

The 2013 Annual Work Plan of Justice and Environment J&E

What we do since 2004...

Justice and Environment (J&E) is an **association of public interest environmental law organizations**. The objective of J&E is to contribute to a better status of environment and human health in Europe where J&E is active through the use of law (European and national environmental laws) and the improvement of access to information, public participation and access to justice in environmental matters by legal means.

Objectives of J&E are to guarantee that the public has appropriate access – as ensured by international as well as European Union law – to environmental information, participation in decision-making and environmental justice. J&E aims at **strengthening the participation of NGOs and the public** at large in environmental policy-making and implementation.

J&E is also willing to contribute to the fight against **climate change** and promote both mitigation and adaptation activities in the legal field. J&E also wants to ensure that private and public projects entailing significant **environmental impacts are properly assessed** beforehand, with the participation of the public. J&E aims at preserving the **biodiversity** within the EU and contribute to halting its loss. Additionally, J&E aims at reducing the use of resources and the generation of **waste**, at enhancing the environmental **liability** regime of the European Union any beyond, and at the promotion of the protection **human health** from environmental impacts. Ultimately, J&E has an internal objective of building its own **capacities**, in order to be able to meet the aforementioned challenges with an effective organizational structure and a competent staff.

The actions of J&E are predefined by our nature of being an association of legal organizations, having an environmental activist approach. They are:

- **legal research** (this includes both national legal research and research of EU level regulatory framework as well as respective case law of courts and tribunals on both levels)
- **monitoring** (monitoring of Member State performance in transposing and implementing EU environmental law, as well as the development of EU environmental *acquis*)
- **comparative analysis** (this covers analysis of EU Member State situations both in terms of regulation and implementation)
- **preparation of reports** (findings of researches are compiled into comprehensive reports)
- **position papers** (reports are complemented by short and easy-to-capture legal position papers that are equally to inform the public and to influence the decision-makers)
- **amicus briefs** (where applicable the aforementioned position papers are formulated in a manner that suppose to influence dispute resolution procedures in the pipeline)
- **strategic complaints** (in certain cases, J&E is submitting on its own behalf requests and submissions that are supposed to uncover legal uncertainties and promote the cause of environmental protection and public participation on the EU level)
- **legal advice and representation** in actual administrative and court cases on the national level (consultations with clients, preparation of files for clients, submission of briefs on behalf of

clients, participation at meetings and hearings, appearance before administrative bodies, litigation at courts, etc.)

- **conferences** (these include events organized or co-organized by J&E as well as externally organized events, mostly held in Brussels)
- **consultations** (these can be either public consultations, stakeholder consultations or NGO activist consultations, over a certain matter)
- **meetings** (these are mostly organized with decision-makers, primarily with the respective units of the Commission in Brussels)
- **trainings** (both external trainings held for the public or decision-makers and judges, and internal trainings to raise the awareness of J&E staff)
- **networking** (J&E heavily relies on NGO networking, including internet-based networking and use of social media tools)
- **internet presence** (all our outputs and positions are open and accessible for the public at large, on the internet page of J&E, mostly in English, however, the development of national language content is on the agenda)

All these actions and means are supposed to achieve a better enforcement of EU and national environmental laws and secure the public's right to a clean and safe environment.

The usual outputs (as physical manifestations of the actions taken) and the results (as more long-lasting, sometimes intangible achievements) of J&E logically follow the course of actions, as follows:

Outputs:	Results:
<ul style="list-style-type: none"> - legal analyses - position papers - meeting memos - reports - MOUs - submissions in cases (national and EU) - consultations with clients - files for clients - briefs on behalf of clients - participation at meetings and hearings - appearance before administrative bodies - litigation materials at courts - letters - arguments presented in procedures - personal presence at meetings, conferences, etc. - training sessions - guidance and toolkits - web presence - publications 	<ul style="list-style-type: none"> - input into decision-making processes - influence exercised on decision-makers - views expressed, discussion sparked - cooperation with partners and stakeholders - allies and alliances within the civil sector - more aware clients on environmental issues - cases taken to the superior level - cases taken to the court - more solid rights implementation in cases - better state of environmental reached via cases - changed attitude of administrative bodies and court in environmental issues - case decisions (national and EU) - issues raised - opinions and standpoints expressed - trained public, decision-makers and judges - more informed civil society - public awareness raised - web information spread - publications read and used - J&E capacities raised - more communicated, connected and acknowledged J&E

What we do in 2013...

In 2013, we are active in a number of topic areas such as public participation, climate change in connection with energy, EIA, environmental liability and land use planning.

