lithuania 2021, OECD Environmental Performance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/48d82b17-en>.
- OECD (2015), Lithuania: Fostering Open and Inclusive Policy Making, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264235762-en>.
- EC (2019a), “The EU Environmental Implementation Review 2019, Country Report – Lithuania”, Commission Staff Working Document, SWD(2019) 125 final, European Commission, Brussels, https://ec.europa.eu/environment/eir/pdf/report_Lt_en.pdf.
- EC (2019b), “Attitudes of European citizens towards the environment”, Special Barometer 501, European Commission, Brussels, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getSurveydetail/instruments/special/surveyky/2257>.
- EC (2018), “Attitudes of Europeans towards biodiversity”, Special Barometer 481, European Commission, Brussels, <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/search/biodiversity/surveyKy/2194>.
- European e-Justice Portal (2020), “Access to Justice in Environmental Matters – Lithuania” webpage, https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-lt-en.do?member=1
- Kazakevicius, E. (2019), “Development of an assessment framework on environmental governance in the EU Member States”, Environmental Governance Assessment: Lithuania, No 07.0203/2017/764990/SER/ENV.E.4, Institute for European Environmental Policy, Brussels, <https://circabc.europa.eu/ui/group/cafdbfbb-a3b9-42d8-b3c9-05e8f2c6a6fe/library/f3197930-f1b7-4486-b8b4-64219644d04e/details>.
- NAO (2020), Efficiency and effectiveness of environmental protection and pollution prevention activities, No. VAE-3, 4 May, National Audit Office of Lithuania, www.vkontrole.lt/audito_ataskaitos_en.aspx?tipas=15.
- NAO (2019), Territorial planning, No. VA-3, 17 June, National Audit Office of Lithuania, www.vkontrole.lt/audito_ataskaitos_en.aspx?tipas=15.

Republic of North Macedonia

1. Overview

The Republic of North Macedonia (North Macedonia) is a land locked country in south east Europe in a region of historical political unrest, but which has experienced only short period of unrest in 2001⁷¹. The country is referred to as the Republic of North Macedonia since 2019. The population is 1.8million people. Since July 2022 the initial phases of negotiating accession to the EU has been ongoing⁷². The European Council endorsed the decision to open accession negotiations with North Macedonia. After the Council approved of the Negotiating Framework, in accordance with the revised enlargement methodology, on 19 July 2022 the EU started the opening phase of the accession negotiations with North Macedonia.

The Republic of North Macedonia parliamentary democracy with three branches of government - executive, legislative and judicial. There are 78 branches of local government, referred to as municipalities. The capital city of Skopje is comprised of 10 municipalities. National government is responsible for standardising and transposing international laws relating to the environment, waste management measures, sustainable development, developing and monitoring a national action plan for environment.

2. Dimensions of environmental governance

The Aarhus Convention was ratified by North Macedonia in 1998 and is transposed into domestic law under the Law on Ratification of the Convention on Access to Information, Public Participation in Decision making, and Access to Justice in Environmental Matters.

Under Article 8 of the Constitution of the Republic of North Macedonia a core principle for respect for the environment is identified along with principles of respect for social justice and international law⁷³. The Aarhus Centre in Skopje contributes to the implementation of environmental legislation and Aarhus Convention in practice in North Macedonia⁷⁴. This is achieved through coordination with Aarhus network members within North Macedonia, local authorities and the national Ministry of Environment and Physical Planning. The Centre prepares guidance on the including CSOs in decision making processes and supports the organisation of the National Strategy Meetings, an annual meeting of which relates to climate change. The Centre was established under the EU initiative Building capacities of environmental CSOs to increase democratic processes in the Republic of North Macedonia.

⁷¹ BBC, North Macedonia Country Profile, 20 January 2023. <https://www.bbc.com/news/world-europe-17550407>

⁷² [Delegation of the European Union to North Macedonia](https://www.eeas.europa.eu/north-macedonia/european-union-and-north-macedonia_en?s=229), The European Union and North Macedonia; Political Relations, https://www.eeas.europa.eu/north-macedonia/european-union-and-north-macedonia_en?s=229

⁷³ [Delegation of the European Union to North Macedonia](https://www.eeas.europa.eu/north-macedonia/european-union-and-north-macedonia_en?s=229), The European Union and North Macedonia Political Relations, https://www.eeas.europa.eu/north-macedonia/european-union-and-north-macedonia_en?s=229

⁷⁴ [Aarhus Centres, Aarhus Centres North Macedonia](https://aarhus.osce.org/north-macedonia/aarhus-centre-skopje), Aarhus Centre Skopje <https://aarhus.osce.org/north-macedonia/aarhus-centre-skopje>

North Macedonia has enacted a plethora of environmental related laws and policies since the early 2000s. The Action Plan on Renewable Energy Resources 2015 identifies multiple renewable fuel sources domestically which can be capitalised for residential and commercial needs⁷⁵. The Energy Development Strategy until 2040 identifies how to reduce carbon emissions from North Macedonia's energy system, suggests how to improve energy efficiency, the need for investment in research and development, increase the regulatory framework of energy supply and ensure security of energy markets⁷⁶. Key Performance Indicators are outlined for each strategy goal and the strategy itself was circulated for consultation with members of the public, however at the later stages of development.

The two primary pieces of legislation relating to the environment in north Macedonia are the Energy Law to improve consumer protections on energy supply choices⁷⁷ and the Law on Ambient Air Quality sets measures for avoidance, prevention or reduction of harmful effects from ambient air pollution on human health and the environment⁷⁸.

Based on the Voluntary National Review process from 2020, North Macedonia has indicated commitment to embedding the sustainable development goals within the National Sustainable Development Plan⁷⁹. This action to integrate SDGs into the national mechanism in collaboration with the United Nations⁸⁰.

2.1 Transparency (access to information)

Article 16 of the Convention provides for access to information of activities of public authorities. Further the Law on Free Access to Public Information includes information pertinent to risks to the environment as subject to freedom of access⁸¹ and a provision similar to whistleblowing protections under Article 37 of the law which prevents liability for providing information which discloses wrongdoing in relation to the environment.

The Agency for Protection of the Right to Free Access to Public Information is the guardian of the Law on Free Access to Public Information in North Macedonia⁸². It has been operational since the end of 2019. Details of cases heard by the Agency have been analysed but are not available in English and it is unclear if any relate to Aarhus relevant principles.

⁷⁵ LSE Grantham Research Institute on Climate Change and the Environment, North Macedonia, **Action Plan on Renewable Energy Sources**; <https://www.climate-laws.org/geographies/north-macedonia-republic-of-north-macedonia/policies/action-plan-on-renewable-energy-sources>

⁷⁶ LSE, Grantham Research Institute on Climate Change and the Environment, Climate Change Laws of the World, Energy Law (compliant with the EU Third Energy Package); <https://www.climate-laws.org/geographies/north-macedonia-republic-of-north-macedonia/laws/energy-law-compliant-with-the-eu-third-energy-package>

⁷⁷ Ibid

⁷⁸ LSE, Grantham Research Institute on Climate Change and the Environment, Climate Change Laws of the World, Law on Ambient Air Quality, <https://www.climate-laws.org/geographies/north-macedonia-republic-of-north-macedonia/laws/law-on-ambient-air-quality>

⁷⁹ Sustainable Development Goals, Knowledge Platform, <https://sustainabledevelopment.un.org/memberstates/macedonia>

⁸⁰ European Environment Agency, North Macedonia country profile - SDGs and the environment; <https://www.eea.europa.eu/themes/sustainability-transitions/sustainable-development-goals-and-the-country-profiles/north-macedonia-country-profile-sdgs>

⁸¹ Sustainable Development Goals, Knowledge Platform, Republic of North Macedonia, <https://sdgs.un.org>

⁸² European Environment Agency, North Macedonia country profile - SDGs and the environment, <https://www.eea.europa.eu/themes/sustainability-transitions/sustainable-development-goals-and-the-country-profiles/north-macedonia-country-profile-sdgs>

North Macedonia is also a member of the Open Government Partnership and has developed a 3-year plan to promote democratic transparency. Public consultation was facilitated in the development of this plan but it is not possible to retrieve details of these submissions through English language.

2.2 Participation

The International Republican Institute, an organisation promoting citizen engagement in democratic processes in over 100 countries⁸³, has found that public participation in North Macedonia is very low due to disengagement with local government and negative experiences of indifferent politicians⁸⁴. Qualitative research indicated that local governments were not considered as viable options for complaints or recommendations by the public for their local area and where there was engagement, proposals were rejected⁸⁵. In November 2021, the Council of Europe supported a 2-day training initiative for up to 80 community representatives to build capacity on engaging on local planning and civic participation. Community Action Teams are established in some cities with a focus on countering extremism under the Stronger Cities Network⁸⁶. This initiative engaged local government and stakeholders and was positively received as a mechanism to address extremism. There is a basis for this initiative in national policy⁸⁷. There is potential for a similar mechanism to be established in relation to the environment.

2.3 Access to Justice

Article 15 of the Constitution provides for the right to appeal against individual legal acts issued in a first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed.⁸⁸

No domestic litigation relating to climate and access to information or participation was found during the preparation of this profile.

2.4 Compliance assurance, accountability, and effectiveness

There is no Environmental Protection Agency or equivalent body within North Macedonia⁸⁹. Macedonian Environmental Information Centre (MEIC) is Department within the Ministry of Environment and Physical Planning provides advice to the government on environmental issues.

⁸³ International Republican Institute, What we do, <https://www.iri.org/what-we-do/>

⁸⁴ International Republican Insititute, IRI in North Macedonia, <https://www.iri.org/resources/iri-north-macedonia-report-shows-unresponsive-mayors-and-lack-of-civic-participation-in-local-government/>

⁸⁵ Ibid

⁸⁶ Strong Cities, How Cities Can Take the Leap from Policy to Action, 4 February 2020, <https://strongcitiesnetwork.org/en/cities-take-leap-from-policy-to-action/>

⁸⁷ Strong Cities, Merkle and Hulse, Multi-stakeholder Models for Local Prevention, Technical Evaluation and Learnings from Kumanovo, North Macedonia, https://www.isdglobal.org/wp-content/uploads/2022/04/Kumanovo_SCN.pdf

⁸⁸ The right to appeal against individual legal acts issued in a first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed. Constitution of Republic of North Macedonia.

⁸⁹ UNECE, Current state and development of the Shared Environmental Information System (SEIS), April 2019, Republic of North Macedonia, <https://unece.org/sites/default/files/2021-12/UNDA%20North%20Macedonia%20ENG.pdf>

Information on environment is the starting point for any activity in the field of environment (e.g. information on the level of pollution, sources of funding targeted at environmental protection or activities of organization active in environment protection). For that purpose, i.e. for proper management of the process of collecting, processing, delivery and dissemination of environmental, the MEPP established the Macedonian Environmental Information Centre (MEIC) in April 1998⁹⁰.

North Macedonia has been found to be non-compliant with some EC Directives relating to the environment. Due to a lack of domestic legislation, North Macedonia was deemed to have failed to transpose Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment⁹¹, and the emission ceilings established under the National Emission Reduction Plan (NERP) in North Macedonia were found to be inadequate.

The EIA process within North Macedonia has been criticised as not facilitating stakeholder/public engagement sufficiently due to lack of notice of EIA procedures, lack of measuring the impact of consultation and inaccurate recording of public contributions⁹². For companies who have been granted a licence to exploit natural resources with an Integrated Environmental Permit, self-reporting and declaration of emissions is relied upon. Not all IEP holders have equipment which self-monitor emissions⁹³.

A significant environmental project of waste water management and treatment has been launched in March 2022 which adheres to EU standards on water management⁹⁴. This is part financed by the European Investment Bank and will support North Macedonia's process of membership to the EU. Other environmental projects funded by the EU include expansion of railways and transitioning power plants to renewable fuel processing centres⁹⁵. The OECD is positive about the ambitions of North Macedonia's climate related policies but notes the need for follow through by implementing the National Energy and Climate Plan and National Energy Strategy 2040⁹⁶.

