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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: 19th meeting of the Working Group of the Parties (WGP 19) (Geneva, 17–19 June 2015) - Compilation of statements by the EU and its Member States

Delegations will find for information:

- in Annex I, a compilation of statements by the EU and its Member States delivered during the 19th meeting of the Working Group of the Parties to the Aarhus Convention (WGP 19);
- in Annex II, the elements for possible interventions by delegates from the EU Member States at the panel presentations and round-table discussions (item 5 of WGP 19), provided as background papers and based on agreed contributions of the EU and its Member States.

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: 19th meeting of the Working Group of the Parties (WGP 19) (Geneva, 17–19 June 2015)

- Statements by the EU and its Member States -

Agenda item 1: Opening of the meeting and adoption of the agenda

The EU and its Member States would like to thank the Bureau and the Secretariat for the Provisional agenda for the nineteenth meeting of the Working Group of the Parties.

With regard to item 4(a) under the provisional agenda concerning the Compliance mechanism we wish to make the following procedural comments:

1. We would like to propose an extension of the time limit allocated for discussion from 15 minutes to 30 minutes thus amending the indicative timing under the agenda item 4(a).
2. Compliance and the implementation of decision V/9 are important issues for the EU and its Member States. We believe that the outcomes of the recent meetings of the Compliance Committee merit exchange of views in the Working Group.

With regard to item 7(b) under the provisional agenda concerning future funding of the Convention we wish to make the following procedural comment:

We would like to propose putting agenda item 7(b) earlier in the agenda to allow for more discussion of this important issue.

Agenda item 3(a): Access to information

The EU and its Member States would like to thank the Secretariat for preparing Report of the third meeting of the Task Force on Access to Information.

We welcome the progress of discussions made by the Task Force and the secretariat with regard to the scope, quality and comparability of information to be provided in accordance with the Convention.

Agenda item 3(b): Public participation in Decision-making (PPDM)

The EU and its Member States would like to thank the secretariat for preparing Report of the fifth meeting of the Task Force on Public participation in decision-making.

We welcome the progress of discussions made by the Task Force and the secretariat with regard to the obstacles, challenges and good practices in relation to public participation in decision-making.

The EU and its Member States take note of the discussion on innovative practices of public participation in decision-making as well as of the update on the Aarhus Good Practice Online Database.

In preparation for the Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change we also take note of the outcomes of the thematic session on climate change-related decision-making.

Agenda item 3(c): Access to justice

The EU and its Member States would like to thank the Secretariat and the Chair of the Task Force on Access to Justice for its work to date.

The EU and its Member States take note of the outcomes of the eighth meeting of the Task Force on Access to Justice.

We welcome the progress of discussions made by the Task Force on Access to Justice and the Secretariat based on the outputs delivered at the previous meetings and by finalising studies with regard to substantive and procedural challenges of access to justice.

Agenda item 3(d): Genetically modified organisms (GMOs)

The EU and its Member States would like to thank the Secretariat for the work done to date.

We welcome the bilateral collaboration with the Secretariat of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity dedicated to genetically modified organisms (GMOs).

The EU and its Member States take note of the outcomes of the discussions on relevant developments with regard to GMOs.

Agenda item 4(a): Compliance mechanism

The EU and its Member States would like to thank the Bureau and the Secretariat for the timely inclusion of item 4(a) on the provisional agenda of the WGP 19, as we would like to comment on the Compliance mechanism.

We welcome the Compliance Committee's (hereinafter – the Committee) continued engagement on the use of domestic remedies, transparency and due process issues raised in Decision V/9 on general issues of compliance as adopted last year by the Fifth Meeting of the Parties in Maastricht.

We would like to take this opportunity to express our strong support for the work of the Committee and the Secretariat in developing a procedure for processing new communications pending determination of preliminary admissibility. In our view this innovation of procedure in compliance matters provides clarity for both communicants and responding Parties on how the pre-admissibility stage of new communications will be handled.

In addition in our view various successive stages of procedure for processing communications pending determination of preliminary admissibility provide the opportunity for both communicants and responding Parties to share their views on admissibility at an early stage which is to be welcomed.

The very high number of communications now being brought before the Committee, as well as the budgetary constraints facing Parties and the Secretariat, emphasise the importance of the pre-admissibility procedures in guiding the Committee and the Secretariat to be able to focus provided limited resources on cases that are not unsubstantiated.

The EU and its Member States look forward to continuing to provide feedback and constructive suggestions to the Committee and the Secretariat on these new procedural innovations with regard to compliance matters as they are developed and applied.