1. Aarhus Convention

J&E has always considered the implementation of the Aarhus Convention (AC) as one - if not the number one - of its priorities. Involvement in the national level implementation has always been an activity frequented by J&E. This took various forms ranging from operating national public interest environmental law offices giving free legal advice to citizens and CSOs to participating at relevant meetings of the Aarhus Convention Secretariat.

The reason behind this is that all staff members and member organizations of J&E consider the Aarhus Convention – and certainly the EU legal regime making the AC operational on the level of Member States as well as the Union – the cornerstone of environmental access rights. Those access rights, in addition to having an intrinsic value, are also powerful tools for the enforcement of environmental laws in practice because – as especially the European Commission wrote in its reasoning to the draft of the long-passive Access to Justice Directive – without the participation of the public the implementation of the EU environmental law would not function properly. This is reflected in our 2013 working programme as well, in which we tried to carefully select those areas where the work of J&E can have the most impact, can support the respective work of the European Commission to the largest extent possible and can reflect to real public needs in the Member States.

2. Climate change

Concluding from its past researches, J&E criticized a number of issues in the field of climate change regulation and practice, e.g. that EIA and SEA do not keep pace with the development of certain real processes and they do not incorporate the assessment of climate related impacts to the necessary extent.

This year J&E is venturing onto new areas in order to keep working with law and keep contributing to the fight against climate change. Our two target areas in 2013 are adaptation and energy transition.

We will conduct studies on the legal aspects of climate change adaptation, with regard to the EU Adaptation Strategy, formulate our position respectively and disseminate the results among the decision-makers on EU level.

We will analyze the regulatory framework on the trans-European energy infrastructure (the so-called Grids Regulation), prepare and publish a position paper for EC decision-makers and stakeholders, and investigate the status of energy transition and corresponding legislation in a number of Member States. We will also inform NGOs and stakeholders working on energy transition at the EU and Member State levels about our findings.

3. Environmental Impact Assessment

The Environmental Impact Assessment Directive (EIA Directive 85/337/EEC), together with the Strategic Environmental Assessment Directive (SEA Directive 2001/42/EC) are crucial tools for the implementation of the sustainable development principle of the EU stated in Art. 11 of the TFEU. These procedures are meant to prevent an aggressive negative impact of certain human activities on the environment, preserving certain environmental factors and preventing environmental damages.

The liveliest issue in this regard is the revision of the EIA Directive which is going on since 2010 when a consultation procedure for a new amendment of the Directive was launched by the European Commission. The Commission proposal for the amendment was published in October 2012 and J&E

rapidly reacted to this development, with a press release demanding a strong EIA Directive and with a topical workshop held in Brussels in November 2012 with the participation of civil society and the representatives of the Commission.

In 2013, we will continue analyzing the directive draft and make all efforts in order that an effective and strong EIA Directive is adopted at the end of the legislative process.

4. Environmental liability

It is almost a commonplace that the Environmental Liability Directive 2004/35/EC has not brought those results that were originally expected. Reports reveal that implementation is still weak and there is limited experience with ELD cases. J&E however believes that such a legal instrument should meaningfully contribute to a better state of the environment.

For this reason, in 2013 we will conduct a survey on severity thresholds applied for accidents falling under the scope of the ELD Directive in at least 10 EU Member States. And to make this exercise and impact, we will not only prepare and publish a position paper for EU decision-makers and stakeholders, participate at relevant meetings, publish findings on our websites, keep preparing our ELD newsletters and disseminate press releases on the topic, but we will also try to influence EU legislation by preparing a proposal for a new ELD regulation based on last year's J&E findings.

5. Land use planning

A new topic in the J&E portfolio, in 2013 we will devote our attention to a legal instrument that is so decisive in many environmental conflicts and that is – once combined with proper public participation – can make the wish formulated by the Aarhus Convention a reality: to involve the public into the decision-making process “early, when all options are open”. We will analyze land use planning / spatial planning in a specific context: the right of remedy in relation to the planning process and its outcome.

We will conduct a survey among J&E members on access to justice rules in spatial planning matters in at least 6 Member States, compose a respective legal analysis and inform national and EU stakeholders of the results. We will also bring the issue to the attention of the Aarhus Convention Compliance Committee in relation to a specific Member State (still to be defined).

