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# Environmental Law Within the Framework of European Courts and UN Charters

*Ley ambiental en el marco de los tribunales europeos y las cartas de la ONU*

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***ABSTRACT***

Access to justice is the concrete means of asserting everyone's right to respect for provisions protecting the environment. Does the European Union have vocation to guarantee effective judicial protection? This article presents a difference in treatment by Union law of access to national judges and access to his own court. Indeed, if access to national judges in litigation environmental rights, is widely promoted by Union law the access to Court of Justice is, on the contrary, rigorously framed in the law of the Union and in despite proposals and demands, no substantial development can be in the area of the environment.

**Keywords**: Environmental law, European courts, UN letters.

***RESUMEN***

El acceso a la justicia es el medio concreto de hacer valer el derecho de todos a respetar las disposiciones que protegen el medio ambiente. ¿Tiene la Unión Europea vocación de garantizar una protección judicial efectiva? Este artículo presenta una diferencia en el tratamiento por la ley de la Unión del acceso a los jueces nacionales y el acceso a su propio tribunal. De hecho, si el derecho de la Unión promueve ampliamente el acceso a los jueces nacionales en litigios sobre derechos ambientales, el acceso al Tribunal de Justicia está, por el contrario, rigurosamente enmarcado en la ley de la Unión y, a pesar de las propuestas y demandas, no se puede lograr un desarrollo sustancial en el área del medio ambiente.

**Palabras clave**: Cartas de la ONU, ley ambiental, tribunales europeos.

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## *INTRODUCTION*

Access to justice is the concrete means of asserting the right of everyone to respect the provisions protecting environment and is therefore essential to the application of these. However, access to justice in name of environmental protection is not easy. First, nature, no more than its elements, can defend its own interests in court. This prerogative must therefore be transferred to subjects of law, individuals, alone or grouped in association, acting on behalf of the defense of the environment against a insufficiently protective legal standard or against a decision to authorize a project, activity or of an environmentally hazardous substance. Then, even if individual interests can be also protected, the protection of the environment is by nature a collective interest, whereas in many legal systems, a personal interest is required for who claims to sue. A layout applicable procedural rule is therefore, generally necessary to ensure the right of access to the environmental justice.

What about within a framework of Euro Union laws? It is the objective of this article to analyze in to what extent the legal order of the European Union guarantees such a right understood, in the context of this study, like the right of natural and legal persons to have access to a judge. Union environmental law European is dense; it combines sect oral instruments and instruments of a transversal nature [2]. Therefore, it is for the less essential, to ensure its effectiveness, than judges, national judge like a Court of Justices of a Union, may be seized of all dispute relate to an incorrect applications of a standards which compose it. At first glance the situation looks rather reassuring. Since its origin [3], the Union has defined itself as a Union of law [4] which aims to guarantee effectives judicial protections now [5] enshrined in a Treat [6[. Besides, the remedies provided for in the Treaty are numerous, "complete" [7] even the Court tells us, intended to allow the supervision by the Court both of acts taken by the institutions, bodies, offices and agencies of the Union and of acts, state behavior or abstentions. In addition to those provided for in national courts, Article 19, paragraph 1, second sentence, of the TEU, requiring Member States to establish the means of redress necessary to ensure effective judicial protection in the fields covered by Union law.

In the area of the environment, the principle has also been particularly valued since the adoption in 1998 of the Conventions on Accesses to Info, general Participation in Decisions-Make and Accesses to environmental justices, convention approve on behalf of a Euro Community by decisions 200637/1 of Feb 17, 2005. Since then, the Union is, alongside the Member States, party to the Convention which is therefore an integral part of the legal system of the Union and for which the Court has jurisdiction to rule on preliminary ruling [9]. However, the objective of the Convention is ambitious in particular - but not only acting the right of access to justice in environmental matters [10] organized in three distinct cases: In relation to access to information [11], with the decision-making process [12] and more generally in order to contest any hypothesis of violation of national provisions (and of Union law) protecting the environment. Under a 3rd paragraph of paper 9 of a text, the Parties to the Convention must effect ensuring that "members of the public who meet some criteria provide for by its internal law may initiate administrative or legal proceedings to challenge the acts or omissions of individuals or public authorities which go against the provisions of national environmental law."

