

## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Working Group of the Parties

#### Twenty-fifth meeting

Geneva, 3 May and 7-8 June 2021

Item 9 (e) of the provisional agenda

#### Preparations for the seventh session of the Meeting of the Parties:

#### Rapid response mechanism to deal with cases related to article 3 (8) of the Convention

## Explanatory note regarding comments by EU and its Member States<sup>1</sup>

Prepared by the secretariat in consultation with the Bureau

This paper is prepared in response to comments by EU and its Member States<sup>2</sup> on the draft note of the Bureau on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention (ECE/MP.PP/WG.1/2021/12)<sup>3</sup>.

**Comment 1:** In paragraph 12 of the Annex of the Draft Note (Mandate of the Rapporteur on environmental defenders under the Aarhus Convention), we find that there is an overlap between subparagraphs (a) and (b). In fact, the expression “Any body of the executive branch of the government of the Party concerned” seems to already cover “Any other ministry or government entity of the Party concerned”.

#### *Clarification:*

“Government entity” may not necessarily be “an executive branch of the government” in all Parties. It may, for example, be a state-owned enterprise, which is not a part of the executive branch of government, but it is a state entity and a public authority under article 2(2) of the Convention. It will be therefore important to leave this text flexible as “executive branches” and “government entities” vary from country to country. Otherwise, the Rapporteur may have problems in carrying out his/her tasks effectively. Furthermore, to avoid any misunderstandings, it is important to note that article 2(2) expressly excludes bodies acting in a judicial or legislative capacity.

Alternatively, para. 12 could be thus re-drafted as follows:

12. The Rapporteur may issue a protection measure to:

- (a) Any body of the executive branch of the government of the Party concerned, especially the ministers responsible for environment, justice and foreign affairs; and
- (b) Any other public authority of the Party concerned within the definition of article 2(2) of the Convention.

**Comment 2:** In paragraph 16(b) of the Annex of the Draft Note (Mandate of the Rapporteur on environmental defenders under the Aarhus Convention), we believe that the element “and” is missing.

#### *Clarification:*

The text is correct. This sentence is stating the following: The Rapporteur can make referrals to the Compliance Committee. He/she shall report these referrals to the Meeting of the Parties

<sup>1</sup> This document was not formally edited.

<sup>2</sup> See comments by EU and its Member States: [https://unece.org/sites/default/files/2021-05/EUandMScomments\\_DD\\_PP\\_AJ\\_RRM.pdf](https://unece.org/sites/default/files/2021-05/EUandMScomments_DD_PP_AJ_RRM.pdf)

<sup>3</sup> See: [https://unece.org/sites/default/files/2021-05/ECE.MP\\_PP\\_WG\\_1.2021.12\\_aec\\_RRM\\_ECO%20Forum\\_0.pdf](https://unece.org/sites/default/files/2021-05/ECE.MP_PP_WG_1.2021.12_aec_RRM_ECO%20Forum_0.pdf)

Thus, in the document, the above text merged in one sentence: “*The Rapporteur shall report **any referrals he or she makes to the Compliance Committee to the Meeting of the Parties***”

Alternatively, the sentence in para. 16(b) could be re-drafted as follows:

“If the Rapporteur makes a referral to the Compliance Committee, then he/she shall report that fact to the Meeting of the Parties”.

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