



To: Mr Frans Timmermans, First Vice-President of the European Commission  
Mr Jyrki Katainen, Vice-President for Jobs, Growth, Investment and Competitiveness  
Mr Karmenu Vella, Commissioner for Environment, Maritime Affairs and Fisheries  
Ms Věra Jourová, Commissioner for Justice, Consumers and Gender Equality

Brussels, 9 March 2015

OPEN LETTER

Dear Vice-President Timmermans, dear Vice-President Katainen, dear Commissioner Vella, dear Commissioner Jourová

**Re: Access to Justice Directive as an Urgently Needed Tool for Better Enforcement**

We are writing to you to express our concern at the widespread obstacles which citizens seeking access to justice in environmental matters continue to face in many EU Member States and to urge the Commission to come forward with a legislative proposal to address this problem as soon as possible.

As environmental civil society organizations active in the field of public participation and access to justice, jointly representing the concerns of millions of Europeans, we have observed over the past years that most Member States fail to provide adequate access to courts in environmental matters. The existence of large disparities in access to justice between Member States is borne out by many studies (including those prepared for the Commission), the jurisprudence of the Court of Justice of the European Union and the findings of the Aarhus Convention Compliance Committee. An improved regime of access to environmental justice, by allowing members of the concerned public the opportunity to directly challenge violations of environmental law, is needed to ensure better application of EU environmental legislation, a priority of the Commission, and thus uphold the rule of law, to support subsidiarity by having cases dealt with at the national level rather than overburdening the Commission and CJEU, and to establish a more level playing field for business. It is also needed to enable the EU and its Member States to meet their obligations under the Aarhus Convention. This can only be achieved through a legally binding approach, hence the need for a new legislative proposal. Such a proposal would also signal the intent of the Commission to establish a more democratic Europe which is closer to its citizens.

Please consult Annex I where we elaborate on these points. We also enclose for convenience the Commission Roadmap of 2013 on the topic, which sets out many similar arguments. We urge you to take account of these concerns by putting this topic on your agenda for the months to come and would be grateful for the opportunity to meet with you to discuss them face-to-face.

Yours sincerely,

Jeremy Wates  
EEB Secretary General

Also on behalf of:  
Client Earth  
Justice & Environment

## Annex I

Please find below a more detailed elaboration on why we consider that an Access to Justice Directive proposal should be issued as a matter of urgency:

- (1) The Commission Work Programme for 2015 emphasizes the need for “a renewed focus on implementation” of the “well-developed regulatory system of the EU”.<sup>i</sup> This **commitment to better implementation** has also been reiterated by Commissioners on various occasions, such as lately by Commissioner Vella during his meeting with the European Parliament on 24 February 2015. Indeed, it is fundamental to the principle of the rule of law that laws which have been adopted are effectively applied - something which is all too often not the case in the EU today. It is neither practicable nor desirable that the already overstretched resources of the Commission should bear the full brunt of dealing with potential breaches of EU environmental law, important as its role is. The European public, when empowered to challenge alleged violations of EU environmental law through national courts, can complement the role of the Commission and thereby reduce the number of cases reaching it. Thus, the adoption of a Directive would **support the principle of subsidiarity** by ensuring effective access to justice at national level instead of provoking complaints to the Commission and costly infringement procedures against Member States.
- (2) The **7th Environmental Action Programme**, which was highlighted by Commissioner Vella in his recent address to the Parliament, commits to ensuring that national provisions on access to justice reflect the case law of the Court of Justice of the European Union (CJEU).<sup>ii</sup> The word ‘ensuring’ implies a legally binding approach, which is consistent with the fact that non-binding measures have manifestly failed to prevent the current disparity in levels of access to justice across Europe. The jurisprudence of the CJEU, notably the judgment in Case C-240/09, unequivocally shows that there is a **legal vacuum** with respect to access to justice which can only be remedied by the adoption of an Access to Justice Directive.<sup>iii</sup> In the absence of legislation at EU level, there is not only a persisting lack of legal certainty and, thus, predictability for investors, but the CJEU will also need to – repeatedly –interpret the Aarhus Convention in lengthy preliminary ruling procedures.
- (3) In the absence of EU rules governing access to justice in environmental matters at Member State level, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding the rights that individuals derive from Union law.<sup>iv</sup> However, the most recent reports prepared for the Commission demonstrate widespread **failure of the Member States to provide adequate remedies** and large disparities in the extent to which civil society can challenge decisions of public authorities in different Member States.<sup>v</sup> This in turn leads to a **lack of a level playing field for business**, meaning that unless and until a Directive is adopted, there is a threat to the smooth functioning of the internal market. As also concluded in the final report of the Darpö study,<sup>vi</sup> the extent of these disparities between the Member States unequivocally requires a binding instrument for harmonization and will not be remedied by further guidelines or recommendations.

