

The Aarhus Regulation Amendment and EU Accountability

What is the Aarhus Convention?

The [Aarhus Convention](#) is an international UN Convention adopted in 1998 and ratified by the EU and [46 other countries](#). The core idea of the Convention is environmental democracy, the idea that people should have a say in decisions made affecting the environment in which they live through meaningful public participation in decision-making processes. The Convention also enshrines the right of the public (individuals and NGOs) to go to court to protect the environment and to access environmental information. These three core rights (environmental participation, information, and access to justice) create important oversight and accountability over State body decision-making in all areas affecting the environment, including climate action.

What is the Aarhus Convention Compliance Committee?

The [Aarhus Convention Compliance Committee \(ACCC\)](#) is a mechanism designed to ensure that parties to the Aarhus Convention comply with it. It is an international tribunal made up of eight independent experts selected for their “high moral character and recognized competence” in the field. The EU (along with all the other Parties) [agreed to the establishment](#) of the Compliance Committee and is bound by the terms of the Aarhus Convention.

What is the Aarhus Regulation?

The EU’s [Aarhus Regulation](#) is designed to implement the Aarhus Convention at EU level and to give NGOs the right to challenge decisions of EU level institutions/bodies before the EU Courts if they breach environmental law. It also provides rights of access to information and public participation rights at EU level, as regards EU institutions and bodies. It has never functioned as it should and is currently going through an amendment process at EU level.

What is the problem with the Aarhus Regulation?

The Aarhus Regulation was flawed from the start because it only allowed NGOs the right to challenge an extremely limited category of decisions and it didn’t give individuals any rights to challenge decisions of EU institutions before the EU Courts. [ClientEarth](#) (an environmental NGO) made a complaint to the ACCC highlighting the problems with the Aarhus Regulation, and the ACCC stated (in findings from [2011](#) and [2017](#)) that the Aarhus Regulation breached the Convention. The EU Commission [proposed](#) amendments to the Regulation to address the issues in the ACCC findings, but in [Feb 2021](#) the ACCC advised that the proposed changes were not satisfactory as they still omitted rights for individuals, and introduced new restrictions on the categories of reviewable decisions. The EU Commission [rejected this advice](#), and intend to proceed with the flawed amendment despite being on notice that they are in breach of international law. The problems with the Regulation and current proposals also mean that there is [insufficient oversight](#) of decision making power at EU level. [NGOs have made proposals](#) to remedy these defects and ensure EU compliance with its obligations under the Aarhus Convention, as discussed in this [EJNI Briefing](#).

What is required to avoid the EU breaching international law?

1. Introduction of individual rights to challenge EU institutional decisions (ACCC advises [2021](#), para 32 – 38).
2. Removing the phrase ‘legally binding and external effects’ from the Art 2(1)(g) of the draft Regulation. The ACCC highlighted that this phrase in its form was unacceptable ([2017](#) decision, paras 101-104) ([2021](#) advises paras 47-55).
3. Removing the phrase ‘excepting those provisions of this act for which Union law explicitly requires implementing measures at Union or national level’. This exclude almost all EU level administrative decision making. This is why the ACCC highlighted it as unacceptable (Advices from [2021](#), paras 56-68).

**Participate in our online Day of Action on Aarhus @ <https://ejni.net/day-of-action/>
Email your local/national/EU representative using the email tool available at www.climateoversight.eu**

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*Dr Ciara Brennan is a lecturer in law at Newcastle University and the Director of EJNI, Alison Hough BL is a barrister and lecturer in law at Athlone Institute of Technology. The Access to Justice Observatory Project has been generously funded by the European Climate Foundation and is being carried out by researchers from Athlone Institute of Technology, Newcastle University and University College Dublin in collaboration with a wide range of external, expert stakeholders. For more information on EJNI or the Access to Justice Observatory Project, visit our website: www.ejni.net or email admin@ejni.net