



From

Plan B za Slovenijo (Plan B for Slovenia), Slovenian network of NGOs working in the field of Sustainable Development

Coordinator: Umanotera, The Slovenian Foundation for Sustainable Development

Trubarjeva cesta 50

1000 Ljubljana

To

Level Petrović and

Vedran Nikolić

Directorate-General for Environment

European Commission

1049 Bruxelles/Brussels

Belgium

Ljubljana, February 25, 2021

Subject: Notification of the Commission regarding potential breaches of EU regulation in Slovenia

Dear Mr. Petrović and Mr. Nikolić,

We are contacting you in order to notify you of **four alarming current legal issues in Slovenia**, which all relate to potential breaches of EU legislation. Plan B za Slovenijo (Plan B for Slovenia) represents 37 NGOs, working in the field of Sustainable Development, of which 18 NGOs have a status of a non-governmental organization acting in the public interest¹ in the area of nature conservation and/or environmental protection.

In the last year since the change in Slovenian government, we have been facing severe pressures from the government and the Ministry of the Environment and Spatial Planning. This pressure is related to our access to justice in environmental matters (A2J) and the national conditions for acquiring and maintaining the status of working in public interest (referring to the Article 11 of the '[Aarhus regulation](#)' 1367/2006 and the second paragraph of Article 9 of the [Aarhus Convention](#)).

¹ The statuses are granted following strict conditions by the Ministry of Environment and Spatial Planning.



The Slovenian government, specifically The Ministry of the Environment and Spatial Planning, is proposing, or has already adopted the following:

1. Severe restriction of A2J for NGOs with the status of acting in the public interest and also for all affected individuals by removing the right to challenge spatial acts at the Administrative court.

The currently valid Spatial Planning Act² includes A2J regarding the spatial plans/acts for all individuals affected by the plan, and also for all NGOs with the status of working in the public interest in the fields of environmental protection, nature conservation, spatial planning and cultural heritage – Article 58 of the Act, currently in force. All subjects can appeal to the Administrative Court.

The proposed changes of the Spatial Planning Act (attached within the e-mail), included in the proposal *after* the public consultation, aim to effectively remove A2J regarding spatial plans by deleting Article 58 of the Act.

This is particularly unacceptable given that within the Slovenian legal system, the only remaining competent court is the Constitutional Court. The practice of the Court is such, that due to the supposed lack of legal interest (procedural reasons) and non-exhaustion of other national legal remedies (which in this case will not exist), it virtually never accepts the appeals against spatial plans. As such, the remaining legal remedy against spatial plans (at the Constitutional Court) is ineffective. If the proposed change will enter into force, there will be no effective legal remedy/A2J regarding spatial plans.

It is also worth mentioning that the European Commission already opened a case against Slovenia regarding the lack of effective remedies in this particular case – A2J regarding spatial plans. For this reason, the Article 58 has been adopted in Slovenian legislation in 2017 (currently valid legislation), and the procedure against Slovenia was closed by the Commission. The number of this infringement procedure was 2016/4140, based on the complaint of 'Društvo Novo Mesto' on the 12th of September 2013.

2. Several crucial reductions or complete abolishment of the rights of participation as side intervenors in the most important environmental procedures.

The proposed Environmental Protection Act – ZVO-2, published [here](#) (in public consultation until the 11th of February), proposes the removal of the right of NGOs that have the status of working in public

² Zakon o urejanju prostora – Spatial Planning Act, Official Gazette RS 61/17, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7341>



interest in the field of environmental protection (status acquired in accordance with national provisions), to enter into several environmental procedures as side intervenors.

The Environmental Protection Act, which is currently in force (accessible [here](#)) explicitly grants NGOs with the status of working in the public interest within the field of environmental protection the right to intervene as a side intervenor in the following procedures:

- Environmental impact assessments (2011/92/EU),
- Environmental permits (2008/1/EC, 2010/75/EU, 2012/18/EU),
- Environmental liability (2004/35/CE).