Agenda item 4(c): Capacity-building and awareness-raising

The EU and its Member States would like to thank the Secretariat for the work done to date.

We welcome the efforts and progress made by the Secretariat in promoting capacity-building and awareness-raising in various international forums and by enhanced bilateral and multilateral cooperation with stakeholders.

The EU and its Member States take note of the developments in the area of capacity-building and awareness-raising under the Convention.

Agenda item 6: Implementation of the work programmes for 2012-2014 and 2015-2017

The EU and its Member States would like to thank the Secretariat for providing the Report on the Implementation of the Convention's work programmes for 2012 – 2014 and 2015-2017 (hereinafter – the Report) as a basis for our discussions at the WGP 19.

We would like to make the following substantive comments on the Report:

1. We welcome and highly appreciate the Secretariat's efforts, indicated in paragraph 2 of the Report, to make its activities more resource and time efficient through the use of electronic tools. We strongly encourage the continued use and expansion of such an approach further in implementing the work programme for 2015-2017. In particular, we would like to underline that there may be further opportunities for use of electronic tools such as phone and video conferences in respect of the compliance mechanism and participation in various task forces. Due to the fact that many financial contributions are made towards the end of each financial year causing continuous uncertainty as to the availability of sufficient funds, we see continued and extensive use of electronic tools as one of the appropriate means to meet the financial challenges. We also appreciate the ongoing efforts within the informal group of representatives of the multilateral environmental agreements (MEAs) governing bodies for the purpose of identifying synergies and common activities among MEAs as mentioned in paragraph 2 of the Report.
2. Recalling paragraph 1 of the decision V/3 on promoting effective access to justice, we recognize the need for further considerable efforts to achieve effective access to justice. However, we would like to emphasise paragraph 13 of decision V/3, which requests the Task Force on Access to Justice to prepare analytical materials "as resources allow" with regard to support the work on exchanging information, experiences and good practices on implementation alongside identified priority needs. We believe that due to limited financial resources available priority should be given to the implementation of the provisions under the Aarhus Convention. Carrying out of activities which go beyond the scope of application of the Aarhus Convention and their financing should be in balance with actual funds available.
3. We welcome the Compliance Committee's work in addressing decision V/9, including on the format for submitting communications, as stated in paragraph 20 of the Report. As well as helping to ensure transparency and due process for all parties, and ensuring that domestic remedies are taken into account, the Committee's work provides an opportunity to improve the focus and quality of communications. Given the growing number of communications made to the Committee, this will help to ensure that resources devoted to the compliance mechanism can be focused on cases that have merit and which raise issues that have not already been considered by the Committee.

Agenda item 7(b): Future funding of the Convention

Draft estimation of the operational costs needed for the effective functioning of the Convention

The EU and its Member States would like to thank the Bureau and the secretariat for the Draft estimation of the operational costs (hereafter – Draft estimation) needed for the effective functioning of the Convention, which is a useful starting point on which further work can proceed.

The Draft estimation is a constructive text which can help us to improve the effectiveness, efficiency, sustainability, predictability and budget discipline of the Convention. In this respect, we wish to make the following substantive comments on the Draft estimation:

1. The overall position of the EU and its Member States on the work programme for 2015-2017 remains unchanged with regard to the activities under the Convention as adopted by the Fifth Meeting of the Parties in Maastricht, the Netherlands, in 2014.
2. We support that an indicative allocation of the resources for the planned activities under the Convention and their subsequent costs, which are subject to annual review, are put forward for further discussion within the Working Group of the Parties. We would like to draw attention to the challenge of how to make the best possible allocation of existing funds to match actual operational costs. This would require allowing the secretariat in consultation with the Bureau some extent of flexibility with a view to ensure a balanced and full implementation of the approved work programme.
3. We would like to encourage further discussion with regard to the operational costs identified for each of the activities under the Convention's current work programme. Nevertheless, some clarification from the Secretariat is needed as regards the breakdown of operational costs and other costs. This also applies to the methodology used for cost estimation. In the meantime, we would point out that in view of progressive budgetary constraints on the Parties, we intend to maintain close cooperation with the secretariat and the Bureau. The aim is to develop new approaches towards what should be achieved under the Convention, whilst taking into account the actual funds available.
4. With regard to the forthcoming work programme for the next term (2018-2020) and the budget thereof, we would like to point out that the objective of Paragraph 10 of the 2014 Decision V/7 on financial arrangements is to ensure that, when preparing the draft work programme and budget for the next financial term (2018-2020), there should be a clear match between the activities and costs foreseen in the work programme and the financial resources that are estimated to be available to implement it, irrespective of the applicable financial scheme for contributions.
5. To this end, we have identified the following types of costs and activities that should be considered when preparing the work programme for 2018-2020:
 - (i) Operational costs of activities which are required by the Convention (i.e. "operational costs needed" in terms of decision V/7). These only concern those mandatory costs required in the Convention, such as meetings of Parties (Article 10) and relevant secretariat staff costs (Article 12).

