

**Convention on Access to Information, Public Participation in Decision-making and Access to
Justice in Environmental Matters: 20th meeting of the
Working Group of the Parties (WGP 20)
(Geneva, 15–17 June 2016)**

- Statements by the EU and its Member States -

Agenda item 3(a): Access to Information

The EU and its Member States would like to thank the Secretariat and the Task Force on Access to Information and its Chair for preparing the Report of the fourth meeting of the Task Force and the Note by the Chair.

We appreciate the work done by the Task Force so far on Access to Information and for the identification of global, regional and subregional processes of relevance.

We welcome the suggestions for substantive issues to be given priority in the next intersessional period. Given the large number of issues suggested, we would also welcome a discussion on which matters among those should be given a higher priority. A priority order will enable the Task Force to take issues in turn, matching available resources, rather than a large number of issues at once, while also taking into account the extra year until the next MoP.

Recalling the Maastricht Declaration, we support the suggestion for focus on access to environment-related product information. With regard to the suggestion to focus also on the effective protection of environmental whistleblowers we look forward to additional information as to what kind of concrete activities are envisaged in this respect.

Concerning the suggestion for the active dissemination to the public of all necessary information in case of any imminent threat to human health and the environment, we would like to invite the Task Force to take into account the outcome of the Eighth Ministerial Conference Environment for Europe that was held on June 8-10 in Batumi.

Finally, we also support the suggestion for the active dissemination of environmental information with a focus on the update of the Recommendations that were adopted through decision II/3 of the Meeting of the Parties in Almaty in 2005, linking the re-use of public sector information, with a view to more effective use of electronic information tools to provide public access to environmental information. In this regard we are interested to learn more about the concrete plans to update the Clearinghouse Mechanism and whether any new tools for electronic dissemination of information are envisaged.

Agenda item 3(b): Public Participation in Decision-making

The EU and its Member States would like to thank the Secretariat and the Task Force on Public Participation in Decision-making and its Chair for preparing the Report of the sixth meeting of the Task Force and the Note by the Chair.

We appreciate the work done by the Task Force so far on Public Participation in Decision-making.

We welcome the suggestions for substantive issues to be given priority in the next intersessional period, taking into account, where appropriate, relevant parts of the Maastricht Recommendations.

Agenda item 3(c): Access to Justice

The EU and its Member States would like to thank the Secretariat and the Task Force on Access to Justice and its Chair for the work done to date.

We bear in mind that in particular, target 16.3 of the Sustainable Development Goals calls for promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

We take note of the various challenges identified by the Task Force regarding uncertainties of legal frameworks with regard to standing and the scope of review, financial barriers to access to justice, lack of timeliness in review procedures and effective remedies, insufficient awareness of the public and legal professionals about the Convention, as well as deficiencies in case statistics.

The EU and its Member States agree with the Chair of the Task Force that the future work of the Task Force will benefit from even more focused discussions and a prioritization of key issues. In our view a concentration on concrete actions and best practices will contribute to the promotion and implementation of an effective Access to Justice in the UNECE region.

We welcome the proposal by the Task Force to prioritise the following topics during the next intersessional period:

- Access to justice in information cases,
- Possibilities for the public to challenge acts or omissions that contravene permit requirements or laws relating to the environment, while we believe that we should focus mainly on Article 9 paragraph 3 of the Convention,
- Financial barriers to access to justice.

We believe that, depending on availability of resources, other topics could be considered to be included in the work programme for the next intersessional period, including outreach activities such as networking and cooperation with relevant international fora, taking also into account the extra year until the next MoP.

To streamline the work, reduce workload, increase efficiency and avoid any inconsistencies between the decision on the new work programme and four decisions on different substantive topics (access to information; public participation; access to justice and PPIF), we propose to discontinue producing these separate four decisions and incorporate their key elements (extension of the mandates; lead countries; specific calls) in the introductory part of the decision on the new work programme and refer to priority activities which are already included in the Annex of the work programme.

As this is the first Task Force that we are discussing today, we make this statement now, so that Parties can think it over; we will come back on this proposal when we discuss the future work programme under item 8a.

Agenda item 3(d): Genetically modified organisms

The EU and its Member States would like to thank the Aarhus Convention Secretariat for the preparation of the GMOs section within the report on Implementation of the work programme 2015-2017.