However, as soon as the analysis becomes more precise, the impression is transformed singularly and becomes more mixed. The most recent news also gives some significant clues. For the second time, in a decision of 17 March 2017, the compliance committee for the Aarhus Convention noted the inadequacies of Un laws vis-a-vis a right to judge in environmental matters and concluded that there is non-compliance Union law vis-à-vis the provisions of a Conventions on public access to Justices [14]. And yet, in the same period, the Commission published, more precisely on April 28, 2017, a Communication on access to justices in environmental matter [15] with a view to identifying the important case-law of the Court in the matter and in so doing, "to clarify matters appreciably and to constitute a source of reference "in particular for" the public, in particular natural persons and environmental NGOs, acting as defenders of the general interest "[16]. In concluding its document, the Commission emphasizes that, from his point of view, the requirements currently

contained in the Union acquis already provide a framework consistent for access to justice in this area [17]. Moreover, the judgment rendered on December 20, Protect Natur [18] seems to support this conclusion. The Court, on a basis of paper 47 of the Charter and Article 9- of the Aarhus Convention, recalls the impossibility for national procedural rights to deprive environmental organizations of the possibility of having compliance with standards issued by the Environmental Union law [19] and stresses that in this case it is the responsibility of the national jurisdiction, to leave inapplicable, in the dispute before it, the rule of national procedural law.

To account for this situation, it is useful to consider, on the one hand, access to national judges and the rules of Union law which apply thereon, on a other hand, accesses to a Court of Justices (and to its Court) [20] as Phone. Indeed, if access to national judges is, in the case of environmental disputes, widely favored by Union law, on the contrary, access to the Court of Justice is, on the contrary, strictly framed in the Union law, and despite proposals and claims, no changes have taken place in the area of the environment. Union law - and more specifically the case law of the Court - seems to require states members what it does not require for itself. Of course, the consequences can, from a certain point of view, be gelatinized because, it is the regular argument in the jurisprudence, the limits to the access to the Court itself are precisely compensated by access to national judges who can hear national enforcement measures under Union law and who may, if necessary, refer a question to the Court. However, in addition to the fact that this is not always the case, a hiatus exists insofar as the invalidity of the measures taken at Union level itself can hardly be brought before the Union judge. This will be about to account for the importance of such a gap between access to national judges and access to the Union judge in as such. In the first case, specificity in the field of the environment is promoted (part 1), in the second case, it still remains largely denied (part 2.)

## *ACCESS TO NATIONAL JUDGES*

### Law of union

Principle of indirect administration and institutional and procedural autonomy of member states. If the Union law may be advanced to the merits before the national courts, common law courts of the right to the Union, it is not, in principle, intended to take an interest in the conditions of access to such jurisdictions. It is necessary remember that, under the principle of indirect administration, it is the Member States which are responsible to implement the law produced by the legal order of the Union which, although autonomous in its conception,

''Depends on the efforts of member states" with regard to compliance with its provisions. We must also remember whereas, to this end, Article 19-1 of the TEU establishes, in general, the obligation for the Members State to guarantee effectives judicial protections in a areas covered by Un laws. Final, to recall that it is settled case law that "it is up to each member state to designate the competent courts and to regulate the procedural modalities of legal remedies" aimed at ensuring the respect for Union law, which can be referred to as the principle of institutional autonomy and procedural. Note that this principle is consistent with what the Aarhus Convention itself provides. This in effect grants States Parties room for maneuver in the application of the right of access to justice and the organization of remedies aimed at challenging an act that was adopted despite the rules relating to public participation or more broadly to challenging an act which infringes any other standard Environmental. Thus, for the first case, article 9-2 provides that a right of recourses is granted to ''Member of a general concerned" having the sufficient inter to act or claiming an infringement of the right.

However, he specified that "what constitutes sufficient interest and an infringement of a right is determined according to the provisions of domestic law". Thus, non-governmental organizations are deemed to have an interest and rights. Which could be harmed when they work to protect the environment and that they meet the conditions that may be required under domestic law. In the second case, article 9-3 provides that "member of a general" must be able to initiate administrative or judicial proceedings to challenges the act or omissions of individuals or general authorities that go against the provisions of the national environmental law, but only

when they meet "a possible criteria laid down in it is domestic law ". These provisions therefore enshrine a right to the judge in environmental matters but in no way unconditional access of members of the public to justice, an actio popularis environment, authorizing States Parties to establish specific criteria to which they must respond to be able to effectively exercise the remedies provided. It is precisely for this reason that the Court has, on the occasion of a preliminary reference formed in a litigation relating to the protection of a species of bear brown in Slovakia, finding that Article 9-3 has no direct effect, finding that the provision does not contain no clear and precise obligation capable of governing the situation of individuals.

It must be admitted, however, that despite the constantly reminded procedural institutional autonomy, the Union law says a lot, and this is an important element of specificity, about the conditions of access to judges of the Member States of the Union, in particular in the field of the environment, arguing the principle of the effective of Un law but also a necessary application of a principles of the Convention Aarhus. Admittedly, the provisions of secondary legislation prove to be relatively limited, undoubtedly the ultimate mark of a desire to ensure respect for the principle of procedural autonomy enjoyed by the Member States of the Union(I). But, on the side of the jurisprudence of the Court of Justice, the prescriptions are on the contrary quite numerous and precise and clearly attest to what the Union judge is trying, in this matter, to reconcile procedural autonomy and effective protection of the right to access to justice (II).

