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Alice Pisapia, Researcher, Assistant Professor

University of Insubria, Faculty of Economics, Varese

E-mail: alice.pisapia@uninsubria.it

THE ROLE OF ASSOCIATIONS IN LITIGATION BEFORE THE EU COURTS FOR THE PROTECTION OF GENERAL INTERESTS

ABSTRACT

This contribution aims to analyze the fundamental right of access to justice in environmental matters, when the object of supranational litigation is a general interests defended by associations that represent supra-individual rights. The environment, a common heritage, has historically been the subject of dedicated European legislation to establish a common general framework of obligations for public authorities. However, the topic will be analyzed as a first sector that can be replicate and expanded in other field, as for example the one of digital rights in the EU. In the environmental sector, the question of access to justice it is particularly relevant considering that the interest to be protected is evidently not an individual interest, but rather a general and collective interest. While recognizing the potentially crucial role attributable to mechanisms for the protection of collective interests, the EU procedural system has not stimulated the involvement of third parties in litigation through class action mechanisms, however the proposed contribution aims to investigate the issue of the role of associations with particular reference to the role recognized to them in the procedural field by European jurisprudence to formulate hypotheses regarding the development of the EU judicial protection system. In conclusion, the considerations developed for the environmental field will be analyzed for their application in other sector of the EU policies.

Keywords: *European Law, Access to Justice, Fundamental rights, General interest, Active legitimization*

1. INTRODUCTION

Legitimation to act is, together with the interest to promote action, one of the procedural preliminary condition to promote the action, prodromal and necessary to assert the right of access to justice, guaranteed at Union level by art. 47 of the Charter of Fundamental Rights (the Charter). Indeed, European Union law recognizes the fundamental right of any individual to an effective remedy before a court in order to enforce the subjective rights conferred upon them by EU law. This principle, enshrined in the Charter, ensures that individuals have access to judicial protection and that national courts uphold the direct and effective application of EU law.¹ The right to an effective remedy has been one of the cornerstone arguments underpinning the legal order of the European Union, which is fundamentally based on the rule of law. The Court of Justice of the European Union (CJEU) has consistently reaffirmed this principle as essential to ensuring the uniform and effective application of EU law. In *Les Verts v. European Parliament* (Case 294/83), the Court explicitly recognized the EU as a "community based on the rule of law", where neither Member States nor institutions can escape the judicial review of the Court of Justice. Similarly, in *Unibet v. Justitiekanslern* (Case C-432/05), the CJEU emphasized that national procedural autonomy cannot undermine the right to an effective remedy under EU law. These rulings, among others, illustrate the central role of judicial protection in maintaining the EU legal order.² Although the argument concerning the

¹ Anrò, I., *Il difficile accesso alla giustizia ambientale per le ONG e la riforma del Regolamento di Aarhus: nuove vie verso la Corte di giustizia dell'Unione europea?*, in *Federalismi*, 6 April 2022; Cantillo, C., *L'accesso alla giustizia in materia ambientale nell'ordinamento dell'Unione a seguito dell'entrata in vigore del trattato di Lisbona: problematiche attuali e prospettive de jure condendo*, in Rossi, L. S., *La protezione dei diritti fondamentali*, Napoli, 2010, p. 271-298; Montini, M., *Verso una giustizia climatica basata sulla tutela dei diritti umani*, in *Ordine internazionale e diritti umani*, 2020, p. 506-537; Avino, G. D'., *Il diritto alla tutela giurisdizionale effettiva nell'art. 47 par. 1 della Carta dei diritti fondamentali dell'UE*, in Di Stasi, A. (Eds.), *Tutela dei diritti fondamentali e spazio europeo di giustizia. L'applicazione giurisprudenziale della Carta*, Napoli, 2019, p. 151-177.

