

Aarhus Convention

Seventh session of the Meeting of the Parties to the Aarhus Convention (MoP 7) (Geneva, Switzerland, hybrid format, 18-20 October 2021)

Statements by the EU and its Member States

Agenda item 1: Opening of the preparatory segment

Agenda item 2: Adoption of the agenda and of operating procedures to facilitate remote participation and decision-making

Statement

Good morning, Chair, dear colleagues, ladies and gentlemen, I am speaking on behalf of the European Union and its Member States. This is our first intervention at the 7th session of the Meeting of the Parties and I would like to take the opportunity to sincerely thank the Secretariat for its excellent work in preparation for this meeting. 20 years after the entry into force of Aarhus Convention is a suitable moment to take a look at its achievements, especially at how and to which extent the aspirations and objectives underlying the Convention have been realised. Admittedly, this would all be easier to do in a non-COVID situation, however our current reality is as it is and we should try to make the best out of it. Therefore, I would like to say that the EU and its Member States are looking forward to a constructive and fruitful session. The EU and its Member States remain engaged to honour our obligations under the Aarhus Convention and will keep on working towards its effective implementation.

We also appreciate the possibility to join the side events, organised in the course of last week, and would like to thank the organisers to offer us the opportunity to participate in such diverse events.

With respect to the agenda of the session ahead of us, the EU and its Member States can support it as proposed.

The EU and its Member States have submitted comments to the draft operating procedures. While not all of these comments have been taken on board, we welcome that our main comment, namely that the quorum should be established on the basis of physical representation and via roll call and not exclusively on the basis of Parties physically present in Geneva, has been taken into account in the revised version. Against this background and in a spirit of compromise, we can support the operating procedures as amended, in order to allow for a smooth functioning of the Meeting of the Parties. We would like to stress, however, that this position does not constitute a precedent for future meetings in the framework of UNECE under COVID-19 conditions.

Agenda item 6: Substantive issues

(c) Access to justice

Statement

The EU and its Member States thank the Bureau for preparing draft decision VII/3 on promoting effective Access to Justice. We would like to express our gratitude to the Kingdom of Sweden and we warmly congratulate Mr Darpo for successfully leading and chairing the Task Force on Access to Justice for a considerable time. We welcome the offer of Belgium to lead the Task Force in the future and we can accept this decision as submitted to the Parties.

(d) Genetically modified organisms

Statement

The EU and its Member States thank Mr Gaugitsch for his work in the area relating to the GMO and GMO amendment. We welcome in particular the completion of the Pocket Guide and the fruitful cooperation between the Secretariats of the Aarhus Convention and of the Convention on Biological Diversity. Furthermore, we support the strengthening of coordination between national focal points of the Aarhus Convention and the Cartagena Protocol on Biosafety.

We also thank Austria for its committed work in this area and its willingness to continue it also in the future. We also call upon countries to ratify the GMO amendment as soon as possible.

Agenda item 7: Procedures and mechanisms facilitating the implementation of the Convention

(a) Reporting mechanism

Statement

The EU and its Member States thank the Secretariat and the Bureau for the draft decision on Reporting requirements. In particular, we would like to express our appreciation for the remarkable work of the Secretariat. We also wish to reiterate our commitment to fulfil the reporting obligations under the Aarhus Convention, in full respect of the recommended deadlines and procedures.

We can accept the text of this Decision as it stands.

(b) Compliance mechanism

Statement on draft Decision VII/8 on General issues of compliance

The EU and its Member States would like to thank the Secretariat and the Bureau for the preparation of the draft Decision on General issues of compliance¹, and the Compliance Committee for the preparation of the reports on procedural matters and general issues of compliance², and for their dedicated work during the last intersessional period.

We would like to start by a general point on substance:

- Each Party is obliged to guarantee effective implementation of rights enshrined in the Aarhus Convention, particularly those related to fundamental human rights. We note with regret that in some countries that are Parties to the Convention, there still are reported cases of harassment, penalization and persecution of members of the public for exercising their rights guaranteed by the Convention. We condemn such practices and encourage these Parties to take all necessary measures in order to ensure that such situations do not occur again in the future. With regard to Belarus, considering the gravity of the situation, we will make a separate statement.