An interesting initiative on climate awareness has been the development of a toolkit for private actors as part of the Green Climate Fund readiness project in 2022⁹⁷. The toolkit

⁹⁰ Ministry of Environmental and Physical Planning, Department – Macedonian Environmental Information Centre, <https://www.moepp.gov.mk/en/министерство/сектор-македонскиот-информативен-це/>

⁹¹ Energy Community, Case ECS-22/21: North Macedonia / environment; <https://www.energy-community.org/legal/cases/2021/case2221NM.html>

⁹² UNECE, Environmental Performance Reviews, North Macedonia, Third Review, 2019 https://unece.org/fileadmin/DAM/env/epr/epr_studies/ECE.CEP.186.Eng.pdf at p.45

⁹³ Ibid, at p. 47

⁹⁴ European Investment Bank, Progress made on North Macedonia's largest environmental project, 2 March 2022, <https://www.eib.org/en/press/news/progress-made-on-north-macedonia-s-largest-environmental-project>

⁹⁵ Republic of North Macedonia, Ministry of Finance, MoF: Republic of North Macedonia was awarded an EC grant amounting to EUR 225.6 million aimed at infrastructure and energy projects 25 February 2022, <https://finance.gov.mk/2022/02/25/mof-republic-of-north-macedonia-was-awarded-an-ec-grant-amounting-to-eur-225-6-million-aimed-at-infrastructure-and-energy-projects/?lang=en>

⁹⁶ OECD iLibrary, [Multi-dimensional Review of the Western Balkans: From Analysis to Action](https://www.oecd-ilibrary.org/sites/4223758a-en/index.html?itemId=/content/component/4223758a-en), 18. A green recovery in North Macedonia; <https://www.oecd-ilibrary.org/sites/4223758a-en/index.html?itemId=/content/component/4223758a-en>

⁹⁷ FAO Food and Agricultural Organisation for the United Nations, Regional Office of Europe and Central Asia, GCF Country Programme lays the foundations for transformative climate finance in North Macedonia; <https://www.fao.org/europe/news/detail-news/en/c/1539410/>

provides an overview of the legal and policy framework for climate initiatives on multiple issues such as transport, agriculture and biodiversity. It outlines the risk of climate change and discusses potential contributions through adaptations, finance and technology development in relation to the private sector⁹⁸.

Through a United Nations Environment Programme there has been positive engagement with the MOEPP to promote biodiversity, introduce legal restrictions on exploitation of some forest species and to designate a new national park⁹⁹.

3. Institutional context

Monitoring of environmental initiatives in North Macedonia is under the remit of [the Ministry of Environment and Physical Planning](#). The Ministry also monitors environmental issues, is responsible for natural amenities, physical planning and information systems¹⁰⁰. Environment and climate change is relevant to the work of the Ministry of Health in relation to infectious diseases that can arise from nature and the impacts of pollution and climate events on humans. Municipalities are responsible for locally implementing national laws, policies and standards/plans¹⁰¹.

In the Balkan region, North Macedonia is a leader in adopting climate initiatives through the preparation of their National Energy Climate Plan which identifies strategies for decarbonisation, energy sufficiency and security and energy innovation and competitiveness¹⁰².

4. Role of Civil Society

Based on the Balkan Civil Society Development Network, in 2019 there are over 10,000 civil society organisations within North Macedonia¹⁰³. There is a lack of transparency relating to funding of civil society organisations and no consultation on the priority areas of funding streams¹⁰⁴.

There is a well-coordinated network of civil society through the Aarhus Centre Skopje. The principles of the Aarhus convention are embeded in the work of many environmental

⁹⁸ Green Development, Republic of North Macedonia, Toolkit for Private Sector Engagement in Climate Action <http://www.greendevlopment.mk/en/toolKit2.aspx>

⁹⁹ UN Environmental Programme, *Alejandro Laguna*, Leveling up national biodiversity conservation in North Macedonia, <https://www.unep.org/regions/europe/our-projects/leveling-national-biodiversity-conservation-north-macedonia>

¹⁰⁰ Government of the Republic of North Macedonia, Ministry of environment and physical planning, <https://vlada.mk/node/17980?ln=en-gb>

¹⁰¹ European Committee of the Regions, Division of Powers, Macedonia Environment, <https://portal.cor.europa.eu/divisionpowers/Pages/Macedonia-Environement.aspx>

¹⁰² Spasic, North Macedonia first in Western Balkans adopts National Energy and Climate Plan, Balkan Green Energy News, <https://balkangreenenergynews.com/north-macedonia-first-in-western-balkans-adopts-national-energy-and-climate-plan/>

¹⁰³ Monitoring Matrix, North Macedonia, <https://monitoringmatrix.net/report-north-macedonia-2019/>

¹⁰⁴ Standard 2.2.1. Public Funding Availability, Monitoring matrix, North Macedonia, Balkan Civil Society Development Network, <https://monitoringmatrix.net/report-north-macedonia-2019/>

NGOs¹⁰⁵. There are three NGOs which are supported financially by the Access Initiative¹⁰⁶ which is itself an international network of environmental NGOs. These organisations are Biosfera, Florozon and the Macedonian Green Centre. The European Commission's 2021 report on North Macedonia is positive about the role of civil society in democratic reform. The Council for Cooperation with and Development of Civil Society was established in 2018 and has met on numerous occasions to discuss civil society funding, cross border initiatives and engagement in national crisis management deliberations¹⁰⁷.

Under the Open Parliament Action Plan there are commitments to increase opportunities for citizens to contribute to government through information portals and raising awareness of the functions and how to access public authorities¹⁰⁸.

¹⁰⁵ Florozon Centre for Environmental Democracy, About Us, <https://florozon.org.mk/index.php/about-us>

¹⁰⁶ The Access Initiative, Members in North Macedonia <https://accessinitiative.org/network/country/north-macedonia/members>

¹⁰⁷ The 2020 CSO Sustainability Index for North Macedonia, <https://www.balkancsd.net/novo/wp-content/uploads/2021/07/2020-CSOSI-North-Macedonia.pdf>

¹⁰⁸ Open Government Partnership National Action Plan 2021-2023, Skopje, October 2021, https://www.opengovpartnership.org/wp-content/uploads/2021/11/North-Macedonia_Action-Plan_2021-2023_EN.pdf

Poland

1. Overview

Poland is a large land-locked country with a Baltic sea border. It is a democratic government with a multi-party political system. The population of Poland is approximately 38 million¹⁰⁹.

Government in the Republic of Poland is comprised of two houses of parliament – the Senat (upper) and the Sejm (lower). There is no representation of local or regional authorities within the Government. The Prime Minister is the head of Government, with the President being the Head of State. There are three levels of local government – regional (voivoidships), counties (powiat) and municipalities (gmina). Further, there are three types of municipalities – urban, rural and urban-rural¹¹⁰.

The coal mining industry is a significant commerce in Poland, with strong trade union representation and experiences of hardship in regions where coal mines have ceased operation². Poland's carbon intensity is the second highest in Europe¹¹¹.

2. Dimensions of environmental governance

Poland's Environmental Protection Law 2001 is the primary piece of environmental legislation, although many other legal instruments also engage climate issues.

The Aarhus Convention was ratified by Poland in 2002. The Aarhus Convention has been transposed through the Polish Act of 3 October 2008 on Access to Information on Environment and Its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment. The Act establishes the General Directorate for Environmental Protection. The remit of this office is covered through multiple departments - Department for Environmental Projects Implementation, Department for Environmental Impact Assessment, Department of Administrative Decision-making, Department of Natural Resources Management as well as internal administrative and legal departments¹¹².

There are numerous legislative provisions relating to the environment ranging from the 1970s onward. Among these are regulations of waste law, animal protection, energy law, water law, and investment in sustainable energy sources¹¹³: the Polish Act of 20 February 2015 on Renewable Energy Sources; the Polish Act of 20 May 2016 on Investments in Wind Power Stations; the Polish Act of 10 April 1997 – Energy Law; the Polish Act of 20 July 2017 – Water Law; the Polish Act of 27 April 2001 – Environment Protection Law.

¹⁰⁹ BBC, Poland Country Profile, <https://www.bbc.com/news/world-europe-17753718>

¹¹⁰ European Committee of the Regions, Division of Powers, Poland, <https://portal.cor.europa.eu/divisionpowers/Pages/Poland.aspx>

¹¹¹ European Commission, Platform for coal regions in transition, Małopolska, Poland; https://energy.ec.europa.eu/system/files/2020-07/malopolska_regional_profile_-_start_technical_assistance_0.pdf

¹¹² Government of Poland, Responsibilities and competences; <https://www.gov.pl/web/gdos/responsibilities-and-competences2>

¹¹³ LSE, Climate Change Laws of the World, https://climate-laws.org/legislation_and_policies?from_geography_page=Poland&geography%5B%5D=142&type%5B%5D=legislative

2.1 Transparency (access to information)

The Polish Constitution, drafted in 1997, protects the right to information for members of the public in relation to activities by public authorities under Article 61. It protects the right to access information about the activities and services of public authorities or any individual or bodies discharging public functions¹¹⁴.

The OECD is critical of the Polish transparency concerning environmental information due to the vast number of bodies operating in this area. While there have been improvements in data collection, particularly spatial data as required under INSPIRE regulations, there remains work to be done in ensuring this is publicly accessible¹¹⁵.

Recent developments in 2020 recognises the increased role of technology in information freedom allocates responsibility to the Ministry of Digitisation for freedom of information also¹¹⁶. Another relevant public autonomous body is the Office of the Ombudsman (Rzecznik Praw Obywatelskich, RPO) in Poland¹¹⁷. The Office of the Ombudsman has taken a series of measures to ensure that the civil liberties and human rights of Poles are protected, including active communication campaigns at the national, regional and local levels to raise awareness of citizens' rights and how to protect them. However, despite meeting all of the eligibility criteria for membership since the Open Government Partnership's (OGP) establishment in 2011, Poland has not joined the OGP¹¹⁸, a multilateral initiative that aims to secure concrete commitments from both national and subnational governments on promoting open government and empowering citizens, with national and local members in all regions of the world¹¹⁹.

2.2 Participation

Citizen's Assemblies have been taking place in Gdansk since 2016. These assemblies are comprised of 60 people and aim to recreate the population representation of the city. Importantly this assembly has the power to bring about change to the city's policies on

¹¹⁴ A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.

3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.

¹¹⁵ European Commission, Environmental Implementation Review 2019, Country Report Poland, https://ec.europa.eu/environment/eir/pdf/report_pl_en.pdf at p31.

¹¹⁶ Following the adoption of the Regulation of the President of the Council of Ministers in October 2020 on the detailed scope of activities of the Ministry of Digitisation, these tasks are now also carried out by the KPRM (President of the Council of Ministers, 2020[

¹¹⁷ Commissioner for Human Rights, <https://bip.brpo.gov.pl/en>

¹¹⁸ Visegrad Fund, Oxygen and Fundacja Rozwoju Democracji Lokalne, Open Government Partnership approach and priorities, Country Analysis Poland, July 2021, https://oxygen.org.am/wp-content/uploads/2021/09/Summary-report_OGP_Poland.pdf

¹¹⁹ Open Government Partnership, About Us, <https://www.opengovpartnership.org/about/>

issues including climate change¹²⁰. As a city which has experienced destruction due to flooding in recent years, the climate issue was to the fore of the issues discussed by the assembly. There are multiple examples of deliberative democracy processes being utilised by cities across Poland on environmental issues.

A citizen's assembly is also in place in Lublin where members of the public can propose ideas for discussion by having input into the city's budget. There is a specific green budget under which environmental ideas can be submitted¹²¹.

The Warsaw climate panel is another public participation initiative involved 80 randomly selected citizens to discuss and make recommendations on climate and energy efficiency for the city¹²². The city of Lodz embraced technology amid the pandemic in 2020 to conduct part of their citizens assembly online for 67 randomly selected inhabitants of the city aged between 16 and 76¹²³. The assembly focused on greenery in the city. Concerted efforts were made to equip all participants with technology and support to engage with the online events by NGOs and volunteers¹²⁴. However, the Sustainable Governance Indicators suggest that public awareness of politics is low and that media is influenced by government agendas¹²⁵.

The first Polish national citizens assembly related to energy poverty and took place in October and November 2022. It was comprised of 100 people and took place across five days. The report of the Citizens Assembly was expected to be produced in December 2022¹²⁶. There is a dedicated website for the assembly but no English language version to date¹²⁷.

2.3 Access to Justice

There are multiple references to the environment and the protection thereof within the Constitution of the Republic of Poland. These references are often coupled with rights to public health. Article 74 places responsibility for the protection of the environment with public

¹²⁰ Gazivoda, Solutions: How the Poles Are Making Democracy Work Again in Gdansk , November 22, 2017. <https://www.resilience.org/stories/2017-11-22/solutions-how-the-poles-are-making-democracy-work-again-in-gdansk/>

¹²¹ Lublin - Your City, You Decide, A Handbook for Residents, https://lublin.eu/gfx/lublin/userfiles/_public/mieszkancy/organizacje_pozarzadowe/ppliki_do_pobrania/older_partycypacja_eng.pdf

¹²² Sonnet Energy, Warsaw City Labs, Warsaw City Lab: how habits and behaviours impact energy use at the city level; <https://sonnet-energy.eu/portfolio-item/warsaw/>

¹²³ The Innovation in Politics Institute, Online Citizens Assembly in Lodz - Greenery in the City, <https://innovationinpolitics.eu/showroom/project/online-citizens-assembly-of-lodz-greenery-in-the-city/>

¹²⁴ Ibid

¹²⁵ Sustainable Governance Indicators, Poland, https://www.sgi-network.org/2022/Poland/Executive_Accountability

¹²⁶ Bergerrat, Polish Citizens Assembly discusses energy poverty, <https://www.buergerrat.de/en/news/polish-citizens-assembly-discusses-energy-poverty>

¹²⁷ Narada Obywatelska O Kosztach Energi, The First Nationwide Civic Panel, <https://naradaoenergii.pl>

authorities¹²⁸. However, these are considered to be principles of governance, rather than directly enforceable rights¹²⁹.