We welcome in particular the concrete results delivered in the area of checklists of measures that may be helpful to Parties for ratification and implementation of the relevant provisions regarding LMOs/GMOs through the ongoing cooperation between the UNECE Secretariat and the secretariat of the Cartagena Protocol on Biosafety.

We also welcome the ratification of the GMO amendment to the Aarhus Convention by Georgia and France, following which we only need 3 more ratifications for the entry into force of the GMO amendment. We call on those Parties who have not yet ratified the GMO amendment to complete their national ratification procedures as soon as possible.

Agenda item 4(a): Compliance mechanism

The EU and its Member States would like to thank the Compliance Committee and the Secretariat for all the work done to date.

We take note of the reports of the Committee on its various meetings held during this year.

We would like to thank the Chair of the Compliance Committee for his note on promoting effective compliance with the Convention (doc. AC/WGP-20/Inf.4).

In view of the growing number of cases we welcome the initiatives by the Committee to manage its workload more effectively and to provide greater assistance to Parties in their implementation of MOP decisions on compliance cases.

We welcome the measures to promote the effective review of compliance, under I. sub (a) to (c) and the measures to promote effective follow-up of decisions of the Meeting of the Parties on compliance under II, sub (a) to (c) mentioned in the Chair's note and we recommend that they will be continued during the next intersessional period.

Regarding the proposals under I. sub (d), (e), (f), (g) and (h) of the Chair's note, in line with our statement at the 19th Working Group of the Parties that we would continue to provide feedback and constructive suggestions to the Committee and the Secretariat, the EU and its Member States have the following remarks:

With regard to para (d) we welcome the Committee's work in continuing to innovate and find ways of improving the compliance mechanism in response to decision V/9, in particular the new practices associated with the preliminary admissibility procedure. Although the experience has been positive, there are some aspects that we consider could be further improved.

- There does not at present appear to be scope for communications to be found partially inadmissible, where some allegations are admissible and others are not. The practice appears to be that if there is any admissible allegation included in the communication, the whole communication is forwarded to the Party concerned, even if, for example, most of the communication is inadmissible. Introducing greater flexibility by allowing parts of a

communication to proceed to the next stage would ensure that the Committee gets the full benefit of being able to scrutinize admissibility more closely at an earlier stage. It would also avoid the Party concerned having to submit, and the Committee having to consider, a substantive response on inadmissible points. It would also reduce the need for admissibility arguments to be repeated, because Parties are not aware whether some of the arguments made at the pre-admissibility stage have been accepted by the Committee or not. Given the volume of communications, we believe that such an approach would help make the Committee's work more efficient.

- It would also assist all parties in a communication for the Committee if the Committee would give a reasoning when it finds a communication to be admissible. Both Party concerned and communicant will be able to understand the decision and enable more reasoned arguments to be provided at the later stages, avoiding repetition of the same points on admissibility and focusing on the relevant allegations. Again we consider this to be a more efficient way of working for the Committee.

With regard to para (e) we also welcome the Committee and the Secretariat making more use of technology to assist its work, including, where needed, the participation of experts by audio or video conference. This is a very practical way of finding a more efficient way of working.

Coming to para (f), we call upon the Parties to start implementing draft recommendations as soon as possible after the Compliance Committee and the Party have agreed on them. The implementation of mutually agreed draft recommendations should not be delayed until endorsement by the Meeting of the Parties. However, we are concerned at the recent practice that is developing at hearings for the Committee, to ask Parties whether they will already agree to the Committee's findings and recommendations before they have been drafted. This is at odds with decision I/7 which clearly contemplates circumstances where findings are referred to the Meeting of the Parties and we question the development of this practice.

We would further like to draw the Committee's attention to a growing need that content published on the UNECE website in the framework of compliance cases be screened before online publishing. We acknowledge in this regard the work already done by the secretariat on protecting copyrighted documents. Indeed, there have been recurrent instances of inappropriate remarks by Communicants regarding the Party's officials instructing the compliance case, by adding the personal data of these persons, which are posted online. However, the UNECE website should not become a forum for slanderous remarks and personal data should be protected. Therefore, we call upon the Committee to adopt appropriate rules to prevent such cases in the future.