The current proposal is nullifying these rights and eliminating the ability of NGOs with the status of working in the public interest to intervene as side intervenors in the above procedures. The proposal provides only the right to appeal at the end of the procedures. As such, any effective and active participation of NGOs related to Article 6 of the Aarhus Convention.

3. Setting additional conditions to acquire or maintain the status of working in the public interest in the fields of environmental protection and nature conservation for national NGOs and almost completely removing A2J for NGOs with acquired status in the field of nature conservation.

In April 2020, the Act on Intervention Measures to Contain the COVID-19 Epidemic and Mitigating its Consequences for Citizens and the Economy³ set specific provisions for environmental impact assessment (EIA) procedures and access to justice for NGOs (integral permit = building permit + environmental consent). The new additional conditions for NGOs to gain the status of acting in the public interest in the area of environmental protection and nature conservation were set (regarding number of members and employees), and these conditions were set retrospectively – they should have already been fulfilled in **the last two years** in order for an NGO to be a party in the (integral) EIA procedure.

Out of 77 NGOs with the status of working in the public interest in the area of environmental protection and nature conservation, we managed to collect data for 56. **Only 9 NGOs (or 16% of all) meet the new conditions.** The NGOs that do not fulfill these conditions would need to drop out of the currently ongoing procedures, **where they were already a party.** More information is available on the [webpage of Justice & environment](#) (in Slovene language [here](#)).

³ Zakon o spremembah in dopolnitvah Zakona o interventnih ukrepih za zajezitev epidemije COVID-19 in omilitve njenih posledic za državljane in gospodarstvo (ZIUZEOP-A), Official Gazette RS 61/2020, <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-0901?sop=2020-01-0901> – Article 42 referring on the integral procedure regulated in the Building Act.



There was also a provision that a construction can begin immediately after the integral permit is final in the administrative procedure (there is only one instance of this procedure), regardless of the possible procedure at the Administrative Court. The provisions of the whole intervention act were solely meant to be valid during the Covid19 crisis and expired at the end of May. However, the next act on Covid19 intervention measures has extended the validity of (only) these environmental provisions until the end of 2021⁴. Three NGOs challenged the act at the Constitutional Court in the beginning of May; in July, the Court suspended the implementation of the challenged provisions until the final decision is adopted (more info in Slovene language [here](#)). The Court has not reached the final decision yet. The only provision that is still valid from this “Covid intervention act” and that the Constitutional Court did not address, is the shortening of the deadline for filing a suit to the Administrative Court against an integral permit – from the usual 30 days, to 15 days.

Further – in the beginning of June, the amendments to Nature Conservation Act were adopted⁵ with two major changes for the position of nature conservation NGOs:

- new, additional conditions for gaining the status in public interest in this area were introduced – the associations should have at least 50 active members, the institutions should have 2 full time employees with suitable education and experiences. But there was also a provision for NGOs to adapt to these conditions in the period of 6 months;
- **access to justice was almost deleted:** previously the association with this status had the right to act in the interest of nature conservation **in all administrative procedures and judicial proceedings** (this regulation was valid from 1999). Now, they can act in the interest of nature conservation in administrative procedures and judicial proceedings **as the law stipulates. But the Nature Conservation Act doesn't contain any other provisions about access to justice.**

The new conditions for NGOs are unnecessarily high, un-inclusive and do not help achieve higher professional standards among the NGOs.

4. The proposed impossibility of competent state organs to give a negative opinion in the EIA procedure.

The proposed Environmental Protection Act – ZVO-2, published [here](#) (in public consultation until the 11th of February) also proposes a new provision in Article 96, regarding Article 6, paragraph 1 and Article 8a

⁴ Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Zakon o interventnih ukrepih za omilitev in odpravo posledic epidemije COVID-19 (ZIUOOPE)), Official Gazette RS 80/2020, <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-1195?sop=2020-01-1195> – Article 2.

