EUROPEAN
COMMISSION

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2025/0316 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the eighth session of the Meeting of the Parties to the Aarhus Convention regarding communications ACCC/C/2015/128 concerning access to justice regarding State aid decisions, ACCC/C/2013/96 concerning Projects of Common Interest, ACCC/C/2014/121 concerning Industrial Emissions Directive and ACCC/C/2010/54 concerning National Energy Action Plans

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the EU's behalf at the eighth Meeting of the Parties to the Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention or the Convention)[1]. The proposal relates to the envisaged adoption of draft decision VIII/8e on compliance by the EU with its obligations under the Aarhus Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Aarhus Convention

The Aarhus Convention is a multilateral environmental agreement concluded under the aegis of the United Nations Economic Commission for Europe (UNECE).

The Aarhus Convention was approved on 17 February 2005[2] by the European Community, which also made a Declaration upon signature, notably on its obligations regarding access to environmental information[3]. All Member States are Parties to the Convention in their own right. Regulation (EC) No 1367/2006 (the Aarhus Regulation) as amended by Regulation (EC) 2021/1767 constitutes the core implementation of the Convention with regard to acts of the EU institutions and bodies[4].

2.2. The Meeting of the Parties to the Aarhus Convention

The Parties to the Convention meet every four years and one of the standing items on the agenda concerns Parties' compliance with the Convention. Compliance is assessed by the Aarhus Convention Compliance Committee (the ACCC or the Compliance Committee) established under Article 15 of the Convention. The Committee's findings are not subject to appeal.

The Compliance Committee's findings are submitted for endorsement to the Meeting of the Parties (the MoP) to the Aarhus Convention according to Rule 37 of Decision I/7 on the Review of Compliance[5]. If endorsed, the Committee's findings gain the status of official interpretation of the Aarhus Convention, making them binding on the Contracting Parties and the Convention Bodies.

The Meeting of the Parties generally decides by consensus. If all efforts to reach consensus have been exhausted, decisions on substantive matters are taken by a three-quarters majority

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1 As published on the UNECE website: http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf.

2 Council Decision 2005/370/EC, OJ L 124 of 17.5.2005, p. 1.

3 The EU Declaration is published on the UNECE website under the heading Declarations and Reservations, see https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en.

4 OJ L 264, 25.9.2006, p. 13.

5 Decision I/7 on Review of Compliance. *Rule 37 on Consideration by Meeting of the Parties. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. […],* see https://unece.org/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf.

vote of the Parties present and voting[6]. The EU has 27 votes of the overall 48 votes if all Parties are present.

Prior to the Meeting of the Parties, the EU position on matters for which a Council decision is needed under Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) are discussed at the Council Working Party on International Environmental Issues (WPIEI) and adopted, at the latest, at the last Council meeting prior to the Meeting of the Parties at which it is possible to do so. In 2025, that would be the Environment Council on 21 October 2025.

2.3. The envisaged act of the Meeting of the Parties to the Aarhus Convention

On 17-19 November 2025, during its eighth session, the Meeting of the Parties to the Aarhus Convention is to adopt decision VIII/8e regarding compliance by the EU with the Convention.

The purpose of decision VIII/8e is to determine whether the EU complies with the Aarhus Convention having addressed the findings in communication ACCC/C/2015/128 and recommendations in MoP decision VII/8f regarding the communications ACCC/C/2013/96, ACCC/C/2014/121 and ACCC/C/2010/54; to set out the conditions necessary to ensure compliance; to ask the Party concerned to take urgent measures to ensure compliance; and to request regular reporting by the EU on the measures adopted to ensure it complies with the Convention.

3. POSITION TO BE TAKEN ON THE EU'S BEHALF

3.1. Communication ACCC/C/2015/128

On 17 March 2021, the Committee issued findings with regard to communication ACCC/C/2015/128,[7] made by the non-governmental organisations (NGOs) *Oekobuero* and *GLOBAL 2000*, concerning the possibility for members of the public to challenge decisions on State aid measures taken by the European Commission under Article 108(2) of the TFEU.

The ACCC also made the following recommendation in its findings.

(131) The Party concerned [should] take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under Article 108(2) TFEU that contravene European Union law relating to the environment, in accordance with Article 9(3) and (4) of the Convention.

