

Aarhus Convention Secretariat

c/o Fiona Marshall
Palais des Nations
8-14 Avenue de la Paix
1211 Geneva 10, Switzerland

Vienna, 26 September 2022

Regarding: Comments on the plan of action on request ACCC/M/2021/4 (*European Union*).

Dear Ms. Marshall,

Dear Aarhus Secretariat,

We very much appreciate the opportunity to comment on the plan of action on request ACCC/M/2021/4 (*European Union*).

For the purposes of this comment, we would like to refer to and fully support Alistair McGlone's statement, which was already sent to the secretariat on Thursday, 22 September 2022.

As stated by the secretariat, the Committee had called for a submission of a plan of action concerning the implementation of the recommendation in paragraph 131 of the Committee's findings on communication ACCC/C/2015/128.

The plan subsequently prepared by the European Union includes a public questionnaire. This questionnaire, however, is hardly aimed at the actual implementation of the Committee's recommendations. Instead, it repeatedly suggests to the consultees that remaining inactive is a viable possibility and that "maintaining the status quo", as stated in questions 13 to 19, is an eligible option. Furthermore, question 7 asks whether there is a need for "additional" means of challenging Commission State aid decisions: the word "additional" presupposes that there are existing means to challenge, which is currently not the case.

All this disregards the fact that the European Union is bound to provide access to members of the public to procedures to challenge European Commission state aid measures that contravene European Union law relating to the environment by article 9 para 3 of the Aarhus Convention. By maintaining the status quo, the European Union thus fails to fulfil its obligations under international law. As it was perfectly stated by Alistair McGlone: "The consultation does not discuss how to implement the Committee's recommendation and instead invites a discussion of whether the recommendation should be implemented."

In short, the plan of action – including the conducting of a public survey - provides for three solutions, one of them being the amendment of the Aarhus Regulation, which does not require further comments. Option 2 and Option 3 include the Amendment of the Best Practices Code and the Amendment of the Procedural Regulation. Both options are described in rather vague language, and it remains unclear to the consultees what the outcome would be and whether any configurations would constitute binding law.

All in all, we would like to stress that the implementation of the Committee's recommendations in its findings regarding communication ACCC/C/2015/128 is not an option but a legal requirement that needs to be addressed with binding and concise alternatives for action.

With best regards,



Thomas ALGE
Managing Director,
ÖKOBÜRO – Alliance of the Austrian Environmental Movement