

Brussels, 10 April 2018

To: Environment Ministers of EU Member States

Dear Minister,

This summer will mark the 20<sup>th</sup> anniversary of the adoption of the Aarhus Convention, the UN's flagship treaty promoting access to information, public participation and access to justice in environmental matters. The EU, having been a major driving force behind the creation of the Convention, should be at the centre of celebrating the Convention's success in promoting environmental democracy in a wide range of countries from throughout Europe and Central Asia.

Unfortunately the EU's own commitment to the Convention, and to the participatory democracy which it promotes, was seriously called into question in September last year when the EU opposed the endorsement by the Meeting of the Parties (MoP) of a finding by the Convention's independent Compliance Committee that the EU itself was in non-compliance due to the insufficient possibilities for the public to have access to justice at the level of the EU institutions. The EU position prevented the MoP, for the first time in the history of the Convention, from endorsing a finding of non-compliance by the Committee, thereby undermining the compliance mechanism and the Convention itself. The EU was fortunately completely isolated in its position but the resulting stalemate led to the issue being postponed to the next time the MoP convenes in 2021 – see further details in the annex.

We are writing now to express our concern that seven months later, and despite a general commitment by the EU to explore ways and means to comply with the Convention, we see no signs that the EU is taking serious steps to address the problem at the root of the non-compliance. Given the Commission's apparent unwillingness to move forward on the issue, the role of Member States will be crucial.

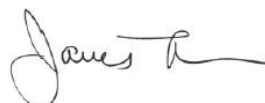
We therefore call upon Environment Ministers to support the adoption of a Council Decision requesting the Commission to come forward with a legislative proposal for revision of the so-called Aarhus Regulation. The revision of the Regulation is the only way to bring the EU back into compliance with the Convention and the process must be launched swiftly so that the revision process is completed at the latest for the next MoP in 2021.

It is also important for the EU's credibility vis-à-vis the other Parties that it has some concrete progress to report by the time of the 20<sup>th</sup> anniversary. It will not be sufficient to say that it is looking into the problem.

Yours sincerely,



Jeremy Wates  
Secretary General  
European Environmental Bureau



James Thornton  
CEO  
ClientEarth

## **Annex**

### **Restoring EU compliance with the Aarhus Convention**

The EU is currently in breach of the Aarhus Convention, the UN's flagship treaty on environmental democracy, due to the very limited possibilities for NGOs to have access to justice at the EU level. This was the finding reached by the Convention's Compliance Committee in March 2017, after extensive and detailed consideration of a communication (complaint) that was submitted to it in 2008.

In response to the finding, the Commission, which was clearly keen to minimise the possibilities for NGOs to challenge its decisions before the Court of Justice of the European Union, initially proposed that the Convention's governing body, the Meeting of the Parties (MOP), should reject the finding of non-compliance. Fortunately the idea of rejecting the finding was itself unanimously rejected by the EU Member States. However, the resulting compromise that emerged in a Council Decision in July 2017 was nonetheless very problematic and still involved the EU opposing endorsement of the finding of non-compliance by the MoP (according to the EU proposal, the MoP would only 'take note' of the finding). This would have overturned the longstanding practice whereby, since its establishment in 2002, all of the Committee's findings of non-compliance have been endorsed by the MoP, with the full support of the EU. The EU also sought to weaken the force of the MoP recommendations and remove certain references to its jurisprudence, in ways that would have set similarly bad precedents.

At the Aarhus MOP in Montenegro in September 2017, the EU position was widely and severely criticized by non-EU Parties as well as by NGOs, with not a single other Party or stakeholder supporting it. A stand-off ensued and the entire issue was put off until the MoP convenes again in 2021. The EU's credibility was severely damaged in the process. Essentially, it showed that it was willing to jeopardize the progress towards democratization triggered by the Aarhus Convention in the continent, including in Eastern Europe and Central Asia, for the sake of defending the lack of public accountability of its institutions, and in particular the Commission.

Looking ahead, it is of crucial importance that the EU takes steps without delay to address the problem at the root of the non-compliance that was correctly identified by the Committee, namely the fact that except in access to documents cases, environmental NGOs have virtually no access to the Court of Justice of the EU to challenge the acts and omissions of the EU institutions. Specifically, the Commission should initiate the process of revising the Aarhus Regulation forthwith, in particular to remove the limitation on the administrative acts that may be challenged to 'measures of individual scope under environmental law'. The [Inter-Institutional Agreement on Better Law-Making](#) as updated in May 2016 obliges the Commission to give prompt and detailed consideration to such requests.