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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Council Decision (EU) 2018/... requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate with a view to the outcomes of the study, a proposal for a European Parliament and Council Regulation amending Regulation (EC) No 1367/2006

– 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 1367/2006 ² ("the Aarhus Regulation"). Upon signature and approval of the Convention, the EU made a Declaration ³.
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 25 April 2017, the Council Legal Service issued an opinion on "Aarhus Convention - findings of the Compliance Committee: preparation for the MoP and next steps" ⁵.
5. On 30 June 2017, the Aarhus Convention Bureau issued draft Decision VI/8f concerning compliance by the European Union with its obligations under the Convention ⁶ 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.

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 Doc. 8445/17.

⁶ UN Economic Commission for Europe doc. ECE/MP.PP/2017/25.

6. 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.
7. On 17 July 2017, the Council adopted its Decision (EU) 2017/1346 of 17 July 2017 on the position to be adopted, on behalf of the EU, at the Sixth Meeting of the Parties (MoP-6) to the Convention as regards compliance case ACCC/C/2008/32 ⁸.
8. At the Aarhus Convention MoP-6 (Budva, Montenegro, 11–13 September 2017), the EU and its Member States *inter alia* declared, in line with the above mentioned Council Decision, that the EU will continue to explore ways and means to comply with the Aarhus Convention in a way that is compatible with the fundamental principles of the Union legal order and with its system of judicial review, taking into account the concerns expressed within the Convention ⁹.
9. In absence of concrete steps taken by the Commission to address this issue, and following to extensive consultations with the Member States, the General Secretariat of the Council and the Council Legal Service, the Presidency tabled on 30 January 2018 a draft Council Decision based on Article 241 TFEU requesting the Commission to submit a legislative proposal amending Regulation (EC) No 1367/2006 in order to bring it in full compliance with Articles 9(3) and (4) of the Aarhus Convention.
10. The WPIEI (UNECE Aarhus) discussed on this proposal at its meeting on 9 February, as well as at its meeting on 27 April 2018 on the basis of a revised text tabled by the Presidency. At the end of its discussions and following to an informal silence procedure, the WPIEI agreed on 11 May 2018 and by simple majority on the text set out in document 7595/2/2018 REV 2.

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 OJ EU L 186 of 19.7.2017, p. 15.

⁹ Doc. 12311/17.

11. The Committee of Permanent Representatives is therefore requested to invite the Council to:

- adopt, by simple majority, the draft Council Decision set out in document 9422/18 (text finalised by the Jurist-Linguists) as an "A" item on the agenda of one of its forthcoming sessions;
- decide to publish it in the EU Official Journal ("L" series) as soon as possible;
- decide to enter in its minutes the joint statement of FR, LU, IT and ES, with the support of LV, as set out in the addendum to this Note;
- inform the European Parliament of the adoption.
