Statement of Norway

Thank you Chair,

Norway takes this opportunity to thank the Compliance Committee for their continued efforts to contribute to ensuring that the obligations of the Convention are adhered to by the Parties by thoroughly considering general issues, submissions and communications through transparent and fair procedures and reporting their conclusions and recommendations to the Meeting of the Parties for consideration. Norway would like to express its support for the draft decisions prepared by the Bureau on general issues of compliance and the compliance of individual Parties.

The draft decision VI/8f concerning compliance by the European Union with its obligations under the Convention is drafted in accordance with the long-standing and consistent practice of the Meeting of the Parties to endorse the findings of the Compliance Committee and recommend to the Party concerned to take actions in accordance with the recommendations of the Committee.

The European Union has proposed that the Meeting of the Parties in this particular decision deviates from this long-standing, consistent practice to accommodate the institutional and legal context of the Community, including the fundamental principles of the Union legal order and with its system of judicial review. The Union proposes that the Meeting of the Parties – instead of endorsing the finding of the Compliance Committee -
should only take note of it. The Union further proposes that the Meeting of the Parties should only take note of the finding that the Union fails to comply with article 9, paragraphs 3 and 4, of the Convention, not the reasons for its non-compliance. The Union additionally seems to propose that the Meeting of the Parties should only recommend in general that the Union considers that the Union institutions within their competences take the necessary steps to comply with article 9, paragraphs 3 and 4 of the Convention. The Union finally proposes to exclude references to the Court of Justice of the European Union from the recommendations.

By proposing these deviations from the long-standing, consistent practice of the Meeting of the Parties, the European Union seems to seek for itself as a Party to the Aarhus Convention a larger margin of appreciation with regard to the extent of their obligations and the need to implement measures necessary to comply with their obligations under the Convention.

The question is whether these deviations from the long-standing, consistent practice of the Meeting of the Parties are warranted and desirable.

The arguments put forward by the European Union do not make it clear to us that the draft decision challenges the fundamental principles of the Union legal order and its system of judicial review. It addresses specific provisions of EU secondary law and jurisprudence on standing. The draft decision refers to the finding and recommendations of the Compliance Committee, which concludes that neither the jurisprudence nor the Aarhus Regulation provides access to justice that fully meet the requirements of Article 9 paragraphs 3 and 4 of the Aarhus Convention, and recommends that all relevant EU institutions within their competences take the steps necessary to provide access to justice in accordance with the EU obligations under the Convention. It does not dictate what measures the EU should take, it only provides examples of possible measures which could be sufficient. Improvements in administrative review procedures is
one of the measures which could be sufficient to bring EU back in compliance. No changes in EU Treaties or the jurisprudence of the CJEU would then be required.

The European Union is a Party to the Convention and as such obligated to comply with its provisions, including Article 9 paragraphs 3 and 4. The European Union and the Compliance Committee paint a very different picture of the impact of the Committee's finding and recommendations on the Treaty of the Functioning of the European Union, the fundamental principles of the Union legal order and its system of judicial review. Even if we were to rely solely on the picture of the European Union, and thus allow them a wide scope to define for themselves the extent of their obligations under the Convention and the need for measures to comply, we cannot overlook the fact that under international law, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

We are aware of the challenges faced by Parties being subject to communications and findings of non-compliance and recommendations for measures to rectify the shortcomings. Communications are however a result of challenges faced by members of the public trying to exercise the rights that we as parties to the Aarhus Convention signed up to guarantee. The importance of these rights are emphasized by the Sustainable Development Goals, including but not limited to Goal 16. The need for continued efforts to implement these rights are highlighted in the draft decisions that the Meeting of the Parties is invited to adopt, including the draft decision on access to justice, which encourages further considerable efforts to improve the effectiveness of public access to justice in environmental matters, inter alia by removing as the case may be barriers such as standing and scope.

The Compliance Mechanism of the Aarhus Convention is one of the strongest and most efficient among the mechanisms of environmental conventions. To keep it that way will require continued shared efforts from
the public to use it wisely, the Compliance Committee to carefully consider the cases brought before it through transparent and fair procedures, the Parties to actively engage and respect the outcome through the decision of the Meeting of the Parties in line with long-standing and consistent practice. If in very exceptional circumstances the Meeting of the Parties were to consider deviating from this practice, they need to consider very carefully whether that is warranted and desirable, and not only carefully consider the consequences of its decisions on the Party subject to the decision on compliance, but also for the other Parties, the Convention, its bodies and mechanisms and – not least - for those depending on the rights of the Convention.

Norway therefore strongly prefers the draft decision from the Bureau. We urge Parties to carefully consider whether it is warranted to deviate from the long-standing and consistent practice of the Meeting of the Parties.

The proposal to replace the word "endorse" in paragraph 7 with the words "take note of" and the proposal to introduce in the introduction of paragraph 7 the words "to consider" are of particular concern to us. The need for these amendments in addition to the deletion of the last part of paragraph 6 and the references to the CJEU in paragraph 7 is unclear, and so are their effect.

[It needs to be clear that the EU is in non-compliance, and that necessary steps need to be taken in good faith to rectify the situation.]

Given the unclearities, the importance of the matter, the different views and also the importance of reaching consensus on the decision, Norway is of the opinion that the matter should be further discussed in an informal group. This could assist us in thoroughly exploring the reasons and effects of the amendments proposed by the EU and possible ways forward to accommodate all the different interests that are at stake here.
Norway therefore proposes that the Chair convenes an informal group for this purpose, to work when the plenary is not in session, as it would otherwise be difficult for parties with very small delegations to participate.

Thank you, Chair