⁵ Zakon o spremembah Zakona o ohranjanju narave (ZON-E), Official Gazette RS 82/2020, <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-1235?sop=2020-01-1235> – Article 3, referring to the Article 137.



of the EIA Directive – the ability of competent state institutions, to give an opinion about the proposed investment in the EIA procedure.

The new provision, second paragraph of Article 96, states: “In the opinion {of the competent institution}, the opinion giver shall define the compliance of the project and the report on the impacts on environment with regulations within its competence. The opinion giver may declare:

1. that the project and the report are acceptable {sufficient},
2. that the project or report needs to be amended.”

In this way, a negative opinion of a certain competent state institution (in the EIA procedure there are several) regarding the investment/project is impossible – it can be either acceptable or it can propose further amendments of the project. We find this to be in direct contradiction with the EIA Directive. For example, Article 8a(2) stipulates, that “ 2. The decision to refuse development consent shall state the main reasons for the refusal.”. In Slovenia, the state is thus proposing to amend the EIA procedure in a way, where a negative EIA decision is impossible.

Regarding the rapid developments described above, we are concerned for the state of our environment and our future. We would highly appreciate any feedback on how we can proceed further or if DG finds it necessary to act on any of the described issues. We are available for any further information you may require.

For Plan B za Slovenijo,

Polona Valič, coordinator of the network

Members of the network Plan B za Slovenijo and other signatories of the letter:

CNVOS - Zavod center za informiranje, sodelovanje in razvoj nevladnih organizacij

Balkan River Defence

Center za trajnostni razvoj podeželja Kranj, razvojni zavod

CIPRA Slovenija, društvo za varstvo Alp

Destikator, klub trajnostnih rešitev

DONDES, društvo za ohranjanje naravne dediščine Slovenije

Društvo Bober – Okoljsko gibanje Dolenjska

Društvo Dinaricum , Društvo za ohranjanje, raziskovanje in trajnostni razvoj Dinaridov

Društvo Ekologi brez meja

Društvo Gibanje za trajnostni razvoj

Društvo Mariborska kolesarska mreža

Društvo Temno nebo Slovenije

Društvo Humanitas – Center za globalno učenje in sodelovanje

Društvo za energetska ekonomiko in ekologijo Slovenski E-forum



Društvo za opazovanje in preučevanje ptic Slovenije, DOPPS, BirdLife Slovenija
Društvo za proučevanje in ohranjanje metuljev Slovenije
Društvo za trajnostni razvoj Duh časa
Eko krog – društvo za naravovarstvo in okoljevarstvo
Focus, društvo za sonaraven razvoj
Herpetološko društvo – Societas herpetologica slovenica
Inštitut za mladinsko participacijo, zdravje in trajnostni razvoj (IMZTR)
Inštitut za politike prostora - IPOP
Inštitut za trajnostni razvoj in celostne rešitve - InTeRCeR
Ljubljanska kolesarska mreža, društvo za vzpodbujanje kolesarjenja in trajnostnega prometa
Kulturno ekološko društvo Smetumet
Mladinska zveza Brez izgovora
Morigenos - slovensko društvo za morske sesalce
NEC Notranjski ekološki center, Cerknica
Pravno informacijski center nevladnih organizacij - PIC
REVIVO, Institute for ichthyological and ecological research
Slovensko društvo za proučevanje in varstvo netopirjev
Slovensko odonatološko društvo
Sončni grič, društvo za trajnostno kulturo bivanja
Trajekt, Zavod za prostorsko kulturo
Umanotera, Slovenska fundacija za trajnostni razvoj
UMMI, Zavod za izobraževanje Koper
VITRA Center za uravnotežen razvoj Cerknica
Zavod Eko Humanitatis
Zavod Svibna, regijski zavod za ohranjanje in trajnostni razvoj podeželja
Združenja ZEK DPBK, Združenje za ekološko kmetovanje Dolenjske, Posavja in Bele krajine
Greenpeace v Sloveniji (Greenpeace Srednja in Vzhodna Evropa)