² CGEU, 6 October 2015, C-362/14, *Schrems*, ECLI:EU:C:2015:650, par. 95 "... Likewise, legislation not providing for any possibility for an individual to pursue legal remedies in order to have access to personal data relating to him, or to obtain the rectification or erasure of such data, does not respect the essence of the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter. The first paragraph of Article 47 of the Charter requires everyone whose rights and freedoms guaranteed by the law of the European Union are violated to have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law (see, to this effect, judgments in *Les Verts v Parliament*, 294/83, EU:C:1986:166, paragraph 23; *Johnston*, 222/84, EU:C:1986:206, paragraphs 18 and 19; *Heylens and Others*, 222/86, EU:C:1987:442, paragraph 14; and *UGT-Rioja and Others*, C-428/06 to C-434/06, EU:C:2008:488,

deprivation of the right to judicial protection is central, it has not, to date, led the CJEU to adopt a less rigid interpretation of the standing requirements under Article 263(4) TFEU for private applicants. The Court has consistently upheld the strict criteria established in *Plaumann v. Commission* (Case 25/62), requiring that a private applicant must be "individually concerned" by the contested act in a manner that differentiates them from all other persons. Despite criticisms regarding the restrictive nature of this test and its implications for access to justice, the CJEU has maintained its narrow approach, emphasizing the complementary role of national courts and the preliminary ruling procedure under Article 267 TFEU in ensuring effective judicial protection.³ This contribution aims to offer some reflections on the fundamental right of access to justice in cases where the subject of litigation concerns diffuse interests—by their very nature supra-individual and where these interests are defended by non-governmental organizations or other associations representing collective concerns. Those reflections will be developed in particular starting from the environmental domain. The analysis will focus on the legal standing of such organizations within the EU judicial system and the extent to which procedural mechanisms allow them to effectively advocate for the protection of diffuse interests.

The environmental sector, being regarded as a common heritage, has historically been the subject of dedicated European legislation aimed at establishing a common framework of obligations for public authorities as well as rights for the public. This regulatory framework reflects the EU's commitment to ensuring high environmental protection standards and fostering public participation in environmental decision-making, in line with both primary and secondary EU law, as well as international commitments such as the Aarhus Convention.⁴ In 2017,

paragraph 80)". Moreover see Salvatore, V., *Lo Stato di diritto, una prospettiva di diritto comparato. Unione europea*, Comparative Law Section, Library service, Research service of the European Parliament (EPRS), July 2023, ref. PE 745.685, pp. 29-55.

³ CJEU 1 February 2001, C-300/99 e 388/99 P, *Area Cova e a.*, ECLI:EU:C:2001:71; General Court, 15 September 1998, T-109/97, *Molkerei Großbraunshain e Bene/Commissione*, ECLI:EU:T:1998:209; 23 November 1999, T-173/98, *UPA*; 27 June 2000, T-172/98, *Salamander/Parlamento e Consiglio*, ECLI:EU:T:1999:296. See in doctrine Kronenberger, V., Dejmek, P., *Locus Standi of Individuals before Community Courts Under Article 230 (4) EC: Illusions and Disillusions after the Jégo-Quéré (T-177/01) and Union de Pequenos Agricultores (C-50/00) Judgments*, in *The European legal forum: Forum iuris communis Europae*, Vol. 5, 2002, pp. 257-272; Ward, A., *Judicial Architecture at the Cross-Roads: Private Parties and Challenge to EC Measures Post – Jégo – Quéré*, in *The Cambridge Year Book of European Legal Studies*, Vol. 4, 2001, p. 424-431; Arnall, A., *The Action for Annulment: A case of Double Standards?*, in O'Keeffe, D.; Bavasso, A. (eds.), *Judicial review in the European Union*, Kluwer 2000, p. 177-185.

