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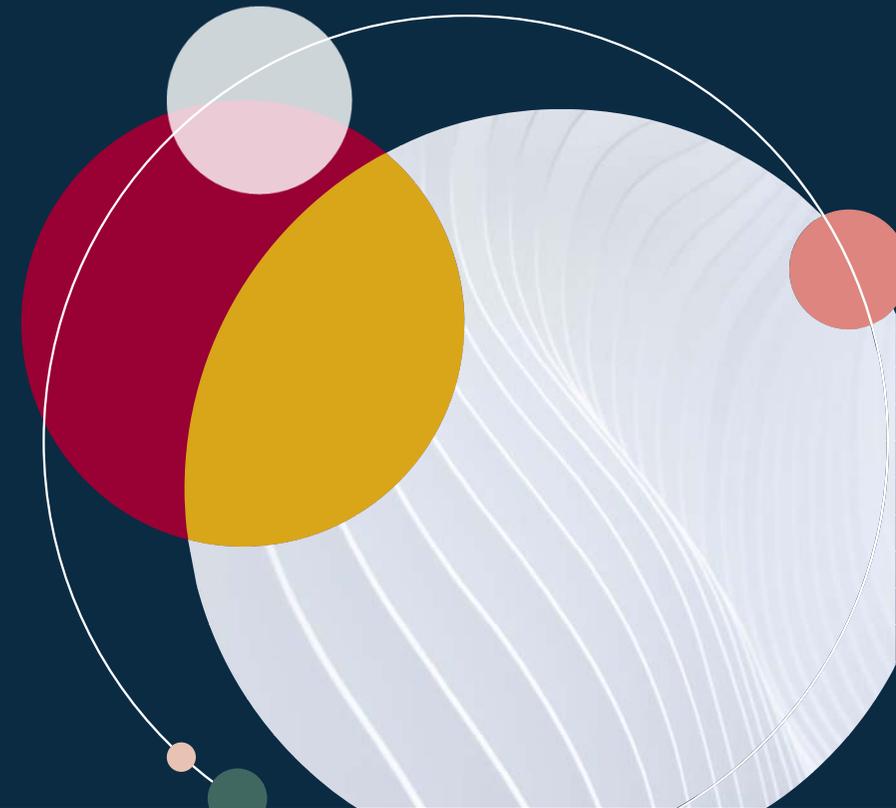
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Implementation of EU access to justice rules

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Darren enables clients throughout the chemicals and life sciences supply chain to get and keep their products on the European market (both in the EU and in the UK).

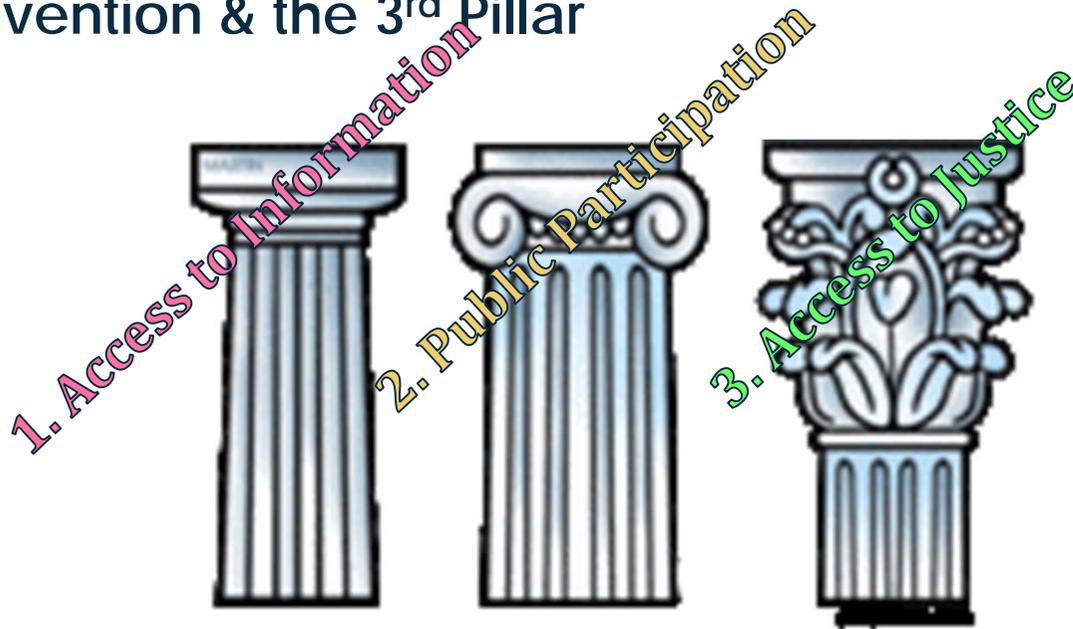
He provides a global clientele (companies, consortia and trade associations) with strategic advice, undertakes advocacy before institutions and agencies and litigates before courts and tribunals (including the CJEU and ECHA board of appeal).

