

## The 2012 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 Union 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 research 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 request 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 court, 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"> <li>- legal analyses</li> <li>- position papers</li> <li>- meeting memos</li> <li>- reports</li> <li>- MOUs</li> <li>- submissions in cases (national and EU)</li> <li>- consultations with clients</li> <li>- files for clients</li> <li>- briefs on behalf of clients</li> <li>- participation at meetings and hearings</li> <li>- appearance before administrative bodies</li> <li>- litigation materials at courts</li> <li>- letters</li> <li>- arguments presented in procedures</li> <li>- personal presence at meetings, conferences, etc.</li> <li>- training sessions</li> <li>- guidance and toolkits</li> <li>- web presence</li> <li>- publications</li> </ul> | <ul style="list-style-type: none"> <li>- input into decision-making processes</li> <li>- influence exercised on decision-makers</li> <li>- views expressed, discussion sparked</li> <li>- cooperation with partners and stakeholders</li> <li>- allies and alliances within the civil sector</li> <li>- more aware clients on environmental issues</li> <li>- cases taken to the superior level</li> <li>- cases taken to the court</li> <li>- more solid rights implementation in cases</li> <li>- better state of environmental reached via cases</li> <li>- changed attitude of administrative bodies and court in environmental issues</li> <li>- case decisions (national and EU)</li> <li>- issues raised</li> <li>- opinions and standpoints expressed</li> <li>- trained public, decision-makers and judges</li> <li>- more informed civil society</li> <li>- public awareness raised</li> <li>- web information spread</li> <li>- publications read and used</li> <li>- J&amp;E capacities raised</li> <li>- more communicated, connected and acknowledged J&amp;E</li> </ul> |

## ***What we do in 2012...***

In 2012, we are active in a number of topic areas such as public participation, climate change, EIA/SEA, waste, air/noise/human health, environmental liability.

### ***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 a national public interest environmental law office giving free legal advice to citizens and CSO 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 are, in addition to having an intrinsic value, also a powerful tools for the enforcement of environmental law 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 2012 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 researches, J&E criticized 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. EIA/SEA are closely linked to new investments, projects, strategic planning, extension or adaptation of existing plants, roads. At strategic level SEA influences the fundamental nature of the development and at project level through consideration of alternatives and mitigation EIA can be used as a design tool.

Climate relevant impact of a plan should be assessed in Member States but in practice it is very limited and formal without deeper evaluation. Despite that the EU legislation includes provisions on taking climate aspects into account, EIA and SEA often are limited to site boundaries and only formally mentioning – but not evaluating – climate change aspects. The impacts of projects do usually not respect political or geographic boundaries and those will occur offsite and may take decades to realize as health impacts of extreme weather and climate events, drier agricultural soils etc.

J&E is aiming to study the problem, that arguments referring to the problem of climate change often are used to justify environmental destruction, e.g. in planning and building water or wind power plants in special protection areas or areas having critical water impacts. J&E has the firm belief that in EIA/SEA processes it is to be examined and identified that climate change and nature/water protection aspects - assessed regarding to the related substantive EU legislation as well - are balanced and climate change is not used as an excuse for establishing projects destructing nature or water resources.

Most of the Member States have National Climate Strategies with either narrower or general scope; however, these policy documents have no immediate legal relevance and comprehensive legislative regulation on climate change is lacking or those are not sufficiently effective. J&E had monitored the legislative development in the member states and made national reports on the concepts, directions of the climate legislation. Each report presented the provisions on emission mitigation, adaptation to the impacts of climate change and research activity of the existing legal documents and of the published drafts and concept papers of the future national climate change act. UNFCCC and Kyoto

Protocol generally are in compliance with (long term reduction targets) the idea of CC Act, as well as with the idea of Art. 192. of TFEU. In J&E's view, reaching emission targets of EU there is a need to have effective and comprehensive national legislation on climate change.

### 3. Environmental Impact Assessment/Strategic Environmental 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. However, these procedures are under pressure.

Since the adoption of the EIA Directive in 1985 several gaps emerged so that the Directive was amended several times. In 2010, a new consultation procedure for a new amendment of the Directive was launched by the European Commission and a Commission proposal for amendment is expected in the next months. On 22 November 2011 Commissioner Potocnik clarified in his speech to the Petitions Committee of the EP that EIA is an important instrument that is subject to many complaints, for example with regard to incorrect screening procedures.

