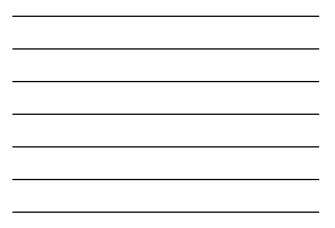


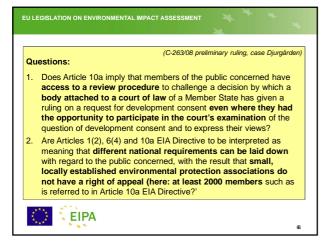
EIPA

EU LEGISLATION	ON ENVIRONMENTAL IMPACT ASSESSMENT			
Ac	Access to Justice in the Aarhus Convention			
Article 9(1):	Access to Justice related to refusal or inadequate provision of environmental information	f		
Article 9(2)	Access to Justice related to cases of public participatio	n		
Article 9(3)	Access to Justice "to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environmen (actio popularis, in addition to paragraph 1 and 2)	e		
Article 9 (4):	Procedures shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable timely and not prohibitively expensive.	e,		
Article 9(5):	Establishment of appropriate assistance mechanisms to remo or reduce financial and other barriers to access to justice.	ve		
	EIPA	, B		



EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT				
Transposition of Aarhus Convention into EU law				
Access to Information:	Directive 2003/4/EC on Access to Information includes provision on judicial appeal			
Public Participation:	Directive 2003/35/EC on public participation – incorporating access to justice rules in EIA- Directive (Article 10a)			
Access to Justice:	only Proposal for Directive (COM(2003)624) plus			
Regulation 1367/2006	on all three pillars, laying down rules to apply the provisions of the Aarhus Convention to Community institutions and bodies			
C EIPA	4			

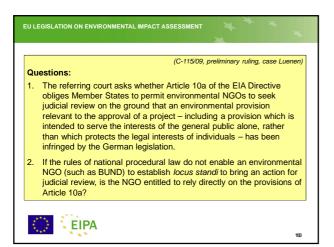
EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT					
Article 10 a EIA Directive					
 Member States (MS) shall ensure that, in accordance with the relevant national legal system, members of the public concerned: (a) having a sufficient interest, or alternatively, (b) maintaining the impairment of a right, where administrative procedural law of a MS requires this as a precondition, have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive. MS shall determine at what stage the decisions, acts or omissions may be 					
challenged. What constitutes a sufficient interest and impairment of a right shall be determined by the MS, consistently with the objective of giving the public concerned wide access to justice. []					
*** * * * * * 5					



	(C-263/08 preliminary ruling, case Djurgården)
E	CJ:
1	. Members of the public concerned within the meaning of Articles 1(2) and 10a of Directive 85/337 as amended must be able to have access to a review procedure to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.
	The right of access to a review procedure within the meaning of Article 10a does not depend on whether the authority which adopted the decision or act at issue is an administrative body or a court of law. Participation in the decision-making procedure has no effect on the conditions for access to the review procedure.

EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT
(C-263/08 preliminary ruling, case Djurgården) ECJ: 2. National rules that offer extensive opportunities to participate at an early stage in the procedure in drawing up the decision relating to a project are no justification for making judicial remedies against the decision adopted at the end of that procedure available only under very restrictive conditions. Directive 85/337 concerns also projects more limited in size which locally based associations are better placed to deal with. The rule of the Swedish legislation at issue is such as to deprive local associations of any judicial remedy. Article 10a precludes a limiting provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive solely to environmental protection associations with at least 2 000 members.

EU LEGISLATION ON ENVIRONMENTAL IMPACT ASSESSMENT
(C-115/09, preliminary ruling, case Luenen) Facts of the Case: Company Trianel intends to construct and operate a coal-fired power plant in Lünen, Germany. The project is subject to a mandatory EIA. In May 2008, the competent authority issued a preliminary decision plus partial permit for the project to Trianel. It stated that there were no legal objections in relation to the project site. An environmental NGO (BUND) initiated proceedings against the preliminary decision / permit. It claims that the preliminary decision / permit contain formal and substantive defects, and alleges that the project infringes the protective and precautionary principles of anti-pollution laws as well as requirements of the water and nature protection laws. BUND was not entitled to bring that action, because the NGO was not main- taining the impairment of a substantive individual right, as is required in German law to obtain <i>locus standi</i> .

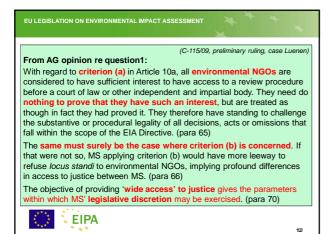


(C-115/09, preliminary ruling, case Luenen) Position of Attorney General: The German Government argues that Article 10a of the EIA Directive does not require Member States to modify their national systems so as to allow an *actio popularis* whereby any party enjoys unlimited access to challenge administrative decisions on environmental grounds. That is correct. However, the central issue of the present proceedings is

whether it is compatible with the EIA Directive for a Member State to maintain procedural rules on *locus standi* whose effect is that no party at all may bring an action alleging infringement of legislation aimed only at protecting the environment.

for discussion.....





From AG opinion re que	(C-115/09, preliminary ruling, case Luenen) stion 2:
	ctive is certainly sufficiently clear and precise to overver, sufficiently unconditional?
unconditional' where 'it s condition, or subject, in its	a provision in a directive is sufficiently ets forth an obligation which is not qualified by any s implementation or effect, to the taking of any titutions of the EU] or by the MS'. <i>v</i> , para 45)
Final opinion of AG re	question 2:
	plementation into national law, an environmental irectly on the provisions of Article 10a of the EIA

_