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#### INFORMATION NOTE

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From: General Secretariat of the Council  
To: Delegations

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Subject: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)  
Twenty-third meeting of the Working Group of the Parties (WGP 23)  
(Geneva, 26-28 June 2019)  
- Compilation of statements by the EU and its Member States

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Delegations will find in the [Annex](#), for information, a compilation of statements by the EU and its Member States delivered during the 23rd meeting of the Working Group of the Parties to the Aarhus Convention (WGP 23).

**Aarhus Convention**

**23rd Working Group of the Parties (WGP 23)**

**(Geneva, 26-28 June 2019)**

**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 Secretariat and the Chair of the 23<sup>rd</sup> meeting of the Working Group of the Parties for the extensive and excellent work on the preparation and the timely submission of the background documents.

Our thanks also to the Chair for her introductory statement and for inviting the WGP to adopt the proposed agenda.

We are looking forward to holding fruitful discussions which will assist the implementation of the three pillars of the Aarhus Convention.

We agree with the agenda as it stands.

**Agenda item 3(b): Access to information**

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

The EU and its Member States welcome the outcomes of the Thematic session on access to information, which was held during the 22nd Working Group of the Parties (19-21 June 2018) in Geneva. The discussions held with this occasion showed the importance of this subject for Parties, partner organizations and other stakeholders and highlighted their attention and progress made for the effective implementation of access to information pillar of the Convention.

We also welcome the interactive exchange of information in which Parties, NGOs and other stakeholders shared their experience in regard to the implementation of articles 4 and 5 and other relevant provisions of the Aarhus Convention.

We acknowledge the importance of facilitating effective public access to environmental information in order to achieve the Sustainable Development Goal 16, and in particular target 16.10 (Public access to information and protection of fundamental freedoms), and to contribute to the implementation of the other Goals and targets, specifically Goals 3 (Good health and well-being), 6 (Clean water and sanitation) and 12 (Responsible consumption and production).

We encourage the active dissemination of environmental information through the use of modern digital technologies for implementing the Aarhus Convention.

We also encourage the Parties, as well as the stakeholders to continue to submit case studies on electronic information tools and to populate the Aarhus Clearinghouse with the relevant resources.

In relation to the upcoming 6th meeting of the Task Force on Access to Information under the Aarhus Convention (Geneva, 2-4 October 2019), we welcome its preparations, pursuant to Decision VI/1 of the Meeting of the Parties on promoting access to information.

### **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.

We take note of the outcomes of the twelfth meeting of the Task Force on Access to Justice (Geneva, 28 February –1 March 2019), following up on the subjects identified in Decision VI/3 of the Meeting of the Parties on promoting effective access to justice.

We welcome the thematic session of the task force meeting which focused on challenging acts and omissions that contravene permit requirements or laws relating to the environment with special attention to cases regarding air quality. The discussions supported the implementation of article 9 in conjunction with 6, 7 and other relevant provisions of the Convention.

We acknowledge the importance of facilitating effective access to justice in cases related to air quality for the successful implementation of Sustainable Development Goals 3 (health), 11 (cities), 12 (sustainable consumption and production) and Sustainable Development Goal 16 with its target 16.3 (rule of law and access to justice).

The EU and its Member States take note of the outcomes of the Judicial Colloquium “SDG16: Role of Judiciary in Promoting the Rule of Law in Environmental Matters” (Geneva, 27-28 February 2019).

We welcome the importance of strengthening the capacity of the judiciary to effectively handle cases related to environmental matters and to apply constitutionally-entrenched environmental rights, thereby supporting the attainment of target 16.3 of Sustainable Development Goal 16.

We note the importance of the linkages between the Aarhus Convention and other UNECE Multilateral Environmental Agreements (Espoo Convention and the SEA Protocol, Water Convention and the Protocol on Water and Health, Air Convention and Industrial Accidents Convention) in enforcing environmental law in the context of environmental constitutionalism and sustainable development.

The EU and its Member States take this opportunity to emphasize their full commitment taken in Budva at the sixth session of the Meeting of the Parties, towards the implementation of the principles and objectives of the Aarhus Convention.

