Sixth session of the Meeting of the Parties to the Aarhus Convention
(Budva, Montenegro, 11-13 September 2017)

- Contribution by the European Union -

Agenda item 7 b): Compliance mechanisms

Draft decision VI/8f concerning compliance by the European Union with its obligations under the Convention (ECE/MP.PP/2017/25)

The EU would like to thank the Bureau for the preparation of draft Decision VI-8f concerning compliance by the European Union with its obligations under the Convention, as well as the Compliance Committee for all the preparatory work leading to this draft Decision.

We would like to reassure the Parties to the Aarhus Convention about the EU's unflagging attachment to the principles of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

The EU recalls that it has previously endorsed Decision V/9g and reaffirms its commitment to implement it.

We would like to focus here on case ACCC/C/2008/32 on compliance by the EU as regards Article 9 paragraphs 3 and 4 of the Aarhus Convention.

The Aarhus Convention Compliance Committee (ACCC) found the EU to be in breach of the Convention's rules on access to justice. In particular, the ACCC was of the view that neither the case-law by the Court of Justice of the European Union on the standing criteria for private persons before the EU Courts, nor the 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, which provides for administrative review of individual environmental acts by EU institutions and bodies, would grant environmental organisations and members of the public a standing that would be sufficient for the purposes of the Convention.

Both on signature and on approval of the Convention the EU made Declarations, in which it was stated that, whilst the EU intended the Convention to cover its own institutions alongside national public authorities, it also made clear that “Within the institutional and legal context of the Community and given also the provisions of the Treaty of Amsterdam with respect to future legislation on transparency, the Community also declares 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.”
Legal redress is granted in the Union by a “complete system of legal remedies and procedures” consisting of the EU Courts, namely the European Court of Justice (CJEU) and the General Court, in conjunction with all the national courts of the Union's Member States. Addressees of EU acts may challenge the legality of that act before the General Court, and the same right is open to any person who can demonstrate that they are directly and individually concerned by that act. Moreover, regulatory acts may be challenged by persons who are directly concerned by them, when the regulatory act does not entail implementing measures.

In addition, any national court of a Member State may, if it considers it necessary, refer a question concerning the validity or interpretation of acts of the EU institutions to the CJEU. Where there is no appeal possible from the decision of the national court, then the national court must, generally speaking, refer the question to the CJEU.

It is against that background that the EU will continue to 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, taking into account concerns expressed within the Convention.

In this respect, we would like to underline that in view of the separation of powers it is not possible in the EU legal order for instructions to be given to the CJEU or to the General Court regarding their judicial activities; and that the Union has an internal system of distributed competences between the Member States and the EU that must be taken into account.

In light of these considerations, and bearing in mind that draft Decision VI/8f only deals with one of the ACCC findings in case ACCC/C/2008/32, the EU is in a position to accept it, subject to the incorporation of the following amendments:

− amending paragraph 6 of the draft Decision to 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, paragraphs 3 and 4, of the Convention”.
− amending the heading of paragraph 7 to read as follows: "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); and
− deleting point (c) of paragraph 7.

The EU will continue to faithfully honour its obligations under the Aarhus Convention, within its institutional framework and in close cooperation with its Member States, and will keep on working towards its effective implementation.

______________________

1 Case C-583/11 P, Inuit Tapariit Kanatami, at paragraph 92 of the judgement.