Domestically, there have been numerous cases regarding environmental rights since 2019. It is significant that NGOs do not have to prove that they are directly affected by the action of the party being sued in order to bring a case at national level litigation¹³⁰. There are different procedures however for challenges to local laws in which NGOs do need to prove they are an injured party¹³¹. This enables NGOs to represent broader environmental interests without evidencing direct harm. The fees involved in bringing environmental cases is fixed at 200PLN, (€42) as well as legal representation costs¹³² which may be burdensome to individuals or NGOs.

Some of the ongoing litigation includes challenges to national plans which are overly reliant on coal-produced electricity¹³³. The court is active in promoting reduced dependency on coal. In the case of ClientEarth v. Polska Grupa Energetyczna an environmental NGO complained that there was no plan to close Europe's largest coal burning power plant. In a novel judgement, the court ruled that the plant must engage with the NGO to negotiate reducing their emissions in a timely fashion¹³⁴. In a case heard by the Polish National Contact Point for OECD Guideines for Multinational Enterprises the lack of transparency of financing for insurance of the coal sector was challenged. The NCP ruled that increased transparency was necessary about the environmental impact of the coal company¹³⁵.

2.4 Compliance assurance, accountability, and effectiveness

Public complaints mechanisms are well documented on the websites of Polish public authorities¹³⁶. There are proposals for criminal sanctions for negligence resulting in environmental harm, particularly by corporate bodies¹³⁷. Companies who have been guilty of environmental crimes will be excluded from public procurement competitions.

¹²⁸ Article 74: 1. Public authorities shall pursue policies ensuring the ecological security of current and future generations. 2. Protection of the environment shall be the duty of public authorities. 3 Everyone shall have the right to be informed of the quality of the environment and its protection. 4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.

¹²⁹ European Justice, Access to justice in environmental matters; Poland, https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters?POLAND&action=maximizeMS&lang=en&idSubpage=1&member=1

¹³⁰ European Commission, Environmental Implementation Review 2022, Country Report, Poland, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022SC0269&from=EN>

¹³¹ European Commission, Environmental Implementation Review 2019, Country Report Poland, https://ec.europa.eu/environment/eir/pdf/report_pl_en.pdf

¹³² Ibid

¹³³ Górka et al. v. Poland, (2021) https://climate-laws.org/geographies/poland/litigation_cases/gorska-et-al-v-poland

¹³⁴ LSE, Climate Change Laws of the World, ClientEarth v. Polska Grupa Energetyczna https://climate-laws.org/geographies/poland/litigation_cases/clientearth-v-polska-grupa-energetyczna

¹³⁵ Development YES – Open-Pit Mines NO v. Group PZU S.A. (2019)

¹³⁶ European Commission, Environmental Implementation Review 2019, Country Report Poland, https://ec.europa.eu/environment/eir/pdf/report_pl_en.pdf, at p33.

¹³⁷ Osborne Clarke, Poland is introducing tough criminal penalties for environmental crimes, including those resulting from a lack of diligence, 01 September 2022. <https://www.osborneclarke.com/insights/poland-introducing-tough-criminal-penalties-environmental-crimes-including-those-resulting>

Accountancy regulation for corporations is a strong mechanism for environmental regulation as companies over 500 people must also report on non-financial operations which impact on the environment, society and human rights¹³⁸.

The 2001 Environmental Protection Act provides the legal framework for all commercial and environmental activities in Poland. The Ministry of the Environment (MoE) is the highest national office responsible for the preparation and implementation of environmental legislation and strategies. In accordance with EU directives, the Polish government prepares a national plan to implement environmental rules and to direct the corresponding regional governments, or voivodeships, to develop and implement cascading local plans¹³⁹. Overall, Poland's environmental governance exhibits a high level of national, regional, and municipal coordination. Environmental norms are relatively free from corruption and overall compliance is high.

Poland is a significant polluter within Europe and has experienced deleterious climate related events in recent years¹⁴⁰. The coal industry is slow to cease operation and the communities affected by closures of mines are being disproportionately impacted socially and economically. Further, coal mining activities are affecting neighbouring states¹⁴¹.

A project on the duty to effectively protect nature promoted education among public authorities and the public where their work relates to environmental issues. The education focused on increasing technical knowledge on nature preservation¹⁴².

In 2018 the Polish government introduced the Clean Air project - a subsidy scheme to support residents to replace old, ineffective and pollutant heating systems and to improve insulation¹⁴³. The initiative aims to reduce and phase out coal use in residential settings, this reducing smog and improving air quality¹⁴⁴. The target of replacing 3,000,000 old fashioned coal burning units is deemed as unrealistic as only 70,000 have been replaced in the first year¹⁴⁵.

3. Institutional context

¹³⁸ Under Directive 2014/95/EU,

https://www.wolftheiss.com/app/uploads/International_Comparative_Legal_Guides_Poland.pdf

¹³⁹ International Trade Administration, Poland Country Profile, <https://www.trade.gov/country-commercial-guides/poland-environmental-technologies>

¹⁴⁰ International Energy Agency, Poland climate resilience policy indicator; <https://www.iea.org/articles/poland-climate-resilience-policy-indicator>

¹⁴¹ Wiejski, It's hard, we're neighbours': the coalmine polluting friendships on Poland's borders; The Guardian, 29 March 2021, <https://www.theguardian.com/world/2021/mar/29/its-hard-were-neighbours-the-coalmine-polluting-friendships-on-polands-borders>

¹⁴² General Directorate for Environmental Protection, Activities, Projects of the General Directorate for Environmental Protection, <http://projekty.gdos.gov.pl/you-have-right-activities>

¹⁴³ Koschalka, Polish government's Clean Air programme to stop subsidising coal stoves, Notes from Poland, May 21, 2021; <https://notesfrompoland.com/2021/05/21/poland-to-stop-subsidising-coal-fired-heaters-under-clean-air-programme/>

¹⁴⁴ International Energy Agency, Clean Air Project, 23 March 2022, <https://www.iea.org/policies/11538-clean-air-programme>. More information is available in Polish at: <https://czystepowietrze.gov.pl/rusza-program-czyste-powietrze-2-0-2/>

¹⁴⁵ Koschalka, Polish government's Clean Air programme to stop subsidising coal stoves, Notes from Poland, May 21, 2021; <https://notesfrompoland.com/2021/05/21/poland-to-stop-subsidising-coal-fired-heaters-under-clean-air-programme/>

The National Energy and Climate Plan is a ten-year plan required by EU law to regulate and reduce Poland's greenhouse gas emissions¹⁴⁶. The National Energy and Climate (ENCP) Plan is a ten-year integrated document [mandated by the European Union](#) to each of its member states in order for the EU to meet its overall greenhouse gases emissions targets. The Energy and Climate Plan addresses all five dimensions of the EU Energy Union: decarbonisation, energy efficiency, energy security, internal energy markets and research, innovation and competitiveness.

The plan establishes the following central goals : 1) the reduction of greenhouse gas emissions in sectors not covered by the ETS system, to solve the problem of air quality (emissions of pollutants in transport and by individual heat sources), to support renewable energy sources, to increase the use of advanced biofuels; 2) to develop a long-term strategy for the renovation of domestic stocks of residential and non-residential buildings, public and private, to ensure energy efficiency; 3) to increase diversification of the energy mix and diversification of directions of supplies of imported fuels; 4) to increase the availability of current cross-border interconnections and integrate the national natural gas transmission system with the systems of Central and Eastern Europe and the countries of the Baltic Sea region; 5) to increase expenditure on research and development in Poland.

4. Role of Civil Society

As is evident from the access to justice section, civil society is very active in utilising legal processes to progress climate initiatives. There has been criticism of efforts to suppress NGO protests in relation to climate change by the civil society sector and UN monitoring bodies¹⁴⁷. The Department of the Prime Minister has a dedicated department for developing legislation in consultation with the public¹⁴⁸, however, this has been perceived as a negative mechanism for placing pressure on NGOs which are critical of government¹⁴⁹. There is division within the climate NGO sector about aligning with reproductive justice movements amid concerns of being critical of government¹⁵⁰.

There is coordination across environmental NGOs however with the Polish Green Network which provides standards of conduct for NGOs domestically and linkages to international resources¹⁵¹. Of current concern is that the agenda of civil society organisations in Poland has been influenced by the increase of refugees from the Ukrainian conflict¹⁵².

¹⁴⁶ LSE, Climate Change Laws Around the World, Poland's National Energy and Climate Plan for 2021-2030; <https://climate-laws.org/geographies/poland/policies/poland-s-national-energy-and-climate-plan-for-2021-2030>

¹⁴⁷ Centre for International Environmental Law, UN Body Echoes Civil Society Concerns Regarding Protection of Civil and Political Rights During Upcoming COP-24 in Katowice, Poland, March 2018; <https://www.ciel.org/news/bureau-aarhus-convention-echoes-civil-society-concerns-civil-political-rights-cop-24-poland/>

¹⁴⁸ Civil Society Department, <https://www.gov.pl/web/primeminister/civil-society-department>

¹⁴⁹ Davies, Polish PM angers human rights campaigners with plans to shake up NGOs, The Guardian, 28 November 2016, <https://www.theguardian.com/world/2016/nov/28/polish-pm-beata-szydoa-angers-human-rights-campaigners-ngos>

¹⁵⁰ Rogola, Coal and conservatism: How Polish activists push for more climate action, Journalis 01 September 2021, <https://www.cleanenergywire.org/news/coal-and-conservatism-how-polish-activists-push-more-climate-action>

¹⁵¹ Polish Green Network, [Who we are and what makes us different](http://zielonasiec.pl/en/home-2/), <http://zielonasiec.pl/en/home-2/>

¹⁵² Marzewski, Poland's Civil Society Is Caught Between Russia and the West, [Global Civil Society in a Geopolitical Age: How Great Power Competition Is Reshaping Civic Activism](#), <https://carnegieeurope.eu/2022/11/30/poland-s-civil-society-is-caught-between-russia-and-west-pub-88484>

Serbia

1. Overview

Since 2000, Serbia has been classified as a semi-consolidated democracy, reverting to a hybrid regime in 2019 and since 2020 in an accelerating process of autocratization.¹⁵³

Because of the unresolved status of the predecessor state, the Federal Republic of Yugoslavia in the UN at the time of the adoption of the Aarhus Convention, the country did not participate in the development of the convention. However, the Federal Ministry for Development, Science and the Environment started the process of adopting the convention. On July 31, 2009 the Republic of Serbia ratified the Aarhus Convention (Official Gazette of the Republic of Serbia no. 38/09 “International Treaties”), thus becoming the 43rd Party to the Convention. In this section, the following abbreviations are used.

LAP	Law on General Administrative Procedure
LSA	Law on State Administration
SEPA	Environmental Protection Agency of the Republic of Serbia
SIA	Strategic Impact Assessment

In 2004 a first set of environmental laws were adopted. Some were subsequently amended:

- LEIA Law on Environmental Impact Assessment (Official Gazette RS no. 72/09)
- LEP Law on Environmental Protection (Official Gazette RS no. 135/04, 36/09)
- LIPPC Law on Integrated Pollution Prevention Control (Official Gazette RS no. 135/04)
- LSEA Law on Strategic Assessment of the Environment (Official Gazette RS no. 135/04, 88/10)

In 2009 and 2010 a second set of environmental legislation was passed:

- LPAIRNS Law on Protection against Ionising Radiation and on Nuclear Safety Official Gazette of RS, No. 36/09
- LPANIR - Law on Protection against Non-Ionising Radiation Official Gazette of RS, No. 36/09
- LCh - Law on Chemicals Official Gazette of RS, No. 36/09
- LBP - Law on Biocidal Products Official Gazette of RS, No. 36/09
- LEIA(am) - Law on Amendments to the Law on Environmental Impact Assessment Official Gazette of RS, No. 36/09
- APL - Air Protection Law Official Gazette of RS, No. 36/09
- NPL - Nature Protection Law Official Gazette of RS, No. 36/09
- LPANE - Law on Protection Against Noise in Environment Official Gazette of RS, No. 36/09
- LSUFR - Law on Sustainable Use of Fish Reserves Official Gazette of RS, No. 36/09
- LWM - Law on Waste Management Official Gazette of RS, No. 36/09
- LPPW - Law on Packaging and Packaging Waste Official Gazette of RS, No. 36/09
- LEP(am) - Law on Amendments to the Law on Environmental Protection Official Gazette of RS, No. 36/09
- WL - Water Law Official Gazette of RS, No. 30/10

¹⁵³ Alizada, Nazifa, Rowan Cole, Lisa Gastaldi, Sandra Grahn, Sebastian Hellmeier, Palina Kolvani, Jean Lachapelle, Anna Lührmann, Seraphine F. Maerz, Shreeya Pilla. 2021. ‘Autocratization Turns Viral. Democracy Report 2021’. V-Dem Institute, University of Gothenburg.