On para (g) we welcome that the Committee is continuing its work on revising the *Guidance Document on the Aarhus Convention Compliance Mechanism*; we welcome that the Committee has agreed its procedure for new communications and has made this available on the website of the Convention.

With respect to para (h) regarding the proposal to organize for the Compliance Committee's findings in a new database we would like to receive more information on the problem to be solved, the costs of construction and maintenance of such a database, and whether there are alternative solutions within the existing Aarhus Clearing House Mechanism or via adding refinement labels to the UNECE webpages dedicated to the findings of the Compliance Committee (e.g. through the already existing search function of the UNECE website).

Agenda item 5: Promotion of the principles in international fora

The EU and its Member States welcome the note prepared by the Chair of the thematic session on PPIF with regard to possible elements for future work (AC/WGP-20/Inf.5).

We recognize that the promotion of the Convention in international fora remains an issue that deserves attention at the level of the Working Group of the Parties, rather than in a separate Taskforce. We are also aware that although there has been progress in the field of transparency and involving stakeholders, still a lot of progress can be made in environment-related issues where stakeholder involvement is not automatically provided for.

In this regard, we would welcome a debate in the 21st Working Group of the Parties on the issue of (Environment and) Health, with a view to the upcoming Environment and Health ministerial meeting in the Fall of 2017.

With respect to the proposal to include as a new topic in the future work programme the promotion of the principles in the forests sector, we would like to see some substantiation. We are aware that there has already been significant work under the UN Forum on Forests to recognize and promote the involvement of stakeholders in the decision adopted at its eleventh session in May 2015. We would like to learn why this sector is selected as a priority for the intersessional period and if major stakeholders from this sector would be interested to participate in a dialogue with our Convention.

Draft elements of the work programme 2018-2021

With regard to the corresponding section in the draft work programme 2018-2021 (section VIII.2), we believe that the focus in the intersessional period should be on expanding the exchange with the international fora on Climate change, Trade and Biosafety and monitoring the progress in cooperation with IFIs, UNEP and UNEA. For these topics the methods of work as foreseen in document AC/WGP-20/Inf.5 are highly relevant.

Concerning the introduction of a new topic that should be considered under this item in the work plan, we would like to see some substantiation on why this topic is chosen and some proposals on what deliverables can be expected towards the next MoP while also taking into account the extra year until the next MoP.

Agenda item 6: Promotion of the Convention and relevant developments and interlinkages

The EU and its Member States welcome the presentation by the Aarhus Convention Secretariat and REC CEE on the progress in developing a regional instrument on Principle 10 in the UNECLAC-region. We congratulate these countries on the progress made during the negotiating rounds in Panama in November 2015 and in Uruguay in April 2016. We renew our offer to support the process, while we recognize that in this phase it is also the responsibility of the countries and stakeholders in the Latin American and Caribbean region to negotiate their own instrument.

We would like to thank the Aarhus Convention Secretariat, REC CEE and the Compliance Committee for their work done to date with regard to supporting the development of a regional instrument in the Latin American and Caribbean region. We also recognize the role that The Netherlands and Italy have played in contributing financially to the process.

We welcome the efforts and progress made by the Secretariat in promoting capacity-building and awareness-raising in various international forums and by enhanced bilateral and multilateral cooperation with stakeholders.

The EU and its Member States take note of the developments in the area of capacity-building and awareness-raising under the Convention.

Finally, we welcome the expression of interest by Guinea Bissau in becoming a Party to the Convention and we look forward to the further steps towards full application. In this respect we ask the Bureau to investigate the support that countries outside the UNECE region can receive, taking into account the decision of UN EXCOM that this support should be facilitated from extra-budgetary contributions.

Agenda item 7: Implementation of the work programme 2015-2017, including financial matters

The EU and its Member States would like to thank the Aarhus Convention Secretariat for the preparation of the reports on the Implementation of the work programme 2015-2017 and on Contributions and expenditures in relation to the implementation of the work programme 2015-2017.

As regards in particular the Report on the implementation of the work programme (doc. ECE/MP.PP/WG.1/2016/5), while we welcome the fact that the report contains detailed information on the activities carried out until February 2016, we would welcome the addition of some elements of assessment regarding implementation progress that would help the Parties to understand whether the overall implementation of the work programme 2015-2017 is on a good track, and to identify those areas where implementation might be lagging behind, if any.