Explosion of the provisions enshrining the right to the judge. For a long time, an issue of accesses to the judge in environmental matter have hardly ever been addressed in European Union law, if not, very succinctly by Directive 90/313 on free of accesses to environmental info , Today at issue is governed by several directives: Directive 2003/4 on general accesses to environmental info; Directive 2003/35 provide for general participation in a preparations of certain plan and programs relating to the environment , Directive 2004/35 on the environmental responsibility , Directive 2010/75 on industrial emission , a directive 92/2011on environmental impact assess with Directive 2012/18 (known as Seveso III) . AT evoking this list, we see that a right of accesses to justices is envisaged only in texts sectoral imposing other environmental obligations (information, public participation, assessment of impacts ...). The legislative option of establishing a dedicated instrument on access to justice has indeed, it was ruled out in 2003 when the Commission had presented a proposal to that effect to which several member states objected (notably in the name of the principle of subsidiary) It is therefore only within non-specific and scattered texts that it is possible to find some relative provisions access to, and conditions surrounding, national judges. Furthermore, upon analysis, one can only note that the obligations are defined in a relatively minimal manner.

Minimalism of the provisions enshrining the right to judge. Directive 2003/35 providing for the participation of the public during the development of certain plans and programs relating to the environment (which came to modify the Directive 86/338 concerning the assess of effect of certain general with secure project on the environment and Directive 97/62 on integrate pollution preventions and control) is a very good illustration clear of such minimalism. Directive 85/337 provided for the possibility of appeal to the courts or administrative in case of refusal of abusive communication and was content to emphasize that this remedy will be in accordance with national legal order. To bring Union law into line with the Convention of Aarhus, directive 2003/35 revises said directive and inserts an article 10a, at first sight more developed moreover, drafted in terms very close to those used in the Convention.

However, the obligations laid down in the article are, in the end, at least general since it is intended that member states guarantee that members of the public with a sufficient interest to act or claiming an infringement of a right (where the right administrative procedure of a Member State imposes such a condition) may appeal to a court or other independent and impartial body established by law to challenge the legality of decisions, acts or omissions falling under the provisions of the directive. Thus, the directive clearly entrusts the Member States should determine at what stage decisions, acts or omissions may be challenged, as well as what constitutes sufficient interest to act or an infringement of a right and therefore does not actually come opening up the possibilities of appeal already existing in national laws. Obligations provided by others sect oral texts

are also minimal and this, without a doubt, Directive 2003/4 on general accesses to environmental info [36] provides, without further details, a possibility of review and appeal to the independent with impartial body establish by law. paper 13 of a Directive 2004/35 on environmental responsibility, which aims in particular to encourage natural and legal persons to play the active role in helping a competent authorities to remedy a environmental damage, finally provides for the principle of a right to appeal while stating that it does not infringement not infringement of any national provisions regulating access to justice.

Beyond the right to appeal? In total, nothing is provided beyond the assertion of a right to appeal. However, the right to access justice clearly depends on what may be considered an interest in acting infringement of a right; moreover, it has wider consequences, such as the possibility of requesting provisional measures, limiting the costs of procedures or even legal aid or the right to access expertise, which can be essential in environmental litigation. However, nothing is provided for on this subject in the right to the Union and the Member States are therefore free to provide - or not make arrangements to make effective in practice the right to environmental remedies. The legislative results are therefore relatively meager. But he is partially offset by demanding case law vis-à-vis the member states, developed on the foundation of the principle of the effectiveness of Union law and of the necessary application of the Aarhus Convention.

**Demanding jurisprudence: the desire to guarantee access to the judge in terms of the environment**

Contrary to legislative prescriptions, the jurisprudential prescriptions are numerous and often demanding. One group out by a Court in the emblematic cases of Slovak brown bears is entirely symptomatic: A procedural laws relate to a condition that must be met to exercise an administrative or judicial remedy in accordance's and both the objective of the Aarhus Convention and that of effective judicial protection rights conferred by Union law, to allow an environmental organization to challenge before a court a decision taken following an administrative procedure likely to be contrary to the law of the Environment Union. In application of this prescription in general, the judgments rendered in the matter have clarified the contours of the right to appeal (1.), but, beyond that, have also delimited the practical conditions essential to its effectiveness (2.). These details apply to national courts which have the obligation to interpret national procedural law even, in the event that such a correct interpretation should prove impossible, to leave unapplied, in the dispute before it, the contrary national procedural rule, even subsequent, without him having to request or to await the preliminary elimination of this one by legislative means or by any other constitutional process .