⁴ De Sadeleer, N., *EU Environmental Law and the Internal Market*, Oxford, 2014; Godt, C., *Enforcement and Environmental Law by Individuals and Interests Groups: Reconceptualizing Standing*, in *Journal of Consumer Policy*, Vol. 23, 2000, pp. 79-105; Tonner, K., *Consumer Protection and Environmental Protection, Contradictions and*

the European Commission issued a Communication specifically aimed at safeguarding access to justice in environmental matters, affirming that such a right must necessarily reflect the public interests at stake.⁵ The Communication 2017, reiterated and reinforced in 2020, sought to clarify and reinforce the obligations of Member States in ensuring effective judicial protection in environmental cases, in line with EU law and international commitments such as the Aarhus Convention.⁶ It highlighted the need for procedural mechanisms that enable individuals and organizations to challenge environmental decisions that may contravene EU environmental law. The ability of associations advocating for the protection of diffuse interests to bring actions before the EU judiciary can serve as a form of private enforcement, exerting pressure to ensure compliance with EU law and contributing to the achievement of the objectives set by European environmental legislation. As stated by the European Commission in point 5 of the aforementioned Communication, "*ensuring that individuals and NGOs have access to justice under the Aarhus Convention is not only a matter of complying with an international commitment, but also an important means of improving Member States' implementation of EU environmental law*" without requiring the Commission to resort to infringement proceedings in every instance.⁷ In the environmental sector, the issue of access to justice presents a wealth of legal and theoretical considerations, as the interest at stake is not an individual interest, but rather a diffuse and collective one. This characteristic raises significant questions regarding the legal standing of individuals and organizations, the procedural mechanisms available to safeguard environmental rights, and the broader implications for judicial protection within the EU legal order.⁸ Some Member States, such as Belgium and Ireland, allow associations to bring legal actions in environmental matters even in cases where no specific victim can be identified,

Suggested Step Towards Integration, in *Journal of Consumer Policy*, Vol. 23, 2000, pp. 63-78; Hedemann Robinson, M., EC Law, *The Environment and Consumers: Addressing the Challenge of Incorporating an Environmental Dimension to Consumer Protection at Community Level*, in *Journal of Consumer Policy*, Vol. 20, 1997, pp. 1-43.

⁵ Commission Communication on Access to Justice in Environmental Matters, 18 August 2017, 2017/C 275/01. This commitment was further reaffirmed in the 2020 Communication Improving Access to Justice in Environmental Matters in the EU and its Member States (14 October 2020, COM(2020) 643 final), which sought to enhance compliance with access to justice requirements by addressing existing barriers and promoting more effective national implementation.

⁶ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, UNECE, 25 June 1998, Aarhus.

⁷ Jendroska, J., *Accès à la justice: remarques sur le statut juridique et le champ des obligations de la convention d'Aarhus dans le contexte de l'Union européenne*, in *Rev. jur. de l'environnement*, special issue, 2009, pp. 31-49.

⁸ Warin, C., *Individual rights and collective interests in EU law: three approaches to a still volatile relationship*, in *Common Market Law Review*, n. 2, 2019, pp. 463-487; Villani, S., *L'accesso alla giustizia ambientale da parte delle ong nel quadro giuridico dell'Unione europea alla luce della prassi recente*, in *Eurojus*, n. 1, 2023, pp. 149-172.

making use of collective action mechanisms. This approach broadens access to justice by recognizing the collective nature of environmental interests and ensuring that legal remedies are available for the protection of the environment as a common good, irrespective of individual harm. Case law has recognized the legal standing of non-profit associations, legally established under the national law of the Member States, to bring actions that would typically be reserved for the direct victim or their legal representative. This represents a significant expansion compared to the procedural rules before the EU judiciary, which impose considerably stricter standing requirements—often deemed excessively rigid. By adopting a more flexible interpretation of the criteria governing legal standing, judicial practice seeks to uphold the fundamental right of access to justice, particularly in cases involving the protection of diffuse and collective interests.⁹

