



Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION 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 in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006

COUNCIL DECISION (EU) 2018/...

of ...

**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 in view of the outcomes of the study,
a proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EC) No 1367/2006**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 241 thereof,

Having regard to the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹, and in particular paragraph 10 thereof on the application of Articles 225 and 241 TFEU,

¹ OJ L 123, 12.5.2016, p. 1.

Whereas:

- (1) On 17 February 2005, the Convention on access to information, public participation in decision-making and access to justice in environmental matters¹ ('the Aarhus Convention') was approved, on behalf of the European Community, by way of Council Decision 2005/370/EC². The Aarhus Convention contributes to the Union's environmental policy objectives, as laid down in Article 191 TFEU.
- (2) The Union implemented the obligations of the Aarhus Convention with regard to its institutions and bodies, in particular by way of Regulation (EC) No 1367/2006 of the European Parliament and of the Council³.

¹ OJ L 124, 17.5.2005, p. 4.

² 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).

³ 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, 25.9.2006, p. 13).

- (3) In line with the non-confrontational, non-jurisdictional and consultative nature of the system of compliance review provided for in Article 15 of the Aarhus Convention, the Aarhus Convention Compliance Committee ('the Committee') was established. The Committee has the competence to review the Parties' compliance with the Aarhus Convention.
- (4) On 17 March 2017, the Union received the findings of the Committee in case ACCC/C/2008/32 regarding access to justice at Union level ('the findings'). In paragraph 123 of the findings, the Committee reached the conclusion 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'. On the basis of the findings, the Bureau of the Aarhus Convention prepared draft decision VI/8f concerning compliance by the European Union with its obligations under the Convention ('draft decision VI/8f').
- (5) On 17 July 2017, the Council adopted Decision (EU) 2017/1346¹ on the position to be taken by the Union at the sixth session of the Meeting of the Parties to the Aarhus Convention ('MoP') with regard to draft decision VI/8f. The Union's position was to accept draft decision VI/8f subject to a number of amendments thereto.

¹ Council Decision (EU) 2017/1346 of 17 July 2017 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 as regards compliance case ACCC/C/2008/32 (OJ L 186, 19.7.2017, p. 15).

- (6) On 14 September 2017, at the sixth session of the MoP held in Budva, Montenegro, the MoP discussed, *inter alia*, draft decision VI/8f but did not agree with the Union proposals to amend it in line with Decision (EU) 2017/1346. In the absence of agreement, the MoP decided to postpone the discussion on this draft decision until its next ordinary session in 2021.
- (7) The Budva Declaration on Environmental Democracy for Our Sustainable Future, also adopted by the MoP on 14 September 2017, calls on the Parties to, and signatories of, the Aarhus Convention to provide effective and equal access to justice for all in line with the requirements of the Aarhus Convention.
- (8) On 15 and 16 November 2017 respectively, the European Parliament adopted a Resolution on an Action Plan for nature, people and the economy, and a Resolution on the EU Environmental Implementation Review (EIR) which both call, *inter alia*, on the Commission to submit a new legislative proposal reviewing Regulation (EC) No 1367/2006, in order to take account of the Committee recommendation regarding case ACCC/C/2008/32.

- (9) At the sixth session of the MoP, the Union expressed its willingness 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. The Union should take concrete steps in that direction, by requesting the Commission to submit a study on the Union's options for addressing the findings of the Committee in case ACCC/C/2008/32. It appears possible to amend Regulation (EC) No 1367/2006 in such a way that the Union's system of judicial review would not be altered, in particular by widening the category of Union acts in respect of which internal review could be requested.
- (10) The Union continues to fully support the important objectives of the Aarhus Convention,

HAS ADOPTED THIS DECISION:

Article 1

1. The Council requests the Commission to submit, by 30 September 2019, a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 ('the study') 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.
2. The study shall cover the legal, financial and human resources implications of different options, including amending Regulation (EC) No 1367/2006.

Article 2

1. The Council requests the Commission to submit, by 30 September 2020, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006, or otherwise to inform the Council on other measures required as a follow-up to the study.
2. In accordance with usual practice, the Council requests the Commission to ensure that the proposal is accompanied by an impact assessment.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at ...,

For the Council

The President