**Outlines of the right to appeal**

General information on the notion of infringement of a right. To the extent that environmental protection has primarily intended to defend the general public interest and not to expressly confer rights on individuals, the main obstacle to the right to environmental remedies probably lies in the "Doctrine of the violation of a right" which requires, in order to be able to take legal action, to provide evidence of an infringement to individual interest. However, the Court's case-law has clarified the limits to the use of such a doctrine, whereas, if it is up to the Member States to define what constitutes an infringement of a right, this power must be modulated by the need to guarantee broad access to justice for the public concerned. A judgment delivered on preliminary question on 12 May 2011 in the case of Bund für Umwelt und Naturschutz Deutschland, specifically on such a doctrine, retained in Germany where the right of appeal recognized to non-profit organizations against an administrative act is only considered admissible if the act infringes the rights applicant's subjective concerns. The dispute between an association and a German administrative authority, concerning a authorization granted for the construction and operation of a coal-fired power plant located in an area around which are five protected areas under the Habitats Directive. Particularly its article 10 already says mentioned, should be interpret in light of and taking into account an objective of an Aarhus Conventions. She stresses that associations should not be deprived of the exercise of the right recognized to them by the Convention as by Union law and declares that German law in that it restricts the right of access to the judge of associations for

the protection of nature and turns out to be contrary to Union law . Restrict the right to appeal to associations on the sole ground that they protect collective interests, she says, undermines objectives of "ensure wide accesses to justices for a general concerne", by depriving them "very largely of possibility of checking compliance with the standards arising from this right, which are most often circumvented towards the general interest and not only towards the protection of the interests of individuals taken individually". We may emphasize that this interpretation is not isolated and has, on the contrary, been confirmed, as regards the Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment, in a Gruber case concerning Austrian legislation.

Right of recourse of associations. The conditions of access to the judge specific to associations were also envisaged in a cases-laws of a Court. Let us simply recall that, according to the provisions of the Convention Aarhus and secondary law mentioned above, not all NGOs (and all members of the public) see each other automatically recognize standing for action. Criteria may be validly provided for by internal law. However, case law has clarified what these admissible criteria can be. In a judgment rendered on October 15, 2009 in the Djurgarden case, the Court confirmed that a national law, here Swedish law, may require that the associations - which intend to contest by legal means a project covered by the evaluation directive environmental impact of curtains' general and secure project - has "a social purpose related to the protection of nature and the environment " The Union judge, on the other hand, considered that the legislation in cause, which subjects the right of recourse of environmental protection associations to the requirement of a minimum number of members (more than 2 000) was incompatible with Union law. It indicates that if such criterion may prove relevant to ensure the reality of the existence and activity of an association, "However, the number of members required cannot be fixed by national law at such a level as to go against it of the objectives of Directive 85/337 and in particular of that of enabling judicial review of operations relating thereto ". In this case, according to the Court, the level set by Swedish law -2000 minimum membership risked depriving most associations of any possibility of appeal .

Limits to the right of appeal. Among the limits to the right of appeal which may be provided for by legislation national, some are due not to the applicants (and to its own conditions), but also to the types of acts attackable. It must also be recall that paper 2 of a Aarhus Conventions excludes from its scope of application acts of the legislative power and that Article 1§5 of Directive No 85/337 provides that it does not apply "to project which is adopt in detail by the specific national legislative act ". In the Boxus case the Court precisely had to know about this limit and has, in this case, developed a position entirely favorable to the recourse and therefore rigorous with regard to the limits allowed. In the case, the Court first clearly intended to broaden the acts against which natural persons should be able to act. Indeed, it considered that despite the margin available to member states, which allows them in particular to determine which court has jurisdiction, provisions of the Convention and the Directive "would however lose all useful effect if the only circumstance that a projects are adopt by the legislative act had the consequence of exempting it from any recourse allowing challenge its legality, as to the substance or the procedure " and she concludes that in the event that none appeal would not be opened against such an act, it would belong to any national court seized in the part of its competence to exercise the control described in the previous point and to draw, where appropriate, the consequences by leaving this legislative act unapplied In the same case, the CJEU also had to be aware of other limits on the right of appeal. In this connection, she also developed case law rigorous. She said that "participation in environmental decision-making is distinct and for a purpose other than judicial review". Therefore, "members of the public concerned Must be able to appeal against a decision whatever role they may has play in the investigation of said requests" Member States therefore do not have the possibility of limiting the right to sue in court a decision only to members of the public concerned who participated in the adoption procedure thereof.