As regards in particular the Report on Contributions and Expenditures, we would like to note that the EU pledge for 2016 (ie 100 000 €, subject to agreement by the EU budgetary authorities) does not appear in document ECE/MP.PP/WG.1/2016/6, and we would like to ask the Secretariat to include it in the final version of this document.

Agenda item 8(a): Future work programme 2018-2021

The EU and its Member States welcome the development of the draft work programme 2018-2021 (ECE/MP.PP/WG.1/2016/7) by the Bureau and wish to thank the Secretariat for the opportunity to comment on this draft.

The ongoing struggle between a meaningful implementation of the provisions in the Convention and the availability of means to achieve this led the 5th Meeting of the Parties to introduce a distinction between ‘operational costs’ which are essential for the functioning of the Convention, and ‘other activities’ which are subject to availability of resources. At the 19th WGP we got a first view of what a future work programme could look like. On the basis of this draft, the EU and its Member States proposed a number of elements to improve the future work programme. We appreciate that these proposals have been taken into account.

The current structure with 3 Task Forces remains the basis to work on implementation of the three pillars of the Convention. We believe that in intersessional periods, these Task Forces should continue to work on capacity building, exchange of experiences and work on supporting the effective implementation of the Convention by its Parties. In addition to that we invite each Task Force to prepare during each intersessional period a special segment in a WGP to discuss upcoming questions and relevant issues on the policy level, as proposed in annex II. We welcome the efforts to introduce priorities in the work of the Task Forces and we will make some suggestions on the order of topics.

With the introduction of this new approach, we believe that the role of the Working Group as a policy think tank can be strengthened. At the same time, the stronger focus on implementation through these Task Forces allows a less intensive schedule of Meetings of Parties. That is why the EU and its Member States believe that the intersessional period could be extended to four years.

The EU and its Member States recommend that the reporting period for National Implementation Reports is extended to 4 years in order to remain in line with the MoPs.

To streamline the work, reduce workload, increase efficiency and avoid any inconsistencies between the decision on the new work programme and four decisions on different substantive topics (access to information; public participation; access to justice and PPIF), we propose to discontinue producing these separate four decisions and incorporate their key elements (extension of the mandates; lead countries; specific calls) in the introductory part of the decision on the new work programme and refer to priority activities which are already included in the Annex of the work programme.

With regard to the annexes, we refer to our substantive comments with regards to the elements in the work programme covering the three Pillars, the Compliance Committee and PPIF. We also have some detailed remarks:

As the current discussion did not yet result in an agreement on the prioritization of activities in the work programme 2018-2021, we propose that the Bureau will prepare a new draft, taking into account the proposals we have submitted.

Regarding annex II:

We welcome the proposed scheme as presented in annex II and the inclusion of a thematic discussion based on the outcome of the work of a special Task Force each meeting of the WGP. However, we think that it is important that one meeting is organized for each task every year, except for the year when there is a thematic session about that Task Force's work included in the WGP. Regarding the order of the topics we could be flexible and leave this to the Bureau and the Task Forces to organise.

Agenda item 8(b): Draft elements of possible financial arrangements

The EU and its Member States welcome the development of the draft elements of possible financial arrangements (ECE/MP.PP/WG.1/2016/8) by the Bureau.

In the previous agenda item, we discussed the ambitious work programme for the intersessional period. We believe that the budget related to the work programme is realistic and has improved considerably by introducing the distinction between “operational” and “other” activities. Now,

under this agenda item, we have to try to match the ambitions with a realistic, transparent and equitable way of raising funds.

In general we can approve the draft elements of possible financial arrangements. However, it must be clear that the EU cannot accept any reference to a mandatory or recommended scheme at this moment. Most of our amendments are related to this position. We further have some comments regarding the bracketed texts.