Darren has a wealth of experience with regulation of biocidal products, plant protection products, REACH, CLP, food and feed, GMOs and wider aspects of environmental law, including extensive work with the Aarhus convention.

Chambers & Partners Europe-wide Regulatory (2020) recognizes his environment and Agro/Food practice, quoting clients' praise: "*exceptional expertise on...regulations on chemicals...and a great ability to understand the complexity of business.*" "*When it comes to things like REACH and chemicals law, he is the best*".

What is “access to justice
in environmental matters”?

Aarhus Convention & the 3rd Pillar



“The third pillar of the [Aarhus Convention](#) is the access to justice pillar, contained in Article 9. It **helps to enforce both the information pillar** (specifically, article 4 concerning information requests) **and the public participation pillar** (specifically, article 6 on public participation in decisions on specific activities) in domestic legal systems, as well as any other provisions of the Convention that Parties specify in their domestic law to be enforced in this manner. The access to justice pillar **also provides a mechanism for the public to enforce environmental law directly.**” [Aarhus Convention Implementation Guide](#) (2014), 2nd Edition.

(NB: Aarhus [Compliance Committee](#) active on Article 9.)

Convention Definition of “access to justice”

Article 9, Aarhus Convention

SUPPORTING ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall, within the framework of its national legislation, ensure that **any person** who considers that his or her **request for information under article 4** has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, **has access to a review procedure** before a court of law **or another independent and impartial body established by law**.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an **expeditious procedure established by law that is free of charge or inexpensive** for reconsideration by a public authority or review by an independent and impartial body **other than a court of law**.

Final decisions under this paragraph 1 shall be **binding on the public authority** holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

KEY

Black = Framing
Green = granting
Red = limiting

“free of charge or inexpensive”



Convention Definition of “access to justice”

SUPPORTING PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

2. Each Party shall, **within the framework of its national legislation**, ensure that **members of the public** concerned
 - (a) Having a **sufficient interest** or, alternatively,
 - (b) **Maintaining impairment of a right**, where the administrative procedural law of a Party requires this as a precondition,

have **access to a review procedure** before a court of law and/or another independent and impartial body established by law, **to challenge the substantive and procedural legality** of any **decision, act or omission** subject to the provisions of **article 6*** and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any **non-governmental organization*** meeting the requirements referred to in article 2, paragraph 5, shall be **deemed sufficient** for the purpose of subparagraph (a) above. Such organizations shall also be **deemed to have rights capable of being impaired** for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 **shall not exclude** the possibility of a **preliminary review procedure before an administrative authority** and shall not affect the requirement of **exhaustion of administrative review procedures prior to recourse to judicial review procedures**, where such a requirement exists under national law.

* In EU this focuses on: EIA & IE (ex-IPPC) regimes etc. as per [Directive 2003/35](#).