In a recent judgment - Protect Natur already cited - relating to an authorization to draw water from a river in order to to feed the snow cannons of a ski resort and where the application of the provisions of the directive

was at stake on water , the Court goes even further, opposing Austrian law which provides that obtaining status as a party to the proceedings is a compulsory condition for being able to bring an action contest the decision taken at the end of this procedure, in that this condition restricts the right to access the justice because that would amount to “depriving the right of appeal of any useful effect, or even of its very substance, which would be contrary to Article 9 (3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter"

The Court has also had occasion to assert that, in accordance and an objective of giving it wide accesses to a justice, the public concerned must, in principle, be able to invoke any procedural defect in support of an appeal contesting the legality of the decisions referred to in that directive . Default entry in respect of German jurisdictional system, the Court had, in 2015 و the opportunity to express itself again on the limits relating to the extent of the remedy and in particular on this latter limit. The action for failure concerned in German law which linked the possibility of invoking a procedural defect on condition that it had affect the meaning of the challenged final decision. The Court considered that such a condition made excessively difficult the exercise of the right of appeal referred to in Article 11 of Directive 2011/92 and undermined.

The objective of this directive aimed at offering "members of the public concerned" wide access to justice by depriving this provision of any useful effect. It would be otherwise, she said, if the legislation provided for such a condition without placing the burden of proof on the claimant of the causal link between the procedural defect invoked and the result of the contested administrative decision, referring for example to the evidence provide by a contracting authority or by a competent authority with, more general, of all the parts of the dossier submit to them . German legislation will also be condemned by the Union judge in what it limits, in the name of the efficiency of administrative procedures, the means likely to be invoked by an applicant in support of a judicial appeal against an administrative decision to the objections raised during the administrative procedure. Raising a ground for the first time in an appeal can hamper the smooth running of this procedure but, according to the Court, the provisions of the right to the Union seek to ensure that supervision relates to the lawfulness of the contested decision, as to the substance or the procedure, in its entirety. According to the Court, States remain however free to lay down certain limits on the admissibility of appeals in the name of the efficiency of the procedures, such as in particular the inadmissibility of an argument presented in an abusive or bad faith manner. The same goes for foreclosure rules, provided that they do not excessively restrict the right of judicial remedy.

At the end of this case law, which is undoubtedly still under construction, we therefore see that the margin of maneuver by States when determining the criteria governing the right to appeal, if it exists, is far away to be absolute. Whether it is the interest to act, the type of associations that can seize the judge, the type and the extent of the action in question, the prescriptions which are brought by the Union judge are significant and participate in a certain way in a satisfactory implementations of a provisions of a Aarhus Convention at national levels, Convention which is moreover used systematically by a Court as an element interpretation. But the case law goes further, by establishing, beyond the right to appeal, the conditions aimed to make it effective in practice.

**Beyond the right to appeal**

If the right to a remedy makes it possible to ensure the effectiveness of environmental protection provisions, its consecration is not enough to achieve this goal. Still it is necessary that the litigant can concretely obtain the application of environmental protection measures, for example by asking for measures provisional. Furthermore, it is also necessary that the costs of the proceedings do not dissuade the latter from making use of his law.

Possibility to request interim measures. The possibility of requesting the adoption of a measure administrative or judicial provisional in application of domestic laws (for example, order a suspensions of the enforceability of the integrate decision), which allow temporarily, that is to say until decision on the merits, to stop the realization of a project or the execution of a decision risky for the environment seems to be essential to ensure the effectiveness of environmental protection, sometimes as much as the appeal as such. Moreover,

Article 9-4 of a Aarhus Conventions require that remedies allow the adoption of suitable interim measures. However, the secondary legislation of the European Union meanwhile is silent on the issue. In Križan, which concerned a discharge authorization, the Court questioned on whether the provisions on access to justice of Directive 96/61 became directive 2010/75 on industrial emissions, allowed, including in the absence of a provision express, member of a general concern to ask a judge to order interim measures likely to temporarily suspend the application of an authorization pending the final decision to be made. The Court will respond positively. She believes that the objective of this directive, which is the prevention and reduction integrated pollution (by implementing measures to avoid or reduce air emissions, water and soil) would not be filled "if it were impossible to avoid that a facility that may have benefited of an authorization granted in violation of this directive continues to operate pending a decision final on the legality of the said authorization" . Having recalled that the possibility of ordering measures provisional was a general requirement of the Union's legal system . However, in accordance with the principle of procedural autonomy, it is up to the Member States to determine the modalities governing the granting of interim measures. Limitation of procedural costs. Limiting the costs of proceedings obviously contributes to the principle effectiveness of remedies intended to ensure the safeguard of the rights which litigants derive from Union law. He in practice, it is a question of avoiding that the applicants are practically prevented from training or pursue a legal action because of the financial burden that could result. Besides the Article 9, paragraph 4, of the Convention requires that the procedures provided be objective, fair and fast and their cost is not prohibitive,. The third paragraph of Article 47 of the Charter of Fundamental Rights provides that "legal aid is granted to those who do not have sufficient resources, to the extent that this assistance would be necessary to ensure effective access to justice "but secondary European Union law does not set up any particular mechanism in matters of Environmental Protection. However, some national systems, in particular the British jurisdictional system, have been submitted to the Court for assessment. In the Edwards and Pallikaropoulos case, the Court held that the interpretation of the concept of "prohibitive" costs cannot be left to national law alone and that, in the interest of a uniform application of Union law and under the principle of equality, this concept was to find, in the Union, an autonomous and uniform interpretation. By virtue of this requirement, and in the case of individuals and members of associations called to play an active role in the defense of the environment, the Court said, the cost of a procedure must "neither exceed the financial capacities of the interested party nor appear, in any event, as objectively unreasonable " The case led to the judge ruling on the "loser" rule payer ", according to which the national court may order that the unsuccessful party bear all of the costs of the proceedings, including the costs of the opposing party. Without calling into question the principle of conviction of the defaulting party, the CJEU asserts that the non-prohibitive cost requirement obliges the court national court called to rule on the costs to be taken into account both in the interest of the person who wishes to defend its rights only in the general interest related to the protection of the environment. As part of this assessment, the national judge cannot be based solely on the economic situation of the person concerned, but must also carry out an objective analysis of the amount of the costs. It can take into account the situation of the parties involved,

