

To: EU Environment Ministers

Brussels, 19 November 2020

Dear Minister,

Re: Call to strengthen Commission proposal to amend Aarhus Regulation

We are writing in connection with the [Commission's proposal](#) to amend the [Aarhus Regulation](#) on the application of the Aarhus Convention to EU institutions and bodies. As you know, the intention behind this proposal has been to support delivery of the European Green Deal through improving access to justice and to end the EU's longstanding non-compliance with the [Aarhus Convention](#).

We are aware that the German EU Presidency is aiming to adopt a common approach at the December Environment Council. While we are also keen to see the co-decision process move forward without unnecessary delay, this should not be at the expense of achieving a satisfactory outcome – an outcome that leaves no doubt as to the EU's compliance with the Convention.

We believe that in its current form, the Commission proposal not only falls short in addressing the problems of access to justice at the EU level and thereby enabling the public and NGOs to play their full role in supporting better implementation of environmental law; **it also fails to ensure compliance with the Aarhus Convention.**

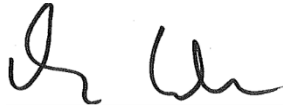
While we welcome the fact that the single biggest obstacle preventing NGOs from seeking access to justice at the EU level has been addressed in the proposal, namely the limitation of the acts that may be challenged to 'measures of individual scope', several other significant problems are not addressed by the Commission proposal. In particular, the proposal:

- Excludes the provisions of EU acts that **explicitly require national implementing measures**, relying on the disproven argument that it is sufficient if the implementing measures can be challenged through national courts as an indirect means to challenge the EU act itself;
- Requires that acts that may be challenged must not only have legally binding effects but also **external effects**, an unnecessary and potentially problematic restriction;
- Excludes Commission decisions on **state aid** from internal review, despite such decisions having major consequences for the environment e.g. through vast state subsidies to fossil fuel industries;
- Fails to include provisions to ensure that **costs** are not prohibitive;
- Does not guarantee that the Court of Justice will review the full procedural and substantive legality in case an internal review decision is challenged in Court, thus limiting the **effectiveness of court review**.

We therefore urge you to seek amendments to the Commission proposal that will address these problems. Further details of our concerns and possible solutions are set out in the attached position paper.

We also urge the Council to take full account of the outcome of the public consultation on this file that has been launched by the Commission, which will only end on 10 December 2020.

Yours sincerely,



Jeremy Wates
Secretary General
European Environmental Bureau



Anais Berthier
Head of EU Affairs
ClientEarth



Zeljka Gracin
Chairwoman
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