J&E will continue the work regarding the EIA Directive promoting the adoption of a stronger directive that will ensure a higher level of environmental protection and get involved into the revision process. J&E experts aim to analyze – among others – compliance of the EIA Directive with the Aarhus Convention since EU is a signatory of the convention and EIA Directive is one of the main EU instruments for public participation in decision making process. Decisions of the Aarhus Convention Compliance show there gaps between the Conventions provisions and those of the Directive.

Regarding the SEA Directive, although it was adopted in 2001, it still appears that there is not enough relevant information at EU level about the practical implementation of this legal instrument. A report of the EU Commission in 2009 showed that the first report on application and effectiveness of certain aspects of the SEA Directive was due in 2006. But, the Commission shows that due to the delays in transposing the Directive in many Member States, and the limited experience of its application, there was not enough information to produce the report in 2006. The conclusions of the report in 2009 showed that “further experience is needed before deciding on whether the Directive should be amended and, if so, how this should be done”. The report concludes that the next evaluation report will be done in 2013. In this context, a revision of the SEA Directive could be considered no earlier than 2016, and it would depend upon the conclusions of the next report.

### 4. Environmental liability

In November 2011 the European Commission hosted a stakeholder workshop on the implementation of the Environmental Liability Directive 2004/35/EC. At the workshop it became apparent that little has changed since the Commission's report und Article 14 par 2 of the Directive that was published on 12 October 2010 (COM(2010)581). This means implementation is still weak and there is limited experience with ELD cases. The Commission's report counted 16 cases early 2010 and the EC estimates there have been 50 to 100 cases until now (excluding Poland, where 400 cases have been reported). In Austria and France not a single case has been reported. In some countries it is reported that prior existing national legal systems provide for stricter or “easier” provisions and are applied instead of specific ELD legislation.

Even though this performance seems disappointing, particularly compared to what was expected in the green and white papers of the Commission, the Directive brought added value. The insurance industry developed suitable products and is ready to sell them. It is informally reported from operators that they made risk assessments and took preventive measures, so possibly the ELD has

preventive effects already. NGOs have better standing and access to information rights in liability cases compared to other legislation.

It was the initial intention of J&E to lobby for an earlier revision of the Directive than 2014, where the Commission has to submit a report to the Council and Parliament, including proposals for amendments as appropriate (Article 18). After discussion with different stakeholders we decided to drop this objective since there is no political chance for such an earlier revision. We therefore shift our resources for more thorough analytical work on the Directive's implementation that should bring specific arguments for better implementation and as to a revision of the Directive in 2014.

#### 5. Nature

Nature and biodiversity have been in the focus of J&E's attention in the last years, with varying geographical coverage and topic interest. In 2012, J&E would like to integrate its work on nature conservation into another, larger topic area: climate change. Therefore all issues of nature conservation will be dealt with within the climate change chapter, focusing on the prevention of the use of climate change argumentation, especially the need for renewable energy sources and biofuels for legitimizing the loss of biodiversity and the destruction of nature and habitats.

Our planned activities regarding water management have the most connections to nature and biodiversity. Water issues have scarcely or only tangentially been in the focus of J&E's attention in the last years, however, in 2012, J&E would like to integrate its work on water management into another, larger topic area which is again climate change. All issues of water management will be dealt with within the climate change chapter, focusing on the prevention of the use of climate change argumentation, especially the need for renewable energy sources for legitimizing the construction of new hydroelectric power plants and the destruction of water dependent nature and habitats.

#### 6. Air/Noise

J&E has never considered its work solely environmental and not having implications on the health protection field. We realized long ago that whatever is done in the protection of the environmental will eventually "pay off" as better conditions for people to live, to preserve their well-being and to keep their health. Even things like biodiversity, having for the first sight only indirect relationship with human health are important factors in maintaining the health conditions of a population on the long run.

Works that J&E has done lately in the health field are mostly about air pollution and noise emission. In 2011, J&E prepared an analysis – adjacent to the review of the Environmental Noise Directive, the END – and a position paper on a citizen-friendly environmental noise regulatory framework. J&E also participated at the commenting of the air protection *acquis*, giving input into the consultation process. J&E wants to continue its work in these two topics, also finding synergies with other European environmental NGOs.