With regard to procedural matters, we would like to make the following points:

- We welcome that the Committee has organised an increasing number of meetings between its ordinary meetings by virtual means in order to ensure the efficient management of its workload³. In addition to efficiency, this approach also saves financial resources for the Convention and helps decrease greenhouse gas emissions related to travel. We encourage the Committee to continue to make use of virtual meetings to the extent possible also in the post-COVID period.
- On a related topic, we encourage the Committee to consider the use of audioconferencing or videoconferencing also for the hearing concerning a communication or submission. We regret that paragraph 27 of the Report on procedural matters suggests that virtual hearings were only justified under the exceptional circumstances of the pandemic.⁴ Not only are these measures useful for health reasons in the context of the protracted pandemic, but they also markedly contribute to prevent energy use and pollution related to long distance transport. Therefore, we would encourage the Committee to consider the possibility of a continued use of virtual hearings.
- We also welcome the Committee's willingness to provide detailed written advice to Parties at their request in order to assist them in their compliance efforts.⁵ The EU has appreciated the advice provided by the Committee to the EU regarding the implementation of the Committee's findings and recommendations on communication ACCC/C/2008/32 (Part II).

¹ ECE/MP.PP/2021/23.

² ECE/MP.PP/2021/44 and ECE/MP.PP/2021/45.

³ ECE/MP.PP/2021/44, para 14

⁴ ECE/MP.PP/2021/44, para 27.

⁵ ECE/MP.PP/2021/44, para 19.

- The EU and its Members States would also like to thank the Committee for its efforts to hold open sessions on “effective case management” to discuss how the Committee can manage its high caseload as efficiently as possible, while at all times ensuring fairness and due process.⁶ We would be particularly supportive of efforts to prioritize cases in order to help ensure that the Committee can focus on systemic issues of non-compliance.
- Compliance cases concerning individual Parties to the Aarhus Convention have so far been grouped in a single draft decision to be submitted to the Meeting of the Parties. In general, this can be a practical approach because it provides an overview of the findings and recommendations in implementation matters concerning a specific contracting Party. However, at the same time the grouping in a single draft decision may complicate decision-making in specific situations. We have already raised this at the Meeting of the Parties in 2017 as being a problem. It is not always appropriate that a single decision covers several, very different aspects of compliance with the Convention, which may affect different authorities or activities in that Party. In other contexts it would be normal practice to prepare one decision per specific breach. Moreover, it also creates procedural problems in case the Party concerned intends to propose to the Meeting of the Parties a different follow-up to the individual compliance cases. We therefore urge to make it possible to single out a specific compliance case in a separate decision in the future if there is a need and upon request by a Party. This process can be facilitated by decision-making under Rule 37 of the Rules of Procedure⁷, which allows any representative to request that any part of a proposal or of an amendment to a proposal be decided on separately.
- As a final procedural point, we strongly encourage the Committee to make best efforts to finalise its findings in all compliance cases that are to be discussed at a MOP well in advance of that MOP. In general, we suggest that only cases in which the draft findings were issued at least 9 months before the MOP, and the final findings were issued at least 6 months before the MOP, should be included in draft decisions for endorsement at the MOP.

With regard to the draft Decision VII/8 on General issues of compliance, we propose the following amendments to be made:

- We would like to propose the following addition to paragraph 3 of the draft Decision: at the beginning of the paragraph, which reads “*Calls upon* those Parties found to be in non-compliance in the coming intersessional period to agree to the Committee making its recommendations to them directly”, to insert “where appropriate” after the words “to agree”;

⁶ ECE/MP.PP/2021/44, para 23.

⁷ Decision I/1, ECE/MP.PP/2/Add.2

- In relation to ACCC/C/2015/128, the EU reiterates its respect for its international obligations in matters pertaining to the Aarhus Convention and in that context acknowledges the concerns expressed in the findings adopted by the Committee in case ACCC/C/2015/128. The acknowledgement should be understood as an expression of the need for the EU to fully assess and understand the implications of the findings, assess the options available and to determine the appropriate course of action. Before having concluded this work, the EU is not able to accept a decision on the endorsement of these findings by the Meeting of the Parties. In that respect we propose that the following words be added to the end of paragraph 9: “while acknowledging the findings of the Committee with regard to communication ACCC/C/2015/128”. We will further address this issue in our statement on Draft Decision VII/8f concerning compliance by the European Union with its obligations under the Convention.

