



Case-law on access to justice in environmental matters: judgments delivered by the EU Court of Justice since the adoption of Commission Notice

DG Environment considers it important to draw attention to new judgments delivered by the Court of Justice of the European Union (CJEU) after the adoption of the Commission Notice on access to justice in environmental matters (i.e. 28 April 2017)¹ which are relevant to points included in the Notice itself. This document is drafted by a Commission service with the sole aim of facilitating consultation of the Notice. It does not constitute a position of the Commission itself.

Two complementary tables are provided:

- **A chronological table** of the new case-law, with links to the Notice. This allows a reader to start with the new case-law and identify relevant parts of the Notice.
- **A table of contents** of the Notice, with links to the new case-law. This allows a reader to start with the Notice and identify relevant new case-law.

¹ OJC 275, 18 August 2017, p.1

Table 1: Chronology of new CJEU judgments on access to justice in environmental matters

Case reference and subject-matter	Quotations	Relevant sections of the Notice
<p>Case-529/15</p> <p>Folk, judgment of 1st June 2017</p> <p>Preliminary reference - Environmental Liability Directive (ELD) - Legal standing of individuals - Fishing rights – Water Framework Directive (WFD)</p>	<p><i>'Article 12 and 13 of Directive 2004/35, as amended by Directive 2009/31, must be interpreted as precluding a provision of national law, such as that at issue in the case in the main proceedings, which does not entitle persons holding fishing rights to initiate a review procedure in relation to environmental damage within the meaning of Article 2(1)(b) of that Directive'.</i></p> <p><i>'However, if, as in the situation in the case in the main proceedings, the competent national authority issued the authorisation without an examination whether the conditions laid down in Article 4(7)(a) to (d) of Directive 2000/60 have been complied with, the national court is not obliged to examine by itself the observance of the conditions laid down in that article and may confine itself to finding that the contested measure is unlawful.</i></p> <p><i>Without prejudice to a possible judicial review, the national authorities which are competent to authorise a project are required to review whether the conditions set out in Article 4(7)(a) to (d) of Directive 2000/60 are satisfied before granting such an authorisation. In contrast, EU law in no way obliges the national courts to take the place of the competent authority by itself examining those conditions when that authority has granted the authorisation without having carried out that examination' (points 38-39 of the judgment).</i></p>	<p>Points 55-56 of the Notice: Substantive rights conferred on individuals and their associations by certain EU environmental secondary legislation.</p> <p>Points 87 to 89 of the Notice: Legal standing in the framework of the ELD.</p> <p>Points 140 to 142 of the Notice: Assessment of the merits of a decision, act or omission.</p>

<p>Cases C-196/16 and C-197/16,</p> <p><i>Comune di Corridonia,</i> judgment of 26 July 2017</p> <p>Preliminary reference - Regularisation <i>ex post</i> with regard to environmental impact assessment (EIA)</p>	<p><i>'In the event of failure to carry out an environmental impact assessment required under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, EU law, on the one hand, requires Member States to nullify the unlawful consequences of that failure and, on the other hand, does not preclude regularisation through the conducting of an impact assessment, after the plant concerned has been constructed and has entered into operation, on condition that:</i></p> <ul style="list-style-type: none"> <i>– national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them, and</i> <i>– an assessment carried out for regularisation purposes is not conducted solely in respect of the plant's future environmental impact, but must also take into account its environmental impact from the time of its completion'.</i> 	<p>Point 135 of the Notice: Scrutiny of procedural legality.</p> <p>Point 164 of the Notice: Instructions requiring omitted measures to be adopted.</p>
<p>Case C-281/16,</p> <p><i>Vereniging Hoekschewaards Landschap,</i> judgment of 19 October 2017</p> <p>Preliminary reference - Validity of a Commission Implementing Decision pursuant to the Habitats Directive</p>	<p><i>'Commission Implementing Decision (EU) 2015/72 of 3 December 2014 adopting an eighth update of the list of sites of Community importance for the Atlantic biogeographical region is invalid, in so far as, by that decision, the Haringvliet site (NL 1000015) was placed on that list without the inclusion of the Leenheerenpolder'.</i></p>	<p>Point 154 of the Notice: Substantive legality – examining the validity of acts adopted by EU institutions and bodies.</p> <p>Uniform interpretation of EU law by the CJEU is ensured by the possibility for national courts to submit questions concerning the validity and interpretation of EU law (Article 267 of the TFEU)</p>

<p>Case C-664/15, Protect Natur, judgment of 20 December 2017</p> <p>Preliminary reference - Water Framework Directive (WFD) - Legal standing of NGOs</p>	<p><i>'Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a duly constituted environmental organisation operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy'.</i></p> <p><i>'The combined provisions of Article 9(3) of that convention approved by Decision 2005/370, Article 47 of the Charter of Fundamental Rights and Article 14(1) of Directive 2000/60 must be interpreted as precluding national procedural rules that deprive, in situations such as that in question in the main action, environmental organisations of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement Directive 2000/60 and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status'.</i></p> <p><i>'Subject to verification by the referring court of the relevant matters of fact and national law, Article 9(3) and (4) of that convention approved by Decision 2005/370, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding, in a situation such as that in question in the main action, a national procedural rule that imposes a time limit on an environmental organisation,</i></p>	<p>Point 104 of the Notice: Legal standing to protect substantive rights.</p> <p>Point 106 of the Notice: Criteria that NGOs must satisfy to claim legal standing.</p> <p>Point 85 of the Notice: Preclusion linked to prior participation in the preceding administrative procedure.</p>
---	---	---

