EEB comments on the update and revision of the European Commission Notice on access to justice in environmental matters of 2017

The EEB welcomes the opportunity to submit written input to be considered for the purpose of the Update of the European Commission Access to Justice Notice from 2017. This is a very timely and important exercise, and the EEB greatly appreciates that the Commission is carrying it out. As other civil society stakeholders will submit more detailed feedback on the proposed update and revision, the EEB would like to put forward some general remarks that pertain to the whole Notice and/or the update and revision process.

Timing and process
Since 2017, there have been a number of important and landmark cases relating to access to justice at the Court of Justice of the EU. We therefore find it timely for the Notice to be updated to reflect these developments. Moreover, there have been a series of legislative files since 2019 which include sectoral access to justice provisions, further developing the legal landscape of rules on access to justice. Having said this, and especially as we appreciate this important endeavour, the EEB would have expected there to be information available well in advance that this revision would take place at the end of 2023, as we have not been able to set time aside to engage fully in this. Similarly, it would be very useful to have a clear timeline for this revision process to help stakeholders with the planning. It is an important exercise, and therefore understanding the process and timing would help the EEB engage with it more productively and allow national experts to weigh in.

Structure and content
The proposed updated and revised Notice, like the current text, does not provide a cohesive handling of landmark cases, whose findings are scattered in the different sections of the Notice without providing the proper context of those cases, which may be essential to understanding the specific findings (e.g. Deutsche Umwelthilfe and Protect cases). What is clearly missing from the Notice is any analysis on the applicable caselaw in line with the Aarhus Convention Compliance Committee findings related to Access to Justice. This would provide better guidance on how to apply jurisprudence in line with both EU and international law and, for instance, could help courts differentiate between instances related to Article 9(2) or Article 9(3) of the Aarhus Convention, which would need to be elaborated further in the Notice. Finally, what would be useful is if the Notice can contextualise and analyse access to justice in light of the more recent sectoral access to justice provisions that have been legislated under the European Green Deal, such as the Deforestation Regulation.

Expectations for a revised Notice on Access to Justice
We expect the Notice to be a useful and practical guide to national judges, and therefore the formulations of the findings of the cases need to be practicable. The Notice should avoid limiting itself to merely copy/pasting wording from the caselaw, which would provide no additional value or guidance compared to reading the original judgment.

The EEB expects that, after the update and revision, the Notice will include the relevant findings and recommendations from the Aarhus Convention Compliance Committee as well as case-law from the

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1 The body of findings of the Aarhus Convention Compliance Committee is constantly growing and evolving, as access to justice is the focus of the 37% of allegations of non-compliance in cases received by the
Court of Justice of the European Union and Advocate General Opinions, as all are relevant sources that provide detail and clarity on the correct application of the Aarhus Convention provision on access to justice in environmental matters.

We suggest that the Notice could further be improved by providing examples to contextualize the relevant case-law to guide national law practitioners in the implementation of the Notice: national courts do not apply case-law of the Court of Justice of the European Union without regards to the facts and context in which it was rendered.

To conclude, the EEB reiterates the importance of a guiding document from the Commission on access to justice in environmental matters to ensure effective and harmonised implementation of this right across the European Union. We thank the Commission and the consultants for the opportunity to submit these comments, and we look forward to the next opportunity to read and comment on a second draft.

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