#### 7. Resources and waste

The use of natural resources and the generation of waste is such a general problem of our current lifestyle that there seems to be no quick and easy solution thereto. Law is a fundamental part of the solution, guiding stakeholders and not allowing the overproduction of waste in abundance. J&E has always been sensitive to the question of waste management time to time had a different focus on issues. E.g. in 2009 we compared the "old" Waste Directive with the new Waste Framework Directive, while in 2011 we made a 6-country survey on the application of the waste planning provisions of the WFD. We again want to cover this area, with a specific focus now on the application of the WFD.

### J&E 2012 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 during the Danish and/or the Cypriot presidencies of the EU still in 2012.  | <ul style="list-style-type: none"> <li>• update our 2008 survey on the directive's potential impacts in a few Member States</li> <li>• write a position paper and send it to the Commission</li> <li>• contact national governments and inspire them to support the adoption of the directive</li> <li>• ally with other environmental NGOs (mostly the Brussels Green 10) and work jointly on supporting the adoption of the directive by the Council</li> <li>• provide as much information to the Commission on access to justice situation in the Member States as possible</li> </ul> | <ul style="list-style-type: none"> <li>• updated survey in a number of Member States on the potential impacts of the adoption of the directive and an aggregate study thereon</li> <li>• position paper submitted to the Commission</li> <li>• information notes and status reports/updates on access to justice situations in the Member States</li> </ul> |
|  | 2. To support the access rights related work actively of other environmental NGO networks having their seats in Brussels.   | <ul style="list-style-type: none"> <li>• <i>ad hoc</i> legal advice and legal research</li> </ul>  | <ul style="list-style-type: none"> <li>• studies on a range of diverse environmental legal topics necessitated by other Brussels environmental NGOs</li> </ul>  |
|  | 3. To contribute to the work of the Working Groups of the Aarhus Convention Secretariat.  | <ul style="list-style-type: none"> <li>• offer our service, as well as participate in the preparatory works and the meetings of as many Task Forces as possible, but at least in the A2J and the PP Task Forces</li> <li>• start an ACCC case based on the input of one or our member organizations</li> <li>• follow closely the ACCC's processes and write critical analyses once the ACCC has published its findings</li> </ul>   | <ul style="list-style-type: none"> <li>• a communication to the ACCC</li> <li>• analyses on ACCC findings</li> </ul>  |
|  | 4. To raise awareness in national decision-makers in countries where J&E is present that public participation is a public interest and that financial assistance mechanisms are needed. | <ul style="list-style-type: none"> <li>• national level legal advice and legal representation in environmental matters in order to promote access to information, public participation in decision-making and access to justice</li> </ul>   |   |
| Climate Change                             | 1. To make sure climate change implications are properly taken into account in EIA and SEA processes in the Member States.  | <ul style="list-style-type: none"> <li>• examining how climate change is considered in EIA and SEA procedures through cases</li> <li>• analyzing how climate change is used as legal justification to implement projects harmful to other environmental factors (such as water,</li> </ul>   | <ul style="list-style-type: none"> <li>• case studies on EIA and SEA proceedings particularly focusing on climate change aspects evaluated therein</li> <li>• position paper about how climate change is used as justification in realization of projects harmful to other</li> </ul>   |