2. THE ROLE OF ASSOCIATIONS IN THE PROTECTION OF COLLECTIVE INTERESTS

Associations play a crucial role in the protection of collective interests, particularly in legal systems where access to justice is traditionally reserved for individuals who can demonstrate direct and personal harm. In areas such as environmental law and digital rights, where the interests at stake are diffuse and supra-individual, associations serve as key actors in ensuring judicial protection. They bridge the gap between public authorities and individual claimants, enabling effective enforcement of legal provisions that might otherwise remain unchallenged. In the EU legal order, the recognition of associations' legal standing varies across Member States, with some jurisdictions allowing them to bring claims even in the absence of a directly identifiable victim. The case law of the CJEU has progressively shaped the scope of their standing, balancing the restrictive criteria under Article 263(4) TFEU with the broader objectives of fundamental rights protection and effective judicial review. By advocating for collective interests, associations contribute to the dynamic evolution of legal frameworks, promoting compliance with EU law and reinforcing the rule of law. Their role is particularly relevant in environmental litigation, where access to justice mechanisms, as reinforced by instruments such as the Aarhus Convention and European Commission Communications, seek to enhance accountability and prevent regulatory gaps. As discussions on collective redress mechanisms evolve, the role of associations may expand further, strengthening the enforcement of rights across

⁹ Biernat, E., *The Locus Standi of Private Applicants under article 230 (4) EC and the Principle of Judicial Protection in the European Community*, Jean Monnet Working Paper n. 12, 2003, NYU School of Law, New York.

different legal sectors within the EU.¹⁰ The analysis of the *locus standi* of associations, although primarily a procedural matter, inherently raises considerations related to judicial policy. As emphasized by authoritative legal scholarship, the introduction of uniform provisions on collective actions would enhance the efficiency of the internal market by ensuring greater legal certainty and consistency in enforcement mechanisms. A more harmonized approach to collective redress would not only facilitate access to justice for diffuse interests but also contribute to the effective implementation of EU law, reducing disparities among Member States and preventing regulatory fragmentation.

While acknowledging the potentially crucial role of mechanisms for the protection of collective interests, the EU legal system has not actively fostered the involvement of third parties in litigation, as is the case in the United States through the class action mechanism. Unlike the U.S. legal framework, where class actions serve as a key tool for collective redress, the EU procedural system remains more restrictive, limiting direct access to judicial review for associations and other representatives of diffuse interests. The absence of a harmonized collective redress system at the EU level reflects a cautious approach, balancing procedural efficiency with concerns over potential litigation abuse. However, recent developments, including the Representative Actions Directive (Directive (EU)

¹⁰ Burlinova, N.V., *The Role of NGOs in International Relations and Public Diplomacy*, in *Journal of International Analytics*, Vol. 13, Issue 1, 2022, pp. 110-123; Leonelli, G., *Access to the EU Courts in Environmental and Public Health Cases and the Reform of the Aarhus Regulation: Systemic Vision, Pragmatism, and a Happy Ending*, in *Yearbook of European Law*, 2021, pp. 230-264; Drelich-Skulska, B.; Domiter, M., *The European Union as a Platform for the European NGOs' Operations: Market Versus Democracy*, in *Eurasian Economic Perspectives*, 2020, pp. 155-167; Eliantonio, M., *Collective Redress in Environmental Matters in the EU: A Role Model or a 'Problem Child'?*, in *Legal Issues of Economic Integration*, 2014, pp. 257-273; Fasoli, E., *Legal Standing of NGOs in Environmental Disputes in Europe*, in *Bochiero, N.; Scovazzi, T.; Ragni, P. C., International Courts and the Development of International Law (Essays in Honor of Tullio Treves)*, The Hague, 2013, pp. 337-347; Jans, J.; Marseille, A., *The Role of NGOs in Environmental Litigation against Public Authorities: Some Observations on Judicial Review and Access to Court in the Netherlands*, in *Journal of Environmental Law*, Vol. 22, Issue 3, 2010, pp. 373-390; Butler, J., *Non-governmental Organization Participation in the EU Law-making Process: The Example of Social Non-governmental Organizations at the Commission, Parliament and Council*, in *European Law Journal*, 2008, pp. 558-582; Armstrong, K., *Rediscovering Civil Society: The European Union and the White Paper on Governance*, in *European Law Journal*, Vol. 8, 2002, pp. 102-132; Bouwen, P., *Corporate Lobbying in the European Union: the Logic of Access*, in *Journal of European Public Policy*, Col. 9, 2002, pp. 365-390; Godt, C., *op. cit.*, pp. 79-105; Bennett, R., *Business Routes of Influence in Brussels: Exploring the Choice of Direct Representation*, in *Political Studies*, Vol. 47, 1999, pp. 240-257.