Important steps have been taken by the EU with regard to its compliance issues highlighted in case [ACCC/C/2008/32](#), concerning access to justice in environmental matters.

An external study requested by the Council of the European Union by Decision [2018/881](#) was launched in September 2018, with the aim 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 study shall garner facts and figures allowing an assessment of the possible shortcomings and options and of the impacts, which can be expected under each of them, including the amendment of the Regulation (EC) No [1367/2006](#).

We are fully confident that the study, which will be submitted to the Council by 30 September 2019, will represent an important milestone and will enable the Commission to decide on how best to address the findings and recommendations of the Compliance Committee in case [ACCC/C/2008/32](#).

### **Agenda item 3(d): Genetically modified organisms**

The EU and its Member States welcome the work done by the Aarhus Convention Secretariat in promoting the GMO amendment.

We welcome the ongoing collaboration between the Secretariats of the Aarhus Convention and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, as well as the preparatory work regarding the organization of a joint global round table (Geneva, 16-18 December 2019), which will address key issues related to access to information and public participation with respect to LMOs/GMOs. In this regard, we support the promotion of the information sharing in relation with GMOs within the next specific Implementation Plan of the Cartagena Protocol on Biosafety.

We encourage the remaining Parties whose ratification of the GMO amendment would count towards its entry into force to take serious steps to achieve this goal and, mindful of the importance of this amendment, we promote its ratification in the near future by other interested Parties.

The EU and its Member States will further take note of the progress made regarding the entry into force of the amendment on GMOs.

### **Agenda item 4 (a): Compliance mechanism**

The EU and its Member States would like to thank the Compliance Committee for its close engagement with the Parties in assisting the implementation of the three pillars of the Aarhus Convention and for the preparation of its meeting reports since the 22<sup>nd</sup> Working Group of the Parties.

The EU and its Member States appreciate the continuous work done by the Compliance Committee in revising the Guide, adopted at its 63<sup>rd</sup> meeting, as an important tool for both Parties and stakeholders.

We take note that the Guide is a living document and may be subject to further development, but meanwhile it will be applied in practice until the preparation of the Compliance Committee's report for the 7<sup>th</sup> Meeting of the Parties in 2021.

We acknowledge and appreciate the efforts made by the Chair of the Compliance Committee to consider our previous comments in his reflections and to reach a compromise text on certain issues in the adopted version of the Guide.

However, we note that some concerns previously expressed by the EU and its Member States have not been fully taken into account.

In this context, we would like to remind that the legal basis for the compliance mechanism is laid down in decision I/7, the guide being an internal, non-legally binding document, helpful to set the practicalities of how the Committee works and assists the Parties to reach compliance.

We consider that this Guide should be adopted by the MoP in the form of a decision in order to be legally binding to all Parties to the Convention and, consequently, the legitimacy of the procedures followed by the Compliance Committee would not be further questioned.

Although we acknowledge the Chair's concerns in regard to the efficient and timely proceedings of the compliance mechanism, in the context of the increasing caseload, the EU and its Member States would like to emphasize the following issues:

### **Use of domestic remedies**

The EU and its Member States take note of the changes to the section regarding „Use of domestic remedies”, but we maintain some concerns and therefore we reiterate the comments which were previously provided during the 62<sup>nd</sup> meeting of the ACCC in November 2018.

We consider that the provision regarding the exhaustion of domestic remedies by other members of the public could allow the Committee to conclude in compliance cases where the communicant itself has not used any other means of redress. Each individual communication has its own unique facts and circumstances and we do not think it is appropriate to conclude that all domestic remedies have been exhausted on the basis of conclusions which relate to other cases.

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 compliance mechanism cannot be compared with rulings and jurisprudence of international courts and the findings of the Compliance Committee are not court decisions, as referred to in paragraph 17 of the Reflections by the Chair.

### **Where needed, a hearing with the parties concerned**

We consider that hearings play an essential role to the compliance process, and we appreciate the step forward made by the Chair in proposing the so-called “careful approach”. However, we would like to be reassured that any decision of the ACCC to reserve its right not to hold a hearing should be in line with the general principles of environmental democracy and the rule of law.