	<p><i>pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure'.</i></p>	
<p>Case C-470/16, North East Pylon, judgment of 15 March 2018</p> <p>Preliminary reference – Effective remedies – provision that costs not be prohibitively expensive.</p>	<p><i>'Article 11(4) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment must be interpreted as meaning that the requirement that certain judicial procedures not be prohibitively expensive applies to a procedure before a court of a Member State, such as that in the main proceedings, in which it is determined whether leave may be granted to bring a challenge in the course of a development consent process, a fortiori where that Member State has not determined at what stage a challenge may be brought. Where an applicant raises both pleas alleging infringement of the rules on public participation in decision-making in environmental matters and pleas alleging infringement of other rules, the requirement that certain judicial procedures not be prohibitively expensive laid down in Article 11(4) of Directive 2011/92 applies only to the costs relating to the part of the challenge alleging infringement of the rules on public participation'.</i></p> <p><i>'Article 9(3) and (4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, must be interpreted as meaning that, in order to ensure effective judicial protection in the fields covered by EU environmental law, the requirement that certain judicial procedures not be prohibitively expensive applies to the part of</i></p>	<p>Point 176 of the Notice: Explicit requirement of costs in certain Directives.</p> <p>Point 185 of the Notice: Criterion on costs applicable to all stages of proceedings.</p> <p>Point 175 of the Notice: The requirement of costs is relevant across the different kind of legal challenge related to the EU environmental law.</p>

	<p><i>a challenge that would not be covered by that requirement, as it results, under Directive 2011/92, from the answer given in point 2 of the present operative part, in so far as the applicant seeks, by that challenge, to ensure that national environmental law is complied with. Those provisions do not have direct effect, but it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with them. A Member State cannot derogate from the requirement that certain judicial procedures not be prohibitively expensive, laid down by Article 9(4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters and Article 11(4) of Directive 2011/92, where a challenge is deemed frivolous or vexatious, or where there is no link between the alleged breach of national environmental law and damage to the environment'.</i></p>	
--	--	--

Table 2: Table of contents of the Notice, showing relevant new CJEU case-law

Table of contents heading	Points of Notice	New CJEU case-law
A.INTRODUCTION: ACCESS TO JUSTICE IN EU ENVIRONMENTAL LAW		
B.THE LEGAL CONTEXT: NATIONAL COURTS AND EU ENVIRONMENTAL LAW		
C.GUARANTEERING ENVIRONMENTAL ACCESS TO JUSTICE		
1.PUBLIC INTERESTS, OBLIGATIONS AND RIGHTS RELEVANT TO THE EXERCISE OF JUDICIAL PROTECTION		
1.1. Introduction		
1.2.Public interests, obligations and rights		
1.3.Ensuring an active role of the public, safeguarding rights and upholding obligations	55-56	Case C-529/15, <i>Folk</i>
2. LEGAL STANDING		
2.1. Introduction		
2.2.Requests for environmental information and entitlement to receive information		
2.3.Specific activities that are subject to public participation requirements	85	Case C-664/5, <i>Protect Natur</i>
2.4.Requests for action under environmental liability rules	87-89	Case C-529/15, <i>Folk</i>
2.5.Other subject matter, such as national implementing legislation, general regulatory acts, plans and programmes and derogations	104 and 106	Case C-664/5, <i>Protect Natur</i>

3.SCOPE OF JUDICIAL REVIEW		
3.1. Introduction		
3.2.Possible grounds of judicial review		
3.3.Intensity of scrutiny/standard of review	135 140-142 154	Cases C-196/16 and C-197/16, <i>Comune di Corridonia</i> ; Case C-529/15, <i>Folk</i> ; Case C-281/16, <i>Vereniging Hoekshewaards Landschap</i>
4. EFFECTIVE REMEDIES		
4.1. Introduction		
4.2.Remedies in case of minor procedural defects		
4.3.Suspension, revocation or annulment of unlawful decisions or acts, including disapplication of legislation and regulatory acts		
4.4.Instructions requiring omitted measures to be adopted	164	Cases C-196/16 and C-197/16, <i>Comune di Corridonia</i>
4.5.Making good unlawful harm caused by an unlawful decision, act or omission		
4.6. Interim measures		
5. COSTS		
5.1. Introduction	175-176	Case C-470/16, <i>North East Pylons</i>
5.2.Criteria for assessing whether costs are prohibitive	185	Case C-470/16, <i>North East Pylons</i>
5.3. Legal aid		
6.TIME LIMITS, TIMELINESS AND THE EFFICIENCY OF PROCEDURES		
7.PRACTICAL INFORMATION		