

Plan of action for MOP request ACCC/M/2021/4 (European Union)

In the spirit of reaching consensus, the Meeting of the Parties exceptionally decided, by consensus, to postpone the decision-making on the Committee's findings and recommendations on communication ACCC/C/2015/128 (European Union) to the next ordinary session of the Meeting of the Parties to be held in 2025. The Meeting of Parties stressed that this exceptional decision shall in no way establish a practice under the Convention. The Meeting of the Parties also requested the Committee to review any developments that have taken place regarding the matter, and to report to the Meeting of the Parties accordingly.

The request of the Meeting of the Parties is available at: https://unece.org/env/pp/cc/accc.m.2021.4_european-union

The Committee's findings on communication ACCC/C/2015/128 (European Union) are available at: <https://unece.org/env/pp/cc/communications-from-the-public>

In accordance with the Committee's procedure for follow-up during the current intersessional period, the European Union has been invited by the Committee to submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendation in paragraph 131 of the Committee's findings on communication ACCC/C/2015/128 (European Union).

In preparing its plan of action, the Party concerned is invited by the Compliance Committee to take into account the Committee's information note for Parties on preparing their plan of action. The Committee's information note, which contains step-by-step guidance for Parties on how to complete their plan of action, is available at: <https://unece.org/env/pp/cc/implementation-decisions-meeting-parties-compliance-individual-parties>

A. Description of the process by which the plan of action has been prepared

The plan of action has been prepared by the European Commission, jointly by the Directorate General for Competition and Directorate General for Environment, and after consultation of other relevant Commission services. The plan of action has been published on the website of Directorate General for Environment and has also been sent to the communicants and observers in case ACCC/C/2015/128 (European Union). Once available, the plan of action will be updated to include the links to the statement of evidence and consultation questionnaire, as outlined in section c below, and will then be formally submitted to the Aarhus Convention Compliance Committee.

B. General character of the measures that will be needed to implement the recommendation in the Committee's findings

The Commission is currently analysing the implications of the findings and assessing the options available with regard to the Committee's findings in case ACCC/C/2015/128, as outlined in section C below, and for this reason it would be premature to comment on the measures needed to implement the recommendation.

C. Detailed plan of action

Recommendation:	In paragraph 131 of its findings on communication ACCC/C/2015/128 (European Union), the Committee, pursuant to paragraph 35 of
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Para. 131 of the Committee’s findings on communication ACCC/C/2015/128	the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.
Proposed measures to fulfil recommendation	The Commission would like to recall its commitment set out in the Commission statement issued as part of the adoption of the revised Aarhus Regulation, to analyse the implications of the findings and assess the options available. According to this statement, <i>‘the Commission remains committed to ensuring that the EU respects its international obligations in matters pertaining to the Aarhus Convention and in that context acknowledges the concerns expressed and findings adopted by the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 as regards state aid on 17 March 2021. The findings call on the EU to “take the necessary legislative, regulatory and other measures [...]”. The Commission is currently 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.’</i>
Outline of the steps necessary to implement the proposed measures	<p>In accordance with the commitments outlined above, during spring 2022, the Commission aims to publish a call for evidence and a public consultation questionnaire. Respondents will have three months to reply to the public consultation.</p> <p>The aim of this exercise is to collect evidence and views from stakeholders in order to assess the implications of the findings and analyse the options available. The output at this first stage, following this exercise, and by the end of 2022, is expected to be the adoption of a Commission Communication <i>‘on the findings adopted by the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 as regards state aid: Analysing the implications of the findings and assessing the options available’</i>.</p> <p>Any further steps for 2023 will depend on the comments received during this public consultation, further analysis by the Commission, and the outcome of the final assessment contained in the Communication. Therefore, any information on next steps beyond 2022 would be premature at this stage.</p> <p>The final version of the action plan will be updated to include links to the call for evidence and public consultation questionnaire referred above.</p>
Actors involved	The work towards the Communication is carried out under the co-leadership of the Directorate General for Competition and Directorate General for Environment of the Commission, and in consultation with other relevant Commission services.
Final date by when implementation of recommendation will be completed	The Commission is mindful of the reporting deadlines requested by the Compliance Committee, in particular, the target date of 1 October 2024, and is committed to constructively work towards meeting those deadlines, subject to any constraints and limitations it may encounter.

