

# “Waiting for Godot”

The Regulation of  
Access to Environmental Justice by the EU

Position Paper

*Justice and Environment 2012*

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**Introduction**

Justice and Environment (J&E) is a European Network of Environmental Law Organizations. J&E has always paid particular attention to the development of access rights in environmental matters. J&E has a long list of analyses, studies, position papers relating to the implementation of access rights, and we even had initiated actual cases in this matter. J&E decided to contribute to the process of adopting an EU directive on access to environmental justice with its own means. That was the reason behind our five-country survey on the impacts of such a directive in 2007<sup>1</sup> and this was the very same reason why we again asked legal experts, now from seven countries, to evaluate the impacts of an access to environmental justice directive on their respective national legal systems.

**The survey**

We have approached our staff members and legal experts of J&E member organizations from the following countries: Austria, Croatia, Czech Republic, Hungary, Romania, Slovakia, and Spain. We have asked the following standard questions from the legal experts:

1. *What kind of impact, if any, would the definition of environmental law of the Draft Directive have on the environmental procedures in your country? Is this definition narrower than the “environmental law” used in your national law or court practice?*
2. *How is the legal standing of “members of the public” regulated in your country?*
3. *Is the concept of qualified entity recognized in the national law of your country? If yes, are the criteria for recognition of qualified entities as set out in Article 8 of the Draft Directive more rigorous or more lenient than in your national law?*
4. *If the concept of qualified entity recognized in the national law of your country, in what procedure are these entities recognized as qualified?*
5. *Is request for internal review recognized in the national law of your country? Is it possible to initiate internal review for administrative act in breach of environmental law only, or for administrative omissions in breach of environmental law as well?*
6. *Following an unsuccessful internal review, is it possible for the applicant to institute an environmental proceeding (a proceeding that concludes with a legally binding decision) in the national law of your country as provided in Article 7 of the Draft Directive?*
7. *The Draft Directive provides a definition for prohibitive cost. According to your estimation, would this definition lower the cost of environmental procedures in your country?*
8. *Is mediation used in environmental procedures in the national law of your country? Would mediation provided by the Draft Directive considerably prolong the environmental procedure?*

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<sup>1</sup> <http://justiceandenvironment.org/files/file/2008/01/aarhus-atoj-tables-attachment.pdf>

9. Is interim relief (or other form of preliminary protection) available for the applicant in your country? What kind of impact, if any, would mentioning of this institute as proposed in Article 4 of the Draft Directive, have on the situation in your country?

## **Conclusions**

Individual country answers can be found on our website, so here we only present an overall impression on the answers to specific questions, draw a general conclusion and suggest a way forward from this situation.

According to the analysis of what the national experts found, the adoption of an access to justice directive by the EU would enhance access to environmental justice in the Member States, and with only a few exceptions (e.g. criteria of qualified entities) would bring progress into the domestic legal systems. In addition, the uniform or at least harmonized rules of environmental access to justice would bring clarity, predictable legal interpretation and make possible the development of a European level case law (via e.g. preliminary rulings) on the issue. This is very much needed after many years of legal development such as Recommendations of the ACCC, judgments of the CJEU and the like, which all created a certain level of uncertainty as regards the implementation of environmental justice rights. An EU directive in the issue would be an improvement compared with the current situation of strong fragmentation that prevails now.

For an easier understanding of how our national legal experts evaluate the changes that the draft directive would bring into their respective legal systems, here is a small matrix for visualizing the potential improvements/drawbacks<sup>2</sup>.

<b>Countries</b>	<b>Austria</b>	<b>Croatia</b>	<b>Czech Rep.</b>	<b>Hungary</b>	<b>Romania</b>	<b>Slovakia</b>	<b>Spain</b>
<b>Issues</b>							
Definition of "environmental law"	Green	Green	Yellow	Green	Red	Green	Yellow
Notion of "qualified entity"	Yellow	Red	Red	Red	Red	Red	Red
Definition of "prohibitive cost"	Green	Green	Yellow	Green	Yellow	Yellow	Grey
Reference to interim relief	Green	Grey	Green	Green	Green	Green	Yellow

<sup>2</sup> Green is progress, yellow is no significant change, red is regress, grey is no data.

## **Recommendations**

J&E believes in agreement with many other stakeholders in the area of access rights implementation that the adoption of the new directive would be a reasonable, desired and progressive move from the EU and thus

- › we urge the Council to **make steps in order to accelerate the process of adoption**, under the Cyprus and the latest during the Ireland presidencies.
- › we ask however the Commission to think over the way the legal status (including legal standing) of non-governmental organizations is regulated in the currently pending directive, and **make it more open and inclusive** so that civil society can enjoy access to justice in environmental matters fully and without unnecessary constraints currently established by the pending directive.

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