(ii) Costs which are not mandatory (i.e., not required by the Convention) and which are, thus, "subject to the availability of resources" in terms of decision V/7. These costs may be further divided into at least two sub-categories:

- (a) Costs of those "core activities" which are not mandatory under the Convention but which have been agreed by the Parties in the light of available funds. These costs may cover the meetings of subsidiary bodies; task forces; the clearing house mechanism; staff costs related to these activities; possible consultancy fees; etc. Although these costs are not mandatory, they would also be included, together with the mandatory costs, in the "core budget" for implementation of the work programme, providing that they can be covered by available resources.
- (b) Costs of activities which may be supported by one or several Parties, in their capacity as donors and in accordance with their own policy priorities. Such activities could comprise technical assistance and capacity building activities and could be set out in a separate technical assistance programme. This would be covered by contributions to a separate trust fund (e.g. "technical assistance trust fund"). A separate trust fund or the same one as for the technical assistance could also cover possible financial support for the participation of countries with economies in transition at the Meetings of the Parties and, in some cases, at the meetings of subsidiary bodies. These costs should not be included in the work programme under "core budget".

6. We note that the projected costs associated with the compliance mechanism are considerably higher than for the other activities.

The EU and its Member States realise that the high costs are also related to the high volume of cases processed by the Compliance Committee. In this respect we welcome the steps taken by the Committee in accordance with the Decision V/9 to ensure due process for Parties and communicants in respect of communications from the public. We encourage the reduction of some of these costs by, e.g., making better use of the available audio and video-conferencing technology.

7. The EU and its Member States submit that we need an early identification of the various types of costs. This will allow the Parties to hold an informed discussion on which core activities should be included in the budget of the next work programme. Therefore we request the secretariat to examine, in consultation with the Bureau, the different types of costs with a view to the preparation of a "core budget" to be agreed by the Parties for the implementation of the work programme for 2018-2020. The issues to be examined should include the number, duration and venue of the meetings of the Convention's bodies as well as adequate representation of the Parties at the meetings.

8. With regard to Decision V/6 on the work programme for 2015-2017 as adopted in Maastricht, the Netherlands, on 30 June and 1 July 2014 and its fourth paragraph, we would draw attention to the encouragement given to every Party under the Convention to make financial contributions, possibly not earmarked, to the Convention's Trust Fund for the timely and effective implementation of the work programme. This will facilitate the timely and effective implementation of priority activities of the work programme for 2015-2017.

9. The EU and its Member States express their concern regarding the expected discontinuation, as of 2016, of funding of one administrative staff member by the 13% programme support costs, levied from the trust funds of the ECE Environment Division. We request written clarification from the responsible United Nations body on this matter.
10. Furthermore, and without prejudice to the current funding scheme of the Convention, this work should be carried out also considering the respective efforts of the UNECE Secretariat for all the UNECE Multilateral Environmental Agreements (MEAs), as explained in the document on "Secretariats to ECE multilateral environmental agreements — the way forward". This initiative aims to improve the link between, on the one hand, activities to be undertaken and costs to be covered and, on the other hand, funds available in predictable budgets.
11. With a view to acquiring a common understanding on what could be achieved under the Convention when budgets are particularly limited, the EU and its Member States are ready to work with other Parties in order to assist the Bureau and the secretariat in taking this matter forward. The aim is to draft an effective and sound work programme for 2018-2020 to be adopted by the next Meeting of the Parties. The EU and its Member States are also ready to work with others with the aim to find together concrete solutions.

Agenda item 8: Promotion of the Convention and relevant developments and interlinkages

The EU and its Member States welcome the progress achieved by ECLAC in the development of a regional instrument implementing Principle 10 of the Rio Declaration on Environment and Development.

We are encouraged to learn that 20 countries are now actively involved in this important process.

Agenda item 9: Preparations for the sixth session of the Meeting of the Parties

The EU and its Member States warmly welcome the interest expressed by the Government of the Republic of Montenegro to host the sixth session of the Meeting of the Parties.

