

THE EU AND THE AARHUS CONVENTION: ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

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KEY FINDINGS

- **The Aarhus Convention, applicable to the EU and all Member States, provides for rights to the public to access to information, participation in decision-making and access to justice in environmental matters.**
- **The Aarhus Convention Compliance Committee has found several EU Member States as well as the EU itself non-compliant with the Convention.**
- **Currently eight EU Member States and the EU are on the list of non-compliant Parties, decided by the Meeting of Parties when endorsing Committee findings. The Committee follows up and reports on whether these Parties are taking sufficient measures to get in compliance.**
- **Adequate implementation by EU legislation, monitoring by the Commission and jurisprudence by the EU judiciary are important for effective enjoyment of the Aarhus Convention rights by the public throughout the EU.**

1. BACKGROUND AND CONTEXT

1.1. Focus of the briefing

In this briefing I describe the 1998 Aarhus Convention on Access to Justice, Public Participation in Decision-making and Access to Justice in Environmental Matters (“Aarhus Convention”) and its background and context, and I highlight some shortcomings and areas of concern *from the perspective of the Aarhus Convention Compliance Committee*. Accordingly, I limit my comments to issues examined by the Compliance Committee with respect to the EU and its Member States, and particularly to matters where these Parties have been found non-compliant. I also refrain from discussing the merits of pending cases, as that could be perceived as influencing current considerations by the Committee.

1.2. Aarhus Convention: a unique combination of environmental and human rights law

The Aarhus Convention stands out as a unique international treaty regime, combining notions from environmental as well as human rights law. This combination is reflected not only in the content of the Aarhus Convention, in which human rights concepts are developed for environmental contexts. It is also shown by the establishment of the

Aarhus Convention Compliance Committee (ACCC); while such committees are common in multilateral environmental agreements, the ACCC was the first to reflect the specific human rights feature of giving members of the public the right to trigger review procedure concerning compliance by the Convention parties.

With the exception of international human rights law, before the 1990's international law did not pay much attention to domestic procedures for decisions-making, citizens' access to documents or citizens' access to court. Today, it may appear surprising that at that time only few multilateral environmental agreements addressed the engagement of members of the public in environmental matters at all; accordingly these matters remained essentially for domestic law- and policy-making only.

The **EU** was a different case. Not only it adopted some pieces of legislation, in particular **Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment**, and Directive 90/313/EEC on the freedom of access to information on the environment, which oblige the Member States to promote access to information and some degree of public participation in decision-making. The **European Court of Justice had also highlighted elements of individual rights to rely on environmental laws before courts**, e.g. with respect to environmental quality standards.¹

While international human rights law and EU law was important for the Aarhus Convention, it would not have come into being were it not for two important circumstances.

The first is the outcome of the **1992 UN Conference on Environment and Development** in Rio de Janeiro 1992. More specifically, through the Rio Declaration on Environment and Development, **Principle 10**, it was agreed at the conference that:

*"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."*²

Principle 10 nicely frames what was to become the Aarhus Convention; it highlights access to information, public participation in decision-making, and effective access to judicial and administrative proceeding, including redress and remedy, ie access to justice.

The second crucial circumstance refers to the political changes in Europe in the beginning of the 1990's, shortly after the fall of the Berlin Wall and the Cold War. These changes influenced, if not transformed, the perception of what are international and national legal issues. New matters, such as civic society, democratisation, environmental human rights and globalisation, transcended state borders, entered the international arena, and expanded into international discourse, law, and policy-making in a way that had previously not been possible.

Soon after the Rio Conference, in **1995, the Third "Environment for Europe" Ministerial Conference endorsed the UNECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making**, which drew on and developed Principle 10. The Ministerial Conference also decided to consider the drafting of a convention. The **negotiations started in June 1996 and the Aarhus Convention was adopted two years later**. From the EU perspective, one of the many objectives of the Aarhus Convention was to spread the notion of the rule of law to **Eastern Europe, the Caucasus region and Central Asia**. From the perspective of these regions, civil society saw the Convention as a vehicle for democracy. Soon after the Convention had entered into force, in 2001, it would be shown that **not only states in Eastern Europe, the Caucasus region and Central Asia, but also some EU Member States (old and new) as well as the EU itself had difficulties in complying with all parts of the Convention**.

