

Progress report on follow up to the findings in case ACCC/M/2021/4 (European Union) on State aid and access to justice

1 October 2023

In the spirit of finding an agreement, 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 and any follow up to the request 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 in communication ACCC/C/2015/128 (European Union). On 1 July 2022, the European Union submitted a draft action plan, which was updated based on the Compliance Committee's comments and its final version was agreed on 31 July 2022. The action plan is available on the website of the European Commission at [Aarhus \(europa.eu\)](https://european-council.europa.eu/media/eu-press/press-releases/2022/07/31-2022-001). In the present document, due on 1 October 2023, the European Union submits its first progress report, outlining the steps made towards delivering on the action plan.

A. Description of the process by which the progress report has been prepared

The progress report 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.

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

With regard to the Committee's findings in case ACCC/C/2015/128, as indicated in the Commission Communication COM(2023)307 *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 adopted on 17 May 2023*¹ (the 'Commission Communication'), the Commission is analysing the impacts, including costs and benefits, of possible measures. (outlined in section C below). For this reason, it would be premature to comment on the measures the Commission will put forward to implement the recommendation.

C. Detailed progress report

¹ Available at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0307

<p>Recommendation: Para. 131 of the Committee’s findings on communication ACCC/C/2015/128</p>	<p>In paragraph 131 of its findings on communication ACCC/C/2015/128 (European Union), the Committee, pursuant to paragraph 35 of 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.</p>
<p>Proposed measures to fulfil recommendation</p>	<p>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></p> <p>In order to avoid repetitions, this progress report does not discuss the progress that has already been outlined in the action plan itself. Instead, it will be limited to the steps that have been taken since [the adoption of the action plan].</p>
<p>Outline of the progress made and the steps taken to implement the proposed measures</p>	<p>In accordance with the commitments outlined above, the Commission has adopted, on 17 May 2023 (COM/2023/307 final), a Communication 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</p> <p>The Commission Communication was accompanied by a Commission Staff Working Document SWD(2023)307² containing a Synopsis Report of Stakeholder Consultation.</p> <p>The Communication (i) sets out the Commission’s assessment of the implications of the Aarhus Convention Compliance Committee’s findings and (ii) reports on the public consultation that the Commission organised to explore options for addressing the findings. The Communication further elaborates on options, including a combination of options, while confirming that the status quo would raise issues of compliance with the Aarhus convention as interpreted in the ACCC findings. As a next step, the Commission will analyse the impacts, including costs and benefits, of possible options in light of its obligations under the Aarhus Convention as well as taking into account the obligation for the Commission to ensure the full functioning of the Internal Market and guarantee a fast, reliable, predictable and effective State aid control mechanism in the EU.</p> <p>The Commission has also set up an Inter-Service Group to work closely on the follow-up to the 17 May Communication.</p>

² Available at: EUR-Lex - 52023SC0307 - EN - EUR-Lex (europa.eu)

	The subsequent course of action is still to be decided by the Commission and will be based on the outcome of ongoing consultations and further analysis.
Actors involved	The work towards the Commission Communication was 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. The Commission carried out an extensive consultation of stakeholders via relevant expert groups.
Final date by when implementation of recommendation will be completed	The Commission is in the process of assessing and analysing options. Therefore, any further steps, including identification of a date by which the implementation of the recommendations is complete, would be premature at this stage. 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.