2020/1828),¹¹ signal a gradual shift towards a more structured role for collective litigation in certain areas of EU law.

In the EU system of judicial protection, as highlighted in legal scholarship, NGOs can actively participate in proceedings before the Court of Justice in a limited capacity. They may intervene as third parties under Article 40 of the Statute of the Court of Justice of the European Union, provided they can demonstrate a direct and concrete interest in the resolution of the pending case. Additionally, in more restricted circumstances, NGOs may act as applicants, although their legal standing remains subject to the strict criteria established under Article 263(4) TFEU, as interpreted by the Court. For an application to intervene to be admissible, it must include, in its conclusions, either partial or full support for the claims of one of the parties, without introducing autonomous legal arguments. Intervening parties are therefore limited to reinforcing the legal reasoning of the party they support, rather than raising independent grounds for challenge or defense. This procedural constraint reflects the ancillary nature of interventions under Article 40 of the Statute of the CJEU, ensuring that the intervention does not alter the scope of the main proceedings. The nature of third-party intervention in proceedings is inherently *ad adiuvandum*, meaning that it must support the position of one of the parties to the case. A mere general interest in the outcome of the dispute is not sufficient to justify intervention. Instead, the intervening party must demonstrate a direct and specific interest in the resolution of the case, aligning with the procedural limitations set out under Article 40 of the Statute of the Court of Justice of the European Union. This requirement ensures that interventions do not introduce new legal arguments but rather reinforce the claims of an existing party.¹²

CJEU's case law, through a rather restrictive interpretation, has further clarified that the interest of a representative association seeking to intervene must be specific to a particular geographical area or thematic sector. A general commitment to the protection of the seas, flora, or water resources is not deemed sufficient to establish the requisite legal interest.¹³ The CJEU has consistently

¹¹ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1–27.

¹² General Court, 27 November 2013, T-462/12 R, *Pilkinton Group/Commissione*, ECLI:EU:T:2013:119, par. 16.

¹³ CJEU, 6 October 1982, 307/81, *Alusuisse/Consiglio e Comm.*, ECLI:EU:C:1982:337, par. 8; General Court, 8 September 2005, T-295/04, *ASAJA/Consiglio*, ECLI:EU:T:2005:305, par. 31; 10 luglio 2000, T-54/00 R, *Federación de Cofradías de Pescadores de Guipúzcoa/Consiglio*, ECLI:EU:T:2000:183, par. 15; 7 luglio 2004, causa T-37/04 R, *Região autónoma dos Açores/Consiglio*, ECLI:EU:T:2008:236, par. 33.

maintained that an association must demonstrate a sufficiently direct and individualized concern in relation to the subject matter of the dispute in order to justify its standing, thereby limiting the scope of interventions based on broadly defined environmental or public interest objectives.

Legal doctrine has widely emphasized the reluctance of the EU judicial system to admit private actions for the annulment of institutional acts under Article 263(4) TFEU. The CJEU has traditionally maintained a restrictive interpretation of the standing requirements, particularly through the *Plaumann test*, which limits admissibility to applicants who are directly and individually concerned by the contested act. This stringent approach has been criticized for creating significant barriers to access to justice, particularly for individuals and associations seeking to challenge EU measures affecting diffuse or collective interests.¹⁴

In the *Greenpeace* case, the General Court refused to apply the *Plaumann test* differently in the environmental sector, maintaining the requirement that applicants must be individually concerned. The Court of Justice subsequently upheld this restrictive approach, confirming that even local environmental associations from the Canary Islands had to demonstrate that they were individually affected by the decision of the Spanish authorities.¹⁵