Since 2012, **all EU Member States and the EU itself are parties to the Aarhus Convention.**

Before presenting the main features of the Aarhus Convention, it is worthwhile to briefly reflect on the rationales for public participation in environmental matters. A very general justification was set out in Agenda 21, also adopted at the 1992 Rio Conference, according to which “One of the fundamental prerequisites for the achievement of *sustainable development* is broad public participation in decision-making”.³ More specific arguments made in favour of public participation in environmental matters (some reflected in the objective and preamble of the Aarhus Convention itself) are that it:

- Improves *protection* of health and the environment, through
 - Better *quality* of decisions
 - Better *enforcement* of decisions;
- Furthers and adapts established *human rights*;
- Enhances *legitimacy* and *fairness* in decision-making;
- Promotes *trust* in public authorities and *effectiveness* in environmental decision-making; and
- Adds to *environmental democracy*.

2. AARHUS CONVENTION: REQUIREMENTS, PRINCIPLES AND CONCEPTS

2.1. General features

As its title indicates, the Aarhus Convention sets **minimum standards** to be met by the Parties with respect to access to information, public participation in decision-making and access to justice in environmental matters. The Convention also defines fundamental concepts and principles to be applied and complied with by the Parties.⁴

It is important to keep in mind that each Party is obliged to guarantee the rights set out in the Convention, in order to “contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (Art 1). Thus, although the Convention is not written in the same “rights-language” as the European Convention on Human Rights, it is apparent that it is intended to **ensure rights** for members of the public with respect to access to information, participation in decision-making and access to justice. It is also apparent that compliance with the Convention requires **appropriate legislative and regulatory frameworks**, which must be clear, transparent and consistent (Art 3(1)).

The Convention is intended to provide for wide public participation and wide access to justice. For that reason, it defines “**the public concerned**” rather broadly. For the same reason, the Convention specifically sets out that “non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest” in the decision-making (Art 2(5)).

The Convention also defines “**public authority**” broadly, so as to include not only governments at different levels, but also **private actors** performing public administrative functions under national law, or having public responsibilities or functions or providing public services in relation to the environment. This is important not least for the right to request access to information in situations where governments privatise or for other reasons outsource public responsibilities and services to private actors. For sure, “public authority” also includes the EU institutions (Art 2(2)).

Finally, the Convention defines “**environmental information**” broadly so as to include not only information on the state of elements of the environment, but also on factors, activities, measures, international agreements, laws, policies etc. likely to affect elements of the environment and the state of the human health (Art 2(3)). This definition has been useful also when considering what is an environmental matter, and what is the scope of the Convention.

More generally, Parties are required to promote the Convention and to facilitate the enjoyment of the Convention rights (Art 3(2-6)), to ensure that nobody is harassed or penalised for exercising their rights (Art 2(8)), and to grant the public access to information, possibilities to participate in decision-making and access to justice without discrimination as to citizenship, nationality or domicile (Art 2(9)). It is obvious from the definitions of “the public” and “the public concerned” as well as from the principle of non-discrimination that state borders are irrelevant when determining who is entitled to access information, participate in decision-making and access justice.

2.2. Access to information

There are two aspects of the obligation related to access to information.

First, it engages a “**passive**” obligation, which means that the Parties must ensure that **public authorities make available the environmental information they possess**. The presumption is that the environmental information possessed by public authorities should be provided to members of the public on request “as soon as possible” and at the latest within a month. Requests for information can only be refused if any of the listed grounds for refusal apply. Even when they do, the grounds for refusal shall be interpreted “in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment” (Art 4(4)). Any refusal must be reasoned and in writing (Art 4(7)).