At its ordinary session in October 2021 the Meeting of the Parties exceptionally decided, by consensus, to postpone taking a decision on the ACCC findings and recommendations in ACCC/C/2015/128 to the next ordinary session of the Meeting of the Parties. At the Meeting of the Parties in 2021, the EU reaffirmed its commitment to fulfilling its obligations under the Aarhus Convention.

Following a call for evidence[8] and multiple rounds of consultations[9] since 2022, the Commission amended the State aid Implementing Regulation and Best Practices Code on 12

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6 Decision I/1 on Rules of Procedure (notably Rule 35 on decision-making), see http://www.unece.org/fileadmin/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.2.e.pdf.

7 https://unece.org/sites/default/files/2021-03/C128_EU_findings_advance%20unedited.pdf

8 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14276-EU-environmental-and-State-aid-law-access-to-justice-in-relation-to-State-aid-decisions-regulation-_en

May 2025 by introducing an internal review mechanism similar to the one applicable under the Aarhus Regulation but adapted to the specific characteristics of State aid.

In its draft report on request ACCC/M/2021/4 of the MoP concerning compliance by the European Union[10], the ACCC concludes that the EU has fulfilled the recommendations set out in ACCC/C/2015/128.

In view of the above considerations, at the upcoming eighth session of the Meeting of the Parties, **the EU should endorse decision VIII/8e as regards communication ACCC/C/2015/128 and welcome the ACCC's draft report.**

3.2. Decision VII/8f

At its seventh session in 2021, the MoP adopted decision VII/8f[11], among other things, reaffirming its decision V/9g. The decision included recommendations regarding ACCC findings on communications ACCC/C/2010/54, ACCC/C/2013/96 and ACCC/C/2014/121.

3.2.1. Communication ACCC/C/2010/54

At its fifth session in 2014, the MoP endorsed the findings of the ACCC, saying that the EU had failed to comply with the Convention as regards communication ACCC/C/2010/54 in relation to Ireland's National Renewable Energy Action Plan (NREAP)[12]. The MoP recommended that the EU 'adopt a proper regulatory framework and/or clear instructions for implementing Article 7 of the Convention with respect to the adoption of NREAPs.'

Subsequent ACCC reports[13] have found that the EU has not yet fulfilled the requirements of paragraph 3 of decision V/9g. Following the request from the MoP concerning compliance by the EU (ACCC/M/2017/3), the EU reported on the measures taken to address the recommendations in decision V/9g as regards Communication ACCC/C/2010/54 in October 2018, 2019, and 2020[14]. In particular, the Commission informed the Committee of the entry into force of Article 10 of the Governance Regulation[15] relating to public involvement in the preparation by Member States of National Energy and Climate Plans (NECPs), which, inter alia, have replaced NREAPs, and of its work in helping Member States to fulfil their

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9 Targeted consultation: https://competition-policy.ec.europa.eu/state-aid/publications/targeted-consultation_en.
Consultation on the draft amendments: 2025 state aid environmental matters - European Commission.

10 2 ECE/MP.PP/2021/2, para. 58, https://unece.org/sites/default/files/2022-02/ECE.MP_.PP_.2021.2_excerpt_0.pdf.

11 Decision_VII.8f_eng.pdf

12 Decision V/9g on compliance by the E U, link: United Nations.

13 Report of the ACCC on Compliance by the European Union with its obligations under the Convention, https://unece.org/DAM/env/pp/mop6/English/ECE_MP.PP_2017_39_E.pdf.

14 ACCC/M/2017/3 European Union | UNECE

15 OJ L 328, 21.12.2018, p. 1. *Article 10. **Public consultation.** Without prejudice to any other Union law requirements, each Member State shall ensure that the public is given early and effective opportunities to participate in the preparation of the draft integrated national energy and climate plan — as regards the plans for the 2021 to 2030 period, in the preparation of the final plan well before its adoption — as well as of the long-term strategies referred to in Article 15. Each Member State shall attach to the submission of such documents to the Commission a summary of the public's views or provisional views. In so far as Directive 2001/42/EC is applicable, consultations undertaken on the draft in accordance with that Directive shall be deemed to satisfy the obligations to consult the public under this Regulation. Each Member State shall ensure that the public is informed. Each Member State shall set reasonable timeframes allowing sufficient time for the public to be informed, to participate and express its views. Each Member State shall limit administrative complexity when implementing this Article.*

obligations under the Aarhus Convention in the context of that Article 10, to be read in conjunction with recital 28 of the Governance Regulation.

