

# EU climate law through the lens of the Aarhus Convention

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# Valorisation Addendum

## 1. **Relevance:**

Climate change is real and greenhouse gases produced by human activities are interfering with the Earth's temperature.<sup>1</sup> The imminent threat of climate change and the clear contribution of humankind to this process call for concrete responses from all to tackle this problem. This has prompted the public to take action in diverse forms around the world. For instance, a movement started by the Swedish teenager Greta Thunberg in August 2018 pushed thousands of students around the world to engage in demonstrations calling for action against climate change.<sup>2</sup>

In addition to individuals taking to the streets, many non-governmental organizations (NGOs) have been using legal instruments to attempt to force action on climate change-related issues. This thesis highlights as examples ClientEarth and Friends of the Earth, which have repeatedly used legal tools available to influence the decision making by governments in a more environmentally friendly direction.<sup>3</sup>

The engagement of the public, particularly environmental NGOs (ENGOs), demanding for a suitable and timely response prompts the question of what rights members of the public actually have to access climate change-related information and to participate in climate change decision making. This thesis, therefore, examined how these procedural rights are provided for in the EU emissions trading system (EU ETS) Directive and the Renewable Energy Directive at the EU level, and assessed their compatibility with the Aarhus Convention.<sup>4</sup> The findings from this research have filled an important gap in the extant academic literature by showing that, in the area of EU climate change - in particular regarding

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<sup>1</sup> The IPCC stated: "It is *extremely likely* that more than half of the observed increase in global average surface temperature from 1951 to 2010 was caused by the anthropogenic increase in GHG concentrations and other anthropogenic forcings together." Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report. Summary for Policymakers*, 2014b, [https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5\\_SYR\\_FINAL\\_SPM.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf), p. 5.

<sup>2</sup> S. Laville, M. Taylor and D. Hurst, 'It's our time to rise up': youth climate strikes held in 100 countries, *The Guardian*, 15 March 2019, <https://www.theguardian.com/environment/2019/mar/15/its-our-time-to-rise-up-youth-climate-strikes-held-in-100-countries>.

<sup>3</sup> At the EU level, these NGOs, for instance, have started legal action against the European Union (EU) in view of the denial to access environmental information. See Case T-278/11, ClientEarth, Friends of the Earth Europe, Stichting FERN and Stichting Corporate Europe Observatory v. European Commission, 13 November 2012, ECLI:EU:T:2012:593.

<sup>4</sup> The regional Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (known as the Aarhus Convention).

access to information and participation in the EU emissions trading system (EU ETS) and in the recognition of biofuels schemes-, adjustments in the legal framework are needed.

In addition to its academic scope, this thesis could have important social, environmental and economic relevance. There is clearly a large part of society that is interested in engaging in the discussion on how to best tackle climate change. This thesis provides a clear description of the EU legal framework available to the public (individuals, NGOs and economic actors alike) for access to environmental information and public participation in climate change decision making. It also identifies opportunities to engage in the debate more actively, such as the possibility for the public in general to provide feedback on acts adopted by the European Commission,<sup>5</sup> but also shortcomings, such as the delay on the disclosure of information by the European Commission<sup>6</sup> that can become points of action for individuals and ENGOs. The findings are also useful for governments, since the thesis discusses the compatibility of the EU legal framework with international law. From an environmental perspective, if the public uses the results of this thesis to participate more in the decision making concerning the measures to tackle the adverse effects of climate change, this could eventually help to voice the diversity of possible solutions to the climate change problem. From an economic perspective, measures taken to mitigate the effects of climate change, such as emissions trading, involve economic costs as they put a price on carbon used to produce goods consumed by the public. The European Union has established the EU ETS, which was developed through numerous legal instruments. To participate in the acts adopted under the EU ETS, the public needs to possess sufficient knowledge of the system and of the specific legislation applicable. This thesis, by providing thorough analysis of the measures adopted under the EU ETS in view of access to information and public participation may provide the public tools to engage in the discussion of how to implement such a complex system.

