

The 7th EAP

Public Consultation Process of the
7th Environment Action Programme

Position Paper

Justice and Environment 2012

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Justice and Environment (J&E), European Network of Environmental Law Organizations believes that the multi-annual Environment Action Programmes of the EU (EEC and later EC) are cornerstones of environmental protection throughout the entire Union. They are mirrors and beacons at the same time: they reflect on the global trends and development in environmental protection but also show direction for the future and guide policy, legislation and action.

Having this in mind, J&E believes that the current drafting of the 7th EAP and the public consultation process is a good opportunity to include important aspects into the policy-making procedure. Using the paper “**Consultation document, EU environment policy priorities for 2020: Towards the seventh EU Environment Action Programme**” as a starting point, we find it necessary to stress the following points:

- There are **significant achievements** in the protection of environment in the Union that can be clearly attributed to the forward-looking planning manifested in the multi-annual EAPs of the Community/Union. It is always a good point for orientation to look at the respective EAP when someone wants to discover trends and tendencies in environmental protection, and not only in Europe. The EAPs are always true reflections of what is important in environmental protection in the region and globally.
- However, contrary to what the Consultation Document suggests, one cannot be fully satisfied with the existing environmental legislation of the EU and we cannot confidently say that environment legislation is completed to cover almost all environmental media except soil. **There are important issues still to cover**, e.g. nanotechnology, geoengineering, soil as noted by the documents (especially the adoption of binding legislation, in particular addressing covering of soil and soil degradation as a result of agriculture), environmental noise, especially in cities, protection of marine resources (also by means of more marine protection areas) and any other issue that development of science and technology may bring up. Other issues, that are still uncertain in terms of their environmental impact, such as GMOs, should be more safely and strictly regulated.
- In our view, the 7th EAP should strive to fill in the significant policy gaps it acknowledges by fully ensuring public participation, and also being active in other regions of the world, promoting principles of environmental democracy.
- As regards public participation, the 7th EAP should **be conscious about the benefits of inclusive governance** and should not be afraid to spell them out. The 7th EAP should

ascertain that early and open public participation enhances the quality of decisions and improves effectiveness of the decision-making process in environmental matters.

- Altogether, the Consultation Document is lacking a major point: while mentioning global trends and challenges, it **forgets to mention the European responsibility** for the global environmental problems. It talks about improving the resilience of Europe and forgets that building the Fortress Europe is not a solution, even in environmental matters.
- The Consultation Document aims to safeguard Europe's natural capital but totally omits to mention that this will be a futile exercise without looking beyond the boundaries of Europe, without preserving the global ecosystems. This is in contradiction with the document itself which – on its last page – recognizes the role of the EU on the global level; however, this is not fully elaborated and remains a statement with **no action points**.
- The Consultation Document is too heavily relying on economic aspects when justifying environmental protection. While this is acceptable in terms of the lately coined term of Green Economy, otherwise this coupling of economic performance with the protection of environment reflects a long outdated concept which should be eliminated from the 7th EAP. This again comes back when comparing the average material use of an EU citizen with the ratio of imported goods. The future environmental policy should not take inspiring economic growth as its first priority; in a conflict situation with protection of the environment and human health, these should prevail over economic growth. However, if both objectives can be fulfilled at the same time, this can only be welcomed.
- For the very same reason, it is misleading to welcome the decoupling of economic growth from environmental damage: firstly because this is **only a relative success**, compared to the last decades' of environmental degradation attributable to economic "development", secondly because this is a European phenomenon, not copied whatsoever by countries such as China, India, Brazil, etc.
- In addition, when setting priorities to be pursued when enhancing social resilience (page 6), **the paper is too optimistic**. Setting such goals as "cleaning the air we breathe" or "ensuring water quality" are indeed noble causes, however, the conflicts with the industrial sector is not at all mentioned in the document, thus making it hardly credible. Therefore possible conflicts and challenges should also be addressed in the upcoming EAP.
- The Consultation Document foresees the mobilization of an appropriate mix of policy instruments, among which planning, funding, market based ones, R&D are explicitly mentioned. We miss the mention of impact assessment, both strategic and project level, which not only guarantee the necessary scrutiny but also **ensure proper public participation in decision-making**.

- We welcome the reference to actions in the fiscal policy and express our hopes that the financial institutions of Europe will make the concept of Green Economy and sustainable development oriented financing part of their policies.
- J&E as an environmental law organization warmly welcomes the objective that the currently existing legal framework has to be implemented and enforced. However, we also would like to stress that stronger legal tools combined with the scrutiny of public participation can easily bring about achievements with a relatively low investment of resources. This however requires a more open thinking and the **treatment of (civil) society as a cooperation partner in the protection of the environment in Europe**. Furthermore, there is no mention on new EU level institutions and the need of the establishment thereof, such as the EU level environmental ombudsman or EU level environmental inspection bodies. Adding specific provisions on inspection to EU legislative acts, as for example was done with the Industrial Emissions Directive is welcomed, as this ensures more unified implementation and enforcement rules in MS, having a positive effect on the equal protection of citizens and environment in different MSs. In terms of priorities in this context (page 7), J&E finds the lack of reference to public access to information (inspection and surveillance regimes), participation in decision-making (complaints) and access to justice (all areas of EU environmental law).
- We recommend that **full public participation be ensured** in not only implementing but also in developing EU environmental legislation.
- When listing priorities that could be pursued in the context of the Green Economy (page 5), J&E suggests the following additions:
 - public spending, green public procurement
 - Official Development Assistance, resource allocation for environmental protection outside Europe
 These points can bring significant difference to what is the Business As Usual model now in Europe.
- While recognizing the developments that contribute to a better access to environmental information in the EU, we think that these are mostly technical developments, and their counterpart, the **development of legal framework** is also important.
- One sad example of how much the technological framework is not enough in itself is the practical “flushing” of the Principle 10 of the Rio Declaration in the current negotiations for the Rio+20 process whereby P10 is deprived of any connotation that would refer to binding legal frameworks and instruments. We believe that **the EU should stand up against this tendency** and present its legal system as an example for the rest of the world in such matters.

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