Although the expansion of standing has been achieved through case law, as seen in *Inuit Tapiriit Kanatami v. Parliament and Council* (Case C-583/11 P) and *Telefónica v. Commission* (Case C-274/12 P), the Court of Justice has yet to develop a sufficiently consistent and coherent approach to standing that would ensure full and effective judicial protection for non-privileged applicants. While these rulings have introduced clarifications regarding the interpretation of regulatory acts under Article 263(4) TFEU, they have not fundamentally altered the restrictive approach derived from the *Plaumann test*. As a result, access to direct judicial review remains significantly constrained for individuals and

¹⁴ Mastroianni, R.; Pezza, A., *Access of individuals to the European Court of justice of the European Union under the new text of article 263, para. 4, TFEU*, in *Rivista italiana diritto pubblico comparto*, 2014, pp. 923-948; Jaeger, M., *L'accès des personnes physiques ou morales à la justice: les premières interprétations par le Tribunal des nouvelles dispositions de l'article 263, quatrième alinea, TFUE*, in *L'Europe des droits fondamentaux (Mélanges en hommage à Albert Weitzel)*, Paris, 2013, pp. 121-125; Lenaerts, K., *The legal protection of private parties under the EC Treaty: a coherent and complete system of judicial review?*, in *Scritti in onore di Giuseppe Federico Mancini*, 1998, pp. 591-623; Poli, S., *The Legal Standing of Private Parties in the Area of State Aids after the Appeal in Commission v. Kronoply/Kronotex*, in *Legal Issues of Economic Integration*, Vol. 39, Issue n. 1, 2012, pp. 357-379.

¹⁵ General Court, Case T-585/93, *Stichting Greenpeace Council (Greenpeace International) and Others v. Commission*, ECLI:EU:T:1995:147 and CJEU 2 April 1998, C-321/95 P, *Greenpeace/Commissione*, ECLI:EU:C:1998:153.

associations seeking to challenge EU acts, thereby raising concerns about compliance with the principle of effective judicial protection under Article 47 of the Charter. In the absence of a broader and more systematic judicial evolution, non-privileged applicants continue to face substantial procedural hurdles in securing judicial review before the EU Courts.

3. APPLICATIONS OF LEGAL STANDING IN ENVIRONMENTAL LITIGATION

As already mentioned, the issue of legal standing in environmental litigation is of particular relevance within the EU legal order, as environmental protection inherently involves diffuse and collective interests. Access to justice in environmental matters is shaped by a combination of EU law, national procedural frameworks, and international commitments, most notably the Aarhus Convention. However, despite the recognition of environmental protection as a fundamental objective of the EU, procedural barriers continue to limit the ability of individuals and organizations to challenge environmental decisions before the EU Courts.

In the *Trianel* case an environmental NGO brought an action before the German administrative court seeking the annulment of the authorization to construct and operate a coal-fired power plant in Lünen. The German court, applying national law transposing the relevant EU directive, held that an NGO could not challenge the authorization on the grounds of an alleged violation of environmental law, as it lacked the required standing to claim an infringement of its own rights. The referring court asked the CJEU whether a national provision that denies standing to environmental organizations on the basis that they do not assert a violation of individual rights is compatible with EU law. In its ruling, the CJEU aligned EU legal provisions with the Aarhus Convention, holding that a Member State cannot make the legal standing of environmental organizations conditional upon the concept of individual rights as defined by national law, where such national legislation derives directly from EU law that clearly establishes obligations in the relevant sector. The Court reaffirmed that, while “*it is for the legal order of each Member State to determine the competent courts and procedural rules governing actions intended to safeguard rights which individuals derive from EU law, such rules must not be less favorable than those governing similar domestic actions (principle of equivalence) and must not render the exercise of rights conferred by the EU legal order practically impossible or excessively difficult (principle of*

effectiveness)”.¹⁶ This ruling represents a significant step in strengthening access to justice in environmental matters within the EU. It confirms that national procedural rules cannot impose barriers that undermine the effective enforcement of EU environmental law, particularly where collective interests are at stake. The case also reinforces the binding nature of Aarhus Convention principles in shaping EU law on access to justice, ensuring that environmental organizations can play a meaningful role in judicial proceedings concerning environmental protection.

