

March 2, 2021

J&E standpoint on the Advice by the Aarhus Convention Compliance Committee  
to the European Union concerning the implementation of request ACCC/M/2017/3

1. Association Justice and Environment, z.s. (J&E) has acknowledged that the Aarhus Convention Compliance Committee (ACCC or Committee) had prepared an [Advice](#) in the case [ACCC/M/2017/3](#).
2. J&E fully supports the response to the draft Advice provided earlier by the communicant ClientEarth in the ACCC/C/2008/32 case.
3. J&E fully supports the response to the draft Advice provided earlier by the European Environmental Bureau (EEB).
4. J&E fully supports the joint position paper of ClientEarth, EEB and J&E called “[Amending the Aarhus Regulation: an internal review mechanism that complies with international law](#)”.
5. In addition, J&E would like to make the following observation concerning Point III. 23. (b) (i) of the Advice:
  - a. The specific section of the Advice reads as follows: “***The Aarhus Regulation is amended, or any new European Union legislation is drafted, so that it is clear to the Court of Justice of the European Union (CJEU) that that legislation is intended to implement article 9(3) and (4) of the Convention***”.
  - b. While this particular section of the Advice seems minor in importance in comparison with the others, and while we believe that significant changes in the Aarhus Regulation will be triggered by the rest of the Advice, we still think that the foregoing citation is not to be underestimated.
  - c. We believe that it happened to the surprise of many of us when the CJEU in Case C-404/12 P - Council and Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe ruled that

*52 In that regard, it cannot be considered that, by adopting Regulation No 1367/2006, which concerns only EU institutions and moreover concerns only one of the remedies available to individuals for ensuring compliance with EU environmental law, the European Union was intended to implement the obligations, within the meaning of the case-law cited in paragraph 48 of this judgment, which derive from Article 9(3) of the Aarhus Convention with respect to national administrative or judicial procedures, which, as EU law now stands, fall primarily within the scope of Member State law (see, to that effect, judgment in Lesoochránárske zoskupenie, EU:C:2011:125, paragraphs 41 and 47).*

*53 It follows from all the foregoing that, in holding that Article 9(3) of the Aarhus Convention could be relied on in order to assess the legality of Article 10(1) of Regulation No 1367/2006, the General Court vitiated its judgment by an error of law.*
  - d. In order to avoid the repetition of such situations, there is a definite need to spell out as clearly as possible what the Advice now contains under Point 23. (b) (i).
6. J&E welcomes the ACCC for providing a clear Advice to the Party concerned.

**J&E**

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