Second, the Parties must actively ensure that **public authorities possess and update relevant environmental information**, and that **mandatory systems are established**, providing for an adequate flow of information. Electronic databases shall be publicly accessible and the Parties are to set up nationwide systems of pollution inventories and registers. This part has been further developed through the 2003 Kiev Protocol on Pollution Release and Transfer Registers.

2.3. Public participation

It is a particular challenge to internationally define minimum standards for public participation in decision-making, applicable and relevant for a great number of parties with diverse political, legal, economic and cultural backgrounds. While the Convention gives great leeway for the Parties in creating their national decision-making processes and structures, it sets certain **crucial requirements** intended to ensure effective public participation. The Convention provides for public participation with respect to three categories of decision-making.

First, most **detailed provisions apply to decision-making concerning specific, listed activities and to other activities which may have a significant effect on the environment**. For all these activities, the Parties must ensure:

- *Early information and notification* about the decision-making procedure, in an effective, adequate and timely manner;
- *Reasonable time-frames* to prepare and participate effectively;
- *Early and effective public participation* when all options are open;
- That *all relevant information* is made available at the time of the public participation procedure;
- That the public is *allowed to submit comments, information, analyses or opinions* in writing or at public hearings;
- That *due account* is taken of the *outcome* of public participation; and
- Publicly accessible *decisions* with *reasons* and *considerations* (Art 6).

The Compliance Committee has in a few cases considered the application of this provision to **multi-stage decision-making**, and Environmental Impact Assessment decisions, for instance when different authorities decide on different aspects at different stages. The decision-making procedures among the Parties are diverse, and the Parties maintain discretion in designing them and in deciding the range of options to be discussed at each stage of the decision-making. These options may involve various consecutive strategic decisions regarding plans, programmes and policies as well as various individual decisions concerning the specific activity, e.g. authorising the basic parameters and its location,

technical design, and finally its technological details related to specific environmental standards. Still, ***within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place.***⁵

Second, rather similar, although to some extent less detailed, requirements for public participation apply to decision-making concerning ***plans and programmes***. Thus:

- Practical or other provisions shall be made for public participation during *preparations* of plans and programmes relating to the environment;
- This should be provided in a *transparent* and *fair framework* with necessary *information*;
- *Reasonable time-frames* must be ensured to prepare and participate effectively;
- *Early* and *effective* public participation must be provided when all options are open; and
- *Due account* shall be taken of the *outcome* of public participation

The Parties must endeavour to provide for public participation when preparing *policies* relating to the environment (Art 7).

Third, as far as *executive regulations* and *generally applicable legal instruments* are concerned, the Parties are obliged to strive to promote effective public participation, at an appropriate stage. To this end, certain requirements are set out (Art 8).

In addition, the 2nd Meeting of Parties (MoP) decided to amend the Convention in order to provide for public participation with respect to deliberate release into the environment and the placing on the market of *genetically modified organisms*. These changes have not yet entered into force. It is somewhat surprising that no such provisions have been agreed with respect to the marketing of chemicals, for which no right to participate is set out in the Convention (unless the decision can be construed as concerning a specific activity or a plan or programme).

2.4. Access to justice

The last “pillar” of the Convention focuses on access to justice. Here too, the Convention distinguishes between three categories of decisions, acts and omissions.

First, **anyone who is denied access to environmental information shall have access to a review procedure before a court of law or another independent and impartial body** established by law. For these cases, standing should be granted to anyone whose request has been ignored, wrongfully refused or otherwise not dealt with in accordance with the Convention. In certain cases, the Parties should also provide for **expeditious procedures** for reconsideration by a public authority (Art 9(1)).

