

To: European Commissioners

Brussels, 21 October 2013

OPEN LETTER

Dear President Barroso, Dear Commissioners,

Re: Access to environmental justice in the Commission Work Programme for 2014

On 22 October 2013, the Commission is expected to adopt the annual Work Programme of the European Commission for 2014 (EC WP 2014).

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 feel that it is imperative that this Work Programme guarantees citizens of the European Union a more harmonized regime of access to environmental justice. To this end, we are convinced that the EC WP 2014 must include the issuing of a new proposal for a Directive on Access to Justice in Environmental Matters. In our view, in this European Year of Citizens, the withdrawal of the 2003 proposal referred to in the recent REFIT Communication is only acceptable if it is to make way for a new proposal on access to justice.

There are several compelling reasons why such a proposal should be issued as a matter of urgency:

- 1) The European Union is a Party to and thus legally bound by the 1998 UNECE Aarhus Convention but has not yet legislated in all three areas regulated by the Convention; there is an [Access to Environmental Information Directive](#) and a [Public Participation Directive](#), but there is no Access to Environmental Justice Directive yet. The jurisprudence of the European Court of Justice, 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 such a directive. In the absence of legislation at EU level, it will be the ECJ that will need – repeatedly – to interpret the Aarhus requirements, something that is to no one's benefit. Perhaps paradoxically, the adoption of a directive would also support the principle of subsidiarity by ensuring effective access to justice at national level.
- 2) A [number of surveys, analyses and reports](#) completed lately demonstrate that there remains a high level of uncertainty in terms of access to justice in environmental matters and reveal large disparities in the extent to which civil society can challenge decisions of public authorities in different Member States. This in turn leads to the 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.
- 3) The Commission has frequently expressed its dedication to rights; most prominently President Barroso spelled it out in his [2009 Political guidelines for the next Commission](#): *“Rights and obligations only become a reality when those concerned have easy access to them. I believe the*

Commission, the European Parliament and the Member States need to put aside time and attention to defining, communicating and enforcing these rights.” If the Commission wishes to live up to this expectation, there is no doubt that access to environmental justice should be regulated on the Union level. Furthermore, the [2013 Work Programme of the Commission](#) already contained the goal “*if people and businesses are to take full advantage of their rights, they need easy access to justice*”. This has not yet been secured; therefore obviously there is still a major step to be done. The Council and the Parliament have also recognized the need for action to improve access to environmental justice. This is reflected in the 7th Environmental Action Programme which commits to ensuring that national provisions on access to justice reflect the ECJ case law.

All these converge into a specific direction and demand that the Commission take seriously the voice of environmental NGOs, the results of its own studies, the clear signals from the ECJ and its own promises by including the Access to Environmental Justice Directive in its EC WP 2014.

We urge you to take account of these concerns in your deliberations on the 2014 Work Programme.

Yours sincerely,



Jeremy Wates
EEB Secretary General

Also on behalf of:

Justice & Environment

Client Earth

Friends of the Earth England, Wales & Northern Ireland

Swedish Society for Nature Conservation

Instituto Internacional de Derecho y Medio Ambiente (IIDMA)