In its report on decision VII/8f[16], after reviewing the final progress report submitted by the EU[17] to ACCC on 1 October 2024, the ACCC recognises that the *Guidance to Member States for the update of the 2021-2030 national energy and climate plans*[18] amounts to *instructions* for the purposes of paragraph 2(a) of decision VII/8f. Consequently, the ACCC concluded that the EU has managed to comply with the findings with respect to ensuring that the arrangements for public participation in the preparation of the Member States' NECPs are transparent and fair, the requirement of allowing early public participation 'when all options are open', and the obligation to ensure that due account is taken of the outcome of public participation. However, according to its same report, the ACCC has concluded that the EU has not fully met the requirements with respect to providing the public with the necessary information to effectively participate in the procedures, in particular the preparation of the draft updated NECP itself. As regards fulfilling the requirements of paragraph 2(b) of decision VII/8f concerning the manner in which the Commission evaluates NECPs accordingly, the ACCC recognised the significant progress made. However, it considers that the Commission should explicitly incorporate into their assessment criteria, the requirement that public participation takes place 'when all options are open'. The upcoming revision of the Governance Regulation offers the opportunity to further work on the remaining elements of the ACCC's findings.

In view of the above considerations, at the upcoming eighth session of the Meeting of the Parties, **the EU should endorse the draft decision VIII/8e where it follows up on ACCC/C/2010/54**, subject to the provisions of this Council Decision. The EU should ensure, that the MoP recognises in its decision 'significant progress in ensuring compliance with the findings in Articles 6(4) and 7 of the Convention'.

3.2.2. Communication ACCC/C/2013/96

On 28 October 2013, the European Platform against Windfarms submitted communication ACCC/C/2013/96[19] to the ACCC alleging a failure by the EU to comply with its obligations under Articles 3 (2), 4 and 7 of the Convention in relation to the European Commission's adoption on 14 October 2013 of a list of 248 Projects of Common Interest (PCI)[20].

In its findings of 9 November[21] 2020 the ACCC recommended that the EU *'take the necessary legislative, regulatory or other measures and practical arrangements to ensure that in public participation procedures within the scope of article 7 of the Convention carried out under the TEN-E Regulation, or any superseding legislation: (a) The main consultation documents, including the notification to the public, are provided to the public in all the official languages of the Party concerned; (b) Due account of the outcomes of the public participation is taken, in a transparent and traceable way, in the decision-making.'*

At its seventh meeting in 2021, the MoP adopted decision VII/8f, endorsing the findings of the Committee with respect to communications ACCC/C/2013/96 on compliance by the EU

16 Decision VII/8f concerning the European Union | UNECE

17 Final progress report by the EU, frPartyVII.8f_01.10.2024_report.pdf.

18 Guidance to MS for updated NECPs 2021-2030 - European Commission

19 ACCC/C/2013/96 European Union | UNECE

20 OJ L 115, 25.4.2013, p. 39, no longer in force.

21 ACCC findings and recommendations with regard to communication ACCC/C/2013/96 concerning compliance by the European Union, ECE/MP.PP/C.1/2021/3.

with its obligations under the Convention and requesting the EU to submit a plan of action and subsequent progress reports on the implementation of recommendations.

Since then, the Commission has taken a number of steps towards providing additional participatory opportunities, such as:

(1) public consultation on the methodology to be used to assess Projects of Common and of Mutual Interest[22];

(2) hybrid meetings, open to the public during the selection process;

(3) presenting the results of the public consultation on the candidate projects to the regional groups;

(4) making available to public the meetings where the results of the public consultation on the candidate projects are presented to the regional groups, and their recordings.

The EU reported on the implementation of the MoP recommendations concerning communication ACCC/C/2013/96 in its final progress report of 1 October 2024. Nevertheless, in its draft report on the progress made by the EU, the ACCC concluded that the EU has not yet fully met the requirements of decision VII/8f.