Despite a variety of amendments (such as in 2016 to define “environmental information” in the LEP and between 2018-2022 to improve participation) the state of the implementation of the Aarhus Convention in Serbia is highly deficient. NGOs raised concerns especially regarding lack of sound environmental impact analysis and public consultation in the construction sector (Belgrade Urban Plan) and regarding hydro-power plants.

2. Dimensions of Environmental Governance

2.1 Transparency (access to information)

Practical solutions for access to information (contact points, established practices and procedures, metadata registers and instructions) often do not exist, there is a lack of information available on the Internet, but also in general, especially pronounced at the local level. Therefore, it takes more time to obtain information, and thus makes the procedure for providing information more expensive for those who possess it.¹⁵⁴

Official Data on the Environment

The Environmental Protection Agency of the Republic of Serbia (SEPA) has made good progress in the area of information dissemination (so called “Priority Data Flows”) by increasing data flows to European Environment Agency from 17% in 2004 to 75% in 2010 and then up to 100% in 2019 and 89% in 2020. However, there is a lack of compliance between different institutions with regard to the information they collect and hold. This is not only due to the vague division of competencies between institutions, but also due to the absence of by-laws defining the flow of information.¹⁵⁵

‘Emission’ and ‘pollution inventory’ are only partly in accordance with requirements of EU directives, and this has an effect on what kind of information is collected and made accessible to the public”.¹⁵⁶ Inconsistent legal regulations are the reason for the limitation of own pollutant monitoring. It is necessary to improve the legal regulations related to the monitoring of soil and water conditions.

Regular publication of a national report on the state of environment is elaborated in the Law on Environmental Protection (Articles 76 and 77). In accordance with this Law, the SEPA must publish a national report on an annual basis. The latest report was published for 2020. Some environmental data is also published regularly (monthly, quarterly, annually) by the Statistical Office of the Republic of Serbia. All reports are available online.

Metaregister

In accordance with Article 74 of the LEP, the SEPA shall establish and maintain an information system that will “procure formation, classification, maintenance, presentation and distribution for numerical, descriptive and spatial databases on: quality of the environmental media, monitoring of the status and protection of the environment, legal, administrative and organisational and strategic measures, scientific-technical information about planning measures of prevention and exchange of information with other information systems, etc.”

¹⁵⁴ Government of the Republic of Serbia. 2022. ‘Strategija za primenu konvencije o dostupnosti informacija, učešću javnosti u donošenju odluka i pravu na pravnu zaštitu u pitanjima životne sredine – Arhuska Konvencija za period 2023 – 2032 godina’.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.; Velkavrh, Anita Pirc, Slavko Bogdanović, Andjelka Mihajlov, Dragoljub Todić, Ivan Jarić. 2011. ‘Strategy for Implementing the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – The Aarhus Convention’. Ministry of Environment, Mining and Spatial Planning of the Republic of Serbia, Belgrade.

The SEPA is also an institution responsible for establishing the Environmental Pollution Sources Register, which is in principle harmonised with PRTR Protocol and E-PRTR Regulation.¹⁵⁷

The Serbian Eco-register contains information in the possession of the competent ministries and other state institutions, municipal and city administrations for the environment, protected natural assets and managers, business entities and non-governmental organizations. Ekoregistar is set up as a subdomain of the website of the Environmental Protection Agency at the following address: <http://www.ekoregistar.sepa.gov.rs>. In the course of 2013, the Project for the improvement and updating of the Ecoregister was implemented. In the period from 2013 to 2021, the Eco-Register is updated once a year.¹⁵⁸

NGOs highlighted that "information provided by public authorities is not available in a visible and practical way to the general public in the RS."¹⁵⁹ The information is not always updated, numerous local governments and the economy do not submit data, the quality of the information presented is questionable and very often presented in a way that is difficult for citizens to understand. It has been states that it is very often difficult to find information on the websites of state administration bodies, that is, the search requires a good knowledge of terms and processes in order to follow the schedule on the site.¹⁶⁰

Public Concerned

Aarhus definitions of 'public' and 'public concerned' are transposed into some environmental laws in the Republic of Serbia, but not into all. There is no correct definition that is applied consistently, throughout the legal system.¹⁶¹ "Public concerned" is defined only in four environmental laws (LEP, LEIA, LSEA and LIPPC), but not mentioned in the other. Article 74 of the Constitution which regulates the right to information about the state of the environment uses the word "everyone" (svako).¹⁶² The Law on Free Access to Information of Public Importance (Article 5) also uses the word "everyone" and does not contain specification on a distinction between "public" and "public concerned".

Environmental Information

In 2016 the Law on the Environment was amended to contain the term "environmental information".¹⁶³ However, 'document' is frequently used instead of the 'information', which greatly narrows interpretation of the right of access to information, as the former refers only to physical documents and published material.¹⁶⁴

¹⁵⁷ Velkavrh, op cit.

¹⁵⁸ Government RS 2022, op cit.

¹⁵⁹ Nedimović, Branislava. 2016. 'Izveštaj o sprovođenju konvencije o dostupnosti informacija, učešću javnosti u donošenju odluka i pravu na pravnu zaštitu u pitanjima životne sredine (Arhuska konvencija)'. Ministry for Agriculture and Environmental Protection of the Republic of Serbia, 3rd report on the implementation of the Aarhus Convention.
https://ekologija.gov.rs/sites/default/files/razno/T%D1%80%D0%B5%D1%9B%D0%B8_%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98_%D0%90%D0%9A.pdf

¹⁶⁰ Trivan, Goran. 2020. 'Izveštaj o sprovođenju konvencije o dostupnosti informacija, učešće javnosti u donošenju odluka i pravu na pravnu zaštitu u pitanjima životne sredine (Arhuska konvencija)'. Ministry for Environmental Protection of the Republic of Serbia, 4th report on the iimplementation of the Aarhus Convention.
<https://ekologija.gov.rs/sites/default/files/izvestaji/4.%20Izve%C5%A1taj%20o%20sprovo%C4%91enju%20Arhuske%20konvencije%20fin..pdf>

¹⁶¹ Government RS 2022, op cit.

¹⁶² Ibid.; Velkavrh, op cit.

¹⁶³ Government RS 2022, op cit.

¹⁶⁴ Ibid.

In the same year, an exception to access to information “official secret”, which had until then existed without a legal foundation, was added by adopting amendments to the Decree on office operations of state administration bodies (Official Gazette RS 80/92, 45/2016). The category “official secret” does not exist in the Law on Data Protection and so these amendments conflict with the constitutional principle of hierarchy of general legal acts. These changes limit public access to information related to the EU accession process and bilateral screenings.¹⁶⁵ These changes accelerate already earlier observed deficiencies in the public access to progress reports regarding the environment.¹⁶⁶

Laws related to the environment are regularly posted on the website of the Ministry of Environmental Protection, the Institute for Nature Conservation of Serbia, the Provincial Institute for Nature Conservation, the National Assembly of the Republic of Serbia, Aarhus Centers and others. All legal acts are published in the Official Gazette of the Republic of Serbia. However, information on law enforcement and policy and international agreements concerning environmental protection is not often available to the public, and in particular the lack of information on the progress of implementation is notable. Equally, details related to the implementation of projects/programmes and reports on progress in the implementation of undertaken commitments are very rarely available.¹⁶⁷

Threat and Emissions

The term “information relating to endangering or protecting the environment” was established in the legal system of the Republic of Serbia by amendments to the Law on Environmental Protection 2016 in Article 3, item 33 d), which stipulates that information relating to the threat or protection of the environment is information about a sudden danger caused by human activity or a consequence of natural phenomena, including information on environmental emissions. The Law on Environmental Protection, Law on Air Protection and Food Safety Law and Law on The Environmental Protection Act, the Air Protection Act, the Food Safety Act and the Chemicals Act define a system for alerting and communicating information in case of environmental and human health hazards, but most laws do not contain definitions of the threat thresholds.¹⁶⁸

Requests for Access

The right of access to information is either not clearly defined or not mentioned at all in many environmental laws (for example, in the Law on Strategic Environmental Assessment and the Law on the Protection and Sustainable Use of Fish Stocks).¹⁶⁹ Particularly, legal definitions of persons or entities with the right to request information are not consistent.

Some stipulations of the existing legislation in the Republic of Serbia are actually stricter than those of the Aarhus Convention. According to the Law on Free Access to Information, information must be made available more quickly, persons requesting information should be informed about the refusal to disclose information promptly, and information must be provided free of charge to journalists, human rights associations and all persons requesting information regarding threats to public health and/or the environment.¹⁷⁰ However, there is non-compliance with prescribed deadlines on the part of administrative bodies regarding responses to requests for information.¹⁷¹

¹⁶⁵ Belgrade Open School (BOŠ). 2017. ‘Komentar Beogradske Otvorene Škole na Treći Izveštaj o Sprovođenju Arhuske Konvencije’.

¹⁶⁶ Velkavrh, op cit.

¹⁶⁷ Government RS 2022, op cit.

¹⁶⁸ Ibid.

¹⁶⁹ Id.

¹⁷⁰ Velkavrh, op cit.

¹⁷¹ Nedimović, op cit.

Exceptions to the exercise of the right of access to information and the criteria for rejecting requests for disclosure of information are rather vague, and the interpretation of these provisions in national legislation is somewhat arbitrary; for example, public authorities seem to be left free to decide what exactly is meant by access to data that would "significantly complicate the realization of justified economic interests" (Law on Access to Information of Public Importance, Article 9). The government frequently rejects requests for the documentation of Environmental Impact Assessments referring to copy rights of subcontractors and consultants that prepared these reports.¹⁷²

Ombudsperson for Data Protection

In case a request to access to information is denied, the cause can be brought to the Ombudsperson for Information of Public Importance and for Personal Data Protection (in the following: Ombudsperson). According to data from the Ombudsperson's report for 2015, there has been an increase in the number of complaints regarding information related to environmental protection and animal protection. In case the Ombudsperson rejects the appeal, there is the possibility of starting a lawsuit initiating an administrative dispute before the competent court against the decision of the Ombudsperson.

2.2 Participation

With the adoption of various regulations from 2018 until today, the legal framework has been significantly improved and procedures have been developed for public participation during the preparation of plans and programs in the field of environmental protection. However, although the procedures have been refined, there has not been a significant improvement in the practice of public participation because the procedures are mostly not applied.

In July 2019, the Ministry of State Administration and Local Self-Government adopted a general rulebook on good practice guidelines for public participation in the preparation of draft laws and other regulations and acts with the aim of improving public participation in the preparation of draft laws and other regulations and acts. In December 2021, the Government of Serbia adopted the Decree on public participation in the development of plans and programs in the field of environmental protection, which establishes procedures for public participation in the preparation of planning documents for which the procedure of public participation is carried out in accordance with the law governing strategic environmental impact assessment (air quality, waste management plans, action plan for noise protection, protection of water from pollution). The procedures for public participation in the decision-making process have also been improved through the Law on Planning System (2018) and amendments to the Law on State Administration (amendments from 2018). The implementation of these laws, however is unsatisfactory.

Environmental Impact Assessment

The Republic of Serbia has developed a set of procedures for public participation, primarily via the Law on Environmental Protection (2004), LEIA (2004), LSEA (2004), and LIPPC (2004). These new laws provide a legal framework for public participation. Public participation in EIA procedures has not been developed because of a lack of criteria establishing the meaning of 'association' which makes it difficult to know what the registration obligations of organisations are under the Serbian law.

LSEA and LEIA are not aligned with applicable directives at the EU level regarding the deadlines for conducting public consultation. Informing the public electronically is not regulated by the LSEA and LEIA. In practice the Ministry of Environmental Protection has established the practice of informing the public through the website, as well as a number of

¹⁷² Velkavrh; Trivan, op cit.

local self-governments publish call on their website. The practice is uneven and non-binding, relevant amendments to the LSEA and LEIA have been prepared but not adopted yet.¹⁷³ Moreover, authorities undermine participation of important documents that can have significant impacts on the environment and on a large number of people by opening them for public inspection during the holidays. In practice, it often happens that the public gets involved too late to ensure effective public participation when all options are still open. A large number of plans that have been approved do not consider alternative solutions, and in particular do not consider zero option where the public has the opportunity to comment on whether the proposed activity should take place at all.¹⁷⁴

Implementation of the provision for public participation in the LEIA, LSEA and LIPPC is not possible without support of other sectoral laws. In the areas of waste management, water management, energy and other areas for which the strategic impact assessment is carried out, there is no public participation procedure in giving consent to the strategic impact assessment report. In the area of spatial planning public participation is regulated by the Rulebook on the content, manner and procedure of drafting spatial and urban planning documents (2019). But this Rulebook is not aligned with the provisions of the Aarhus Convention. Article 62 The Rulebook contains a limited definition of the public (objections during public consultation are submitted by interested legal and natural persons).¹⁷⁵

The Law on Planning and Construction establishes the obligation to prepare a strategic impact assessment for spatial plans, but not for urban plans, although in practice strategic impact assessment is also carried out for individual urban plans, if the criteria established by the LSEA are met. This practice, however, is not uniform. Public participation in the process of drafting a report on strategic assessment for spatial and urban plans is carried out in accordance with the provisions of the Rulebook on the content and method of drafting spatial and urban planning documents (2019). In practice, problems arise because the stage of public presentation of the plan and the report on the SIA is often skipped during public inspection, and this step is equated with the public session of the planning commission. Holding public hearings on by-laws is still a rarity rather than an established practice.¹⁷⁶ This is especially concerning in case of the public discussion of General Regulation Plan of Belgrade in 2022, where a significant part of the planning scope was completely omitted and was not considered.¹⁷⁷

The LEIA contains a list of projects for which impact assessment is mandatory and a list of projects for which environmental impact assessment may be required ("Official Gazette of the Republic of Serbia", No. 114/08). The lists of activities are not fully aligned with EU regulations and the list from the Aarhus Convention as a large number of projects lacks criteria on how to decide on the need to prepare an environmental impact assessment study.