Since the compliance system is a mechanism to assist Parties to comply with the Convention, a decision to proceed without a hearing should only be taken in consultation with the parties to the case. Therefore, we are of the view that if one or both of the parties consider that a hearing is necessary, providing a substantive reason for that, the hearing should be held.

### **Preparation of draft findings**

We believe that a Party concerned needs enough time in order to prepare its formal position on the upcoming compliance decision to be adopted by the next MOP. We consider that a certain amount of time is required to start internal coordination, which involves not only the authorities already involved in the specific case but also the higher levels of administration or other Ministries (such as for Foreign Affairs). Only when the draft findings are made available, the Party concerned is able to consider its positioning on a compliance decision because it is by then that the Parties know the exact legal grounds why they are deemed to be in non-compliance.

## **Comments and information submitted during the proceeding**

In accordance with the current provisions of the Guide, observers can play an important role in the different phases of the process before the Compliance Committee, so that they should receive the same treatment given to communicants and parties. In this context, the extent of their comments should be limited to a maximum number of words and addenda. On the other hand, the Compliance Committee, of its own accord or alternatively, at the request of a party, should have the possibility of dismissing any observer's comments as inadmissible when it is not closely related to the main issue on the process, as well as when the observer's comments includes new points not necessarily connected to the original matter or at least, being able to declare such new issues unacceptable.

Committee's review of the implementation of decisions of the Meeting of the Parties on compliance (paragraphs 211-215)

We consider that the provisions represent changes to the Compliance Committee procedure in preparing the progress review and further undermines the functionality of Parties' progress reports to comment on the Committee's recommendations and findings in the progress review.

The Committee deleted in the 5<sup>th</sup> draft of the Guide the text that referred to progress review session taking place at "one of its meetings each year". The adopted version of the Guide maintains this change and prefers the wording "periodic" meetings.

If this resulted in multiple progress reviews per year, this would be excessively burdensome for the Parties.

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

The EU and its Member States would like to thank the Secretariat for its continuous work done in building synergies and enhancing coordination with partners through capacity-building activities, as well as the close cooperation with United Nations partner agencies and other international organizations within the Aarhus Convention capacity-building coordination framework.



The EU and its Member States appreciate the results of the networking event for matching countries' needs with offers of support, which was held on the margins of the twenty-second meeting of the Working Group of the Parties, on the following topics: access to information, public participation, access to justice and e-learning and education.

We take note of the outcomes of the eleventh meeting of the Capacity-building Coordination Framework, which was held in Geneva, on 9 October 2018. In this regard, we welcome the discussions on the potential cooperation within existing and future capacity-building activities under the Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers in the light of the decisions of the Meetings of the Parties to the Convention and the Protocol adopted at the most recent sessions (Budva, Montenegro, 11–15 September 2017) and considering the upcoming 2019 in-depth review of progress towards Sustainable Development Goal 16.

The EU and its Member States welcome the efforts of the Secretariat in providing substantive support to multi-stakeholder dialogues related to developing renewable energy sustainability and in promoting relevant obligations under the Convention at the Regional meeting on open data and e-government for the environment (Kyiv, 5-6 March 2019).

We appreciate the constant liaising of the Secretariat with partner organizations, potential donors and interested countries and stakeholders and the handling of consultations regarding capacity-building activities through electronic support.

The EU and its Member States acknowledge the importance of the Aarhus Clearinghouse in the dissemination of information about funding opportunities, workshops and training events relevant to building capacities regarding the implementation of the Aarhus Convention.

#### **Agenda item 6: Promotion of the Convention and other relevant developments and interlinkages**

The EU and its Member States would like to thank and warmly welcome the efforts and progress made by the Secretariat and other invited experts in promoting and raising awareness regarding the Aarhus Convention at international level, as presented in the Report on the implementation of the work programme for 2018-2021.

We appreciate the progress achieved through various activities of the Secretariat, supported by relevant stakeholders, including in providing substantive input on the Convention and its Protocol for the environmental performance reviews for Kazakhstan and North Macedonia, in organizing training programmes on public participation in Central Asia and in publishing in all six official languages of the United Nations a promotional brochure addressing the general public interested in the Convention and its provisions.