A significant turning point came also with *Slovak Bears* case in which the CJEU ruled that national courts must interpret domestic procedural rules in light of the Aarhus Convention, emphasizing that NGOs should not be denied access to justice where it would undermine the Convention’s objectives.¹⁷ While this case did not directly alter EU standing rules, it reinforced the obligation of Member States to facilitate judicial review in environmental matters. The Court of Justice adopted the same approach in October 2009, where, following the Opinion of AG Sharpston, it ruled that a Member State cannot restrict the legal standing of environmental associations solely to those with a minimum number of registered members. Such a requirement was found to be incompatible with the principles enshrined in the Aarhus Convention and EU law, as it could create an unjustified barrier to access to justice in environmental matters. The Court reaffirmed that Member States must ensure that procedural rules governing legal standing do not undermine the effectiveness of environmental protection measures under EU law.¹⁸ This ruling further strengthened the role of environmental NGOs by preventing Member States from imposing arbitrary or excessive formal requirements that could hinder their ability to challenge environmental decisions. By aligning its interpretation with the Aarhus Convention, the Court emphasized that national rules on standing must comply with the principles of effectiveness and equivalence, ensuring that environmental organizations can fulfill their essential role in environmental litigation without facing disproportionate procedural constraints.

4. THE REPRESENTATIVE ACTIONS DIRECTIVE

The adoption of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers marks a significant shift in the

¹⁶ CJEU, 12 May 2011, Case C-115/09, *Bund für Umwelt und Naturschutz Deutschland eV (BUND) v. Bundesrepublik Deutschland*, par. 43.

¹⁷ CJEU, 8 Marzo 2011, Case C-240/09, *Lesoochránárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*.

¹⁸ CJEU, 15 October 2009, C-263/08, *Djurgården-Lilla Värtans Miljöskyddsförening, ECLI:EU:C:2009:631*.

EU's approach to collective redress. While the directive primarily targets consumer protection, its framework lays the groundwork for broader applications, including in environmental litigation and other areas where collective interests are at stake. The directive establishes a harmonized system of representative actions across EU Member States, enabling qualified entities—typically consumer organizations or public bodies—to bring actions on behalf of groups of affected individuals. It aims to ensure that consumers have effective legal remedies against violations of EU law, particularly in cases involving widespread harm. The directive mandates that Member States provide mechanisms allowing representative actions before national courts, ensuring access to justice for consumers. By enabling collective enforcement, the directive strengthens compliance with EU regulations, reducing reliance on public enforcement mechanisms such as infringement proceedings. To prevent litigation abuse, the directive introduces safeguards, such as limiting standing to qualified entities and discouraging frivolous claims through procedural checks. Although the directive is designed for consumer protection, its adoption signals a broader shift in EU judicial policy, which could influence other areas of collective interest litigation, such as environmental law. The directive could serve as a model for expanding collective redress in environmental litigation, where diffuse interests require adequate judicial protection. The Aarhus Convention already establishes principles on access to justice in environmental matters, but the EU procedural framework remains fragmented. Moreover, the directive could impact the digital rights area. With the increasing impact of digital platforms on fundamental rights, there is a growing discussion on the need for collective redress mechanisms in areas such as data protection (GDPR enforcement) and algorithmic transparency. Finally, in competition law and financial services domaine. The directive complements existing initiatives allowing collective claims in antitrust and financial regulation cases, ensuring fair market conditions.

The introduction of a structured mechanism for representative actions in consumer law contrasts with the restrictive approach to *locus standi* under Article 263(4) TFEU, where private applicants face strict standing requirements of the so called *Plaumann test*. While the directive offers a procedural avenue for consumer-related collective claims at the national level, it does not directly alter the standing requirements before the CJEU. However, it highlights the increasing recognition of collective enforcement as a necessary component of effective judicial protection under EU law.

The Representative Actions Directive represents an important milestone in the evolution of collective redress within the EU legal system. While currently limited to consumer protection, its impact could extend to other areas where collective interests require effective judicial protection. As discussions continue on

expanding collective action mechanisms, the directive may serve as a precursor to a more comprehensive EU-wide framework for collective litigation, reinforcing access to justice and the rule of law across multiple legal domains.