J&E 2013 Work Plan Activities Overview

Theme	Objective	Activity	Output
Public Participation and Access to Justice	1. To promote the adoption of the Access to Justice Directive by the EU in 2013.	<ul style="list-style-type: none"> communicate with the Commission in order to influence the draft text of the Access to Justice Directive prepare an opinion paper in order to provide arguments to the Commission on behalf of the Access to Justice Directive participate at relevant stakeholder meetings and workshops to further the adoption of the directive work together with the actual presidencies of the EU in order to influence the agenda (Ireland, Lithuania) by establishing contacts, finding appropriate focal points and contact persons at the respective presidencies, initiative meetings, discuss standpoint of presidencies, submit opinion and position papers, etc. 	<ul style="list-style-type: none"> legal expert input to the Commission on the Access to Justice Directive letters to Commission and Council on Access to Justice discussions with actual presidencies of the EU
	2. To improve public participation in the EC infringement procedures.	<ul style="list-style-type: none"> evaluate the so-called EU Pilot on the management of MS infringement cases prepare information requests to the Commission in infringement cases contact national governments for data on infringement cases develop a position paper together with other Brussels NGOs on public participation in enforcement cases draft a conceptual draft regulation on accessibility of information and participation in decision-making in infringement cases 	<ul style="list-style-type: none"> position paper submitted to the Commission on civil society impression of the success of the EU Pilot information requests to the Commission on closed, ongoing and planned infringement cases letters to national governments on infringement cases position paper on the standpoint of Brussels NGOs draft regulation on infringement cases and submission to MEPs
	3. To raise awareness of the Aarhus Convention in the EU.	<ul style="list-style-type: none"> organize a 15th Anniversary event for the Aarhus Convention during the Green Week in Brussels 	
	4. To enhance cooperation with the AC Task Forces in order to have a more meaningful CSO input.	<ul style="list-style-type: none"> assistance in MOP5 preparations of the TFs participation in the work of AC Task Forces in order to be part of the decision-making and analytical processes, especially the Access to Justice Task Force and the Public Participation Task Force 	
Climate Change	1. To strengthen knowledge base on legal aspects and approaches of climate change adaptation strategy in the EU.	<ul style="list-style-type: none"> conduct a study of the legal aspects of climate change adaptation, with regard to the EU Adaptation Strategy formulate and provide J&E's position on the EU Adaptation Strategy 	<ul style="list-style-type: none"> study on legal aspects and approaches of adaption strategy position paper on climate change adaptation

	2. To strengthen advocacy towards adopting EU regulation on grids ensuring compliance with existing EU legislation on environment and public participation.	<ul style="list-style-type: none"> disseminate results among the decision-makers on EU level analyze the draft regulation on guidelines for trans-European energy infrastructure prepare and publish a Position Paper for EC decision-makers and stakeholders prepare a status report on energy transition and corresponding legislation in at least six J&E Member States inform national decision-makers and stakeholders 	<ul style="list-style-type: none"> legal analysis of the draft regulation on guidelines for trans-European energy infrastructure position paper on EU draft regulation on grids status reports on energy transition in J&E MS
Environmental Impact Assessment	1. To influence the final wording of the amended EIA Directive to ensure that it meets expectations of the civil society.	<ul style="list-style-type: none"> prepare and present comments and proposals to EU decision-makers regarding the revised EIA Directive related to the issues identified as important by J&E and regarding the coherence of the EIA Directive with other legislation and policies of EU set up meetings with EU representatives to promote J&E's work related to the new EIA proposal 	<ul style="list-style-type: none"> position paper regarding the EIA Directive revision process comments regarding the EIA Directive on specific issues
Environmental Liability	1. To make decision-makers on national and EU level aware of the complementary information on thresholds with respect to ELD and national liability regimes and thus to contribute to a more effective ELD implementation (also keeping in mind the upcoming revision of the directive)	<ul style="list-style-type: none"> conduct a survey on severity thresholds in at least 10 Member States prepare and publish a position paper for EU decision-makers and stakeholders prepare a proposal for a new ELD regulation based on last year's J&E findings 	<ul style="list-style-type: none"> surveys on severity thresholds in at least 10 MS comparative study position paper proposal for the ELD revision
Spatial Planning	1. To gather evidence of the shortcomings as well as the best practices regarding access to justice in spatial planning matters in EU countries.	<ul style="list-style-type: none"> conduct a survey among J&E members on access to justice rules in spatial planning matters in at least 6 Member States identify non-compliances with Art. 9(3) and Art. 9(4) AC as well as best practices compose a legal analysis of the access to justice legislation in spatial planning matters based on the survey 	<ul style="list-style-type: none"> survey and final report on comparative analysis of access to justice rules regarding spatial planning matters in MS position paper based on the survey