Second, **access to court or another independent and impartial body of law should also be granted with respect to decision-making concerning specific activities for members of the public concerned** who either have a sufficient interest or, where so required in national law, maintain impairment of a right. These criteria should be determined in accordance with national law and consistently with the objective of giving the public concerned wide access to justice. To this effect, **environmental NGOs** are deemed to have a sufficient interest to be granted standing. This right to access to justice pertains to challenging the substantive as well as procedural legality of any decision, act or omission concerning specific activities (Art 9(2)).

Finally, each Party shall ensure **access to administrative or judicial procedures to members of the public**, meeting the criteria in national law, “if any”, **to challenge other acts and omissions by private persons and public authorities “which contravene provisions of its national law relating to the environment”** (Art 9(3)). In this regard, the Committee has concluded that for EU Member States applicable European Union law relating to the environment should also be considered to be part of the domestic, “national law”.⁶

Contrary to the first and the second categories, it may suffice to ensure access to administrative review procedures to challenge acts and omissions in the third (and arguably

the largest) category. Yet, also these procedures must meet the general requirements for access to justice, described below. As is indicated, the Parties may set national criteria to be met for members of the public in order to have standing in these provisions. Aware of the possible risk that Parties would abuse these criteria, the Compliance Committee, at an early stage set out that the Parties may not use this flexibility as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organisations or other members of the public from challenging acts or omissions that contravene national law relating to the environment.⁷

Access to justice must not be pro forma only. Therefore, *all procedures* referred to above under the three categories, including any administrative procedure, must provide **“adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive”** (Art 9(4)). For this reason, despite the usefulness of ombudsman institutions, they most often do not meet the requirements for access to justice. As pointed out below, the Compliance Committee, has found Parties non-compliant because procedures have not been timely or because they have been prohibitively expensive.⁸

3. AARHUS CONVENTION COMPLIANCE COMMITTEE

The Aarhus Convention Compliance Committee was established by the first Meeting of the Parties (MoP) to the Convention, through Decision I/7 “Review of Compliance”, in 2002 as an arrangement “of a **non-confrontational, non-judicial and consultative nature for reviewing compliance**” (Art 15 of the Convention) in order to **“promote and improve compliance with the Convention”** (preamble of Decision I/7).

The non-judicial and consultative nature of the Committee is fundamental for its work. The Committee is **fully independent** vis-à-vis the Convention Parties, and the nine members, serving in their personal capacity, “shall be persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience”. Based on Decision I/7 and in the spirit of the Convention, the Committee applies principles of transparency, fairness and due process in its reviews, it maintains strict rules on conflict of interest, it holds hearings with the parties, and it develops its **jurisprudence through “findings” on compliance or non-compliance**. Despite these quasi-judicial elements, the Committee is not a court and delivers no enforceable judgments.

Instead, the Committee’s work is forward-looking and intended to promote compliance and get non-compliant Parties in compliance. The Committee is mandated to **examine compliance by the Parties based on different requests**:

- *Submissions* by **Parties** concerning compliance by other Parties or by themselves (thus far, the Committee has received **two submissions**, one of which (S/2, submitted by Lithuania concerning compliance by Belarus) is pending;
- *Referrals* by the **secretariat** (so far the secretariat has brought **no referral** to the Committee); and
- *Communications* by **members of the public** (by 21 June, ie the first day of the Committee’s 53rd meeting, and the day of the hearing before the EU Parliament, the Committee has received almost **140 communications**).

In addition to examining compliance based on these requests, the Committee may in consultation or agreement with the Party concerned **advise and facilitate assistance, make recommendations** on specific measures and request strategies, including time schedules regarding the achievement of compliance.

When a communication is received and found *preliminary admissible*, the communication is forwarded to the Party concerned for reply with statements and comments regarding the alleged non-compliance. Thereafter, the parties to the case are invited to a hearing, and the Committee starts drafting its findings. Once the draft findings are adopted, they are sent to the parties for their comments. The Committee then takes these comments into account, before finalising its findings.

