

**27<sup>th</sup> Working Group of the Parties to the Aarhus Convention**  
**Agenda item 5b: Compliance mechanism**  
**Geneva, 26-28 June 2023**

Thank you, Chair. My name is Summer Kern, and I speak on the behalf of Justice and Environment and its Austrian member organization, OEKOBUEO. OEKOBUEO is one of the communicants of communication ACCC/C/2015/128 concerning the EU, which is now known as ACCC/M/2021/4; or “the state aid case”.

On May 17<sup>th</sup>, the European Commission finally published a Communication analyzing the implications of the Compliance Committee’s findings and assessing the options available for their implementation. While this is a welcome step, it must be noted that the EU had announced (and informed the Committee) that this Communication would be published already by the end of 2022.

I regret to say that the Communication, as we expected, disappoints. Far from containing concrete measures that the Commission intends to take, the Communication, despite its title, fails to truly deliver an assessment of the implementation options it sketches out. Such an assessment is postponed, rather, for a future impact analysis and no timeline for this or other measures is provided.

These delays are of critical concern. The next session of the Meeting of the Parties takes place in 2025, and reporting must be accomplished well beforehand. Given the lengthy procedures of the EU, and our experience as regards the earlier case ACCC/C/2009/32, we have serious concerns about the timely implementation of M4. To be quite clear: To fail to do would be disastrous, causing the EU’s standing amongst the Parties to the Convention and beyond irreparable damage.

Accordingly, we urge action now. Take the required steps to come into compliance with the Committee’s findings on M4 as a matter of highest urgency. At this point I must acknowledge that the EU has undertaken significant efforts to engage us, the communicants, to engage observers and members of the public. We welcome this and confirm our readiness to respond in kind, to engage in an open, professional, and productive way. But as time of the essence, I must stress that we must all avoid any delays and distractions.

In this regard we emphasize that the commissioned Milieu study on access to justice to challenge state aid decisions at the Member State level can be such a distraction. Is it valuable in and of itself? Yes. Like the studies observer ClientEarth undertook and those we at Justice and Environment have undertaken, it shows that such access is critically lacking and thus reveals ways in which the state aid system as a whole fails to function as it should.

Yet, as the Commission itself suggests in its Communication, not only is the status quo not an option, but access to justice in state aid cases at the national level is a complementary, and not an alternative solution to address the Committee’s findings on M4. Access to justice at the EU level is needed. Now.

Thank you.