## *ACCESS TO THE COURT OF JUSTICE*

### Environmental denial by EU law

Interest of the question. The question of access to the Court of Justice of the European Union presents, at first view, less interest than the previous one insofar as litigation relating to acts and activities having possibly an impact on the environment takes place mainly before national judges, including when European Union law is at stake. And for good reason, what Union law, in material terms, provides, these are mainly obligations to national authorities (in terms of quality monitoring, monitoring the state of the environment or relating to the preparation of plans and programs aimed at reducing pollution and waste or relating to the

conditioning of certain activities with the granting of a permit or authorization) which take the form of general regulations internal, as well as by specific decisions and acts issued by national public authorities. The question however, is not far from marginal. It is not first because, in practical terms, a non-number negligible decisions, more precisely authorizations to do (or not to do), are taken at the level of the Union, through the European Commission whether it concerns decisions to authorize the release of GMOs, use of herbicides, decisions approving national plans (in terms of industrial emissions, reduction of greenhouse gases) or decisions to support activities (financing the creation of power stations). It is not then axiologically because, natural with legal person must, having regard to a objective of the Union de droit, be able to access the Union judge to contest all acts - including of general scope - taken by the Union in the environment sector. Preliminary reminder on legal remedy before the Court of Justices. Consider the access of people physical and moral to the Court requires that some preliminary reminders be made. We must first remember that some remedies are not open to individuals. This is the case with the infringement remedy. Certainly anyone can file a complaint, free of charge, with the Commission against a Member State and need not demonstrate the existence of an interest in acting. However, the Commission discretionarily assesses whether a follow-up should be given or not to a complaint. It is also important to remember that certain remedies, if they are open to people In the environmental field, physical and moral activities are almost never activated. This is the case of Union extra-contractual liability recourse . Consequently, the analysis is mainly carried out logically on the conditions of admissibility of the action for annulment which, moreover, largely determine those of additional remedies such as the objection of illegality and the remedy for failure to act. The central question may be summarized as follows: under what conditions can a natural or legal person apply to the Court of Justice for the European Union (heard as designating the Court at first instance, then appealing to the Court( when it considers that the European institutions or bodies have violated the rights which it derives from the provisions protect the environment? More specifically, what is the situation of an individual or a non-governmental organization wishing to question the validity of a Union act which may affect a protections of a environment, whether an act in question is of a legislative or executive nature?

The answer is not a priori complex: the classic (and generic) conditions of access to the Union judge for natural and legal persons as set out in the treaty apply, which is not surprising, in the area of the environment. It is therefore sufficient to recall them to report on access to the judge. the Union in environmental matters. Should we however conclude - and this is the main question – to the absence of procedural specificities in this matter? The question is all the more important than the conditions provided for by the treaty and interpreted by the judge allow only close access for persons physical and moral to the judge. On examination, the conclusion is clearly positive. The interpretation of the said conditions by the Union judge in environmental litigation is absolutely identical to the classical interpretation without any specificity being, despite proposals in this regard sense, raised (I). However, while potentialities were and are hoped, for the time being, the application of the Aarhus Convention and its Union extensions did not change the situation in a courtroom still clearly locked (II).

**The status quo in an interpretation of conditions of accesses to the Court**

Delimited in paper 264 § 5 TFEU, substantially modified by the Treaty of Lisbon . the conditions of actions for annulment for natural and legal persons envisage three hypotheses for which the conditions are distinct. Any natural or legal person may first appeal against acts for which it is the addressee. It can also do so against other acts of which it is not the recipient, but which concern it directly and individually. Finally, an appeal may be brought "against acts which directly concern it and which do not include implementing measures." It is precisely this third hypothesis which was added in the last treaty and which, by not repeating, for this hypothesis, the contested condition of individuality referred to in the second, aims to broaden the right of appeal of natural and legal persons. These three hypotheses and especially the conditions which they foresee

have been the subject of course many interpretations that should be remembered (1) before finding that they have been absolutely included, without change, in environmental litigation (2).