5. CONCLUSION

The European case law on the criteria applicable to the recognition of legal standing allows for some general reflections. First, it is noteworthy that the environmental sector, where the role of associations representing collective interests is particularly significant, has historically been the area in which the European judiciary has been most willing to adopt an expansive interpretation of access to justice criteria. Indeed, this development has been strongly influenced by the EU's accession to the Aarhus Convention, which provided a clear legal basis for reinforcing procedural rights in environmental matters. By aligning its jurisprudence with the principles of the Convention, the CJEU has gradually recognized the importance of ensuring effective access to justice for environmental organizations. This sector has thus played a pivotal role in shaping the broader discussion on legal standing in EU law, demonstrating how the protection of diffuse interests can lead to a more dynamic interpretation of procedural rules.

Where national courts, in formulating preliminary ruling requests, have raised doubts regarding the legal standing of environmental protection associations, the CJEU has consistently clarified that recognized environmental organizations must be able to challenge, through judicial review, administrative measures that are potentially non-compliant with EU law and assert the negative environmental effects arising from such measures. In these cases, the direct effect of legal standing provisions has been derived from the Aarhus Convention, as interpreted by EU case law. Moreover, the Court has taken the opportunity to reaffirm that, within the EU legal order, the term "environmental law" must be understood in a broad and extensive manner, encompassing all legal provisions contributing to the achievement of the Union's environmental objectives, regardless of their formal legal source. By relying on conventional norms that establish direct effect for standing in environmental matters, the CJEU has extended the scope of effective judicial protection, ensuring that the entire field of environmental law benefits from the principle of effectiveness in judicial review and the fundamental right to an effective remedy under Article 47 of the Charter. This expansive interpretation reinforces access to justice for environmental organizations, aligning national procedural rules with EU obligations in a manner that ensures robust enforcement of environmental law.

In my humble opinion, this expansive interpretation of legal standing for associations will also be applied in the field of digital rights. Just as environmental organizations have played a crucial role in enforcing compliance with EU environmental law, civil society organizations advocating for digital rights may similarly seek to challenge measures affecting fundamental rights in the digital sphere, such as data protection, algorithmic transparency, and online content moderation. Recent legislative developments, such as the General Data Protection Regulation (GDPR) and the Digital Services Act (DSA), emphasize the importance of collective enforcement mechanisms to safeguard fundamental rights in the digital environment. While legal standing for digital rights organizations just started to be used extensively – *Meta Platforms* – there is a growing recognition of the need for effective access to justice to address large-scale and systemic violations of digital rights¹⁹. The interpretation provided by the Court in the *Meta Platforms* ruling represents a significant development in the EU procedural framework regarding legal standing. By recognizing that representative entities—such as consumer associations—play a crucial and tangible role in safeguarding the interests of the broader public, the judgment strengthens the collective enforcement of fundamental rights and enhances access to justice for diffuse interests. This ruling aligns with the broader trend in EU law towards expanding the role of collective redress mechanisms, as seen in Directive (EU) 2020/1828 on representative actions for consumer protection. By affirming the ability of consumer organizations to challenge potential infringements of EU law, the Court reinforces the principle that legal standing should not be unduly restrictive when fundamental collective interests are at stake.

The *Meta Platforms* decision thus marks an important milestone in the evolution of procedural rights within the EU, potentially paving the way for similar developments in other areas of collective interest litigation, such as digital rights and environmental protection. Given the EU's commitment to the principle of effective judicial protection under Article 47 of the Charter, and the increasing role of representative actions in consumer and data protection law, it is conceivable that the CJEU may extend its more flexible approach to standing to organizations advocating for digital rights. This would align with the broader trend of enhancing judicial review mechanisms to ensure compliance with EU law, particularly in areas where the impact on individuals is diffuse and where collective representation is essential to ensuring effective enforcement.

¹⁹ CJEU, 28 April 2022, C-319/20, *Meta Platforms*, ECLI:EU:C:2022:322.

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