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**Sent:** Friday, September 13, 2013 11:27 AM

**To:** Mreža za prostor IPoP

**Subject:** Javna razprava Evropske komisije o uresničevanju dostopa do pravnega varstva v okoljskih zadevah, ki vključuje tudi urejanje prostora

Spoštovani!

Na vas se obračamo za pridobitev podpore pri prizadevanjih za boljši dostop do pravnega varstva v okoljskih zadevah. V teku je namreč pomembna javna razprava, ki jo je sprožila Evropska komisija glede **dostopa do pravnega varstva v okoljskih zadevah**. Razprava je odprta na spletni strani [http://ec.europa.eu/environment/consultations/access\\_justice\\_en.htm](http://ec.europa.eu/environment/consultations/access_justice_en.htm). **Javna razprava poteka do 23.9.2013**, obrazložitev pa je dostopna na isti spletni strani (<http://ec.europa.eu/environment/consultations/pdf/access.pdf>).

Gre za uresničevanje tretjega stebra Aarhuške konvencije (Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah) - za pravico do učinkovitega pravnega varstva (9. člen konvencije). To vključuje predvsem pravico do **ustreznih in učinkovitih pravnih sredstev**, postopki na njihovi podlagi pa naj bi bili pravični, pošteni, pravočasni in ne pretirano dragi. Posebno vlogo morajo imeti nevladne organizacije s statusom delovanja v javnem interesu po notranjem pravu (vključena javnost), glede katerih je namen konvencije, da jim omogoči **širok dostop do pravnega varstva**. Aarhuška konvencija s pravico dostopa do pravnega varstva je posebej pomembna tudi za varstvo pravic (predvsem učinkovitega sodelovanja javnosti) pri prostorskem načrtovanju, glede katerega trenutno v Sloveniji ni ustreznih pravnih sredstev. Tudi sicer je Sloveniji je dostop do pravnega varstva v okoljskih zadevah zelo omejen - tako s pridobivanjem ustreznega statusa v javnem interesu (za področje urejanja prostora to sploh še ni urejeno), ozkega nabora postopkov, do katerih lahko te dostopajo, procesno oviranje odločevalskih organov v samih postopkih, ...

Slaba implementacija tretjega stebra konvencije povsod po Evropi predstavlja problem (glej analizo stanja na [http://ec.europa.eu/environment/aarhus/access\\_studies.htm](http://ec.europa.eu/environment/aarhus/access_studies.htm)), zato Evropska komisija že dolgo razmišlja o morebitni ureditvi tega področja z direktivo. S to namero so poskusili že v letu 2003, pa je bil odpor nekaterih držav prevelik. Javna razprava, ki jo je odprla Evropska komisija je tako ponoven poskus reševanja tega problema, pri čemer bo izid javne razprave tudi podlaga za nadaljnje ukrepanje Evropske komisije. Velika prizadevanja za ureditev tega področja z direktivo usmerjajo tudi mednarodne mreže okoljskih organizacij, posebej Justice&Environment, ki že leta sistematično analizira izvajanje Aarhuške konvencije in podaja evropskim telesom ustrezne predloge (<http://www.justiceandenvironment.org/>).

Nujno je, da si okoljske nevladne organizacije prizadevamo za sprejem direktive, ki bi države zavezala k nekim minimalnim skupnim standardom izvajanja tretjega stebra Aarhuške konvencije. Za nekatere države, tudi za Slovenijo, glede na boljše prakse po nekaterih drugih državah, pomenil velik napredek pri uveljavljanju pravic okoljevarstva. **Namreč zapisana pravica brez ustreznega učinkovitega pravnega varstva dejansko ne obstaja v celoti oziroma ne zaživi.**

**Glede na opisano prosimo vse, ki se vam zdi pravno varstvo v okoljskih zadevah pomembno, da v čim večjem številu izpolnite [vprašalnik](http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=A2JUST)**, ki je del javne razprave, in ki ga najdete na zgoraj navedeni strani javne razprave (<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=A2JUST>). V pomoč pri izpolnjevanju pripenjamo primer izpolnjenega vprašalnika.