- With regard to para 1(b) we believe that no Party should contribute less than USD1000, as contributions below that amount are likely to entail costs higher than the actual contribution.
- Even though we propose to delete the annex and its footnotes, as a matter of principle the EU wants to point out that the footnote D is not acceptable. As the EU has already emphasized in the past, including at MOP5, the standard practice in terms of the EU contribution to MEAs is 2,5% of the core budget. This is part of the EU pledge and it is generally applied in MEAs, including PRTR. Therefore, we reiterate our call to the Bureau and the Secretariat to kindly avoid introducing concepts such as the use of “historical contributions of the EU”, particularly in circumstances where the EU has consistently been contributing at a much higher level than it would normally do, because of its willingness to support financial sustainability and predictability as well as the effective implementation of the work programme. For the record: the footnote needs to be adjusted accordingly – even if it be deleted afterwards - , i.e. either by referring to the standard practice of the 2,5% of an eventual core budget, such as in the EU pledge and in PRTR, or by only keeping the first sentence of the footnote at this stage.

Agenda item 8(c): Agenda of the 6th session of the Meeting of the Parties

The EU and its Member States would like to thank the Bureau and the Secretariat for the Draft outline of the agenda of the 6th session of the Meeting of the Parties to the Convention.

We are especially grateful that the current proposal manages to organize the Meetings of the Parties to the Convention and its Protocol back to back and concludes the deliberations within one week.

As we indicated earlier, we do not believe that an high level segment should be automatically included in the programme of the MoP. In this specific case, however, we think that there is added value in having a high level segment on the role that the Convention and its Protocol can play in implementing the SDGs. This role is especially eminent in Goals 16 (Rio Principle 10), 9 (Sustainable Industrialization) and 12 (Sustainable Consumption and Production), but in a more general way, the Aarhus Convention and its PRTR Protocol have a horizontal relevance in almost all other SDGs.

In this regard, we welcome the results of the UNEA-2 Conference (Nairobi, 23-28 May 2016). UNEA-2 adopted 25 resolutions, including one on Delivering on the 2030 Agenda for Sustainable Development and one on the Application of Rio Principle 10 to the Latin American and Caribbean Regions, thus framing the global environment agenda for the next years and providing political guidance to the implementation of the environmental dimension of the 2030 Agenda. We regret that it was not possible to adopt an ambitious and robust UNEP Stakeholder Engagement Policy, although initially there was strong text on the table that could have received our support. But in the end we were not able to support the weaker alternative that was tabled.

With regard to developing a high level (ministerial) declaration, we see merit in having a declaration, touching upon the main theme of the high level segment and its consequences for future work under the Convention and its Protocol.

We approve the draft outline of the agenda of the sixth session of the Meeting of the Parties to the Convention and the joint High Level Segment as they are presented in document ECE/MP.PP/WG.1/2016/10. In this regard we very much appreciate the positive signal given by the Bureau of the PRTR Protocol.

Agenda item 8(d): Dates and hosting of the 6th Session of the Meeting of the Parties to the Convention

The EU and its Member States warmly welcome the offer by the government of Montenegro to host the 6th session of the Meeting of the Parties to the Convention and the 3rd session of the Meeting of the Parties to its Protocol.

We also welcome the proposal to hold the Meeting of the Parties in mid-September, as this allows for the most effective preparation by the Parties and the Secretariat.

Agenda item 10: Adoption of outcomes

The EU and its Member States would like to welcome the outcomes of the 20th session of the Working Group of the Parties to the Aarhus Convention and the constructive spirit in which our discussions have taken place.

We believe that we have made progress in terms of preparations for the upcoming 6th session of the Meeting of the Parties , and we would like to thank you, Madam Chair, as well as the UNECE Secretariat and all delegates that have contributed to this 20th Working Group of the Parties .

In terms of follow-up and in order to ensure that all those who unfortunately could not attend this session may benefit from the discussions and decisions that we have taken, we would like to ask the Secretariat to provide more information about the content of discussions in the outcome documents/ reports of the meetings. We feel that currently these reports are very procedural and we would like the reports to have information on the substance of the discussions, especially for the benefit of those delegates unable to attend the meetings. We also would appreciate that the official report, even if as an unedited advance copy, were made available preferably within one month after the meeting, taking into account that previously the reports had to be adopted at the end of the meeting and taking into account that we want to act upon our decisions as soon as possible, as there is still a lot to do before the next WGP and MoP. A quick distribution of the (unedited) report will help us to start doing our work.

Thank you very much.