The outcome of this research, hence, does not only provide an important contribution to the academic debate by providing an in-depth understanding of the minimum requirements for procedural rights given by international and EU law in view of legal instruments aiming to decrease greenhouse gas emissions and stimulating renewable energy, but it also provides crucial information that can be used directly in the practice of climate policies.

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<sup>5</sup> See section 4.5 of Chapter IV.

<sup>6</sup> See section 3.5 of Chapter V.

## **2. Target groups:**

The climate change problem reverberates throughout society and the findings of this thesis may be of interest to a wide range of interest groups. Apart from academics, individual, NGOs, economic actors, and governments are target groups, since all these actors may interact through procedural rights in the context of climate change decision making.

The public, including individuals, NGOs and economic actors, by addressing the findings of the thesis, may rely on the rights to access to environmental information and public participation to engage in climate change decision making at EU level. For instance, by engaging in the public consultations and feedbacks opportunities provided the European Commission. Moreover, in many instances, environmental NGOs need to acquire specific knowledge in order to assess whether an intended action may be successful. The results of this thesis identify restrictive access to environmental information and limited public participation in the EU legal framework that could serve as starting point for these actions.

In a broader perspective, the thesis, by discussing the climate change problem from a procedural rights perspective, may have an impact on public awareness regarding the legal instruments available to get access to climate change-related information and public participation in climate change decision making, which has the potential of putting the public closer to governmental decision making.

Concerning governments, especially at the EU level, this thesis provides a careful analysis of the EU legal framework on access to information and public participation regarding the EU ETS and the recognition of biofuels schemes and its compatibility with its international commitments. The legal and policy shortcomings identified in this thesis can foster further discussions on the steps needed to achieve compliance and prioritize actions. The lessons learned under the analysis of the EU legal framework may also benefit other governmental actors, which can reflect upon the results while implementing and/or improving their own legal framework.

## **3. Activities/Products:**

The research findings emerging from this thesis may benefit the public, including NGOs, by strengthening the arguments for litigation and advocacy for the protection of the environment.

Besides Europe, which already has seen the entry into force of the Aarhus Convention, the UN Economic Commission for Latin America and the Caribbean (ECLAC) adopted a regional treaty on access to environmental information, public participation and access to

justice in environmental matters.<sup>7</sup> This new development is highly influenced by the experience with the Aarhus Convention, even while facing challenges in responding to the measures created to tackle climate change. The unique experience of the EU described in this thesis may be, therefore, an important source for countries to learn about the success and obstacles to the implementation of a convention on environmental procedural rights.

#### **4. Innovation:**

No other study has provided an in-depth examination of the rights of access to environmental information and participation in governmental environmental decision for the public, especially individuals and ENGOs, at the EU level in the field of EU climate change law. Therefore, it is another piece of the complex puzzle on how procedural rights may eventually contribute to the achievement of a fossil-free economy and society.

#### **5. Planning & Implementation:**

This thesis will be on open access,<sup>8</sup> which makes access to the results of this thesis unrestricted. In addition, the outcome of the research is not only provided through a written PhD thesis, but will also be made accessible to the public in the form of a summary of the research (in accessible language) to be put on the internet and to be directly sent to ENGOs.

Part of the findings have also been publicised through two academic publications and through several conferences and workshops where I have given oral presentations.

Furthermore, part of the findings had been incorporated in the teaching of Environmental Law to bachelor students in a university of applied science. Many of these students have heard about environmental procedural rights for the first time and they can apply this knowledge in their professional life.

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<sup>7</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú on 4 March 2018 (not yet entered into force).

<sup>8</sup> The PhD theses of Maastricht University can be found here: <https://cris.maastrichtuniversity.nl/en/publications/?nofollow=true&format=&type=%2Fdok%2Fatira%2Fpure%2Fresearchoutput%2Fresearchoutputtypes%2Fthesis%2Fdoc>.