In view of the above, at the upcoming eighth session of the MoP, **the EU should** reiterate the understanding that the additional participatory opportunities introduced in the TEN-E process amount to practical arrangements ensuring that due account is taken of the outcomes of the public participation in line with decision VII/8f, in a transparent and traceable way, in the decision-making under the revised TEN-E Regulation. Further, the EU should reiterate that the main consultation documents, including the notification to the public, are provided to the public in all the official languages of the parties concerned, as the TEN-E Regulation requires that all public consultation documents, manuals of procedures, and application and technical documents made available in the promoters websites are translated in all languages of concerned Member States. The EU should, nevertheless~~,~~ endorse **draft decision VIII/8e where it follows up on ACCC/C/2013/96** in the remaining aspects, subject to the draft Council decision, provided that the MoP recognises the improvements made by the EU to meet the requirements of paragraph 8 (a) and (b) of decision VII/8f and comply with Articles 3(2), 4 and 7 of the Convention. Specifically:

– the organisation of open meetings that enable public participation of interested parties in the PCI selection process, in line with paragraph 8(a);

– the centralisation of projects websites under the transparency platform and its link to the project websites where the translated version of the documents can be found, in line with Paragraph 8(b).

3.2.3. Communication ACCC/C/2014/121

On 12 December 2014, the NGO, the International Institute for Law and the Environment submitted communication ACCC/C/2014/121[23] alleging the failure of the EU to comply with the Convention's provisions on public participation in decision-making. In particular, they alleged that the Industrial Emissions Directive[24] did not fulfil the requirements for public

[22] Consultation on the list of candidate Projects of Common Interest and Projects of Mutual Interest in all infrastructure categories under Regulation (EU) 2022/869 - European Commission.

[23] ACCC/C/2014/121 European Union | UNECE

[24] OJ L 334, 17.12.2010, p. 17.

participation in decision-making stipulated in Article 6(1)(a) and (10) of the Convention in cases where a permit issued under the Directive is reconsidered or updated.

In its findings of 14 September 2020[25], the ACCC recommended that the EU '*put in a place a legally binding framework to ensure that, when a public authority in a Member State of the Party concerned reconsiders or updates permit conditions pursuant to national laws implementing article 21(3), (4) and (5)(b) and (c) of the Industrial Emissions Directive, or the corresponding provisions of any legislation that supersedes that Directive, the provisions of article 6(2)(9) will be applied, mutatis mutandis and where appropriate, bearing in mind the objectives of the Convention'*.

At its seventh session in 2021, the MoP adopted decision VII/8f, endorsing the findings of the Committee with respect to communications ACCC/C/2014/121 on compliance by the EU with its obligations under the Convention and requesting the EU to submit a plan of action and subsequent progress reports on the implementation of recommendations.

The EU reported on the implementation of the MoP recommendations concerning communication ACCC/C/2014/121 in its final progress report of 1 October 2024. In its draft report on the decision VII/8f of the MoP concerning compliance by the EU, the ACCC concluded that the EU has now met the requirements regarding communication ACCC/C/2014/121 by amending the Industrial Emissions Directive.

In view of the above, at the upcoming eighth session of the MoP, **the EU should endorse draft decision VIII/8e where it follows up on ACCC/C/2014/121 and welcome the ACCC's draft report,** subject to the provisions of this Council Decision.

3.3. ACCC conclusions

In its draft reports on the progress made by the EU to implement request ACCC/M/2021/4 of the MoP concerning compliance by the European Union and decision VII/8f, the ACCC:

(1) concludes that the EU has met the requirements regarding communication ACCC/C/2014/121 by amending the Industrial Emissions Directive;

(2) concludes that the EU has met the requirements regarding communication ACCC/C/2015/128 by introducing an internal review request mechanism similar to the one under the Aarhus Regulation but adapted to the specific characteristics of the State aid framework;

(3) welcomes the significant progress made to date but it considers that the EU has not yet met certain requirements regarding the original communications on ACCC/C/2010/54 and recommends to the MoP that it reaffirms its decision VII/8f;

(4) welcomes the significant progress made to date but it considers that the EU has not yet met certain requirements regarding the original communications on ACCC/C/2013/96 and recommends to the MoP that it reaffirms decision VII/8f.