Več informacij:

Senka Vrbica, Pravno-informacijski center nevladnih organizacij - PIC, [pic@pic.si](mailto:pic@pic.si)

Priloga: Primer izpolnjenega vprašalnika

## Access to justice in environmental matters – options for improving access to justice at Member State level

Introductory questions	
A. Please indicate the country where you reside or where your organisation is principally based: -single choice reply-( <i>compulsory</i> )	Slovenia
B. To which one from the following categories do you belong? -single choice reply-( <i>compulsory</i> )	Organisation
If Organisation: -single choice reply-( <i>compulsory</i> )	National network or organisation of environmental professionals
C. Please indicate your name if responding as a citizen or the name of your organisation/public authority if responding as an organisation/public authority, together with the email address.  If you are responding on behalf of an organisation or public authority, please indicate also the postal address of your organisation/authority.  If your organisation is registered in the Transparency Register, please indicate also your Register ID number. -open reply-( <i>compulsory</i> )	
Pravno-informacijski center nevladnih organizacij - PIC, Ljubljana Metelkova 6 1000 Ljubljana Slovenija (pic@pic.si)	
D. Unless you specify otherwise, your contribution will be published on the Commission's website. Please indicate here if you wish your contribution to be anonymous for purposes of publication. For full information please see the Privacy Statement on the bottom. -single choice reply-( <i>compulsory</i> )	You can publish this contribution as it is
Explanation of terms used in the Questions	
(These are not legal definitions and serve only to aid understanding of the questionnaire).	
A Importance of ensuring effective and efficient access to environmental justice in Member States	
<b>Question 1</b> How would you rank the importance of the following possible <b>advantages</b> of ensuring <b>effective and efficient access to justice in environmental matters</b> in Member States?  <b>a) Reduction of administrative burden for stakeholders</b> -single choice reply-( <i>compulsory</i> )	Somewhat important
<b>b) Level playing field between stakeholders and Member States</b> -single choice reply-( <i>compulsory</i> )	Important

<p><b>c) Ensuring cost-effectiveness for national, regional or local administrations, including those responsible for administration of courts and administration of similar bodies</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>d) Ensuring legal certainty for stakeholders, such as citizens, their associations and business</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>e) Ensuring adequate protection for the environment and human health</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>Question 2</b></p> <p>How would you rank the importance of the following aspects of access to justice from the perspective of achieving overall <b>effective and efficient access to justice in environmental matters</b> in Member States?</p> <p><b>a) Ensure a right of access to national courts by individual citizens and associations</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>b) Ensure an adequate scope of review by national courts</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>c) Ensuring timely judicial procedures and avoiding undue delays</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>d) Ensure that procedures before national courts are not prohibitively expensive</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>e) Ensure that national courts apply effective remedies, including injunctive relief, to prevent damage to human health and the environment</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>Question 3</b></p> <p>How important is it to give broadly <b>the same rights</b> of access to environmental justice to individuals and to associations?</p> <p>-single choice reply-(<i>compulsory</i>)</p>	Somewhat important
<p><b>Question 4</b></p> <p>How important is it to give broadly <b>the same rights</b> of access to environmental justice to litigants from the Member State concerned and to litigants from other Member States?</p> <p>-single choice reply-(<i>compulsory</i>)</p>	Important
<p><b>Question 5</b></p> <p>How important is it <b>for the following interests</b> to have a clear and predictable national legal framework</p>	Very important

<p>for ensuring effective access to environmental justice?</p> <p><b>a) Public administrations in general</b> -single choice reply-(compulsory)</p>	
<p><b>b) Courts and other administrations responsible for access to justice</b> -single choice reply-(compulsory)</p>	Very important
<p><b>c) The legal profession</b> -single choice reply-(compulsory)</p>	Very important
<p><b>d) Local business</b> -single choice reply-(compulsory)</p>	Important
<p><b>e) Business located in other Member States</b> -single choice reply-(compulsory)</p>	Important
<p><b>f) Citizens and associations active in the environmental field</b> -single choice reply-(compulsory)</p>	Very important
<p><b>g) Vulnerable members of the society that cannot easily protect themselves, such as children and people suffering from poor health or disability</b> -single choice reply-(compulsory)</p>	Very important
<p><b>h) The environment</b> -single choice reply-(compulsory)</p>	Very important
<p><b>i) Human health</b> -single choice reply-(compulsory)</p>	Very important
<p><b>Question 6</b> How important is it to have a legal framework that is <b>clear and predictable</b> on the following aspects:</p>	Very important
<p><b>a) Standing of individuals</b> -single choice reply-(compulsory)</p>	
<p><b>b) Standing of associations</b> -single choice reply-(compulsory)</p>	Very important
<p><b>c) Scope of review by the courts</b> -single choice reply-(compulsory)</p>	Very important
<p><b>d) Costs of access to the courts</b> -single choice reply-(compulsory)</p>	Very important
<p><b>e) Remedies, including injunctive relief</b> -single choice reply-(compulsory)</p>	Very important
<p><b>f) Timeliness of judicial proceedings</b> -single choice reply-(compulsory)</p>	Very important
<p><b>Question 7</b> How important is it to the following interests to have environmental access to justice that is <b>cost-effective</b> and keeps <b>administrative burden</b> to a minimum?</p>	Very important