The LSEA (Article 5) stipulates that strategic assessment is carried out for plans, programs, foundations and studies (hereinafter referred to as plans) in the field of spatial and urban planning, land use, agriculture, forestry, fisheries, hunting, energy, industry, transport, waste management, water management, telecommunications, tourism, conservation of natural habitats and wild flora and fauna. This does not mean that a strategic impact assessment report is prepared for each plan or program from the mentioned areas, but that each plan is necessarily subject to a decision-making procedure on the preparation of a strategic impact

¹⁷³ Government RS 2022, op cit.

¹⁷⁴ Ibid.

¹⁷⁵ Id.

¹⁷⁶ Id.

¹⁷⁷ Koalicija 27. 2022. 'Chapter 27 in Serbia: One step forward, two steps back'. Young Researchers of Serbia, Belgrade.

assessment. The public is excluded from this decision. Publishing the decision in the official gazette does not fully meet the requirements of transparency set by the Convention.

Helpful sources:

eConsultation online portal <https://ekonsultacije.gov.rs/>

2.3 Access to Justice

The Government Strategy for the Implementation of the Aarhus Convention 2023 – 2032 concluded that it is “highly unlikely that a proper system of access to justice will be established in a national system of environmental law without accurate and harmonised definitions of ‘public’, ‘public concerned’ and ‘environmental information’, and other relevant definitions”. Many elements of access to justice are insufficiently studied.¹⁷⁸

Requests regarding procedures that challenge the actions or omissions of natural persons or public authorities, in violation of the provisions of their national legislation which regulates the field of the environment (administrative procedures and review procedures before the court), do not exist as far as environmental laws are concerned. Also, in many cases procedures are missing or not sufficiently regulated. For example, if the Ombudsperson finds an appeal to a rejection of a request to access to information justified, the procedure for punishing negligent behaviour of the public official is insufficiently regulated.

There are no administrative procedures in the case of industrial accidents, nor in the case of elimination or prevention of damage to the environment, although anyone can submit a request for compensation for ordinary damage. Criminal offenses against the environment are defined in Chapter XXIV of the Criminal Code.

Minimum standards regarding procedures, decisions and legal remedies related to the right to legal protection (appropriate and effective legal remedies, honesty, fairness, timeliness, etc.) are not regulated in environmental laws but exists in other laws. There is no analysis of the costs in procedures for exercising the right to legal protection. In 2018 adoption of the Law on Free Legal Aid ("Official Gazette of the RS", No. 87/18), the implementation of which began on October 1, 2019, regulates free legal aid for citizens as its beneficiaries and the ways of obtaining and providing it.

Possibilities for exercising the right to legal protection are insufficiently present in the Law on Nature Protection (regarding the advice of users of protected areas) and in the Law on Environmental Protection (regarding protection against chemical accidents and liability against the risk of harm or damage to the environment).

Article 44 of the Law on General Administrative Procedure ("Official Gazette of RS", No. 18/16 and 95/18) (LAP) adopted in 2018 stipulates that a party to the procedure is a natural or legal person whose administrative matter is the subject of the administrative procedure and any other natural or legal person whose rights, obligations or legal interests may be affected by the outcome of the administrative procedure. A party in administrative proceedings can be an authority, organization, settlement, group of persons and others who are not legal entities, under the conditions under which a natural or legal person can be a party, or when it is determined by law. Representatives of collective interests and representatives of broader interests of the public, who are organized in accordance with the regulations, may have the status of a party in administrative proceedings if the outcome of the administrative proceedings may affect the interests they represent. With the aforementioned provision, which regulates who can be a party to the proceedings and which

¹⁷⁸ Government of RS (2022), op cit.

includes representatives of collective interests and wider interests of the public, the LAP is fully compliant with the requirements of the Aarhus Convention.

Access to courts

In the implementation of the third pillar of the Aarhus Convention - (the right to legal protection), the obstacle is the absence of "a system of automated case management in all courts, e.g., free access to data from the case, as well as an overview of developments while preserving the privacy of the parties in the proceedings" (4th National Report). In the courts, there are no departments specialized in environmental protection cases, the training of judges and prosecutors for dealing with environmental protection cases is insufficient. Associations very rarely initiate legal proceedings due to lack of funds and fear that the process will threaten their survival.¹⁷⁹

2.4 Compliance assurance, accountability, and effectiveness

In the Republic of Serbia, there is no special law regulating the implementation of the Aarhus Convention, nor is there a legal basis that provides the necessary conditions for compliance with the requirements of the convention (Government RS 2022, Kurtović 2013).¹⁸⁰

There are no performance or quality standards in the field of public participation, which is why public participation is often only formal. Application of Article 6.8. is particularly problematic in the process of creating spatial and urban plans, where the commission for plans and expert control retain the discretionary right to reject public objections. Decision-makers rarely see public participation at any level as a key element for making good and legitimate decisions, and environmental capacities are particularly small at the local level. There is also a lack of evaluation of the impact of associations made by decision-makers.¹⁸¹

It is necessary to better study the results of public participation in the decision-making process, but preliminary assessments indicate shortcomings. Written explanations of how public comments are taken into account are rarely applied, and there is no feedback. When implementing this provision of the Convention, especially at the local level, it was observed that the authorities, when deciding, only formally state that they have taken into account the opinions of the public, but in fact do not express themselves to the submitted opinions or explain the reasons for taking a specific decision as a whole.¹⁸²

There is a general lack of available information on measuring Serbia's performance in the areas of effectiveness and efficiency. Serbia's process aiming at eventual EU membership has focused more on technical transposition and harmonisation of legislative acts than on problems of implementation.

3 Institutional Context

The Environmental Protection Agency (an institutional structure established within the Ministry of Environment, Mining and Spatial Planning) is the main responsible institution for maintaining the national environmental information system. It was established in 2004. The

¹⁷⁹ Trivan, op cit.

¹⁸⁰ Kurtović, Rejhan. 2013. 'Arhuska Konvencija u Pravnom Sistemu Republike Srbije'. Univerzitetska misao, no. 12 (2): 142–53; Government RS (2022), op cit.

¹⁸¹ Ibid.

¹⁸² Id.

Environmental Protection Agency is not an independent institution. The status of the agency is regulated in accordance with the Law on Environmental Protection.¹⁸³

Record keeping is also defined by all other laws analysed here, as well as in the Law on Free Access to Information of Public Importance, the Constitution, etc. Information flow and reporting is regulated in many cases, but not often in a satisfactory way. There is a lack of coordination between different institutions in terms of the information they collect and hold in their possession; this is due not only to murky divisions of responsibility between institutions, but also to a lack of bylaws defining data flows.¹⁸⁴

Key institutions, such as the Environmental Protection Agency and Institute for Nature Conservation, possess clearly defined points of contact; many institutions, however (especially within local government, and in public and private enterprises), lack clearly defined points of contact.¹⁸⁵

A particular problem is the lack of capacity, both in terms of knowledge and expertise and in terms of the number of employees. In some local self-governments, only one person is engaged in environmental protection, who often has several papers in his jurisdiction. This prevents employees of the administrative bodies from implementing appropriate public participation procedures. Of particular concern is the small number of persons assigned to impact assessment and integrated pollution prevention and control in the competent ministry.¹⁸⁶ The capacities of competent authorities for the implementation of the Aarhus Convention are insufficient. "Technical problems of obtaining information upon request" were observed, considering that it is often about information for which the storage period has expired, that is, which has been destroyed.¹⁸⁷ In the implementation of the second pillar of the Aarhus Convention - (education of the public in making decisions about special activities), the inadequate institutional and other capacities of the Ministry and competent local self-government bodies represent a major obstacle.

The main national institution for the control of free access to information is the Ombudsperson for Information of Public Importance and Personal Data Protection whose authority is established through the Law on Free Access to Information of Public Importance. The Ombudsperson is responsible for monitoring the compliance of public authorities with obligations stipulated by this law. The adoption of the Law on Amendments to the Law on Free Access to Information of Public Importance expands the powers of the Commissioner for Information of Public Importance and Personal Data Protection. The number of complaints to the Commissioner concerning the Ministry of Environmental Protection continues to increase every year.¹⁸⁸

There are five Aarhus Centers in Serbia (New Belgrade, Subotica, Kragujevac, Novi Sad, South and East Serbia).

4 Role of Civil Society

In 2014 the Ministry of Agriculture and the Ministry of Environmental Protection founded the National Council for Climate Change. The National Council for Climate Change consists of representatives of the executive branch, academic institutions, individual cities and the

¹⁸³ Id.

¹⁸⁴ Velkavrh, op cit.

¹⁸⁵ Ibid.; Government RS (2022), op cit.

¹⁸⁶ Ibid.

¹⁸⁷ Nedimović, op cit.

¹⁸⁸ Koalicija, op cit.

Standing Conference of Towns and Municipalities – an association of towns and municipalities in Serbia. During its establishment, civil society organizations were not invited to the Council. At the end of 2016, an invitation to appoint a representative for participation in the Council was sent to Coalition 27, an informal coalition of associations that monitors the process of negotiations of the Republic of Serbia with the EU.¹⁸⁹

In this three-year period, the Environmental Protection Committee of the National Assembly of the Republic of Serbia has created space for public participation in its work through various mechanisms. Through the Green Chair mechanism, representatives of civil society organizations were given a seat at committee sittings, where representatives of civil society organizations had the opportunity to ask questions to MPs and public authorities, participate in discussions and make their proposals. The Committee also facilitated public participation in the legislative process through the organization of public hearings.¹⁹⁰

On 11 June 2015, the Government of the Republic of Serbia adopted the Intended National Determined Contribution (INDC), thus fulfilling its obligations under the UNFCCC. During the preparation of the INDC, the Ministry of Agriculture and Environmental Protection did not involve the public but informed about the drafting of this document and the ambitions of the Republic of Serbia in terms of reducing greenhouse gas emissions. Unlike the process of drafting the INDC, the Ministry of Agriculture and Environmental Protection provided the public with an insight into the Draft of the First Biennial Updated Report according to the UNFCCC and took into account some of the association's comments. The first biennial updated report was submitted to the UNFCCC in March 2016.

In the last few years, at least two thematic networks have been formed: "Natura 2000 resource center of Serbia" 59 and the BELLS movement. 60 Within the framework of the Environmental Forum 61, three associations from Serbia were transparently selected as representative associations for the coordination of dialogue in the field of protection.

Coalition 27 is an informal network of associations that advocates and encourages public participation in the process of accession negotiations of the Republic of Serbia with the European Union and proposes solutions that will contribute to the protection and improvement of the environment and the quality of life of citizens. Every year since 2014, Coalition 27 prepares and publishes shadow reports in which it presents its conclusions on the progress of reforms in the field of environmental protection, foreseen by the negotiation Chapter 27 in the process of accession of the Republic of Serbia to the European Union.

GREEN CHAIR represents a network of over 60 non-governmental organizations dealing with the issue of environmental protection. The mission of the Green Chair is to improve communication with the legislative branch of government through an established mechanism, the only one of its kind, and to influence the improvement of legislative proposals in the field of the environment.

COALITION FOR FREEDOM OF ACCESS TO INFORMATION¹⁹¹ is a coalition of non-governmental organizations that was created in the process of public advocacy for the adoption of the Law on Free Access to Information of Public Importance.

In the budget of the Republic of Serbia, funds are allocated for financial support of projects implemented by associations (non-governmental organizations). Each year, funds for the association's projects are planned in the budget of the Ministry of Education and Culture for

¹⁸⁹ BOŠ Comments, op cit.

¹⁹⁰ Ibid.

¹⁹¹ <https://spikoalicija.rs/koalicija/>

these purposes. According to the Public competition for co-financing projects of associations and other civil society organizations in the field of environmental protection, the Ministry of Environment and Forestry co-finance projects within the framework of which the projects also refer to the Aarhus Convention¹⁹².

The level of knowledge and skills of associations dealing with the environment required to participate in decision-making is very low. Support (mainly financial, but also operational) for the development of the capacities of associations needed for their participation in decision-making and cooperation with neighbouring countries and other associations is small or non-existent.¹⁹³ Besides the civil society sphere, Serbia is home to five OSCE Aarhus Centres.