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|   |  | <p>nature), again via cases</p> <ul style="list-style-type: none"> <li>• legal support / legal advice to the public concerned in projects harmful to the environment such as hydroelectric power plants in protected areas</li> </ul>  | <p>element of environment</p> <ul style="list-style-type: none"> <li>• report on legal support in climate relevant projects harmful to the environment</li> </ul>   |
|   | <p>2. To raise awareness regarding the idea of national climate change acts in countries where this is not the case yet.</p> | <ul style="list-style-type: none"> <li>• monitoring the process and outcomes of adopted CC Acts and existing drafts of Member States</li> <li>• promoting our findings and recommendations on EU and international level</li> </ul>  | <ul style="list-style-type: none"> <li>• copies of letters to the competent decision makers</li> <li>• press releases</li> </ul>  |
|   | <p>3. To contribute to the protection of forests as important sinks against climate change on the EU level.</p>              | <ul style="list-style-type: none"> <li>• analyzing the existing EU legislation on forests and examining the implementation thereof in several Member States where J&amp;E is active</li> </ul>   | <ul style="list-style-type: none"> <li>• a position paper on forests</li> </ul>   |
| <p>Environmental Impact Assessment/Strategic Environmental Assessment</p> | <p>1. To strengthen implementation of the EIA Directive in the Member States.</p>  | <ul style="list-style-type: none"> <li>• analyze the implementation of the directive in different Member States</li> <li>• set up meetings with European NGOs in order to coordinate opinions and to advocate for the amendments to the EIA Directive</li> <li>• comment the proposal issued by the EC using as tools the position papers and the analysis already done by J&amp;E regarding EIA implementation and Aarhus Convention principles</li> <li>• organize a workshop together with other interested NGOs and stakeholders to assess the proposals of the EIA revision and to make relevant comments that will be submitted to EC</li> <li>• compile and submit complaints on strategic EIA flaws of different Member States to the Commission</li> <li>• collect cases on EIA best practices and also identify cases where EIA Directive is not respected</li> <li>• establish an EIA newsletter</li> </ul> | <ul style="list-style-type: none"> <li>• submissions and positions to the directive revision</li> <li>• study and position paper on compliance with the Aarhus Convention</li> <li>• workshop transcripts and presentations</li> <li>• complaints to the European Commission</li> <li>• report on EIA best practices and also report on weaknesses of EIA application</li> <li>• EIA newsletter editions</li> <li>• workshop held in the EIA topic</li> </ul> |
|   | <p>2. To contribute to the proper implementation and upcoming review of the SEA directive through cases and opinions.</p>    | <ul style="list-style-type: none"> <li>• analyze implementation of the SEA Directive in different Member States</li> <li>• analyze the conformity of the SEA Directive with the Aarhus Convention and the SEA protocol of</li> </ul>   | <ul style="list-style-type: none"> <li>• national and comparative reports on SEA implementation</li> <li>• legal analysis with regard to the compliance with Aarhus and Espoo Conventions</li> </ul>  |

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|                         |  | <p>the Espoo Convention</p> <ul style="list-style-type: none"> <li>organize a workshop together with other interested NGOs at EU level where the results of the previous analyses will be discussed with interested stakeholders and EC representatives</li> <li>identify cases that represent violation of SEA Directive and submit a complaint to the EC</li> </ul>                                     | <ul style="list-style-type: none"> <li>workshop promoting the findings of the experts regarding the implementation of the SEA Directive and the conformity with Aarhus Convention</li> <li>case studies regarding the conformity of the SEA Directive with the Aarhus Convention</li> <li>collection of SEA cases and a complaint to EC</li> </ul>  |
| Environmental Liability | <ol style="list-style-type: none"> <li>To promote the practical, on the ground application of the ELD and other environmental liability regimes</li> </ol>   | <ul style="list-style-type: none"> <li>legal analyses and case studies in different Member States on ELD</li> <li>comparison of ELD legislation and other liability legislation</li> <li>position paper and recommendations based on the comparative study</li> <li>prepare an ELD newsletter and press releases</li> <li>host a conference or workshop on ELD in at least one EU Member State</li> </ul> | <ul style="list-style-type: none"> <li>J&amp;E ELD report 2012 with at least 6 national ELD reports</li> <li>comparative analysis</li> <li>position paper</li> <li>ELD newsletter and press releases</li> <li>briefing paper and distribution for the public's rights under ELD</li> </ul>  |
| Air/Noise               | <ol style="list-style-type: none"> <li>To give input into the upcoming revision process of the noise directive.</li> <li>To contribute to the proper implementation of the air quality legislation in the EU through cases.</li> </ol> | <ul style="list-style-type: none"> <li>input into the EC consultation on noise</li> <li>support EEB in air quality issues</li> <li>promote air protection law implementation in the Member States</li> </ul>  | <ul style="list-style-type: none"> <li>comments and inputs into the END revision process written by J&amp;E experts</li> <li>meetings and meeting memos with NGOs or EU institutions</li> <li>consultation submissions</li> <li>data collected from Member States</li> <li><i>ad hoc</i> legal opinions to EEB and EEB Law Group</li> <li>best practice examples collection from a number of Member States</li> </ul> |
| Resources and Waste     |  | <ul style="list-style-type: none"> <li>Assistance to EEB in waste management issues</li> </ul>  | <ul style="list-style-type: none"> <li><i>ad hoc</i> legal advice</li> <li>correspondence between J&amp;E and EEB or any other Brussels NGO that wants to be part of the public commenting process of the effectiveness study on the Waste Framework Directive</li> </ul>   |