<p><b>a) Public administrations generally</b> -single choice reply-(compulsory)</p>	
<p><b>b) Courts and other administrations responsible for access to justice</b> -single choice reply-(compulsory)</p>	Very important
<p><b>c) The legal profession</b> -single choice reply-(compulsory)</p>	Very important
<p><b>d) Local business</b> -single choice reply-(compulsory)</p>	Very important
<p><b>e) Business located in other Member States</b> -single choice reply-(compulsory)</p>	Very important
<p><b>f) Citizens and their associations active in the environmental field</b> -single choice reply-(compulsory)</p>	Very important
<p><b>g) Vulnerable members of the society that cannot easily protect themselves, such as children and people suffering from poor health or disability</b> -single choice reply-(compulsory)</p>	Very important
<p><b>i) The environment</b> -single choice reply-(compulsory)</p>	Very important
<p><b>Question 8</b> How important is to have forms of <b>non-judicial conflict resolution</b> in the environmental field that would provide for amicable out-of-court settlement of differences, with timely and not prohibitively expensive procedures? -single choice reply-(compulsory)</p>	Somewhat important
<p><b>Question 9</b> How important is it to have <b>non-judicial conflict resolution</b> available in resolving disputes in the following sectors?</p> <p>a) Nature -single choice reply-(compulsory)</p>	Somewhat important
<p>b) Water -single choice reply-(compulsory)</p>	Somewhat important
<p>c) Waste -single choice reply-(compulsory)</p>	Somewhat important
<p>d) Air -single choice reply-(compulsory)</p>	Somewhat important
<p>e) Chemicals -single choice reply-(compulsory)</p>	Somewhat important
<p><b>B. Options for ensuring effective access to justice in environmental matters</b></p>	

Questions in this section are aimed at seeking views on the different options for ensuring effective access to justice in environmental matters by the Commission within individual Member States, across the EU as a whole and in relation to a number of specific subject-areas.

<p><b>Question 10</b> To what extent are you satisfied with the <b>current status</b> of access to environmental justice in your <b>own Member State</b>? -single choice reply-(<i>compulsory</i>)</p>	Not satisfied
<p><b>Question 11</b> To what extent are you satisfied with the <b>current status</b> of access to environmental justice in <b>other Member States</b>? -single choice reply-(<i>compulsory</i>)</p>	Not satisfied
<p><b>Question 12</b> On a scale of 1-3 (1 being a top priority activity, 3 being a lower level priority), which of the following actions and initiatives would you consider to <b>be most effective</b> in terms of ensuring <b>legal certainty and a level playing field</b> in the area of environmental access to justice across the EU?  <b>a) Awareness-raising of stakeholders</b> -single choice reply-(<i>compulsory</i>)</p>	2
<p><b>b) Infringement action by the European Commission against the Member States</b> -single choice reply-(<i>compulsory</i>)</p>	2
<p><b>c) Adoption of specific rules on access to justice in EU legislation</b> -single choice reply-(<i>compulsory</i>)</p>	1
<p><b>Question 13</b> How important is it that the <b>Council and the European Parliament</b> as co-legislators <b>have a role in shaping specific rules</b> on access to justice in environmental matters? -single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>Question 14</b> How important are <b>the following advantages of an EU legal instrument</b> ensuring effective access to national courts in environmental matters?  <b>a) Reduction of administrative burden for business</b> -single choice reply-(<i>compulsory</i>)</p>	Somewhat important
<p><b>b) Level playing field between economic operators</b> -single choice reply-(<i>compulsory</i>)</p>	Important
<p><b>c) Ensuring cost-effectiveness for national,</b></p>	Very important