Agenda item 5: Promotion of the principles of the Convention in international forums**- Elements for possible interventions by the EU delegates at the panel presentations and round-table discussions -**

These elements are based on agreed EU and its Member States language and positions but should not be regarded as agreed EU and its Member States contributions or lines to take. They are provided as background papers for EU and its Member States delegates in order to facilitate their possible interventions during the panel and round-table discussions under item 5 of the Aarhus Convention WGP 19, and to contribute to achieving coherence among the different EU and its Member States interventions.

1. Public participation in the lead-up to and at the UNFCCC COP 21

- At the end of 2015, the Paris Climate Conference (COP21) is expected to agree on a universal legally-binding instrument to combat climate change that should come into effect and be implemented from 2020.
- A negotiating text has been made available to Parties on 19 March 2015. Negotiations on the basis of this text will have started in June 2015 in Bonn and will continue in August/September and October 2015.
- Although there is a broad understanding among Parties on most of the basic elements of the Paris agreement - upholding the principles and objectives of the Convention, broadest possible participation, dynamism and durability, and the elements to be covered - mitigation, adaptation, finance, technology development and transfer, capacity building, transparency of action and support - there are still divergences of views regarding the balance of the different elements in the agreement, differentiation, legal architecture and character/scope of commitments and actions.
- The objective of the EU and its Member States remains to adopt a legally-binding agreement, preferably in the form of a new protocol, that is applicable to all and that aims to ensure that the global temperature increase stays below 2°C relative to pre-industrial levels. The Agreement should aim to translate this objective in a long-term global emission reduction goal, ensure dynamism with a review of the mitigation commitments every 5 years, strengthen transparency and accountability, with a focus on capacity-building and investment.
- The core of the Paris Agreement will be the mitigation commitments by Parties, the so-called Intended Nationally Determined Contributions (INDCs). The EU and its Member States communicated their INDC on 6 March 2015. It sets an ambitious binding target of an at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990. In addition to the EU and its Member States, only 9 Parties have submitted their INDCs so far.

- The Paris Agreement must also set out the key elements of a common transparency and accountability system to provide confidence that each Party is implementing its commitments and is on track to meet its target.
- In terms of public participation in the context of the UNFCCC process, the situation is broadly satisfactory. Civil society and NGOs have been closely associated all along the process, and a global citizen consultation took place on 6 June 2015 through World Wide Views on Climate and Energy. A very high level of public attendance is expected at the Paris Conference, and civil society organizations will have their own stands, will organise their own meetings and side events and will have the opportunity to interact with government representatives.
- In the run up to and at the Paris Conference, the EU and its Member States will keep on liaising and cooperating with civil society organizations as usual, including through meetings on the spot with civil society organizations at the level of heads of delegation.

2. Stakeholder engagement in UNEP processes

- In terms of Stakeholders participation in UNEP and in response to paragraph 88h of the Rio+20 outcome document "The Future We Want", UNEP started in 2013 a process to develop a comprehensive stakeholder engagement policy, ensuring the active participation of all relevant major groups and stakeholders, particularly those from developing countries, drawing on best practices and models from relevant multilateral institutions, and to explore new mechanisms to promote transparency, and the effective engagement of civil society in its work and that of its subsidiary bodies. So far, accreditation and participation follow rather vague rules in the Rules of Procedure.
- Unfortunately, at its first session on 23-27 June 2014, UNEA failed to agree on Stakeholders policy, mainly due to opposition by China. Informal consultations are since then taking place under the leadership of the UNEA President in order to pave the way for an agreement on a stakeholder policy that should be negotiated at the OECPR 2 in February 2016 and adopted at the 2nd session of UNEA in May 2016.
- The EU and its Member States are strongly supporting the principle of non-regression in the development of a stakeholders engagement policy and call on all UNECE Members to join efforts within UNEP with the EU and its Member States in this endeavour.
- Regarding UNEP Access to information policy (AIP), the current policy, developed by the Executive Director, is on a pilot phase, and there is an ongoing consultation process in light of which the UNEP Secretariat is expected to review it in the course of this year.
- The EU and its Member States consider that AIP is a key principle of good environmental governance and a core element to ensure effective stakeholder participation.

- The UNEP policy should provide for broad access and then set out clearly defined and restricted exceptions. The current UNEP policy unfortunately does not follow this approach. The EU and its Member States have therefore a number of quite significant concerns about UNEP's AIP. Detailed EU and its Member States views are available on UNEP's website.
- In general, we think that UNEP's policy as presented mixes "access to environmental information" aspects with general considerations concerning other documents relating to personal, commercial etc. information, and does not make a distinction between the different types of documents. A consistent, horizontal approach regarding access to documents throughout the UN system is necessary.
- All national and EU-level environmental data coming from the region must comply with the requirements of the Aarhus Convention, i.e. it is essential that there is free of charge, open access.