The Committee reports to the MoP, both on general compliance issues and specifically with respect to Parties found non-compliant. Non-compliance by specific Parties usually falls within one or more of the following categories:

- **General failure** by a Party to take the necessary legislative, regulatory and other measures to implement the Convention;
- **Failure of legislation, regulations, other measures or jurisprudence** to meet specific Convention requirements; and
- **Specific events, acts, omissions or situations** demonstrating a failure by public authorities or courts to comply with or enforce the Convention

So far, the MoP has endorsed all Committee's findings on non-compliance. In so doing, the MoP also decides on recommendations on measures and requests addressed to the Parties concerned. These decisions by the MoP are later followed up by the Committee when examining whether the Parties found non-compliant take the necessary measures to get in compliance with the Convention. **Since 5th MoP (2014), 14 Parties, nine of which relate to the EU, are on the list of non-compliant Parties.**

All documents in all cases before the Committee are posted on the Committee's website (www.unece.org/env/pp/cc.html).

4. AREAS OF CONCERN FOR EU MEMBER STATES

The **following Member States were reported non-compliant by the Committee to the 5th MOP** (Maastricht, 2014), which endorsed all Committee findings on non-compliance.

Austria was found non-compliant mainly concerning access to justice. The Committee found that the procedure for handling of information requests was not in line with the Convention, and that Austria did not ensure a timely review procedure for information request. Moreover, Austria did not ensure standing for environmental NGOs in many sectoral laws, and for certain cases regarding contraventions of laws relating to the environment there was no means at all for members of the public to challenge acts and omissions. Austria has since then taken some measures, but is not yet in full compliance (MoP Dec. V/9b endorsing Committee findings regarding C/48 and C/63).

Bulgaria was found non-compliant for barring all members of the public, including NGOs, access to justice with respect to General Spatial Plans, barring almost all members of the public access to justice with respect to Detailed Spatial Plans, and for not ensuring that all members of the public concerned with sufficient interest have access to review procedures to challenge final decisions permitting specific activities. Bulgaria has not yet taken the measures needed to get in compliance. Since the 5th MoP, the Committee has also found Bulgaria non-compliant because in certain cases it does not ensure adequate and effective remedies to prevent environmental damage (MoP Dec. V/9d endorsing Committee findings regarding C/58; and C/76 not yet reported to MoP).

Croatia was found non-compliant because it did not provide a transparent framework for public participation with respect to municipal waste management plans. Croatia has taken measures, but the Committee has not yet determined whether the measures are sufficient to bring the Party concerned in compliance (MoP V/9e endorsing Committee findings regarding C/66).

The **Czech Republic** was found non-compliant because its system for decision-making on specific activities fails to provide for effective public participation during the whole process, by failing to provide opportunities for all members of the public concerned to submit comments and opinions on proposed activities, by failing to impose mandatory requirements that these comments and opinions are taken into account, by granting too limited rights for NGOs to appeal certain decision, by not granting members of the public a right to challenge screening decisions in EIA processes, by not ensuring standing for members of the public to challenge acts and omissions with respect to noise and land-use plans, and by not providing sufficient opportunities for public participation with regard to the National Investment Plan in the scope of the EU Emission Trading System. The Czech Republic still has not taken sufficient

measures on quite a few of these points in order to get in compliance with the Convention (MoP Dec. V/9f endorsing Committee findings regarding C/50 and C/70).

Germany was found non-compliant by not ensuring standing for environmental NGOs in many of its sectoral laws to challenge acts and omissions by public authorities and private persons, and by imposing certain requirements on NGOs for appeals. Germany has taken some significant measures, but the Committee has not yet determined whether these measures are sufficient to comply with the Convention (MoP Dec. V/9h endorsing Committee findings regarding C/31)

Romania was found non-compliant by failing in several respects with regard to ensuring access to information in specific cases, by not giving the public sufficient time to submit comment on its 2007 Energy Strategy, by not providing for any public participation in the procedure for issuing archaeological discharge certificate, and by failing to ensure that the review procedures for information requests are timely and provide an effective remedy. Romania has not yet taken the measures needed to get in compliance (MoP Dec V/9j endorsing Committee findings regarding C/51; and C/69 not yet reported to MoP).