<p><b>regional or local administrations, including court administrations and the administrations of similar bodies</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	
<p><b>d) Ensuring legal certainty for stakeholders</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>e) Ensuring adequate protection for the environment and human health</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>Question 15</b></p> <p>Do you have concerns that an EU legal instrument ensuring effective access to national courts in environmental matters would have the following <b>disadvantages</b>?</p>	Not concerned
<p><b>a) Not respecting the legal framework and legal traditions of the Member States</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	
<p><b>b) Overloading the national court systems and increasing the burden on national, regional or local administrations, including court administrations and the administrations of similar bodies</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Not concerned
<p><b>C. Elements on which action at EU level is possible</b></p> <p>Questions in this section are aimed at seeking views on the specific issues on which EU legislative action would be proportionate and appropriate to the objective of ensuring effective access to justice</p>	
<p><b>Question 16</b></p> <p>How important is it to have EU legislative action on the following <b>aspects of standing</b>?</p>	Important
<p><b>a) Standing of individuals</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	
<p><b>b) Standing of individuals from other Member States</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Important
<p><b>c) Standing of associations with legal personality</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important
<p><b>d) Standing of associations without legal personality (e.g., ad hoc associations)</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Important
<p><b>e) Standing of associations from other Member States</b></p> <p>-single choice reply-(<i>compulsory</i>)</p>	Very important



<b>f) Rules to avoid frivolous litigation</b> -single choice reply-(compulsory)	Somewhat important
<b>g) Rules making standing conditional upon previous participation in administrative proceedings</b> -single choice reply-(compulsory)	Somewhat important
<b>Question 17</b> How important is it to have EU legislative action on the following <b>aspects of review</b> ?	Somewhat important
<b>a) Rules defining the scope of review by the court</b> -single choice reply-(compulsory)	
<b>b) Ability to raise arguments not used in a previous administrative procedure</b> -single choice reply-(compulsory)	Somewhat important
<b>Question 18</b> How important is it to have EU legislative action on the following <b>aspects of costs</b> ?	Very important
<b>a) The effective prevention of “prohibitively expensive costs”</b> -single choice reply-(compulsory)	
<b>b) Costs of lawyers representing applicants</b> -single choice reply-(compulsory)	Very important
<b>c) Costs of lawyers representing defendants</b> -single choice reply-(compulsory)	Very important
<b>d) Court fees</b> -single choice reply-(compulsory)	Very important
<b>e) Costs of experts</b> -single choice reply-(compulsory)	Very important
<b>f) The obligation to be represented by professional lawyers</b> -single choice reply-(compulsory)	Not important
<b>Question 19</b> How important is it to have EU legislation on the following aspects of <b>remedies</b> ?	Very important
<b>a) Ability for the applicant to ask for preliminary injunction</b> -single choice reply-(compulsory)	
<b>b) Financial liability linked to preliminary injunctions</b> -single choice reply-(compulsory)	Somewhat important
<b>c) Ability for the defendant to obtain consent for preliminary execution of works</b> -single choice reply-(compulsory)	Important

<p><b>Question 20</b></p> <p>How important is it to have EU legislation on the <b>timeliness</b> of judicial proceedings in environmental matters?</p> <p>-single choice reply-(<b>compulsory</b>)</p>	Very important
<p><b>Question 21</b></p> <p>On a scale of 1-5 (1 being a top priority activity, 5 being a lower level priority), which of the following actions and initiatives would you consider to be <b>most effective</b> in ensuring <b>non-judicial conflict resolution</b> in the environmental field in Member States?</p> <p>-single choice reply-(<b>compulsory</b>)</p>	Compulsory mechanism established in an EU legal instrument on access to justice in environmental matters
<p><b>Question 22</b></p> <p>How important is it to have EU legislation on access to justice in environmental matters under the form of a <b>Regulation</b> instead of a <b>Directive</b>?</p> <p>-single choice reply-(<b>compulsory</b>)</p>	Important
<p><b>Question 23</b></p> <p>How important is it to collect and evaluate <b>data</b> at EU or national level on how access to justice in environmental matters functions in practice?</p> <p>-single choice reply-(<b>compulsory</b>)</p>	Very important