We welcome the continuous advisory support provided by the Secretariat in assisting Guinea Bissau's efforts to accede to the Aarhus Convention and we reiterate our encouragement to other States from outside the UNECE region to become Parties to this international treaty.

The EU and its Member States appreciate the work undertaken by the Secretariat during the reporting period in promoting the Convention and its principles and interlinkages with various international forums, including in the context of international human rights law.

We warmly welcome the works of the Forum of the Countries of Latin America and the Caribbean on Sustainable Development which were organised by ECLAC on 22-26 April 2019, in Santiago, Chile, as an example of coordination among multiple stakeholders, such as governments, the United Nations system, the private sector, academia and civil society.

In this regard, we appreciate the involvement of the Aarhus Secretariat in the "Regional meeting on progress and challenges in the implementation of the Escazú Agreement in Latin America and the Caribbean: towards an early entry into force", which was held at the margins of this Forum, by promoting experiences in assisting countries in the ratification and implementation of the Aarhus Convention.

We acknowledge the need for promoting the ratification and implementation of the Regional Agreement on Access to Information, Public Participation and Justice in environmental matters in Latin America and the Caribbean (Escazú Convention) by providing advisory support to countries and the civil society of the region. In this regard, we welcome the encouragement for ratification of the Escazú Agreement during the Forum, as a catalyst for the 2030 Agenda and climate action.

We reaffirm our willingness to ensuring effective international cooperation between the EU and ECLAC, as well as enhanced global engagement, with the aim of achieving the Sustainable Development Goals and of ensuring the fulfilment of the 2030 Agenda.

The EU and its Member States would like to thank the Aarhus Secretariat and to further encourage its continuous involvement in activities that promote synergies in the area of environmental rights through effective cooperation with other organisations, with the aim of achieving the Sustainable Development Goals.

### **Agenda item 7: Implementation of the work programme for 2018-2021, including financial matters**

The EU and its Member States would like to thank the Secretariat for providing the Report on the Implementation of the Convention's work programme for 2018-2021 and the Report on contributions and expenditures in relation to the implementation of the Convention's work programme for 2018–2021.

We further encourage the Secretariat to pursue synergies with other United Nations Economic Commission for Europe (ECE) multilateral environmental agreements, United Nations agencies and other partners in order to maintain a satisfactory number of activities and share implementation costs.

The EU and its Member States would like to encourage the Parties to the Convention to submit their contributions at the beginning of the financial year in order to ensure certainty and availability of sufficient funds for the effective implementation of the work programme.

We appreciate the progress made by the Secretariat in extending the use of electronic tools, such as email consultations, web-based conferencing, video or telephone technology, online databases and the Aarhus Clearinghouse for Environmental Democracy, with the aim of making its activities more resource- and time-efficient.

We believe that the implementation of the different work programme areas will further contribute to the attainment of the Sustainable Development Goals across the whole 2030 Agenda for Sustainable Development, particularly SDG 16.

## **Agenda item 8: Preparations for the seventh session of the Meeting of the Parties**

The EU and its Member States would like to thank both the Bureau and the Secretariat of the Aarhus Convention for preparing the first draft proposal on the future Strategic Plan for 2022-2030, pursuant to decision VI/5 of the 6th Meeting of the Parties on the work programme for 2018-2021.

We welcome the general approach chosen for the draft proposal, which is to update specific points on the basis of the current strategic plan for 2015-2020. Also, we appreciate the newly inserted link to the SDGs and its specific goals.

The EU and its Member States encourage the use of advanced information and communication technologies in order to implement in a more effective manner each of the three pillars of the Convention. In this regard, we note the importance of the Aarhus Clearinghouse mechanism and we further promote its use for facilitating the collection, dissemination and exchange of information related to national implementation of the Convention and relevant global and regional developments regarding implementation of Principle 10 of the Rio Declaration on environment and development.