- (4) The CJEU consistently emphasizes that a **complete system of remedies in the EU legal order**, which is essential to fulfil the fundamental right of its citizens to effective judicial protection and the heightened requirements under the Aarhus Convention, exists.<sup>vii</sup> Within this system, national courts play a crucial role in enforcing EU law and ensuring consistency within the legal order, not least by providing a **gateway to the EU courts** through the preliminary ruling procedure.<sup>viii</sup> In two decisions handed down just over a month ago, the CJEU confirmed the limited scope of direct access to the European courts, which, however, rests upon the assumption that effective access to national courts is indeed provided – an assumption which is clearly flawed.<sup>ix</sup> The recent rulings of the CJEU have thus increased the urgency of addressing the deficiencies in access to justice at the national level.
- (5) Finally, through its failure to ensure effective access to justice throughout its territory, the EU is – like the Aarhus Convention Compliance Committee (ACCC) concluded in its findings<sup>x</sup> – likely to be in **breach of its obligations under the Aarhus Convention**, if the jurisprudence of the EU Courts were to continue. The latest rulings of the CJEU from 13 January 2015 on the scope of the Aarhus Regulation (Regulation 1367/2006) further demonstrate that the CJEU is not ensuring the correct implementation of the Aarhus Convention. The very narrow interpretation of the Aarhus Regulation provided by the Court will be at issue in the second part of the compliance review procedure this year. It should be remembered that the Convention is a treaty which establishes minimum standards in 47 countries extending from Western Europe right through to Central Asia, in which context the EU should be a leader, not a laggard.

These considerations, several of which are already reflected in a Commission Roadmap published in 2013, all converge in a specific direction and demand that the Commission takes seriously the results of its own studies, the obligations under the Treaties and the Aarhus Convention, the clear signals from the CJEU and its duty to respect the rights of European citizens to a more democratic, accountable Europe by re-issuing a legislative proposal for an Access to Justice Directive.

<sup>i</sup> European Commission Work Programme 2015, p. 6.

<sup>ii</sup> 7<sup>th</sup> Environmental Action Programme, Priority objective 4: “To maximise the benefits of Union environment legislation by improving implementation”, paragraphs 62 and 65.

<sup>iii</sup> Case C-240/09 *Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* [2011] ECR I-1255 (*Slovak Bears case*).

<sup>iv</sup> *Ibid.*

<sup>v</sup> In particular the comparative study on access to justice in the Member States, which was conducted for the Commission under the auspices of Professor Darpö, produced a plethora of differences and insufficiencies with regard to access to justice, available online: <[http://ec.europa.eu/environment/aarhus/access\\_studies.htm](http://ec.europa.eu/environment/aarhus/access_studies.htm)>, last accessed 26<sup>th</sup> of February 2015.

<sup>vi</sup> Jan Darpö, ‘Effective Justice? Synthesis report of the study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union’ (available online, *ibid*) p. 45.

<sup>vii</sup> Case C-583/11 P *Inuit Tapiriit Kanatami and Others v Parliament and Council*, judgment of 3 October 2013, not yet reported, paragraphs 93-6.

<sup>viii</sup> *ibid* as well as Article 19.1 TEU and Opinion of the Court 1/09 [2011] ECR I-1137, paragraph 66.

<sup>ix</sup> Joint Cases C-401/12 P to C-403/12 P *Stichting Natuur en Milieu* as well as Joint Cases 404/12 P and 405/12 P *Vereniging Milieudefensie*, both judgements of 13 January 2015, not yet reported. See in particular paragraph 60 and paragraph 52 respectively.

<sup>x</sup> See Findings of the ACCC in Case ACCC/C/2008/32, paragraph 94-95.