Spain was found non-compliant already at the 4th MoP (2011) by charging fees for copies of land use and urban planning information which are not reasonable, and by failing to consider providing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice to a small NGOs. Spain has taken some important measures, but the Committee has not yet determined that the Party concerned is in compliance with the Convention (MoP Dec. V/9k endorsing Committee findings regarding C/24 and C/36).

United Kingdom was also found non-compliant already at the 4th MoP (2011) mainly by failing to ensure that the costs for all court procedures subject to article 9 were not prohibitively expensive, and in particular by the absence of any clear legally binding directions from the legislature or judiciary to this effect, by not ensuring clear time limits for the filing of an application for judicial review, and by not ensuring a clear date from when the time limit started to run, and by not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement the Convention requirements on costs, etc. Also in cases considered after 4th MoP, the United Kingdom has been found non-compliant due to prohibitively expensive review procedures, but also for failing to provide for public participation in a specific case concerning its National Renewable Energy Action Plan. The UK has taken some measures, but the Committee has not yet determined that the Party concerned is in compliance with the Convention (MoP Dec. V/9n endorsing Committee findings regarding C/23, C/27, C/33, C/53, C/64, C/65 and C/68; and C/77 and C/85&86 not yet reported to MoP).

In this context it should be emphasised that a Party's compliance with the Convention cannot be measured in terms of the number of communications against it. Some countries are clearly more "activist" than others, and to a significant effect this is reflected in the number of communications. Rather, **what matters is the scope and depth of issues** where the Committee finds the Party concerned in non-compliance and – in light of the purpose of the Committee – **whether** the Party involved, when found non-compliant, **takes the necessary measures** to get in compliance with the Convention.

5. AREAS OF CONCERN FOR THE EU

The EU is a special kind of Party to the Aarhus Convention, given its legal structure and the fact that it is a Party in parallel to its Member States. It is apparent to the Committee that adequate EU legislation is important for promoting compliance and implementation of the Convention for the EU itself (including its institutions), and also for compliance by its Member States. It is equally clear that the **jurisprudence of the EU Court of Justice on Aarhus Convention matters has had a positive impact** as far as compliance by the Member States is concerned.

In cases before the Committee, it needs to identify which Party is responsible for what. This engages the question of how the responsibility for compliance is generally allocated between

the EU and its Member States, and whether both the EU and a Member State can be non-compliant with respect to certain legislation or decision-making. Upon the approval (and signing) of the Convention, the EU made a declaration, stating inter alia that:

"the Community institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of Community law in the field covered by the Convention.

The European Community is responsible for the performance of those obligations resulting from the Convention which are covered by Community law in force. The exercise of Community competence is, by its nature, subject to continuous development."

For sure, all three pillars of the Convention apply to the EU institutions and courts, and the Compliance Committee examines whether the EU meets the requirements concerning access to documents,⁹ public participation,¹⁰ and access to its judiciary.¹¹ The Committee has also considered whether EU legislation addressed to its Member States meets the Convention requirements and whether the Commission has done its job in monitoring implementation by the Member States. Yet, **the Committee found that the EU had failed to have in place a proper regulatory framework or clear instruction to ensure the implementation by a Member State of the Convention requirements on public participation with respect to National Renewable Energy Action Plans.** In the same vein **the Committee also concluded that the EU, by way of its monitoring responsibility, failed to ensure the implementation of the Convention by one of its Member States concerning these plans.** The Committee has not yet determined whether the EU has taken sufficient measures to get in compliance (MoP Dec. V/9g endorsing Committee findings in C/54).¹²

6. ROOM FOR IMPROVEMENTS

No doubt, there is room for improvements by the EU as well as its Member States, with respect to all three pillars of the Convention. However, for the reasons given in the beginning of this briefing, I limit myself to discuss areas of concerns based on consideration by the Compliance Committee, and I abstain from making general comments on EU legislation and jurisprudence on Aarhus Convention matters.

