

Strengthening EU rules on access to climate justice

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- 1. The proposed [EU Climate Law](#) seeks to commit the EU to achieving climate neutrality and resilience by 2050 at the latest and creates a binding governance framework to ensure the delivery of those objectives.** Enshrining the commitment to climate neutrality and resilience in law communicates a signal of serious intention by the EU and Member States and recognition of the seismic economic and societal implications of policy failure. However, meaningful accountability for effective implementation is [crucial](#) to the credibility of the EU Climate Law and thus the EU's commitment to implementing the Paris Agreement. Meaningful accountability will require the creation of avenues through which EU citizens and their representatives can challenge action or inaction by authorities at EU and national level that breach the rule of EU climate law by bringing cases before national and EU courts.
- 2. Two major steps towards guaranteeing more effective accountability for climate action at EU and national levels are currently being considered in Brussels.** The first relates to an accountability mechanism proposed by the European Parliament (EP) for inclusion in the EU Climate Law, which, if adopted, would make an important contribution towards strengthening Member State accountability before national courts. The second relates to the revision of the EU Aarhus Regulation which governs the accountability of EU institutions for compliance with EU environmental law (not just climate law) and provides for access to justice at EU level. While both of these legislative files represent crucial opportunities for strengthening EU rules on access to climate justice, this briefing paper will focus on only on the EU Climate Law and will consider why the EU Climate Law is the right place for the access to justice rights being proposed by the EP.
- 3. There are a number of compelling reasons for including access to justice provisions in the EU Climate Law.**
 - (a) **The EU is a signatory of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the 'Aarhus Convention') and is thus obliged to implement the access to justice rights created by the Convention under international law.** The rights enshrined in the EP's proposed amendment are consistent with the European Commission's (COM's) stated [strategy](#) for integrating access to justice rights into new environmental legislation and are consistent with the COM's recently expressed concern about the lack of consistent compliance by MS with the Aarhus Convention and uneven levels of access to justice across the EU. EU action on access to justice is now also under enhanced scrutiny in light of the Aarhus Convention Compliance Committee's (ACCC) January 2021 [advice](#) that the EU is currently in breach of its access to justice obligations under the Aarhus Convention.
 - (b) **The EP's access to justice provision is consistent with precedents for integrating access to justice rights at national level in other cross-cutting EU environmental measures, e.g. the Environmental Impact Assessment Directive 2011/92/EU, the Environmental Liability Directive, 2004/35/EC and Industrial Emissions Directive, 2010/75/EU.** None of the existing access to justice rights in other EU environmental measures address access to justice for MS breaches of EU climate legislation, creating a need for explicit provisions relating to access to justice in the EU Climate Act.
 - (c) **The most appropriate location for the EP's proposed access to justice rights at national level is in the EU Climate Law because the EU Commission's (COM) [vision](#) for the Aarhus Regulation (AR) is that it is exclusively focused on the accountability of EU institutions and access to justice at EU level.** In addition, the EP proposals are only

relevant to climate planning whereas the AR relates to the whole of the environment. The challenge of generating political support for standalone EU legislation which intervenes in access to justice at national level means that the inclusion of national access rights in sector-specific measures within the field of environmental law, such as those proposed by the EP for the EU Climate law, are required – and are [accepted](#) by the COM as the most appropriate way for the EU to ensure EU compliance with the Aarhus Convention at national level.

- (d) **The EP’s proposed access to justice provisions write into legislation what is already required by EU law under the doctrine of direct effect, the fundamental right to an effective remedy (as required by Art 47 of the Charter of Fundamental Rights and Art 9(3) of the Aarhus Convention) and the case law of the CJEU.** The CJEU has clarified that NGOs and affected persons must have court access where national authorities fail to adopt specific plans or programmes mandated by EU law or adopt inadequate plans or programmes. as established in case law, e.g. C-237/07 *Janecek*, and C-404/13 *ClientEarth* in relation to Air Quality Plans, C-165 to C-167/09 *Stichting Natuur en Milieu* in relation to National Air Pollution Control Programmes and notably C-197/18 *Burgenland* in relation to Nitrate Action Programmes. Incorporation of these rights in the EU Climate Law therefore supports a participative transition because it clarifies and codifies public rights of access to justice.
- (e) **The EU’s [Governance Regulation](#) (GR) already guarantees the public the right to participation in the development of NECPs and LTs. The EP’s proposed amendment to the EU Climate Law would enable those rights to be enforced before national courts.** ‘Meaningful accountability’ requires more than the powers conferred on the Commission under the EU CL to monitor MS policy making and to issue non-binding recommendations for taking action where national measures are not consistent with credible contribution to achieving 2050 objectives. While MS are not bound by the COM’s recommendations they will be bound by decisions of their national courts.
- 4. The creation of highly efficient, low carbon, integrated and competitive energy markets is absolutely crucial to climate action. Energy policy is thus inextricably linked to climate policy.** Delivering the economic and societal transformations required to achieve the objectives of the EU Climate Law will require sustained and strong public support for the policies introduced by MS and the EU but also effective public engagement with the many behavioural changes that these transformations will involve. By providing avenues through which citizens can challenge national energy policy as it relates to NECPs and LTs, public engagement and participation in the transition to a climate neutral economy will be significantly enriched. This would underwrite the guarantee of a participative transition and unlock the competitive advantages of taking early and ambitious action towards a climate neutral economy.
- 5. In conclusion, the EP amendments will safeguard political solidarity and public support for the EU’s mandate to lead on climate.** Robust accountability measures for MS will ensure a level ‘accountability playing field’ for all MS at national level by harmonising rights of access to justice on national plan making and will thus play an important part in ensuring that all countries contribute credibly to the shared goal of a participative transition towards a climate neutral economy. Meaningful rights of public participation in climate governance and mechanisms through which MS and EU breaches of EU Climate Law can be challenged will enhance the legitimacy of the EU’s mandate and bolster trust and public support for its leadership with regard to climate action.

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