3. **Promotion of the Aarhus Convention principles in the development, implementation and monitoring of the sustainable development goals (SDGs)**

- In the Rio+20 Outcome document "The Future We Want", all world leaders recognised the need to engage major group and stakeholders in the Post-2015 Agenda process; highlighted the need to engage citizens and provide them with relevant information; underscored that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development; acknowledged that in order to improve civil society participation, it is necessary to strengthen access to information, build civil society capacity and create an enabling environment; and highlighted that it is essential to improve access to information and communication technology
- The proposal on Sustainable Development Goals (SDGs) included in the zero draft of the outcome document for the UN summit to adopt the Post-2015 development agenda recognises that the effective implementation of the SDGs will depend on a global partnership for sustainable development with the active engagement of inter alia civil society. In particular, goal 16 includes targets such as ensure equal access to justice for all; develop effective, accountable and transparent institutions at all levels; ensure responsive, inclusive, participatory and representative decision-making at all levels; and ensure public access to information. Goal 17 includes a target on encouraging and promoting effective civil society partnerships. as a mean of implementation of the Post-2015 Agenda
- The EU and its Member States have underlined on a number of occasions the guiding principles for a new global partnership, which include universality, shared responsibility, mutual accountability, consideration of respective capabilities, and a multi-stakeholder approach.

- Regarding corporate social responsibility (CSR), the EU and its Member States consider that additional efforts are needed to improve due diligence, ensure sufficient risk assessment, enhance market rewards for CSR and improve company disclosure of governance, social and environmental information and sustainability reporting
- All countries should build open information societies, where everyone has access to digital technologies and adopt legal frameworks to protect security, freedom of expression, access to information and privacy in the digital age. The UN should continue to facilitate access to information on existing technology-related mechanisms, including for environmentally sound technologies.
- The EU and its Member States remain committed to the establishment and implementation of a strong monitoring, accountability and review framework, which should be an integral part of the Post-2015 Agenda. All stakeholders must be actively engaged in this process, in particular civil society actors. This concerns all three levels of monitoring and review, i.e. national, regional and global. At national level, we believe it is important for all states to ensure that inclusive and participatory systems for accountability are in place to report on progress on all aspects of the post-2015 agenda with broad, multi-stakeholder participation. At regional level, peer reviews will probably be organised involving all stakeholders in reporting on their actions and commenting on state implementation. Finally, at the global level, the High Level Political Forum for Sustainable Development (HLPF) will play a key oversight role in monitoring the implementation of the post-2015 agenda, including by making recommendations for further action at national, regional and global level. The EU and its Member States welcome the strong stakeholder participation provisions in the relevant UNGA Resolution 67/290 which ensures that major groups and stakeholders can attend and intervene in all meetings, submit documents and present contributions, make recommendations, access all official information and documents and organise side events and round tables.

4. *Promotion of the Aarhus Convention principles in international trade negotiations*

- The conduct of international trade negotiations is an exclusive EU competence which is exercised by the Commission.
- We acknowledge that transparency is essential for mutual understanding and acceptability of policy in any area of interest. Therefore continuous engagements are made on behalf of the Commission with civil society to ensure transparency and dialogue in trade policy making.
- Outreach activities have become increasingly important for trade policy which now attracts considerable attention among stakeholders and the general public. The negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the US have been largely the catalyst for this. In response, the Commission has been active in terms of sharing information and in participating at numerous events around Europe. The Commission has stepped up outreach to European and national parliamentarians, governments, outside experts, consumer groups, unions, NGOs, business and industry bodies.

- The EU position papers on various areas of the TTIP negotiation have been continuously published and we raise these issues also with the US encouraging them to maximise transparency on their side. However, this transparency has to be squared with the need to get good outcomes for the EU in our negotiations, which is why there are limits to us negotiating in public.
- The Commission and the US organise stakeholder events during every negotiating round. Between the rounds the Commission organises dedicated civil society meetings. The meetings allow the Commission to debrief on what happened in the previous round and to hear suggestions from participants for the future.
- The Commission organises regular meetings of the TTIP Advisory Group. These meetings allow the Group to receive detailed information on the status of the negotiations as well as on the preparation of each round.
- The Commission does not give privileged access to negotiating documents to any particular civil society stakeholders. It currently shares TTIP documents with the European Parliament, Member States and the Advisory Group under the modalities agreed with them.
- The European Ombudsman is currently very much focused on trade matters, as there is an ever growing public interest in this field. The requests received in 2013 and 2014 , especially on TTIP, are of increasingly voluminous and complex nature.

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