

Contents

List of Figures	12
List of Tables	12
Abbreviations	13
Introduction	15
Central Claim	15
Outline	16
 I. European Environmental Policy and Civil Society	 19
1. The EU's Political and Legal System	21
1.1. Introduction	21
1.1.1. European Integration: Competences of the Union	21
1.2. The European Legal System	26
1.2.1. Hierarchy of Norms	27
1.2.2. Treaties: European primary law	28
1.2.3. International law	29
1.2.4. European law	30
1.3. Incorporation of international law	32
1.4. The EU as governance system under study	34
 2. European Environmental Policy	 35
2.1. The need for political action	35
2.1.1. The Aarhus Convention – procedural rights	36
2.1.2. Right to a healthy environment	39
2.2. Evolution of European environmental policy	42
2.2.1. Legal basis	44
 3. European Environmental Civil Society	 47
3.1. The Concept of Civil Society	47
3.1.1. Historical Overview	47
3.1.2. Practitioners' Views	49
3.1.3. Working Definition	50
3.2. Environmental Interest Representation to the EU	52
3.2.1. Features Specific to European Interest Representation	53

II. Participatory Governance at the EU & Recourse to Litigation	55
4. The Need for Political Participation	57
4.1. Practical Example: The Aarhus Convention	57
4.1.1. Participation by the Public – NGOs	58
4.2. Political Theories on Democracy	59
4.2.1. Participatory and Deliberative Democracy	59
4.2.2. Opportunity structures for citizen participation	61
4.2.3. Political & Legal Opportunities	62
4.3. Benefits of public participation	63
4.3.1. Critical Voices	65
5. Participatory Democracy within the European Union	67
5.1. The Democratic Deficit of the European Union	67
5.2. Alleviating the EU's Democratic Deficit	69
5.2.1. Legitimacy	71
5.2.2. Transparency	72
5.2.3. The EU – a complex and multi-layered governance construct	73
5.2.4. Governance vs. Government	76
5.3. Citizen Opportunity Structures at the EU Institutions	77
5.3.1. Commission of the European Union	78
5.3.2. European Economic and Social Committee	81
5.3.3. European Parliament	82
5.3.4. Council of Ministers	84
5.3.5. Committee of Regions	85
6. The EU Participatory Policy Cycle	87
6.1. Participatory Policy Cycle – EU Opportunity Structures	87
6.2. The Policy Stages	91
6.2.1. Agenda-Setting	91
6.2.2. Policy Formulation	93
6.2.3. Decision-Making	96
6.2.4. Implementation	98
6.2.5. Evaluation	99
6.3. Model of the EU Participatory Policy Cycle	102
7. The European Court of Justice as Opportunity Structure	105
7.1. Theory and the European Court of Justice	105
7.1.1. Neofunctionalism	106
7.1.2. Neofunctionalist approach towards European legal integration	107
7.1.3. Criticism and Adaptation	110
7.2. Jurisdiction of the Court	111
7.2.1. Modes of Interpretation employed by the ECJ	113

8. Private Litigants before the Court	117
8.1. Benefits and Costs of Litigation Strategies	119
8.1.1. Characteristics inherent to the legal system	119
8.1.2. Type of litigants	121
8.1.3. Prospects of Success	123
8.2. Judicial Opportunity Structure	124
 III. The Aarhus Convention at the EU	 127
9. Access to Environmental Information	129
9.1. Access to Environmental Information in the EU	130
10. Public Participation in Environmental Decision-Making	137
10.1. Public Participation in Environmental Decision-Making under the Aarhus Convention	137
10.2. Access to Participation in EU Decision-Making	138
10.2.1. EU Legislation applying to the Member States	138
10.2.2. Plans, Programs & Policies within the EU	145
11. Access to Justice in Environmental Matters	147
11.1. Access to Justice in Environmental Matters in the Aarhus Convention	147
11.1.1. Indirect Access via EU offices	151
11.1.2. Complaints to the European Ombudsman	151
11.1.3. Complaints to the European Commission	154
11.2. Judicial proceedings	159
11.2.1. Action for annulment (Article 263(4) TFEU)	159
11.2.2. Action for failure to act (Article 265 TFEU)	163
11.3. Indirect Access via the Member States	167
11.3.1. Purpose	167
11.3.2. Subject-matter of the Lawsuit	167
11.3.3. Procedure	168
11.3.4. Effects of the Decision	172
11.3.5. Access to environmental preliminary reference procedure	174
11.3.6. The failed Directive	185
 IV. Critical Assessment of the Status Quo	 189
12. Examination of the Standing Requirements	191
12.1. The Evidence of Concern	191
12.1.1. Direct Concern	191
12.1.2. Individual Concern	192
12.2. General Criticism	194

12.3. Reformulations of the individual concern test	200
12.3.1. Criticism by A–G Jacobs of the current system	200
12.3.2. Argument against a relaxation of <i>locus standi</i>	209
12.3.3. Amendment of the Treaty	209
13. Paradox in Environmental Litigation	213
13.1. Environmental Cases before the ECJ	213
13.1.1. Results	219
13.2. The Greenpeace cases	220
13.2.1. CFI, Case T–585/93	220
13.2.2. ECJ, Case C–321/95P	223
13.3. Proposals concerning standing in environmental disputes	224
13.3.1. Discussion of the Proposals	228
13.4. Shedding Light on the Paradox	231
13.4.1. The specific nature of environmental protection	232
13.4.2. Political prioritization and international legal commitment	232
13.4.3. The Paradox	233
13.4.4. No other Claimant	234
13.4.5. Improve enforcement via associational standing	236
V. Complementing Participation	237
14. Amici Curiae – “Friends of the Court”	241
14.1. Exploring the Concept	241
14.1.1. Purpose	242
14.1.2. Procedure: Existence, Rules and Regulations	244
14.2. Gains and Losses	253
14.2.1. Losses	253
14.2.2. Costs for the Amicus	254
14.2.3. Gains	256
14.2.4. Benefits for the Amicus	257
14.2.5. Conclusion	258
15. Amici curiae in rei naturae in the EU	259
15.1. Solicited briefs	259
15.2. Arguments	259
15.2.1. CONTRA	259
15.2.2. PRO	262
15.3. Proposal	267
15.3.1. Comments and Explanations	270
15.3.2. Restriction to the promotion of environmental protection	273
15.4. Recommendation	276

Conclusion	277
Environmental-related Participation at the EU	277
The Proposal: Introducing Environmental <i>Amici Curiae</i>	279
Political Participation Rights and Amici Curiae	280
Political Scientific Results and Practical Significance	282
Outlook – potential further studies	283
Bibliography	287
Literature	287
Official Documents	303
Online Sources	309
Case Selection	311