Access to information: We see that some Member States have failed to comply with the requirements concerning access to information (Romania in particular, but also Austria). Possibly, Member States would better comply with these requirements if the **Commission monitored more thoroughly the implementation and practice in the Member States.**

Public participation: Some Member States (Croatia, UK) as well as the EU itself have failed to adequately provide for public participation with respect to National Renewable Energy Action Plans. These cases reveal the importance that the EU, when it adopts legislation on matters covered by the Convention, makes sure that the legislation itself meets all relevant requirements. In these contexts, **the Commission should also monitor the measures taken by the Member States to implement the legislation, in light of the Convention.**

Access to justice: Some EU Member States apply too tight criteria for who is entitled to challenge decision before court, with respect to individuals as well as NGOs (Austria, Bulgaria and Germany). The Committee has also found that in some Member States the remedies in judicial procedures are ineffective (Bulgaria, Romaina), and that in some other states the procedures are too costly to comply with the Convention (in particular, this is the case with the UK, but to less extent also in Spain).

General comment: The Committee has concluded in several cases concerning EU Member States and other Parties that they **fail to establish or maintain a clear, transparent and consistent regulatory framework to implement the provisions of the Convention.** Such frameworks are essential for the enjoyment by the public of the rights set out in the Convention.

¹ C-59/89, *Commission v Germany*; C-361/88, *Commission v Germany*; and C-64/90, *Commission v France*.

² *United Nations Declaration on Environment and Development*; UN Doc. A/Conf.151/26.

³ *Agenda 21*, UN Doc. A/Conf.151/26, Annex II, para 23.2.

⁴ A useful text to grasp the Convention is UNECE, *The Aarhus Convention: an Implementation Guide* (2nd ed., 2014).

⁵ ACCC/17 (Lithuania), para 71.

⁶ ACCC/15 (Denmark), para 27.

⁷ ACCC /C/11 (Belgium), para. 35; ACCC/15 (Denmark), para 29; and C/58 (Bulgaria), para 62-66.

⁸ On timely procedure, see C/69 (Romania), paras 84-90. On prohibitive costs, see C/23 (UK), C/27 (UK), C/33 (UK), C/85&86 (UK); C/36 (Spain), para 67; and C/57 (Denmark).

⁹ See C/21 (EU), where the Committee found that the EU did not fail to comply with provisions on access to information.

¹⁰ See C/21 (EU), where the Committee also found that the EU did not fail to comply with provisions on public participation.

¹¹ In June 2016, the Committee is expected to adopt its draft findings concerning the EU with respect to access for the public to the EU Court of Justice (C/32 (EU)). This case started already in 2008. In 2011, the Committee adopted a partial findings (C/32 (EU) Part I), in which it held that "the Committee is convinced that if the jurisprudence of the EU Courts, as evidenced by the cases examined, were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would fail to comply with article 9, paragraphs 3 and 4, of the Convention." In C/32 Part II (EU), the Committee will consider whether the jurisprudence of the EU Courts, as evidenced by the cases examined, has continued and, if so, whether it has been fully compensated for by adequate administrative review procedures.

¹² See C/17 (EU), where the Committee was not convinced that the matters examined by it in response to the communication established any failure by the EU (EC) to comply with the provisions of the Convention when transposing them through the EIA and IPPC Directives. In 2015, the Committee received and found preliminary admissible a communication (C/123 (EU)) alleging that the EU fails to comply with the Convention by not having implemented Arts 2, 3 and 9(3) by a legislative act. The Party concerned has provided its reply to the allegations, but the Committee has not yet decided on a hearing in the case.

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