-1Reminder of the "interpreted" conditions of the action for annulment old interpretation: the example of the interpretation of the condition of individuality. Without the need to come back to it as the question is well known, the most decisive interpretation has long been that relating to conditions provided for under the second hypothesis: either that which requires that it be demonstrated that the act when it is not addressed to the applicant - concerns him "individually" and "directly". She is, as we know, particularly strict, in particular (but not only ) with regard to the criterion of individuality, for which the judge demands, since the Plaumann judgment, that it be shown that the act affects the applicant on account of certain qualities which are specific to him or a factual situation which characterizes him in relation to any other person and, as a result in fact, individualizes it in a manner analogous to that of a recipient, "and the invocation of the right to protection effective jurisdiction enshrined in the general principles of law and then of paper 47 of a Charters, however "Called to the rescue to serve as a basis for relaxing the conditions of admissibility of the appeal cancellation " did not allow the said interpretation to evolve. The Court reiterates, without derogating that it does not may, without exceeding its powers, deviate from the conditions which are expressly provided for in the treaty and even in the light of the principle of effective judicial protection. Consequently, the admissibility of appeals relating to acts of general scope were only admitted in special cases, when the applicants were part of a small circle of people (economic operators) identified or identifiable at when the act was taken or when they intervened in the process leading to the adoption of the act in application of procedural safeguards provided for by Union regulations Recent interpretations of the "Lisbon" hypothesis. More recently, important interpretations have concerned the third branch of Article 263 § 4, that inserted during the Treaty of Lisbon.

They have first concerned with the concept of "regulatory acts" that the treaty [79] had not defined which could not be lacking to provoke lively discussions To simplify the quarrel, "some believed that acts should be included in the category of regulatory acts, while the others opposed it ". The first one hypothesis seemed to be deducible from certain language versions and case law decisions But, having regard to the organization of the paragraph as of the wording of the draft constitutional treaty including came, word for word, from the wording of Article 263 TFEU, the second hypothesis also appeared possible. It was, moreover, that which was adopted by the Tribunal and then the Court, the two having considered in turn that the notion of regulatory act "must be understood as covering any act of general application with the exception of legislative acts " As a result of such an interpretation, there is no doubt that, for the acts legislative, before or after the Lisbon Treaty, the applicants' situation has not changed and in particular "the content of the condition of individual assignment as interpreted by the Court in its settled case-law since the Plaumann judgment " Other interpretations of this third hypothesis also attest that the conditions are not finally as flexible as expected and the opening of access to the courtroom of the Union probably less important than hoped. This is the case with the interpretation of that of "the absence of measurement of execution "of the regulatory act. If the first interpretations were rather favorable to the applicant , the Court subsequently adopted a clearly more restrictive concept. According to her, any national measure of execution of a regulatory act must be considered as an obstacle to the action for annulment of its against, including purely mechanical ones which do not however reveal any intervention discretion of national authorities . This is also the case with the third condition which requires that the act regulatory issue "directly concerns" the claimant, and for good reason, according to its classic jurisprudence regulatory issue "directly concerns" the claimant. And for good reason, according to its classic jurisprudence on the direct assignment already envisaged , the judge required the demonstration of an effect on the legal situation of the applicant . However, often Union regulatory acts do not produce legal effects, but purely material effects, but, for the time being, the judge does not admit them in order to determine whether an applicant is or concerned "directly" .

-2. The application - without change - to acts likely to harm the environment Stitching Greenpeace. Such a configuration has been reproduced for environmental litigation without any specificity being detected. He

was never admitted as a procedural exception that would take into account a fact that in environmental matters a interests are by nature collective and that it is therefore even more difficult to identify the closed circle of applicant who meet the criteria adopted by jurisprudence. Reading the first relevant judgment in this area, the Stitching Greenpeace judgment allows illustrate it, but are linked to the consequences negative for the environment. According to them, to check whether an individual is individually concerned by an act when invoking environmental damage, the judge should require the applicant to establish the three following: a) that he personally suffered harm (actual or potential), because of the behavior allegedly unlawful of the community institution concerned, for example the violation of its rights in matters damage to its legitimate interests arising from this environmental good; b) that the damage results from the contested act; and c) that the damage is likely to be repaired by a decision legal. The Advocate General himself had argued for a "desirable extension of the case law " because of the special nature of acts in the field of the environment which, in fact, are likely to affect broad categories of citizens in a general and abstract manner which can lead to dismiss, in application of the Plaumann case law, for this reason alone, all the appeals brought. He proposed therefore a scheme - distinct from that of the applicants - articulated around the so-called "closed circle" criterion of subjects affected "in a particular way" either for geographical reasons or for other reason )which are quite clearly confused with the concept of damage . The Tribunal and then the Court did not, however, take over these proposals and, on the contrary, clearly stated that the Plaumann case-law was applicable to environmental issues in order to conclude that the action is inadmissible. According to the Court,

the assistance of sufficient circumstances for the applicant to be able to claim that he is affected by the contested decision which characterizes him in relation to any other person, remain applicable, whatever a nature of a affected interest, economic or otherwise, of the applicants " and" the only reference to harm that are standing to act.