In view of the above, following a consistent practice regarding these communications, the Commission recommends that the EU:

– endorses draft decision VIII/8e;

– welcomes the ACCC's draft reports as regards the findings that the EU has met the requirements regarding communications ACCC/C/2015/128 and ACCC/C/2014/121;

[25] Findings and recommendations with regard to communication ACCC/C/2014/121 concerning compliance by the European Union, ECE/MP.PP/C.1/2020/8

– welcomes acknowledgement of progress by the EU as regards communications ACCC/C/2010/54 and ACCC/C/2013/96 and commits itself working towards addressing the outstanding matters in those cases;

– delivers a statement highlighting the progress achieved and highlighting the complexities in addressing the outstanding matters related to communication ACCC/C/2013/96.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the TFEU makes provision for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law but are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[26].

4.1.2. Application to the present case

The MoP is a body set up by an agreement, namely the UNECE.

The act the MoP is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 15 of the Aarhus Convention and the provisions of decision I/7 on the review of compliance, in particular, Rule 37 of it[27].

The envisaged act does not supplement or amend the institutional framework of the Convention.

The procedural legal basis for the proposed decision is therefore Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the EU's behalf.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to environmental policy.

The substantive legal basis for the proposed decision is therefore Article 192(1).

4.3. Conclusion

The legal basis for the proposed decision should be Article 192(1) TFEU, in conjunction with Article 218(9) TFEU.

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[26] Judgment of the Court of Justice of 7 October 2014, *Germany v Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

[27] Quoted above.

2025/0316 (NLE)

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 17 February 2005, the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention)[28] was approved, on behalf of the European Community, by Council Decision 2005/370/EC.[29]

(2) Pursuant to Article 15 of the Aarhus Convention, the Aarhus Convention Compliance Committee (the Compliance Committee) was established. The Compliance Committee is competent to review compliance by the Parties to the Aarhus Convention of their obligations under that Convention.

(3) The Meeting of the Parties (MoP), during its eighth session on 17 -19 November 2025, is to adopt decision VIII/8e concerning compliance by the EU with its obligations under the Convention, including the findings in relation to communication ACCC/C/2015/128 in relation to access to justice in environmental matters regarding final State aid decisions and recommendations in decision VII/8f in relation to National Energy and Climate Plans, Projects of Common Interest and the Industrial Emissions Directive. If the findings are adopted by the MoP, they would gain the status of official interpretation of the Aarhus Convention and be binding on the Parties to the Convention and the Aarhus Convention bodies.

(4) The envisaged decision of the MoP thus has legal effects.

(5) It is necessary to establish the position to be taken on the EU's behalf at the eighth session of the MoP.

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28 OJ L 124, 17.5.2005, p. 4.

29 Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the EU's behalf at the eighth session of the MoP concerning compliance by the EU with its obligations under the Aarhus Convention in relation to access to justice in environmental matters regarding final State aid decisions, as addressed in communication ACCC/C/2015/128, shall be to endorse draft decision VIII/8e as well as to welcome the report submitted by the ACCC on request ACCC/M/2021/4 of the MoP concerning compliance by the European Union.

Article 2

The position to be taken on the EU's behalf at the eighth session of the MoP concerning compliance by the EU with its obligations under the Aarhus Convention in relation to National Energy and Climate Plans (NECPs), Projects of Common Interest (PCIs) and the Industrial Emissions Directive, as addressed in communications ACCC/C/2010/54, ACCC/C/2013/96 and ACCC/C/2014/121 and in decision VII/8f, shall be to endorse draft decision VIII/8e, if the following points are reflected in that decision:

– in relation to NECPs, the decision acknowledges and welcomes that the EU has made significant progress to ensure compliance with the Compliance Committee's findings and recommendations on communication ACCC/C/2010/54 in relation to Articles 6 (4) and 7 of the Convention, and that the EU has complied with part of those findings as regards adoption of *instructions* for the purposes of paragraph 2(a) of decision VII/8f;

– in relation to PCIs, the decision recognises the improvements made by the EU, through practical arrangements, to fulfil the requirements of paragraphs 8 (a) and (b) of decision VII/8f and to comply with Articles 3 (2), 4 and 7 of the Convention.

Article 3

Minor technical changes to the positions referred to in Articles 1 and 2 may be agreed upon by representatives of the EU, in consultation with Member States, on the spot without a further decision of the Council.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President