Statement on Draft Decision VII/8c on compliance by Belarus with its obligations under the Convention

- The EU and its Member States share the serious concerns expressed in draft Decision VII/8c concerning compliance by Belarus, stating that “the situation for persons exercising their rights in conformity with the Convention in Belarus is ... rapidly deteriorating”. Similar concerns are set out in draft Decision VII/8 on General issues of compliance, which notes with concern recent reports of actions by state authorities in Belarus against environmental organisations and incidents of alleged penalization, persecution or harassment contrary to Article 3(8) of the Convention.
- The latest supplementary report of the Committee on the situation in Belarus, issued shortly before this Meeting of the Parties, reiterates these concerns and reports on recent developments. The Committee explains, in particular, that for the first time in the Convention’s history, the recent liquidation of Ecohome has had the effect of silencing a Belarusian environmental NGO that has been actively engaged in the Committee’s procedures concerning that Party’s compliance. In this situation, the Committee invites any person who has previously acted on behalf of Ecohome to continue to engage with the Committee in the place of Ecohome.
- In light of these developments, we have read with particular interest the conclusions and recommendations of the Committee’s report, which recommends to the Meeting of the Parties to consider suspending the special rights and privileges accorded to Belarus under the Convention in case the situation does not improve.
- Following this recommendation, the EU and its Member States welcome the submission by the Bureau to the Parties of a revised draft decision VII/8c concerning compliance by Belarus, which now also includes a decision to suspend the special rights and privileges of Belarus under the Convention. The EU and its Member States fully support the adoption of the revised decision.

- As between Options A and B set out in paragraph 7, the EU and its Member States strongly prefer Option A, which provides a proportionate and timely response to the concerns raised. It is important to emphasise that neither option results in an immediate suspension of the special rights and privileges of Belarus. Instead, both options provide additional time, until 1 December 2021 for Belarus to cancel the liquidation of Ecohome. Option A ensures that non-compliance will have clear consequences. Option B, in contrast, postpones decision-making and introduces additional complexity and uncertainty to the decision-making process, without any clear benefits.
- The suspension of Belarus' special rights and privileges should not, at the same time, prevent the representatives of Belarus from their continued cooperation and engagement with Aarhus Convention bodies, including in the framework of ongoing compliance procedures. In this regard, the EU and its Member States also support the intention of the Committee to continue to engage with those who have previously acted on behalf of Ecohome in the Committee's procedure, in the place of Ecohome.
- Belarus has not only continuously disregarded its obligations under the Aarhus Convention, but has launched a campaign of repression and intimidation against civil society members and non-governmental organisations defending civil rights and fundamental freedoms in all policy areas, including environmental policy.
- In line with previous EU statements on the situation in Belarus, we express our support to those members of the civil society and environmental NGOs in Belarus suffering from repression and intimidation. We urge the Belarussian authorities to fully adhere to the principles of democracy and the rule of law, respect fundamental freedoms and human rights obligations, cease all repression, rehabilitate NGOs liquidated and release all persons whose detention was politically motivated.

Statement on draft Decision VII/8f concerning compliance by the European Union with its obligations under the Convention

The EU would like to thank the Secretariat and the Bureau for the preparation of draft Decision VII/8f concerning compliance by the European Union with its obligations under the Convention⁸, as well as the Compliance Committee for all the preparatory work leading to this draft Decision.

This decision covers five cases brought against the EU. We would like to inform the Meeting of the Parties of the progress made in these cases, set out next steps and suggest some amendments to the draft Decision.

1. Concerning case ACCC/C/2010/54, the EU recalls that it has previously endorsed Decision V/9g and reaffirms its continued commitment to implement it. Consequently, we are also ready to endorse the findings and recommendations concerning request ACCC/M/2017/3 with respect to decision V/9g (case ACCC/C/2010/54).

⁸ ECE/MP.PP/2021/29.

2. Concerning cases ACCC/C/2013/96 and ACCC/C/2014/121, in which the Committee has issued its findings during this past inter-sessional period, the EU can endorse the findings, and is committed to work constructively to find the most appropriate ways to address them and ensure full compliance.
3. With regard to case ACCC/C/2008/32 on access to justice, the Aarhus Regulation has been amended to address the findings and the advice of the Aarhus Convention Compliance Committee (Committee). The amendment was published in the Official Journal of the European Union on 8 October 2021 and it will enter into force on 28 October 2021.

Therefore, the EU can endorse the findings of the Committee with regard to communication ACCC/C/2008/32 (part II) as set out in draft Decision VII/8f, subject to the indication in paragraph 5 of the dates of the procedural steps as outlined above. We provided a revised draft of the text to the Secretariat.

After so many years and so much work and effort on all sides, the EU is pleased that a solution to fully address the findings was finally found, something which is worth celebrating!

