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**Subject: On the implications of the findings of the Aarhus Convention Compliance Committee in communication ACCC/C/2015/128 and access to justice in State aid matters**

Honourable Commissioners,

In its findings under communication ACCC/C/2015/128,<sup>1</sup> the Aarhus Convention Compliance Committee (ACCC) found that no EU procedure satisfactorily enables members of the public to challenge State aid decisions contravening environmental law. In order to ensure for the members of the public access to justice in relation to state aid decisions and thereby the Union's compliance with its obligations under the Aarhus Convention, the Commission has announced, in its Plan of Action for the Aarhus Convention Meeting of the Parties request ACCC/M/2021/4,<sup>2</sup> that it is preparing a Communication on the matter concerned. As part of a public consultation on the preparation of this Communication, the Commission has disclosed **three options** that it is currently considering on how to address the Union's issue of compliance with international law.

The undersigned Members of the European Parliament, actively involved in the 2021 revision of the Aarhus Regulation,<sup>3</sup> are assured that only that one option should be considered as means of addressing the Union's pending issue of compliance with its obligations under the Aarhus Convention, which duly and unequivocally corresponds to the following requirements:

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<sup>1</sup> Available at: [https://unece.org/env/pp/cc/accc.c.2015.128\\_european-union](https://unece.org/env/pp/cc/accc.c.2015.128_european-union).

<sup>2</sup> Available at: <https://ec.europa.eu/environment/aarhus/pdf/Request%20M4%20-%20EU%20plan%20of%20action.pdf>.

<sup>3</sup> Procedure: 2020/0289(COD).

## **1. Respects the competences of the European Parliament under the Treaties.**

Introducing a new internal review procedure for State aid decisions goes beyond the exclusive competence of the Council to “make any appropriate regulations for the application of Articles 107 and 108” TFEU.<sup>4</sup> This reform of the legal framework indeed goes beyond providing for procedures related to the conduct of assessment of State aid measures by the Commission. Pursuant to Article 6 TEU, the EU shall respect and uphold its citizens’ fundamental rights, including procedural rights. The European Parliament, through its role of representing and expressing the will of citizens of the Union,<sup>5</sup> would guarantee that those voices and rights of the public are truly embedded in the process of aligning the Union’s access to justice system in environmental matters with the standards the Union committed itself to under the Aarhus Convention.

This premise has been mirrored already in the European Parliament’s report on the Commission’s proposal for the revision of the Aarhus Regulation.<sup>6</sup> No suggestion was made at the time by any of the legal services involved that this decision was based on a wrong legal basis. Rather, it is the only legal basis that lives up to the highest democratic standard, which is appropriate when granting democratic rights to EU citizens and their associations. Ensuring that adequate procedures are available for members of the public to hold the EU institutions accountable for respecting Union law **calls for a full involvement of the European Parliament as co-legislator.**

## **2. Meets the EU’s international law commitments and brings EU law in compliance with the Aarhus Convention in the best possible way, i.e. through the internal review mechanism under the Aarhus Regulation.**<sup>7</sup>

This lack of procedures to satisfactorily enable members of the public to challenge State aid decisions contravening environmental law exists despite the reminder of the Grand Chamber of the CJEU, in its ruling of 22 September 2020, that compliance of an aid measure with Union environmental law is a requirement of EU State aid law itself.<sup>8</sup>

Providing the possibility for members of the public to challenge a Commission’s decision that does not correctly assess that an aid measure or its beneficiaries comply with environmental law before the CJEU is therefore a matter of compliance with the EU’s international obligations under the Aarhus Convention as interpreted, with authority, by the ACCC. It is also a matter of compliance with the case law of the CJEU itself and of respect of the EU Treaties and principles of compliance with the Rule of Law.

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<sup>4</sup> Article 109 TFEU.

<sup>5</sup> Article 10(4) TEU.

<sup>6</sup> Amendment 24 in P9\_TA(2021)0254 to Article 2(2)(a) of the Aarhus Regulation proposed to delete State aid decisions from the scope of acts excluded from internal review. Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0254\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0254_EN.html).

<sup>7</sup> In application of Article 261(2) TFEU.

<sup>8</sup> Judgment of 22 September 2020, *Austria v. Commission*, C-594/18P, paragraphs 44-45 and 100.

The 2021 revision of the Aarhus Regulation has ensured compliance with the Aarhus Convention in all points but on the question of State aid decisions. The Meeting of the Parties to the Aarhus Convention has confirmed in September last year that the internal review mechanism under the Aarhus Regulation meets the Convention's requirements. Under these circumstances, it is **not wise to seek to amend or adopt a different legal framework**.

**3. Ensures the high level of environmental protection required by the EU Treaties and pursued by the European Green Deal.**

State aid decisions authorise public support for developing or maintaining activities on the market and there is no question that such activities must comply with Union law. Proper and systematic enforcement of Union environmental law is a necessary feature of the “high level of protection and improvement of the quality of the environment” that is an integral element of the internal market.<sup>9</sup>

The Commission committed itself to the European Green Deal to pursue a sustainable growth strategy “where the environment and health of citizens are protected, and where economic growth is decoupled from resource use”. It wants to ensure that its decisions and actions would not harm the environment. **Safeguarding EU citizens’ rights to a safe environment includes ensuring that at least environmental laws are respected and enforced by all means and in a consistent manner.** The European Green Deal and the CJEU recognised that State aid procedures and decisions must actively contribute to this effort.

The undersigned Members of the European Parliament, therefore, ask the Commission to propose a legislative revision to the Aarhus Regulation in order to ensure access to justice in relation to State aid decisions with a full involvement of the European Parliament.

We avail ourselves of this opportunity to renew to you, distinguished Commissioners, the assurances of our highest consideration.

Milan Brglez  
Martin Hojsík  
Marie Toussaint  
Mick Wallace

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<sup>9</sup> Article 3(3) TEU.