The EU and its Member States would like to take the opportunity to submit several comments and drafting suggestions on the draft Strategic Plan for 2022-2030:

- Paragraph 8 (a), 2<sup>nd</sup> indent - The term “ensure due protection” is too prescriptive for a strategic document.  
Furthermore, we suggest the replacement of the term “treaty” used in the proposal with “Aarhus Convention”.
- Objective I.2  
National, Indicative types of activity/measure, 2<sup>nd</sup> paragraph  
Drafting proposal - “To ensure compliance issues are addressed without delay, individual Parties implement the Committee’s findings and recommendations as soon as possible, with a view to already bringing about full compliance with the relevant provisions in the intersessional period, where possible, and subject to the agreement of the Party concerned that the Committee may make recommendations to them directly.”

National, Indicators of progress/targets, 3<sup>rd</sup> paragraph

Drafting proposal - “Findings, as well as recommendations of the Compliance Committee which are subject to the agreement of the Party concerned, are being implemented in the intersessional period by individual Parties found to be in non-compliance.”

The proposals aim to be realistic and in accordance with the requirements of Decision I/7 of the Meeting of the Parties, which does not oblige or request Parties to implement entirely the Committee’s findings and recommendations prior to the next session of the MOP.

Furthermore, this proposal should reflect the requirements of paragraph 36 of Decision 1/7, as well as paragraph 3 of Decision VI/8 on general issues of compliance, namely that the agreement of the Party concerned is needed for the Compliance Committee to make recommendations.

International, Indicators of progress/targets, 1<sup>st</sup> paragraph

Drafting proposal - “Adoption of the findings and recommendations by the Compliance Committee, and adoption of draft decisions on compliance by the Meeting of the Parties”.

The new wording referring to “endorsement” should not be used, as it limits the power of the MOP to decide as to how to adopt the decision.

Furthermore, we would need clarifications from the Secretariat on the following issues related to the international dimension of the Objective I.2 - Indicative types of activity/measure:

- What is the insertion of the word “requests” intended to cover, as Decision I/7 refers to submissions, communications and referrals.
- We would like to understand the change from “periodic” to “regular”, as we believe “periodic” conveys more certainty.
- We are wondering why there is a need for the addition of a “thematic review of systemic compliance problems”, as it appears to duplicate the existing procedures and does not seem justifiable given the Compliance Committee’s limited time and resources. We underline the fact that there is an existing process in place for progress reviews on cases of outstanding non-compliance.

Finally, we would ask the Secretariat to provide the links between the source documents which have been referred to in order to update the strategic plan and the proposed changes to the plan, as this will help us understand the basis for the proposals in the new strategic plan.

- Objective I.6

National, Indicative types of activity/measure, 1st paragraph

Draft proposal - “Information, training, organizational and budgetary measures. Translate text of the Convention and guidance material, as far as appropriate, into national and subnational languages and distribute it widely; provide adequate training to all relevant staff of the authorities.”

National, Indicators of progress/targets, 4th paragraph

Draft proposal - “Convention and guidance material are, as far as appropriate, translated into national and subnational languages and distributed widely.”

In many cases, Parties already provide extensive guidance material for the public in their respective national languages.

- Objective I.8

National, Indicative types of activity/measure, paragraph 5

Under this objective, the new proposal of the Bureau and the Secretariat refers to effective implementation of art. 3, paragraph 8 of the Convention, through measures such as protections of whistle blowers and environmental defenders. In this regard, we believe it should be clarified first what measures or actions could be set in addition to provisions of national penal law or with regard to Environmental Information Acts.

- Objective III.7

National, Indicators of progress/targets

We question whether information in terms of numbers can be gathered **from** Parties if there are no legal obligations corresponding to that request. However, we would not support any obligatory assistance mechanisms on access to justice at UNECE level.

### *Closing statement*

The EU and its Member States would like to welcome the outcomes of the 23<sup>rd</sup> meeting of the Working Group of the Parties to the Aarhus Convention, as well as the productive manner in which our discussions have taken place.

We believe that our discussions on the agenda items further encourage and promote the implementation of the three pillars and the principles of the Aarhus Convention.

We would like to thank you, Madam Chair, as well as the UNECE Secretariat and all delegates and stakeholders that have contributed to the success of this 23<sup>rd</sup> meeting of the Working Group of the Parties.

We are looking forward to meet you all again in this setting at the 24<sup>th</sup> Working Group of the Parties in 2020.

Thank you very much.

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