When it comes to the legal framework for the activities of associations, it is important to note that the National Strategy for creating an enabling environment for the development of civil society has not yet been adopted, despite the fact that the public debate on the Proposal of the Strategy ended on 14 August 2015. In addition to the public debate on the Proposal of the Strategy, the Office for Cooperation with Civil Society of the Government of the Republic of Serbia conducted wider consultations on the Draft Strategy through its official website. The Strategy does not mention the role of civil society organizations in environmental protection and sustainable development. Representatives of the Ministry of Agriculture and Environmental Protection were not involved in the work of the expert and project group for drafting the Strategy. The report on the conducted public debate on the Strategy Proposal does not provide enough information to be able to conclude whether there have been comments from authorities and organizations and associations regarding the respect of the role of civil society in environmental protection.¹⁹⁴

Helpful resources:

<https://riverwatch.eu/en/balkanrivers/news/complaint-against-serbia-submitted-energy-community>

<https://cpe.org.rs/vesti/makisko-polje-najvece-vodoizvoriste-u-beogradu-je-u-opasnosti/>

¹⁹² Government RS 2022

¹⁹³ Government RS 2022, op cit.

¹⁹⁴ BOŠ Comments, op cit.

Spain

1. Overview

Spain is a decentralised constitutional monarchy consisting of seventeen autonomous communities (self-governing sub-state entities), two autonomous cities (Ceuta and Melilla), fifty provinces and 8131 municipalities. According to the distribution of competences established by the Spanish Constitution of 1978 and the statutes of autonomy of the autonomous communities, the application of certain elements of the European Green Deal is attributed to the state and other aspects are within the competence of the autonomies. In practical terms, the application and fulfilment of legal obligations to consult the public on environmental and sustainability matters depends on a complex system of competence distribution that englobes multilevel public administration.

The basis of the Spanish environmental policy lies in article 45 of the Spanish Constitution (which is not a fundamental right) establishing the right to enjoy an environment suitable for personal development, as well as the duty to preserve it. There are other common dispositions of public law to ensure an effective and direct application of the legal obligations to consult citizens on environmental and sustainability matters through deliberation processes. In this sense, the law 27/2006 (18 July) “*regulating rights of access to information, public participation, and access to justice in environmental matters*” (EL), transposed the Aarhus Convention dispositions and Directives 2003/4/EC and 2003/35/EC into domestic law.

2. Dimensions of environmental governance

The situation of environmental governance in Spain is influenced by a set of complex historical and cultural questions, of a very different nature and in constant evolution (social, political and business values that, in general, do not perceive environmental quality as one of the priorities for progress and wellness; corruption; legislative “hyperproduction”; a poor culture of active involvement of citizenship in surveillance of the public administration).

Different entities and institutions at the international (OECD), European (European Commission) and state levels have published reports identifying the need to carry out significant improvements in the quality of environmental governance in Spain.¹⁹⁵

Since 2011, and as a response to the OECD’s recommendations on Spanish governance, Spain has developed a work program consisting of successive plans and policies to improve transparency in governance and to improve environmental governance through the accession of Spain to the international Open Government Partnership.¹⁹⁶

Despite these improvements, Spain obtained slightly negative results in the last Sustainable Development report (SDG), since it dropped one position (from 25 to 26) and according to the data of the European Commission, Spain and Greece continue to be the countries with the most environmental violations in the EU. In this sense, Spain has been the country with the most open cases for failing to comply with the environmental regulations imposed by the European Union for five years in a row. These case files cover a wide range of topics, from

¹⁹⁵ <https://seo.org/wp-content/uploads/2020/12/Indicadores-de-Gobernanza-2020 -SEOBirdLife.pdf>

¹⁹⁶ https://transparencia.gob.es/transparencia/transparencia_Home/index/Gobierno-abierto/iiiPlanAccion/C
see also, <https://datos.gob.es/en/noticia/open-government-partnership-initiative-promote-open-government>

the control of polluting discharges to fraudulent extraction or failing in the protection of the natural environment.¹⁹⁷

2.1 Transparency (access to information)

Articles 3, 4 and 5 of the Aarhus Convention have been primarily transposed by several articles (1.2, 3.1.b, 5.2, 10, 13, and 15) of the EL. Title II of the EL contains the specific regulation of the right of access to environmental information, in its double facet, as active and as passive supplier/receiver of information. Besides the constitutional principle of article 45, there are a set of norms providing legal coverage and enforcement of rights of access to information, public participation, and access to justice in environmental matters.¹⁹⁸

However, despite the legal accommodation, the application of the right to access environmental information has been implemented mostly by online and digital means. In this sense, the EL promotes explicitly “*the greatest possible extent and use of technology*” to disseminate and guarantee public disclosure of environmental information (art.1.2). Users can access websites where public authorities made available environmental information and download links and applications for mobiles devices created by the Ministry of Agriculture, Food and Environment.

The use of environmental information is also linked to the “Transparency Portal” and with Law 19/2013 of Transparency and Good Governance. Environmental data is to a good extent readily accessible to the public in all sectors (except for chemicals). The way that citizens communicate with the public administration on environmental issues follows the general and common procedure. It is initiated at the so-called *Point of General electronic access*, then once the query is in the system is conducted to specialised offices. In Spain, there is no specific channel on access to environmental information.

The provision of environmental information is free of charge, and it is comparatively easy for a citizen to find online information regarding the issuing of potential complaint procedures.¹⁹⁹ The information provided does not refer to external control possibilities (ombudsmen). Access, use and reuse of information are protected by several legal instruments,²⁰⁰ the Spanish government initiative on the reuse of public sector information and, the *Aporta* project.²⁰¹

An overview of the online environmental information provided by public authorities shows good use of electronic channels of communication. Practically, all websites provide access to a long list of relevant legislation, technical documents, EU guidelines, etc. However, communication seems to be one-directional; there is hardly any opportunity to interact online with public entities.

The EL is also the domestic regulatory framework to implement the provisions for the collection and dissemination of environmental information. The EL prescribes the

¹⁹⁷ <https://sigfito.es/espana-a-la-cola-de-las-politicas-ambientales/>

¹⁹⁸ See norms of general administrative legislation, articles of Law 30/1992, of November 26, on the Legal System of Public Authorities and the Common Administrative Procedure; Law 39/2015, of October 1, of Common Administrative Procedure of Public Administration and, Law 19/2013, of December 9, of Transparency, Access to public information and Good Governance and other legislation. This set of norms.

¹⁹⁹ See Article 6 of Law 19/2013 incorporates the obligations to disclose environmental information as prescribed by the Convention.

²⁰⁰ See Decree 1495/2011, Law 18/2015

²⁰¹ https://administracionelectronica.gob.es/pae/Home/pae_Estrategias/pae_Gobierno_Abierto_Inicio;/pae_Reutilizacion_de_la_informacion_en_el_sector_publico.html?idioma=en

requirement of public authorities to ensure that the collected information is up to date, accurate and comparable with other data. The law also creates the obligation of public authorities to draw up, publish and make available to applicants of environment information the list of public and private fees applicable to such requests and the events in which payments are not required.²⁰²

The Ministry publishes and disseminates environmental information and data through different activities and initiatives. However, there is no data on the total visits to the websites that provide environmental information, total downloads on mobile devices or requests for public information.

2.2 Participation

Public participation in decision-making on environmental matters and activities established in article 6 of the Aarhus Convention and by the Directive 2003/35/EC is implemented through the EL and through specific procedures according to different specialised and sectorial pieces of legislation.²⁰³

The EL does not regulate any concrete procedure and it simply states the general duty to promote the real and effective participation of citizens. The EL also introduces informative principles of public action, such as making relevant information publicly accessible; informing about the right and the way to participate; recognising the right to make observations and comments at an early stage when all options are open; to justify the decision adopted and how the participation procedure has been carried out.

Each autonomous institution establishes concrete participatory and deliberation procedures ensuring compliance with the guarantees recognised by the Aarhus Convention. It is up to each public administration to determine which members of the public have the status of a person “concerned” and can, therefore participate in a concrete environmental procedure. At the state level, participation in decisions on the sectorial activities listed in Annex I of the Convention i.e., energy sector, production and processing of metals, mineral and chemical industries, waste management, etc) is enforced by specific legislation and mainly by two pieces of legislation.²⁰⁴

Spanish law provides that public authorities will promote real and effective participation (in the early stages) of those interested in the procedures for granting, substantial modification, and review of the integrated environmental permit and installation. Consequently, is legally prescribed that the substantive body will inform the public about the competent authority to which observations, questions, and allegations must be addressed and the timeframe for doing so. All channels of information (e-mail, post, fax, telephone, personal presence, or website) are generally available to the public at all public authorities for participation and the presentation of allegations.

Law 21/2013 of December 9 on Environmental Assessment is a legal instrument that aims to ensure that development is sustainable and inclusive, and it transposes into the domestic legal system Directives 2001/42/CE, of June 27, on evaluation of the repercussions of certain plans and programs on the environment, and Directive 2011/92/EU, of December 13, of evaluation of the repercussions of certain public and private projects on the environment. This norm brings together in a single text the legal regime for the evaluation of plans,

²⁰² See articles 5.2 and 15 EL.

²⁰³ See art. 3.2.e (EL)

²⁰⁴ See Law 16/2002 on integrated pollution prevention and control as amended by Law 5/2013 of June 11 and Law 21/2013 of December 9.

programs, and projects, and establishes a set of common provisions to approximate and facilitate the application of both EU regulations. Some regional governments have modified their regional legislation to adapt law 21/2013 and others have directly implemented the state legislation.

Regarding Integrated Environmental Permits, law 21/2013 establishes that reasonable timeframes must be provided for every stage of the process, allowing the public to have sufficient time to be well informed and the public concerned to prepare and effectively participate in the decision-making process.

As it happens with environmental plans and programs, sufficient public participation time frames are established by each relevant law. The Spanish legislation includes the possibility that projects subject to environmental impact assessment undergo the standard procedure when requested. It also guarantees early participation by opening the consulting process to the public authorities involved and to the natural persons or public and private legal entities linked to the protection of the environment. Additionally, examples of relevant, and specific legislation have adapted their procedures to the provisions of the national law.

Besides the main ordinary legislation, the Ministry for environmental transition publishes relevant information on environmental matters, projects, plans and programmes to ensure compliance with its obligation to guarantee the right of the public to participate.

State and Autonomous authorities encourage early participation through the Internet and by sending information to the associations, organisations and agents involved in the procedures. At the national level participation of the public is enhanced through the Assessing Council of the Environment (Consejo Asesor de Medio Ambiente, CAMA) which aims at bringing together and enabling the participation of social and economic sectors whose participation is relevant to decision-making in the field of environmental measures.

At the regional level, each Autonomous Community also has its own CAMA on a regional basis to which some other committees are added to enable further public participation. Communication efforts of environmental authorities in Spain often have the broad public as their target audience, and the documentation on environmentally relevant legislation / environmental programmes is very often quite user-friendly.

The EL establishes the minimum public participation requirements in environmental matters. At the national level, the participation of the public is enhanced through the CAMA which aims at bringing together and enabling the participation of social and economic sectors whose participation is relevant to decision-making in the field of environmental measures. Spanish public authorities in general are not often found to provide funding for the development of citizen science initiatives, but the authorities do use their information channels to promote these initiatives and to call for their use (e.g. citizen science portals/apps on marine topics are promoted by the Spanish Environment Ministry).

2.3 Access to Justice

The Spanish legislation provides a very wide range of legitimacy to initiate an administrative procedure in environmental matters by recognising the legal capacity of members of the public who consider that an action or omission attributable to a public authority has impaired their rights to information and public participation.²⁰⁵ However, these rules of legal standing do not apply to environmental matters on access to information, participation and access to

²⁰⁵ See article 20 EL

justice. The legal standing rules applicable to those matters are to be found in the 27/2006 Act.

This law aims to regulate the rights to access environmental information, to participate in the decision-making procedure and to call for administrative and judicial review of the acts and omissions attributable to any of the public authorities breaching environmental legislation. The *actio popularis* accords the right to appeal to all non-profit legal entities meeting some basic requirements.²⁰⁶

At the State level, the “*Guía rápida del Convenio Aarhus*” (Quick Guide to the Aarhus Convention) is to some extent a user-friendly communication on the access of the public to justice in environmental matters. A short guide provided by the UN on access to justice in environmental matters is available on the website of the Ministry. In Spain there are no specific environmental law Courts, the competence and jurisdiction are distributed following the general Organic Law on the Judiciary and other procedural norms among the main jurisdictional orders. Judges and Magistrates have been trained with specific courses on environmental law. While this can be considered good practice, the implementation of this training could be further increased, as it is currently only reaching a relatively small number of judges.

2.4 Compliance assurance, accountability, and effectiveness

Non-compliance with environmental law results in either administrative or criminal sanctions. However, regulators encourage the taking of preventive action. Where this fails, administrative (rather than criminal) sanctions tend to be imposed for breaches, although punitive criminal measures are used when required. Enforcement is always compulsory. However, not all cases are enforced. In practice, many breaches of environmental regulations remain unprosecuted, due to, among other factors, a lack of resources and the difficulty in discovering the breaches.

