

Ms Ursula von der Leyen
President of the European Commission
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

25 September 2020

By email only: ec-president-vdl@ec.europa.eu

Dear President von der Leyen,

European Commission Proposal for a Revision of the Aarhus Regulation on Access to Justice in Environmental Matters

Further to our letters of 12 September 2019 and 24 January 2020, we are writing to reiterate the importance of protecting citizens' rights through timely and effective revision of the Aarhus Regulation.

Recent events in the Brexit negotiations have highlighted that the fulfilment of international law obligations is the hallmark of a State's commitment to the rule of law.

Only last week, in your State of the Union address to the European Parliament, you recalled that international treaties that have been ratified by the EU cannot be "*unilaterally changed, disregarded or dis-applied. This is a matter of law, trust and good faith.*"

We fully support your conviction. This is why we call upon the Commission to urgently take steps to end the EU's longstanding non-compliance with the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "Aarhus Convention"), ratified by the EU in 2005.

On 18 June 2018, the Council requested the Commission to propose, by **30 September 2020 at the latest**, an amendment to Regulation 1367/2006 (the "Aarhus Regulation") addressing the EU's failure to comply with its international obligations on access to justice for environmental organisations at EU level.¹ The European Parliament has similarly called on the Commission to ensure EU compliance with the Convention and welcomed a revision of the Aarhus Regulation.² As the deadline of 30 September approaches, we take this opportunity to remind the Commission that an amendment to the Aarhus Regulation is the only option available to the EU institutions to bring the EU into compliance with its

¹ Council Decision (EU) 2018/881 of 18 June 2018 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006, OJ L155/6.

² European Parliament resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP).

international obligations on access to justice. The Commission itself came to this conclusion in its Roadmap of 6 March 2020.³

We also underline that time is of the essence. The next session of the Meeting of the Parties (MoP) to the Convention is in October 2021. If the EU is not able to report to the other Parties that it is in compliance, or at least very advanced in the process of coming into compliance, by the time of the MoP, this will do further damage across the wider European region and beyond to the credibility of the EU as a proponent of democracy and international law.

The Aarhus Regulation was rightly mentioned as a part of the European Green Deal.⁴ By increasing the possibilities for internal review of its own decisions, the Commission will not only show that it is willing to be held to account, as all public authorities should be in a democratic society, but can also make full use of the expertise of civil society organizations in order to improve its own decision-making, always with a view of putting the EU on a path to respecting our planetary boundaries. True accountability will therefore be fundamental to realising the Deal's transformative potential.

Respecting international law commitments often requires changes to longstanding domestic rules and practices that can seem daunting. In the past, there have been concerns that allowing environmental organisations to protect the environment in the EU courts would lead to an unmanageable caseload for the judiciary. Fortunately, the Commission itself has dispelled such concerns through rigorous research into the impact of amending the Aarhus Regulation. According to a study prepared for the Commission, there have only been 23 judicial challenges based on the Aarhus Regulation between 2006 and 2018 and that, even if high impact changes were introduced to the Regulation, the number of requests cannot be expected to rise by more than a factor of three.⁵

This research is also borne out by the experience of the EU Member States that have had to make similar changes to implement the Aarhus Convention. For instance, according to a 2018 study in Germany, "Aarhus cases" only amount to 0.04% of the caseload of the administrative courts.⁶

With this in mind, we look forward to reading the Commission's proposal to amend the Aarhus Regulation, and emphasise that it must bring the EU into compliance with the Aarhus Convention, as detailed in our responses to the Commission's roadmap consultation.⁷

Thank you very much for considering our request.

³ Roadmap on access to justice in environmental matters, Ref. Ares(2020)1406501.

⁴ Communication on the European Green Deal, COM(2019) 640, 11 December 2019, p. 23.

⁵ Study, p. 223-224. See pp. 317-322 for a more detailed analysis of the predicted impact of the amendments proposed by the Commission in its roadmap.

⁶ A study contracted by the German Advisory Council on the Environment (SRU) showed that, in the time period between 2013-2016, only 35 cases per year were brought by environmental NGOs in proceedings that would fall under Arts. 9(2) and (3) of the Aarhus Convention (*Verbandsklagen*). This equates to 0.04% of the overall case load of the German administrative courts. See Alexander Schmidt & Michael Zschiesche "Die Klagetätigkeit der Umweltschutzverbände im Zeitraum von 2013 bis 2016 – Studie im Auftrag des SRU" (March 2018, p. 13, available at: <www.umweltrat.de>).

⁷ Please see our respective responses to the Commission's roadmap consultation: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12165-Access-to-Justice-in-Environmental-matters/F510670>, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12165-Access-to-Justice-in-Environmental-matters/F510647>, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12165-Access-to-Justice-in-Environmental-matters/F510605>.

Yours sincerely,



Jeremy Wates Secretary
General European
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Anais Berthier,
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Zeljka Gracin
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Cc: Frans Timmermans, First Executive Vice-President, European Commission

Virginus Sinkevičius, Commissioner for Environment, Fisheries and Oceans, European Commission

Florika Fink-Hooijer, Director General, DG Environment, European Commission