

To:

- *Representatives of the Swedish Presidency*
 - *Mr Ulf Kristersson, Prime Minister of Sweden*
 - *Mr Lars Danielsson, Head of the Swedish Representation to the EU*
- *EU Environment Ministers*

CC:

- *Frans Timmermans, European Commission Executive Vice-President for the European Green Deal*
- *Permanent Representations*
- *Rapporteurs and shadows of the Nature Restoration Law*
- *Director General, DG Environment, European Commission*

Re: Serious concerns about the Swedish Presidency proposal for the Nature Restoration Law

Dear Representatives of the Swedish Presidency and Environment Ministers,

We, the undersigned organisations, express our strong opposition to the action taken by the Swedish European Union (EU) Presidency with the aim of deleting access to justice provisions from the Nature Restoration Law and shifting this important provision to a recital only.

Recent Brussels media coverage of a leaked document has shown that Sweden is pushing to remove Article 16 of the Commission's proposal – granting citizens the right "to challenge the substantive or procedural legality of the national restoration plans" and giving non-governmental organisations (NGOs) legal standing.

The ability to challenge a country's incorrect implementation of EU legislation is key to ensuring its effectiveness, and is also a fundamental right of EU citizens, as recognised by the Court of Justice of the European Union (CJEU).

To ensure proper implementation of EU law and efficient protection of biodiversity, civil society and citizens need to be able to access justice in national courts. In 2017, for example, logging was taking place in Białowieża Forest, a Natura 2000 site and the best-preserved lowland forest in the EU. According to Polish law it was not possible to challenge the forest management plan in a national court. As a consequence, the illegal activity could only be stopped after many months and a verdict of the CJEU. Before this happened, 200,000 cubic metres of wood had been felled, half of it in protected old-growth forest stands. If access to justice in national courts had been assured through an explicit access to justice provision, irreparable damage to this precious forest could have been avoided.

Similar challenges led to the annulment of 7,000 hectares of Forest Management Plans in Romania, where a large majority of Europe's remaining old-growth forests is found. Despite these developments, loss of old-growth forests still continues and NGOs are looking for recourse in the CJEU.

Ensuring environmental protection requires an open avenue for civil society to engage in the decision-making process and enforce compliance with environmental legislation, as laid out in the Restoration Law there has been the challenge to fundamental rights, such as access to justice, which is a democratic tool to protect the environment.

The invoked justification of the “redundancy” of a provision dedicated to access to justice is inaccurate and not convincing, especially given that 23 out of the total 27 EU Member States have received recommendations on how to improve their access to justice on environmental matters domestically. There is widely inconsistent and uneven compliance across the EU and its Member States, a fact that creates significant legal uncertainty about the applicable standards, as well as an uneven playing field for national authorities, businesses and environmental organisations. Simultaneously, the decision will further aggravate Member States’ annual financial losses brought about by poor implementation of EU environmental legislation, which reached around 55 billion Euros, according to the Commission’s [2019 Environmental Implementation Review](#).

Ensuring effective access to justice based only on the provisions of the Aarhus Convention can be a lengthy process. In the case of Poland, only 19 years after its accession to the EU and six years after a complaint was filed with the European Commission on the matter, [the CJEU obliged the country](#) to ensure that the public has access to justice in the process of approving Forest Management Plans.

We would like to also note that due to the limited legal effects that a legislation’s recitals produce, when compared to operative provisions (Art 16 of the Commission’s proposal), the inclusion of access to justice only in the recital section of the law could not serve as a legal basis for claimants to enforce their rights in court.

For the Council, under the Swedish Presidency, to adopt such a restrictive approach, while being cognisant of the precarity of access to justice right across the EU and its implications in the EU and its Member States would constitute a silent endorsement of the status quo and the Council’s disregard of the Commission’s calls for including access to justice provisions in EU legislative proposal (as stated in the relevant Commission [Communication](#)). This would also indicate inconsistency in the Council’s approach overall, given the inclusion of an access to justice provision in the EU Regulation on deforestation-free products.

To enable the long-term and sustained recovery of biodiversity in the EU, and meet international commitments, it is important that access to justice is enshrined in law, otherwise systemic obstacles will continue. We call on you to uphold these principles in the ongoing negotiations.

Signed by:

- *Association Workshop for All Beings (Poland)*
- *Auroramålet, Sverige*
- *BirdLife Europe*
- *ClientEarth*
- *EEB*
- *Fern*
- *Fridays For Future Sweden*
- *Protect the forest Sweden*
- *WWF European Policy Office*