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'A' ITEM NOTE

From: General Secretariat of the Council
To: Council

Subject: Draft Council Decision on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention regarding compliance case ACCC/C/2008/32
- Adoption

1. On 17 February 2005, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("the Aarhus Convention") was approved, on behalf of the European Community, by Council Decision 2005/370/EC¹. All EU Member States are Parties to the Aarhus Convention.

¹ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

2. The Union incorporated the obligations of the Aarhus Convention into the EU legislation through Regulation (EC) No 1367/2006² ("the Aarhus Regulation"). Upon signature and approval of the Convention, the EU made a Declaration³.
3. On 17 March 2017, the Union received the Aarhus Convention Compliance Committee (ACCC) findings in case ACCC/C/2008/32 regarding access to justice at EU level. Among other findings, the ACCC held that "*the Party concerned fails to comply with Article 9, paragraphs 3 and 4, of the Convention with regard to access to justice by members of the public because neither the Aarhus Regulation, nor the jurisprudence of the CJEU implements or complies with the obligations arising under those paragraphs*"⁴.
4. On 30 June 2017, the Aarhus Convention Bureau issued draft Decision VI/8f concerning compliance by the European Union with its obligations under the Convention⁵ with a view to its adoption at the Sixth session of the Meeting of the Parties to the Aarhus Convention (MoP 6) to be held in Budva (Montenegro) on 11-13 September 2017. Draft Decision VI/8f endorses only the above mentioned ACCC finding, and makes a number of recommendations and requests to the Union regarding compliance with Article 9, paragraphs 3 and 4, of the Aarhus Convention.
5. The WPIEI (UNECE Aarhus) examined the case ACCC/C/2008/32 findings at its meetings on 22 March and on 14 June 2017.

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264 of 25.9.2006, p. 13).

³ "*within the institutional and legal context of the Community [...], the Community institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of Community law in the field covered by the Convention*".

⁴ Paragraph 123 of the ACCC findings.

⁵ UN Economic Commission for Europe doc. ECE/MP.PP/2017/25.

6. Upon request from the WPIEI, on 25 April 2017 the Council Legal Service (CLS) issued an opinion on "Aarhus Convention - findings of the Compliance Committee: preparation for the MoP and next steps" ⁶. In this Opinion, the CLS concluded *inter alia* that the position of the Union at the MoP-6 regarding case ACCC/2008/32 should be determined by the Council acting in accordance with Article 218(9) TFEU.
7. On 29 June 2017, the Commission submitted a proposal for a Council Decision on the position to be adopted, on behalf of the EU, at the Aarhus Convention MoP-6 regarding compliance case ACCC/C/2008/32 ⁷. According to the Commission proposal, the Union position to be taken at the MoP-6 regarding case ACCC/2008/32 should be a negative vote on the endorsement of the findings.
8. The Commission proposal was examined on 3 and 4 July 2017 at Working Party level. In light of the outcome of these discussions, the Presidency noted that there was not enough support to the Commission proposal and prepared for the Committee of Permanent Representatives an alternative compromise text ⁸ reflecting the approach of the large majority of delegations.
9. On 11 July 2017, the Committee of Permanent Representatives examined the matter and approved by unanimity the alternative Presidency compromise text with some adjustments suggested by delegations. On that occasion, the Commission was not in a position to support the Presidency compromise text.

⁶ Doc. 8445/17.

⁷ Doc. 10791/17. This proposal refers to the ACCC findings and not to the relevant draft MoP Decision VI/8f because Decision VI.8f was only issued on 30 June 2017.

⁸ Doc. 10961/17.

10. The Council is therefore invited to:

- adopt the Decision on the position to be adopted, on behalf of the EU, at the Aarhus Convention MoP-6 regarding compliance case ACCC/C/2008/32 as set out in doc. 11150/17 at its meeting on 17-18 July 2017,
- decide to publish it in the EU Official Journal ("L" series) as soon as possible,
- communicate it to the Aarhus Convention Secretariat, for information, in the context of the ongoing preparations for the sixth session of the Meeting of the Parties of the Aarhus Convention to be held in Budva (Montenegro) on 11-15 September 2017.
