# DECISIONS

## COUNCIL DECISION (EU) 2017/1346

**of 17 July 2017**

**on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention as regards compliance case ACCC/C/2008/32**

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 Environamental Matters ([1]) ('the Aarhus Convention') was approved, on behalf of the European Community, by Council Decision 2005/370/EC ([2]).

(2) The Union implemented the obligations of the Aarhus Convention with regard to its institutions and bodies notably by way of Regulation (EC) No 1367/2006 of the European Parliament and of the Council ([3]).

(3) Pursuant to Article 15 of the Aarhus Convention, the Aarhus Convention Compliance Committee ('the Committee') was established, which is competent to review the Parties' compliance with the provisions of the Aarhus Convention.

(4) On 17 March 2017, the Union received findings in case ACCC/C/2008/32 regarding access to justice at Union level ('the findings'). In paragraph 123 of the findings, the Committee held that 'the Party concerned fails to comply with Article 9, paragraphs 3 and 4, of the Convention with regard to access to justice by members of the public because neither the Aarhus Regulation, nor the jurisprudence of the CJEU implements or complies with the obligations arising under those paragraphs.'

(5) The Aarhus Convention bodies have been made aware by the Declaration that the Union made upon signature and reiterated upon approval of the Aarhus Convention that '[w]ithin the institutional and legal context of the Community […] 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.'

(6) One of the findings in case ACCC/C/2008/32, namely that the Union fails to comply with paragraphs (3) and (4) of Article 9 of the Aarhus Convention, has been incorporated into draft Decision VI/8f, which will be submitted to the sixth session of the Meeting of the Parties to the Aarhus Convention to take place in September 2017 in Budva, Montenegro.

(7) The Union should explore ways and means to comply with the Aarhus Convention in a way that is compatible with the fundamental principles of the Union legal order and with its system of judicial review.

([1]) OJ L 124, 17.5.2005, p. 4.
([2]) 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).
([3]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

(8) In view of the separation of powers in the Union, the Council cannot give instructions or make recommendations to the Court of Justice of the European Union ('the Court of Justice') concerning its judicial activities. Therefore, the recommendations in draft Decision VI/8f related to the Court of Justice and its jurisprudence cannot be accepted.

(9) The Union continues to fully support the important objectives of the Aarhus Convention.

(10) The Union should determine the position to be taken at the sixth session of the Meeting of the Parties to the Aarhus Convention with regard to draft Decision VI/8f,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The position to be taken by the Union at the sixth session of the Meeting of the Parties to the Aarhus Convention with regard to draft Decision VI/8f concerning compliance by the Union with its obligations under the Aarhus Convention shall be to accept draft Decision VI/8f subject to:

— deleting the last part of paragraph 6 of draft Decision VI/8f and replacing 'endorses' with 'takes note of', so that the paragraph would then read as follows: 'Takes note of the finding of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) that the Party concerned fails to comply with Article 9, paraghraphs 3 and 4, of the Convention.';

— inserting the words 'to consider' after the words 'Recommends to the Party concerned' in the heading of paragraph 7 of draft Decision VI/8f, which would then read: 'Recommends that the Party concerned considers that:';

— deleting the words 'to the Court of Justice of the European Union' in point (i) of paragraph 7 (b) of draft Decision VI/8f; and

— deleting point (c) of paragraph 7 of draft Decision VI/8f.

2. Other minor amendments in line with the approach of this Decision can be agreed at coordination on the spot and in light of possible negotiations on draft Decision VI/8f.

*Article 2*

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

Done at Brussels, 17 July 2017.

*For the Council*
*The President*
T. TAMM