The Spanish Penal Code of 1995 was modified to transpose the Environmental Crime Directive (2008/99/EC), adding three new types of environmental crime. The Penal Code now includes two chapters (regulating crimes against natural resources and the environment, fauna and flora and domestic animals), which aim to punish the most serious breaches of environmental laws with imprisonment and fines.

During 2020, a total of 244 court cases have been instituted on environmental matters, 152 in the administrative jurisdictional order, 90 in the criminal courts and 2 in other civil orders. The responsibility for public prosecution of environmental crimes is at the national level.

The Spanish legislation links effective participation with the obligation of electronic means to access as the way of accessing public information and for the consultation of interested persons. It is worth questioning whether this electronic format guarantees that access to information and consultation is easy and effective.

3. Institutional context

The institutional context to apply the European Green Deal in Spain is also conditioned by the attribution of competences established by the Spanish Constitution and the statutes of autonomy. In practical terms in Spain, there are multiple institutions responsible for assuring

²⁰⁶ See articles 22 and 23 of EL

the guarantees established. At the state level, the competent authority is the Ministry for the Ecological Transition and the Demographic Challenge (previously included within the Ministry of Agriculture and Fisheries, Food and Environment). The ministry works in collaboration with other state agencies and commissions, the competent authorities of the autonomous communities, and local authorities in the task of guaranteeing the applicability of the Aarhus Convention.

The EL created an ex - Novo institution, the *Consejo Asesor del Medio Ambiente* (Environmental Advisory Council), assigned for administrative purposes to the Ministry of the Environment. This is a collegiate body whose purpose is the participation and monitoring of general environmental policies toward sustainable development.

Since its creation, the Council has undergone various modifications intended either to adapt its legal regime to the organizational modifications that have been made within the General State Administration or to provide for its greater agility in its function. These modifications aimed to ensure compliance with the constitutional democratic objectives, to guarantee the prescriptions marked by the Rio Conference on the Environment and Sustainable Development and, specifically, the postulates of the Aarhus Convention concerning citizen access to environmental information and the legitimacy of their participation in decision-making processes of an environmental nature.

The main functions of the Advisory Council are: a) to issue a report on draft laws and laws with environmental impact, and in particular, on the issues that these regulations may include in regard to the basic regulations; b) to advise on the plans and programs (at the state level) that the Presidency of the Council proposes based on their impact on the environment; c) Issue reports and make proposals on environmental matters, on their own initiative or at the request of the ministerial departments, autonomous communities and local entities (on their own competences) that request it; d) Propose measures that encourage the creation of employment linked to activities related to the protection of the environment, as well as citizen participation in the solution of environmental problems; e) Propose environmental education measures to inform, guide and make society aware of ecological and environmental values; f) Propose the measures it deems appropriate for better compliance with international agreements on the environment and sustainable development, assessing the effectiveness of the regulations and programs in force and proposing, where appropriate, the suitable modifications; g) Promote coordination between public and private initiative in environmental matters; h) Promote collaboration with similar bodies created by the Autonomous Communities.

Concerning the composition of the Council, the Presidency is held by the Ministry of Environment, then it includes a member representing the most relevant environmental NGOs of the country; a representative of the most important union; two people on behalf of the most representative business organizations, appointed by them in proportion to their representativeness; two people representing the consumer and user organizations, appointed at the initiative of the Council of Consumers and Users; three people representing the most representative agricultural professional organizations at the state level and, a person representing the National Federation of Fishermen's Guilds.

At the sub-state level, the 17 autonomous communities have developed their environmental advisory councils with different nomenclatures but with very similar functions and goals. However, according to the last written memory, only Catalonia has a CAMA that works satisfactorily due to its frequent meetings, tasks, resources, and jobs that can be accessed.

Local entities have competences on environmental matters and therefore many municipalities have developed local norms and institutions to implement their competencies.

In the development and enforcement of these competencies, municipalities have also implemented procedures of public deliberation and participation in environmental matters.

4. Role of Civil Society

In the Spanish case, extensive environmental legislation has incorporated provisions referring to the active involvement of the public. It has also created Environmental Advisory Commissions or Thematic Councils at the state, sub-state and local levels, in which representatives of non-governmental organizations for the defence of the environment participate, as well as representatives of the administration, business, trade unions and university experts.

The report *Una Agenda 2030 transformadora para las personas y el planeta: Propuestas para la acción política* (A transformative 2030 Agenda for people and the planet: Proposals for political action) was prepared by the most relevant civil society organisations in Spain. It complements the one carried out by the Spanish Government for the Voluntary National Review with the 2030 Agenda before the United Nations on July 18, 2018.

This report uses above all a state and European perspective and places the focus on the responsibilities of the Government as the main signatory and compromiser of the 2030 Agenda agreement. The report has the value of having been signed by organizations and networks in Spain that work in 9 different social sectors - ranging from the environment, human rights, social action, feminism, childhood, the alternative economy or disability, to trade union action or development cooperation and global justice. It is from the richness and legitimacy of the dialogue between the diverse, from the plurality of views, that more coherent proposals are woven that allow us to better address the interrelationships of the reality of our country and the challenges of sustainable development.

Sources:

- Report submitted on Behalf of Spain in accordance with decisions I/8, II/10 and IV/4, available at:
https://www.miteco.gob.es/es/ministerio/servicios/informacion/meetingofthepartiestothec onventiononaccesstoinformationpublicparticipationindecisionmakingandaccesstojusticein environmentalmatters_tcm30-530563.pdf

Legal Norms

- Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.
- Ley 16/2002, de 1 de Julio, de Prevención y Control Integrados de la Contaminación.
- Ley 27/2006, de 18 de julio, por la que se regulan los derechos de acceso a la información, de participación pública y de acceso a la justicia en materia de medio ambiente (incorpora las Directivas 2003/4/CE y 2003/35/CE).
- Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance
- Ley 21/2013, de 9 de diciembre, de evaluación ambiental.
- Ley 5/2013, de 11 de junio, por la que se modifican la Ley 16/2002, de 1 de julio, de prevención y control integrados de la contaminación y la Ley 22/2011, de 28 de julio, de residuos y suelos contaminados.
- Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas.
- Ley 7/2021, de 20 de mayo, de cambio climático y transición energética.

- Orden TED/1086/2021, de 29 de septiembre, por la que se establece la composición, organización y funcionamiento de la Asamblea Ciudadana para el Clima.
- Ley Foral 4/2022, de 22 de marzo, de Cambio Climático y Transición Energética.

Official Websites

<https://asambleaciudadanadelcambioclimatico.es/>

<https://www.miteco.gob.es/es/prensa/ultimas-noticias/arranca-la-asamblea-ciudadana-para-el-clima/tcm:30-533962>

<https://assembleaclimabalears.uib.cat/>

<https://diari.uib.es/Institucional/Govern/Arxiu/La-UIB-impulsa-lasamblea-ciudadana-pel-clima-de.cid686120>

https://ajuntament.barcelona.cat/ecologiaurbana/ca/noticia/engega-lasamblea-ciudadana-pel-clima-per-accelerar-la-lluita-contra-lemergencia-climatica_1156762

<https://www.elsolidario.org/tramitan-en-tribunales-244-asuntos-medioambientales>

https://sustainabledevelopment.un.org/content/documents/203533_Civil_Society_Report_Informe_Sociedad_Civil_Espana771ola_Futuro_en_Comn.pdf

<https://www.miteco.gob.es/es/ceneam/recursos/pag-web/agenda2030-transformadora.aspx>

[https://uk.practicallaw.thomsonreuters.com/0-521-6274?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-521-6274?contextData=(sc.Default)&transitionType=Default&firstPage=true)

<https://dashboards.sdgindex.org/profiles>

https://seo.org/wp-content/uploads/2020/12/Indicadores-de-Gobernanza-2020_SEOBirdLife.pdf

<https://sigfito.es/espana-a-la-cola-de-las-politicas-ambientales/>

Ukraine

1. Overview

Ukraine is a semi-presidential and unitary republic whose multiple administrative divisions consist of the Autonomous Republic of Crimea (illegally annexed by Russia), 24 oblasts, districts, cities, city districts, settlements, and villages.²⁰⁷ As it happens with other countries under analysis, Ukraine distributes the competences related to the aspects of European Green Deal implementation to the different levels of public administration.

The constitution (arts. 85 & 116) attributes to national institutions (the Parliament and the Cabinet of Ministers) the power of approving national programmes on environment and to ensure environmental protection respectively. The constitution brings (art. 199) to local administrations on their respective territory, the power to ensure the implementation of national and regional programs for environmental protection. This constitutional disposition provides for multilevel governance in the country despite its unitarian nature. The Autonomous Republic of Crimea has the constitutional power to elaborate, approve and realise programs on environmental protection in accordance with the national programmes.²⁰⁸

Additionally, the environmental policy in Ukraine springs from several other provisions of the Constitution of Ukraine. They are:

- right to ensure ecological safety in Ukraine,
- right of citizens to healthy and safe environment, and
- right to free access to information regarding the environment.²⁰⁹

Law 1264-XII on environmental protection, regulates relations in the sphere of protection, use and creation on natural resources, ensuring ecological safety, prevention of the negative environmental impacts of economic and other activities and liquidation of its consequences, conservation of natural resources, genetic stock of fauna, landscape and other ecosystems, unique areas and natural objects related to cultural heritage.²¹⁰

There are other common dispositions of public law to ensure an effective and direct application of the legal obligations to consult citizens on environmental and sustainability matters through deliberation processes. In this sense, the Verkhovna Rada adopted the Law of Ukraine “On Environmental Impact Assessment” on 23 May 2017; Decrees No.989, No. 1010 and No. 1026 of the Cabinet of Ministers of Ukraine were adopted on 13 December 2017.²¹¹

2. Dimensions of environmental governance

Ukraine's independence has led to its active inclusion in international integration processes through the implementation of the provisions of the concept of sustainable development, biodiversity, ecosystem approach and balanced use of natural resources. On the other hand, the signing by the state of a significant number of international agreements aimed at EU accession requires the improvement of the existing legislation in accordance with the

²⁰⁷ Constitution of Ukraine

²⁰⁸ See art. 138 of the Constitution of the Republic of Ukraine.

²⁰⁹ <https://www.hg.org/legal-articles/environment-law-in-ukraine-6264>

²¹⁰ See Law 1264-XII on environmental protection. <https://www.ecolex.org/details/legislation/law-no-1264-xii-on-environmental-protection-lex-faoc045101/>

²¹¹ https://aarhusclearinghouse.unece.org/sites/default/files/2022-03/2021_Ukraine_NIR_clean_EN.pdf

requirements of the European Union.²¹² Practical activities in implementing the institutional and administrative potential of European integration are the direct introduction of European standards in all spheres of public life and the involvement of the broader public of Ukrainian society in this process. The improvement of environmental governance in Ukraine has reached measures to achieve environmental planning, monitoring, supervision and auditing²¹³.

The Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states, aims at preserving, protecting, improving and reproducing the quality of the environment, protecting public health, rational utilization of natural resources and encouraging measures at the international level aimed at addressing regional and global environmental problems.²¹⁴

The Russian invasion of Ukraine introduces hazards to humans and ecosystems posed by the Soviet legacy of nuclear facilities, including Chornobyl, and heavy industrial facilities located close to residential areas in Ukraine. Many of these sites require ongoing environmental management. Russian attacks on fuel depots and other energy sites, the shelling of industrial facilities, and the dust and rubble produced by using explosive weapons in residential areas pose near- and long-term threats to civilian health far beyond the immediate casualties.²¹⁵ Russia's bombardment of civilian objects underscores the necessity of strengthening international humanitarian law to protect civilians and the environment in armed conflict.²¹⁶

2.1 Transparency (access to information)

The Constitution of Ukraine establishes citizens' right to access to public information in article 34.2 & 3. The Law of Ukraine on Access to Public Information (as amended on March 27, 2014, by draft law No. 0947) determines procedures for exercising and securing the right of every person to access information of public interest possessed by government agencies and other providers of public information. The law refers in article 1, to information of public interest regarding hazardous environment and other consequences of actions of commercial entities, or absence thereof. The information providers (art.12) are the government agencies in terms of the obligation to disclose information on request on the environmental situation. According to art. 21, for the cases of environmental situations, natural hazards, and other emergencies both real and potential, that threaten people's security, a response shall be given immediately but no later than within 48 hours following receipt of the request.²¹⁷

In practical terms, access to information in Ukraine is highly developed. Nevertheless, there are still challenges in the enforcement of the right to access information, most of them relating to public servants' lack of knowledge of legal requirements and how to put them into practice.²¹⁸

²¹² Gulac, O., Goshovska, V., Goshovskyi, V., & Dubchak, L. (2019). New Approaches to Providing of Environmental Management in Ukraine on the Way to Euro Integration. *European Journal of Sustainable Development*, 8(2), 45. <https://doi.org/10.14207/ejsd.2019.v8n2p45>

²¹³ Ibid. See also, Ruban, A., & Rydén, L. (2019). Introducing environmental auditing as a tool of environmental governance in Ukraine. *Journal of Cleaner Production*, 212, 505-514.