However, we also need to reflect on some of the principal issues at stake that explain why this case was extraordinarily difficult. While the EU is a Party to the Convention in its own right, there are also particularities of the EU being a ‘regional economic integration organisation’, which are not fully comparable with other state Parties. The EU and its Member States are each Parties to the Aarhus Convention, each with their respective, and sometimes shared, rights and obligations, and their competencies are allocated in accordance with the EU Treaties. One of the key specificities concerns the general system of access to justice in the EU. In this regard, we would like to emphasize the central role of the Union's national courts as ordinary Courts of EU law and the system of preliminary rulings under Article 267 TFEU as a valid means of redress.

In fact, as explained in recital 7 of the amended Aarhus Regulation, the administrative review procedure provided for in the Aarhus Regulation complements the overall Union system of judicial review that enables members of the public to have administrative acts reviewed through direct judicial challenges at Union level, namely under Article 263, fourth paragraph, of the Treaty on the Functioning of the European Union (TFEU), and, in accordance with Article 267 TFEU, through national courts.

The right and obligation of national courts to make a request to the Court of Justice of the European Union (CJEU) for a preliminary ruling under Article 267 TFEU are essential elements of that system. Under Article 267 TFEU, as interpreted by the CJEU, Member States' national courts form an integral part of the system of judicial protection of the Union as ordinary courts of EU law⁹.

⁹ Opinion of the Court of 8 March 2011, *Creation of a unified patent litigation system*, 1/09, ECLI:EU:C:2011:123, paragraph 80.

In light of these considerations, we emphasise that the measures which the EU as a Party to the Convention has taken to address the findings, in particular via the amendment of the Aarhus Regulation, are there to supplement, and not to replace or correct, the solid legal system that already exists to ensure broad access to justice across the EU.

4. Finally, we would like to turn to case ACCC/C/2015/128¹⁰ on compliance by the EU as regards certain state aid matters. The Committee, in its findings of 17 March 2021, found that the EU was in breach of the Convention because of the failure to provide access to administrative or judicial procedures for members of the public to challenge decisions on state aid measures taken by the European Commission.

Because of the adoption of the findings in case ACCC/C/2015/128 at a very late stage of the legislative process to amend the Aarhus Regulation, while the case ACCC/C/2015/128 was discussed by the EU legislators, it was not possible to assess the implications of the findings in such a short timeframe and to reach agreement on how to address them. Ultimately, in order to avoid a stalemate in the legislative procedure, with the consequence of delaying compliance in the case ACCC/C/2008/32, the European Commission issued a unilateral statement in which it committed to *'analysing the implications of the findings and assessing the options available. The Commission will complete and publish this assessment by the end of 2022. If appropriate, by the end of 2023, the Commission will come forward with measures to address the issue, in light of the obligations of the EU and its Member States under the Aarhus Convention and taking into account the rules of Union law concerning state aid.'*

Accordingly, in relation to ACCC/C/2015/128, the EU reiterates its respect for its international obligations in matters pertaining to the Aarhus Convention, and is in that context ready to acknowledge the concerns expressed in the findings adopted by the Committee in case ACCC/C/2015/128.

The acknowledgement should be understood as an expression of the need for the EU to fully assess and understand the implications of the findings, assess the options available and determine the appropriate course of action. Before having concluded this work, the EU is not able to accept a decision on endorsement of these findings by the Meeting of the Parties.

In light of these considerations, the EU is only in a position to accept the parts of draft Decision VII/8f relating to case ACCC/C/2015/128, subject to the incorporation of the following amendments:

- amending the first sentence of paragraph 11 of the draft Decision to read as follows: *"Acknowledges the concerns raised in the findings of the Committee with respect to communication ACCC/C/2015/128 that"*;

¹⁰ https://unece.org/sites/default/files/2021-03/C128_EU_findings_advance%20unedited.pdf

- replacing paragraph 12 with the following text:
“*Takes note* that the Party concerned is currently analysing the implications of the findings and assessing the options available and it has informed the Meeting of the Parties that the European Commission has committed to complete and publish this assessment by the end of 2022. The European Commission has also committed to come forward with measures to address the issue, if appropriate, by the end of 2023, in light of the obligations of the EU and its Member States under the Aarhus Convention and taking into account the rules of Union law concerning state aid”;
- deleting all references to paragraph 12 from paragraph 13.

We sincerely hope that our roadmap to address any concerns relating to state aid issues, and the changes proposed in draft Decision VII/8f are acceptable to the Meeting of the Parties. If so, we propose that decision-making with regard to these findings is postponed to the next Meeting of the Parties.

