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Will Litigation Ever be the Savoir of the European Environment?

The Aarhus Convention1 (1998) has a broad approach to environmental legislation. It is built on three pillars. The first two pillars, participation of the public in the forming of new environmental policy and a right to information in environmental affairs, have caused little problems for signatories. The closing piece of the Aarhus package is access to justice. A right to bring measures, taken by signatories, of environmental importance under the scrutiny of a court, not only for private individuals, but also "[...] in accordance with national legislation or practice, their associations, organizations or groups". It is this last pillar of the Convention that is of particular interest and a potential problem for the European Union.

The Union has ratified the Convention, which makes specific mention of regional supranational organizations, and through Directives and Regulations made it mandatory for the Member States to comply with the principles of the Convention though all of them were already bound by the fact that they are signatories themselves. The Union itself is bound in the same manner as other signatories.

The problem is that the European Union as an institution, has only recently shown interest in environmental legislation and these interests are unashamedly economical in origin. This has led to the situation where measures by the Union or of its institutions of an environmental nature can be contested via the same procedures that have been instituted over the years with regards to the economical origins of the Union. None of these procedures provide for public interest litigation. Indeed, how can economic interest be equated to public interest?

The Court has always held that any party seeking the annulment of any measure taken by the Union or one of its institutions will have to individualize themselves to the point of almost being a uniquely affected party. Believed primarily to be for reasons of docket control, the Court of Justice has always denied the fact that article 263 TFEU (action for annulment) can be read to cover the *actio popularis,* which would make litigation for the common good a possibility.

This economic approach to 'individual concern' has held at bay organizations such as Greenpeace and the WWF-UK in their attempts to hold the Union accountable for its conduct in the field of environmental policy. The signing of the Aarhus Convention therefor seems to be counterintuitive to the Union's stance as described above. For although the Convention does not demand the *actio popularis* to be implemented by its signatories, it is clear that the current dogma held by the Court will not suffice. This paper and presentation will address the ways in which the European Union, specifically the Court and Commission, is trying to resolve the problem of their Aarhus obligations within the current doctrine.