*“non-governmental organizations promoting environmental protection and meeting any requirements under national law”

Convention Definition of “access to justice”

SUPPORTING ENFORCEMENT OF NATIONAL ENVIRONMENTAL LAW

3. **In addition** and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, **where they meet the criteria**, if any, laid down in its national law, **members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.**

SUPPORTING REMEDIES

4. In addition and without prejudice to paragraph 1 above, **the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.** Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

SUPPORTING ENFORCEMENT OF NATIONAL ENVIRONMENTAL LAW

5. In order to further the effectiveness of the provisions of this article, each Party **shall ensure that information is provided to the public on access to administrative and judicial review** procedures and shall **consider** the establishment of appropriate assistance mechanisms to remove or reduce financial and other **barriers to access to justice.**

Aarhus Implementing Regulation 1367/2006 & Latest Revision

Article 10 Request for internal review of administrative acts

Article 9(3) Convention	Aarhus Regulation	New Aarhus Regulation
<p>In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment</p>	<p>Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.</p>	<p>Any non-governmental organisation or other members of the public that meet the criteria set out in Article 11 shall be entitled to make a request for internal review to the Union institution or body that adopted the administrative act or, in the case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law within the meaning of point (f) of Article 2(1).</p>

Article 2 “Administrative Act” Definition

Aarhus Regulation	New Aarhus Regulation
<p>(g) ‘administrative act’ means any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects;</p> <p>(h) ‘administrative omission’ means any failure of a Community institution or body to adopt an administrative act as defined in (g).</p>	<p>(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1);</p> <p>(h) ‘administrative omission’ means any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law within the meaning of point (f) of Article 2(1).</p>

Article 10 Request for internal review of administrative acts

Aarhus Regulation	New Aarhus Regulation
<p>1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act <u>under environmental law</u> or, in case of an alleged administrative omission, should have adopted such an act.</p> <p>Such a request must be made in writing and within a time limit not exceeding six weeks...</p>	<p>1.</p> <p>1. Any non-governmental organisation or other members of the public that meet the criteria set out in Article 11 shall be entitled to make a request for internal review to the Union institution or body that adopted the administrative act or, in the case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission <u>contravenes environmental law within the meaning of point (f) of Article 2(1)</u>.</p> <p>Such requests shall be made in writing and within a time limit not exceeding eight weeks...</p>

Article 11 Criteria for entitlement

Aarhus Regulation	New Aarhus Regulation
<p>1. A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:</p> <p>(a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;</p> <p>(b) it has the primary stated objective of promoting environmental protection in the context of environmental law;</p> <p>(c) it has existed for more than two years and is actively pursuing the objective referred to under (b);</p> <p>(d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.</p>	<p>1. Substantially unchanged</p>

Art. 11: “Other members of the public” (*applies from 29 April 2023*)

A request for internal review may also be made by other members of the public, subject to the following conditions:

- (a) they shall demonstrate **impairment of their rights** caused by the alleged contravention of Union environmental law and that they are directly affected by such impairment in comparison with the public at large; or
- (b) they shall **demonstrate a sufficient public interest** and that the request is supported by at least 4 000 members of the public residing or established in at least five Member States, with at least 250 members of the public coming from each of those Member States.

In the cases referred to in the first subparagraph, the members of the public shall be **represented by a non-governmental organisation** which meets the criteria set out in paragraph 1 **or by a lawyer** authorised to practise before a court of a Member State. That non-governmental organisation or lawyer shall cooperate with the Union institution or body concerned in order to establish that the quantitative conditions in point (b) of the first subparagraph are met, where applicable, and shall provide further evidence thereof upon request.’;

Article 12 Proceedings before the CJEU

Aarhus Regulation	New Aarhus Regulation
<ol style="list-style-type: none">1. The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.2. Where the Community institution or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty	<ol style="list-style-type: none">1. The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of TFEU.2. Where the Union institution or body fails to act in accordance with Article 10(2) or (3), the non-governmental organisation or other members of the public that made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of TFEU.

Requests for internal review: examples

73 since system initiated

- 13 on active substances
- 2 on MRLs
- 10 on GMOs

See: [Repository of requests for internal review lodged with the European Commission](#)

44 related cases before CJEU

Requests for internal review: examples

- Commission decisions **authorizing placing on market** of products containing, consisting of, or produced from **GM** maize and soyabean and oilseed rape
- Commission Reregulation **setting MRLs**
- Commission Directive / Implementing Regulation **approving active substances**
- Commission Implementing Regulation on **conditions of approval of active substance**
- Commission Directive on **expiry dates for active substance approvals**
- Commission Implementing Regulation **decision to extend approval period**

Take home messages

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