Alternatively, should the suggested amendments not be acceptable, in order to help the Meeting of the Parties reach a consensus, the EU would also be ready to consider a simplified approach to the amendment of draft Decision VII/8f. In this case, we could accept removing all references to case ACCC/C/2015/128 from draft Decision VII/8f. This simplified approach would lead to a similar result: allowing more time for the EU to carry out its assessment and postponing the decision-making with regard to the findings in case ACCC/C/2015/128 to the next Meeting of the Parties.

The EU will continue to work towards complying in full with its obligations under the Aarhus Convention, within its institutional framework and in close cooperation with its Member States.

Statement on Compliance committee elections

The EU and its Member States thank the Compliance Committee and its Secretariat for the work done. We much appreciated its engagement with the Parties to assist them in the implementation of the three pillars of the Convention and for the preparation of all of its meeting reports.

In particular, we would like to acknowledge the outstanding role of Mr Ebbesson in leading the Compliance Committee and the work of Mr Kodjabashev and Ms Ryall for their work during the period in which they served as members of the Committee. As we have seen, Ms Ryall has been re-nominated and we trust that she will continue her good work. In addition, there have been two more excellent candidates nominated for the Compliance Committee, namely Ms Sharpston and Mr Schomerus. The EU and its Member States are very happy to be able to support all three candidates and would like to thank them for their willingness to serve as Committee members. We wish them best of luck for their future work.

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

Statement

The EU and its Member States would like to thank the Bureau for draft decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Aarhus Convention. The EU and its Member States welcome the envisaged establishment and mandate of the Special Rapporteur on environmental defenders. This new mechanism and the Special Rapporteur will enhance the protection of persons exercising their rights under the Convention.

However, the EU and its Member States would like to propose that, pursuant to paragraph 2(e) of Decision I/14, the task of electing the Special Rapporteur is given to the Working Group of the Parties. We would therefore like to propose the following amendment to paragraph 10 of the draft decision VII/9:

"10. Requests the Working Group of the Parties to elect the independent Special Rapporteur on environmental defenders at its next meeting in 2022."

(d) Capacity-building

Statement

The EU and its Member States welcome the work done by the Aarhus Convention Secretariat, as well as other international organisations to raise awareness, provide training and exchange experiences with regard to the implementation of the Convention, as well as the activities undertaken by governments together with these international organisations. We encourage the Aarhus Convention Secretariat to continue its constant efforts in this respect.

Agenda item 8: Promotion of the Convention and relevant developments and interlinkages

(a) Accession to the Convention by States from outside the United Nations Economic Commission for Europe region

Statement

The EU and its Member States would like to thank the Bureau for preparing the draft decision on the accession of Guinea-Bissau to the Aarhus Convention (ECE/MP.PP/2021/21).

We appreciate the work done by the Bureau on the draft decision, taking into account the comments made by Parties and stakeholders in the 24th and the 25th Meetings of the Working Group of the Parties.

We can accept the text of this decision as it stands.

(b) Promotion of the Convention's principles

Statement

The EU and its Member States would like to thank the Aarhus Convention Secretariat and the Bureau for the revised draft decision on Promoting the Principles of the Convention in International Forums (ECE/MP.PP/2021/11).

We would like to express our gratitude to France for its ongoing leadership and welcome its willingness to continue to take the lead in this area.

We can accept the text of this decision as it stands.

Agenda item 9: Programme of work and operation of the Convention

(b) Future work programme for 2022–2025

Statement

The EU and its Member States can accept the text of this decision as it stands.

(c) Strategic Plan for 2022-2030

Statement

The EU and its Member States can accept the text of this decision as it stands.

(d) Financial arrangements

Statement

The EU and its Member States recognise the need to ensure the predictability and sustainability of funding, and appreciate the efforts made to explore new possibilities for providing adequate funds under the Convention. However, the EU and its Member States support only Option A for a financial scheme with voluntary contributions.

As regards the minimum annual contribution, we reiterate that no contributing Party should pay less than 1000 USD in a given calendar year, since below this threshold, the total expenses incurred will surpass the revenues. With such a minimum contribution, the Aarhus Convention would follow the established practice within the framework of other ECE Conventions and Protocols.

Agenda item 11: Elections of officers and other members of the Bureau

Statement

The EU and its Member States would like to thank all Parties which submitted nominations and congratulate all elected Members of the Bureau.