

[ Thank you for your kind attention!  
Cristina  
DIA  
10/11/12 ]

# European Commission's Expert Group (E00390) on Aarhus Implementation Meeting on Access to Justice November 12, 2012 Brussels

Making the eJustice Fact Sheets:  
Main Methods and Difficulties



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# Prequel

1. Restricted call for proposals
2. Bid for the tender by **Umweltbundesamt (UBA) Austria**
3. Favorable decision by the EC
4. Internal UBA project coordination meeting
5. Meeting between EC and EMLA - Issues:
  - o approval of national experts to approach
  - o discussion on questions for the fact sheet
  - o requirements towards the outputs
  - o fixing timing and deadlines

# Contract and Contractors

1. Main contractor: **UBA**
2. Responsibilities: finances and national expert contracts as well as payments
3. Subcontractor of UBA: **EMLA**
4. Responsibilities: contact with EC, substance and coordinating national experts' work



# Timeline

M1 formation of the pool of experts  
M2 definition of the fact sheet template  
M3-M9 writing of the draft versions with  
guidance from EMLA  
M5 draft output  
M9 final output

## reporting

- o M1 inception report
- o M5 and M9 interim reports

## future

- o M10-M13 review by CA
- o M13 final draft report
- o M15 final output and final report

## National Experts

- 27 national experts, 1 from each MS
  - o government or related institution: 3
  - o judiciary: 4
  - o private sector: 6
  - o academia: 4
  - o civil society: 10

## Methods - Substantive

- o Fact sheets with 16 chapters with average 5 questions each totaling to approximately 80 questions
- o Fact sheet template draft originally part of the tender
- o Rewritten fact sheet by EMLA, approved by the Commission
- o Draft fact sheets undergo native English (USA) language check, consistency check and relevance check
- o Reviewed fact sheets go to EC for commenting
- o EC comments forwarded to national experts
- o Corrected drafts go to national Competent Authorities
- o TBD: CA commented versions go back to national experts for final touch

# Fact Sheet Template

- I. Constitutional Foundations
- II. Judiciary
- III. Access to Information Cases
- IV. Access to Justice in Public Participation
- V. Access to Justice against Acts or Omissions
- VI. Other Means of Access to Justice
- VII. Legal Standing
- VIII. Legal Representation
- IX. Evidence
- X. Injunctive Relief
- XI. Costs
- XII. Financial Assistance Mechanisms
- XIII. Timeliness
- XIV. Other Issues
- XV. Being a Foreigner
- XVI. Transboundary Cases



# Illustrative Questions

- o Is there a right to (clean, healthy, favorable, etc.) environment enshrined in the Constitution?
- o Are there special courts, tribunals, boards, etc. to decide in environmental matters?
- o What procedural rules apply for those requesting information and seeking remedies against refusals, etc. (deadlines, format requirements, mandatory counsel, etc.)?
- o Do courts review the procedural legality of administrative decisions? Do courts review the substantive legality of administrative decisions? Do courts look beyond the administrative decision and verify material and technical findings and calculations, etc.?
- o Which are the competent authorities designated by the Member State in environmental liability matters?
- o Detail briefly the powers of ombudspersons (general or specific environmental), public prosecutors (general or specific environmental), or other institutions or bodies that have competence in providing access to justice in environmental matters.
- o Is there actio popularis in your country? If yes, please describe briefly.
- o Describe the role of lawyers. Is legal counsel compulsory or not in judicial procedures in environmental matters? If yes, in what type of procedures or before which courts?

# Illustrative Questions

- o Can parties introduce new evidence? Can the court request evidence on its own motion?
- o Is there possibility for injunctive relief in judicial procedures in environmental matters? Against administrative decisions or against actions or omissions of other parties?
- o Does the 'loser pays principle' prevail? How is it applied by courts? What are the exceptions when this rule does not apply?
- o Is there legal aid available in environmental matters? What are the conditions of this for natural persons and for NGOs?
- o What are the major time limits set by law for judicial procedures in environmental matters, both for the court and for the parties?
- o Is mediation frequently used in environmental matters?
- o Are anti-discrimination clauses regarding language or country of origin found in the procedural laws of your country?
- o Do the public or the NGOs of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, and pro bono legal advice)?

## Methods - Technical and Financial

- o Continuous guidance by EMLA as a first layer
- o More conceptual issues (2-3) communicated to the EC
- o Google Groups mailing list created for group-level communication
- o Shared coordination of the project: UBA - contracts and finances, EMLA - substance and EC liaison
- o Contracts made by individual experts and UBA
- o Standard amounts as lump sum
- o Payment conditions: 50% end of 2012, 50% April 2013



# Difficulties - Substantive

- o different understanding of issues e.g. actio popularis
- o many legal questions from some experts in the beginning e.g. on ex officio judicial
- o difference of legal systems (common law - civil law)
- o presentation of federal states and constituent entities
- o no response 4 MS
- o late response 6 MS
- o language problem (weak English) 1 MS
- o style problem (not lay person friendly) 4-6 MS



# Difficulties - Technical and Financial

- o initial approach to experts 1 February 2012
- o need for additional source of contact from 8 MS (EC, EEB, Milieu Ltd., etc.)
- o positive answer from 18 MS 3 February 2012
- o no answer from 4 MS 21 February 2012
- o second expert 2 MS
- o third expert 3 MS
- o fifth expert 1 MS
- o experts refusing to be on the mailing list 6 MS
- o relatively low manday for high quality work
- o late payment schedule

# Lessons Learnt

1. targeted (to-the-point) questions that warrant a user friendly answer
2. strong expert base
3. cooperating EC
4. robust financial background
5. realistic deadlines
6. clear process
7. good coordination and guidance

# Evaluation

Questions

7

Experts

9

Cooperation

10

Finances

7

Deadlines

10

Process

9

Coordination

8

Sum

60 out of 70 = 85%  
"Not bad."

Thank you for your kind attention!

Csaba Kiss  
EMLA  
J&E