²¹⁴ Ibid

²¹⁵ <https://www.ucpress.edu/blog/58701/the-environmental-and-health-dimensions-of-the-ukraine-war/>

²¹⁶ Ibid

²¹⁷ See the Constitution of Ukraine

²¹⁸ Handbook on Transparency and Citizen Participation in Ukraine, Congress of Local and Regional Authorities of the Council of Europe, 2021.

In the implementation of access to information obligations, responses are often of poor quality, incomplete or provided with delay. In addition, the fees of administrative proceedings are unreasonably high, thereby discouraging citizens to initiate administrative proceedings.²¹⁹ To overcome these challenges, leading NGOs in Ukraine initiated the Fund of the Right for Information Protection and over 150 lawyers joined the Network of Defenders of the Right to Access Information. The Network provides free expert legal assistance and relevant judicial support to guarantee legal protection of the right of access to information.²²⁰

To ensure the right of access to public information, local public authorities as "information administrators" must designate special units or freedom of information officers, who will provide information upon request. They must simplify procedures for submitting requests and obtaining information, as well as provide public access to the meetings of local authorities.²²¹

The access to information on environmental matters is specifically developed by the Law of Ukraine on Environmental Impact Assessment (hereafter, "EIA") enacted on 18 December 2018.²²² Art. 4 of the EIA law states that the public must be timely, adequately and effectively informed in the environmental impact assessment process.²²³ The EIA law establishes the terms of notification and the procedures on public participation in decisions on activities to be assessed by the environmental impact assessment report.

Proactive publication / Open Data

Law No. 319 amending some laws of Ukraine on access to public information in the form of open data compels public authorities and local governments to publish and update public information in the form of open data regularly. Open data must be provided free of charge on the webpages of the authorities and the single-state open data website (data.gov.ua). Open data provisions in Ukraine have enabled significant progress in the public control of the state and local budgets, public procurement, and beneficial ownership disclosure.²²⁴

2.2 Participation

The obligation of public participation in decisions on environmental matters guaranteed by article 7 of the Aarhus Convention and Directive 2003/35/EC is implemented by Law of Ukraine №.872787-VI of December 2010 ratifying the Protocol on the Accession of Ukraine to the Energy Community Treaty, and developed and complemented by the EIA law.²²⁵ The government of Ukraine introduced public consultations on key social issues to involve the public in shaping and implementing relevant national policy. Public consultations can be carried out as public discussions (direct form) and public opinion polls (indirect form).

Proactive participation / Open City

The Open City project is a crowdsourcing Internet platform (opencity.e-dem.ua) for residents to interact with local authorities and utility providers, as well as for the self-organisation of citizens. To do this, there are 2 sections on the site: • "Problems" - allows you to create a

²¹⁹ Ibid

²²⁰ Ibid

²²¹ Ibid

²²² https://aarhusclearinghouse.unece.org/sites/default/files/2022-03/2021_Ukraine_NIR_clean_EN.pdf

²²³ Ibid

²²⁴ Handbook on Transparency and Citizen Participation in Ukraine, Congress of Local and Regional Authorities of the Council of Europe, 2021.

²²⁵ https://aarhusclearinghouse.unece.org/sites/default/files/2022-03/2021_Ukraine_NIR_clean_EN.pdf

message about the problem, which will be sent to the appropriate organisation for resolution

- "Useful objects" - a map of the city on which users of the portal can apply various valuable objects, such as hospitals, schools, parking lots, tourist sites, free Wi-Fi zones, battery reception points, etc.²²⁶

The Law of Ukraine "On Strategic Environmental Assessment" enacted on 12 October 2018 aims to harmonise Ukrainian laws with the EU legislation. The law regulates strategic environmental assessment relations, particularly for public health and enforcement of national planning documentation. This legal instrument states that the public has the right to take part in defining the scope of strategic environmental assessment, it regulates public discussions in the strategic environmental assessment process.²²⁷

The public may also take part in the decision-making process during transboundary consultations (in cases foreseen by the international treaties entered into by Ukraine, particularly the Espoo Convention) of the country of origin (article 14 of the law) and transboundary consultations of the state concerned (Article 15 of the law).²²⁸

Efforts made in Ukraine to promote public access to information and public participation in the decision-making process are defined by several general regulations, particularly by the Law of Ukraine "On Principles of State Regulatory Policy in Economic Operations" which determines the legal and organisational principles of government regulatory policy.

2.3 Access to Justice

Ukraine has implemented access to justice requirements through administrative, commercial, and civil proceedings. Claims for breach of the right of access to environmental information or the right to participate in the environmental decision-making process and claims to challenge public authorities are within the jurisdiction of administrative courts.²²⁹ There are no dedicated environmental courts and any action brought in Ukraine to protect the rights under the Convention and environmental lawsuits are dealt by common law practices applicable to respective types of proceedings.²³⁰

The Constitutional Court of Ukraine, in its decision on 28 November 2013,²³¹ ruled that a public organization may only defend in court the personal non-property and property rights of its members and the rights and legally protected interests of other persons seeking such protection in cases when such power is provided for in its statutes and if the relevant law determines the right of a public organization to apply to a court for the protection of the rights and interests of other persons.²³² Besides, according to art. 1 of the Law of Ukraine "On Public Associations", voluntary associations of natural and legal persons are competent, in addition, to protect environmental rights.²³³

According to para. 3 art. 21 of the Law of Ukraine 'On Environmental Protection', public organizations in the field of environmental protection have the right to submit claims to the

²²⁶ Handbook on Transparency and Citizen Participation in Ukraine, Congress of Local and Regional Authorities of the Council of Europe, 2021.

²²⁷ https://aarhusclearinghouse.unece.org/sites/default/files/2022-03/2021_Ukraine_NIR_clean_EN.pdf

²²⁸ LAW OF UKRAINE On strategic environmental assessment

²²⁹ https://aarhusclearinghouse.unece.org/sites/default/files/2022-03/2021_Ukraine_NIR_clean_EN.pdf

²³⁰ Ibid.

²³¹ Decision of the Constitutional Court of Ukraine of 28 November 2013 in case No 12-rp/2013

²³² A Getman 'Access to Justice for the Protection of Environmental Rights in Ukraine' 2021 2(10) Access to Justice in Eastern Europe 118–127. DOI: 10.33327/AJEE-18-4.2-n000063

²³³ Ibid

court for compensation for damage caused by violation of the law on environmental protection, including the health of citizens and the property of public organizations. Systematic analysis of the Civil Procedure Code of Ukraine leads to the conclusion that in cases specified by law, bodies and persons who are entitled by law to take legal action on behalf of other persons or in the public or public interest, may apply to the court.²³⁴

2.4 Compliance assurance, accountability, and effectiveness

The main governmental body of Ukraine in the sphere of the environment is the Ministry of Environmental Protection responsible for the protection and administration of the environment. Authorities within the Ministry are divided among various agencies and committees. Several other Ministries and Committees, including health protection, industrial safety and industrial policy, also have authority for certain aspects of environmental laws. Local authorities may also have some responsibility for the administration of environmental laws, depending upon the nature of the project under consideration. Law enforcement bodies, such as the Ministry of Internal Affairs and the General Prosecutor's Office, which includes a specialised environmental prosecutor's department, have significant authority to enforce actions against violations of environmental laws.²³⁵

In terms of accountability, the criminal code of Ukraine, in force on September 1, 2001, includes in its first article environmental protection as one of its purposes. It also protects the environment in several articles including a concrete Chapter (VIII) on "criminal offences against the environment" and the criminalisation of "ecocide" defined in article 441, as the *"mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster"*²³⁶

In the report on criminal offences committed at enterprises, institutions, and organizations by types of economic activity in January-August 2019, the General Prosecutor's Office of Ukraine classified criminal offences according to the following categories: agriculture, forestry and fisheries – 1898; mining and quarrying – 733; manufacturing – 1437; supply of electricity, gas, steam and air conditioning – 759; water supply; sewage, waste management – 780.²³⁷ Strengthening criminal liability for environmental crimes is one of the means of effective implementation of criminal environmental policy directions.²³⁸

3. Institutional context

The main governmental body of Ukraine in the sphere of the environment is the Ministry of Environmental Protection responsible for the protection and administration of the environment. Authorities within the Ministry are divided among various agencies and committees. Several other Ministries and Committees, including health protection, industrial safety and industrial policy, also have authority for certain aspects of environmental laws.

Local authorities may also have some responsibility for the administration of environmental laws, depending upon the nature of the project under consideration. Law enforcement bodies, such as the Ministry of Internal Affairs and the General Prosecutor's Office, which

²³⁴ Ibid.

²³⁵ <https://www.hg.org/legal-articles/environment-law-in-ukraine-6264>

²³⁶ Criminal Code of Ukraine.

²³⁷ Baliuk, G.I., Kuschnytska O.P. et.al "Criminal- environmental policy of Ukraine: compensation for damage caused by crimes against environment", *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu*, 2020, (3): 157-163.

²³⁸ Ibid.

includes a specialised environmental prosecutor's department, have significant authority to enforce actions against violations of environmental laws.²³⁹

4. Role of Civil Society

Ukrainian civil society performed two countrywide mass protests with far-reaching consequences, which in the public discourse were even labelled as “revolutions”. The “Orange revolution” of 2004/2005 and the “Revolution of dignity” of 2013/2014 seem to prove that “important components of civil society – namely, public practices, shared civic values, social capital, and its ethical and cultural dimensions.”²⁴⁰

Strictly speaking on environmental matters, it may be remarked that after the nuclear catastrophe in Chernobyl, the ecological movement “Zelenyi Svit” (Green World) started in Ukraine, in 1989, and evolved into a potent political force.²⁴¹

The EU-Ukraine Civil Society Platform

The institutional, general and final provisions of the EU Association Agreement with Ukraine (Article 469) stipulate the establishment of a Civil Society Platform, tasked with promoting regular meetings of representatives of the civil societies of both parties, “to keep them informed of, and gather input for, the implementation of this Agreement”. Thus, the Platform complements the political bodies existing within the framework of the EU-Ukraine Association Agreement, and allows civil society organisations from both sides to monitor the implementation process from the point of view of civil society and prepare their recommendations to the relevant authorities.²⁴²

Working Group 5 of the EU-Ukraine Civil Society Platform as part of its activities on “Energy, Transport, Environment, and Climate Change” submitted in 2018 a report entitled “Climate change in the context of Paris Agreement commitments: challenges and cooperation opportunities for EU and Ukraine”.²⁴³

Civil society is gathering information about the negative impact on the environment that the Russian illegal invasion of Ukraine is causing. For example, the Ministry of Environmental Protection and Natural Resources “[Ekozagroza](#)” website collects information about environmental crimes. In particular, the site collects data regarding the negative impact of the occupiers’ equipment (including air emissions), number of forest fires, and information on air pollution and groundwater. The Ukraine State Inspectorate’s “[Crisis Center](#)” is also noteworthy. The centre works mainly to develop methodologies for collecting and analysing data on the invasion’s negative impacts on the environment. This data can be used in future international litigation.²⁴⁴

²³⁹ <https://www.hg.org/legal-articles/environment-law-in-ukraine-6264>

²⁴⁰ Gatskov, M., Gatskova, K. (2020). Civil Society in Ukraine. In: Veira-Ramos, A., Liubyva, T., Golovakha, E. (eds) Ukraine in Transformation . Palgrave Macmillan, Cham. https://doi-org.are.uab.cat/10.1007/978-3-030-24978-6_6

²⁴¹ Grodeland, Ase Berit (1996) *The 'greening' of Ukraine: An assessment of the political significance of the Ukrainian green movement*. PhD thesis, University of Glasgow, in: <https://theses.gla.ac.uk/71630/> access on 9 nov. de 22. See also [tps://www.britannica.com/place/Ukraine/Ukraine-on-the-path-to-independence#ref404669](https://www.britannica.com/place/Ukraine/Ukraine-on-the-path-to-independence#ref404669)

²⁴² <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-ukraine-civil-society-platform>

²⁴³ <https://www.eesc.europa.eu/en/documents/climate-change-context-paris-agreement-commitments-report>

²⁴⁴ <https://uwecworkgroup.info/civil-society-on-the-path-to-ukraines-green-recovery/>

And more than 50 civil society organisations are developing the [Green Recovery Principles for Ukraine](#), a set of general principles that should be used in the implementation of all of Ukraine's recovery projects. They will work with other public organizations to study the implementation of Ukraine's recovery plan and advance ideas for sustainability and green principles.²⁴⁵

The Aarhus Environmental Information and Education Center cooperates with NGOs in all regions of the country to represent public opinion on the state of the environment, environment safety and environmental protection oversight.²⁴⁶ The Aarhus Center hosted 235 events with more than 5000 participants from 2017 to 2020: members of the central and regional governments, public organisations, research institutions, schools and mass media.²⁴⁷

²⁴⁵ Ibid.

²⁴⁶ <https://aarhus.osce.org/ukraine> and https://aarhusclearinghouse.unece.org/sites/default/files/2022-03/2021_Ukraine_NIR_clean_EN.pdf

²⁴⁷ Ibid.