The Advocate General explains this maintenance: according to him "recognize any subject of law which interest in preserving the environment is affected by an act of a community institution the right to attack this act would be tantamount to admitting popular action in all matters having a dimension environmental " However, "an evolution of the jurisprudence in this direction is impossible, because, in addition to the practical obstacles it encounters, it runs counter to the letter of the treaty ".Later stops. This jurisprudence has not changed since then , especially since the particular hypotheses recognized by the judge for other areas do not, in the area of the environment, not flourished . Admittedly, the change brought about by the Lisbon Treaty could have changed the situation. She should open for example, for economic operators affected by regulatory acts for the protection of the environment, new opportunities for access to the judge subject, of course, to the conditions provided for by the Treaty are met, which has not yet been done. However, with regard to recourse of environmental associations or NGOs against regulatory acts likely to harm the environment, opportunities should not be expanded unless the measure in question does not affect, which is highly unlikely, directly its legal status. We will note moreover that none action by environmental associations or NGOs was not considered admissible by the judge for Nor did was found admissible , the appeal of an association promoting the sustainable use of resources natural resources, WWF-UK, in annulment of a Council regulation establishing, for 2007, the fishing opportunities and the associated conditions for certain fish stocks applicable in Community waters .

## *RESULTS AND CONCLUSION*

Actions are considered admissible. The only admissible complaints concerned cases where associations or NGOs were addressees a decision. This was the case regarding to access environmental information. Because the NGOs were the recipients of decisions refusing requests for access to a certain documents, when they decided to bring actions for annulment against the decisions, they were mechanically considered admissible to act. [108]. This was also the case of the requests for "review" of measurements taken under

environmental law and this, in application of the regulations adopted by the Union were applied at the Aarhus Convention. This naturally leads, to consider these appeals, to question the effects of such a convention on access, alongside national courtrooms, to the courtroom of the union. However, it must be noted that, for the time being, the effects of the Convention still seem quite limited, although in the future they cannot be completely excluded.

The Union is, as we have said, alongside the States, a party [109] to the Convention and as such, its institutions, including the Court, are subject to the obligations of the Convention, in particular that provided for in Article 9-3 of the Convention. Moreover, a regulation no. 1367/2006 was adopted for this purpose, which aims to contribute to the execution of these obligations of the Aarhus Convention by the institutions and bodies of the Union.

The question is: May the Aarhus Convention (and its implementing regulations) imply a change in terms of access to the Union judge in the environmental field? This question of the effect of the Convention is an old question, probably as old as the date of signature by the Union of the said Convention. Very early on could be stressed that "the signing by the Union of the Aarhus Convention could provide" the external argument'' somewhat exonerating internal hesitations which are capable of decisively accelerating evolution "[111] with regard to access to the courtroom. However, several years later, the effect of the Convention has not yet realized. First, as we have seen, the interpretation of the conditions of access to the judge - as provided for by the treaty - was not modified under the influence of the Convention. However, some applicants had argued before the court of the Union, the Convention precisely for this purpose. In particular, it had been argued that rights in of information and public participation enshrined in the Convention should be considered allowing to characterize (individualize) an applicant in relation to any person what the Tribunal has refused, stressing that "any rights which the applicant derives from the Aarhus Convention are granted to it in its quality of member of the public "and cannot therefore have an effect on the applicants' situation.

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ARTICLE 9-2: "Each Party shall ensure, within the framework of its national law, that members of the public concerned a) having a sufficient interest to act or, otherwise, b) asserting an infringement of a right, when the code of a Party's administrative procedure sets such a condition, may appeal to a body court and / or another independent and impartial body established by law to challenge the lawfulness, as to the merits and the procedure, any decision, any act or any omission falling under the provisions of article 6 and, if provided for in domestic law and without prejudice to paragraph 3 below, other relevant provisions of the this Convention ".

ARTICLE 9-2: "Each Party shall ensure, within the framework of its national law, that members of the public concerned a) having a sufficient interest to act or, otherwise, b) asserting an infringement of a right, when the code of a Party's administrative procedure sets such a condition, may appeal to a body court and / or another independent and impartial body established by law to challenge the lawfulness, as to the merits and the procedure, any decision, any act or any omission falling under the provisions of article 6 and, if provided for in domestic law and without prejudice to paragraph 3 below, other relevant provisions of the this Convention ".

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