

Ms Ella Behlyarova
*Secretary to the Aarhus Convention
on Access to Information, Public
Participation in Decision-making and
Access to Justice in Environmental
Matters*
UN Economic Commission for Europe
Palais des Nations
CH-1211 Geneva
Switzerland

Ms Laura Michel
*Chair, Public Participation in
International Forum*

Dear Ms. Behlyarova,
Dear Ms. Michel,

We are members of the International Coalition for Sustainable Aviation, the only accredited civil-society observer to the UN's International Civil Aviation Organization (ICAO). We are reaching out to you with regard to the twenty-third *Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, which will take place in Geneva on June 26-28th, 2019. We have taken note of the agenda of the meeting, in particular the organization of a "*thematic session on the promotion of the principles of the Convention in international forums*", which is set to take place on June 27th. As part of this session, we would like to invite you to facilitate a discussion between working group Parties on the topic of the Aarhus Convention's application within the ICAO process.

Discussions related to addressing the aviation sector's environmental impact do not comply with the Almaty Guidelines on promoting the application of the principles of the Aarhus Convention in International Forums, adopted at the second meeting of the Parties. Specifically, the Almaty Guidelines state that "*Environmental information contained in all official documents developed and produced within each international forum should be made available to the public*" (paragraph 20) and that "*any member of the public should have access to environmental information developed and held in any international forum upon request, without having to state an interest*" (paragraph 23). Furthermore, paragraph 25 states that requests for access to information should only be refused "*on the basis of specific grounds[, where] grounds for refusal should be interpreted in a restrictive way*". Finally, paragraph 27 of the Almaty Guidelines states that the provision of information free of charge should be promoted. Environmental information

developed and discussed at meetings of ICAO's powerful 36-member Executive Council and its Committee on Aviation Environmental Protection (CAEP), as well as documents developed and produced in the Council and CAEP, do not comply with these provisions, and generally fail to meet the objectives of the Aarhus convention.

Most Council and CAEP discussions related to environmental and climate matters at ICAO have been happening behind closed doors. The Organization generally bars journalists from attending its meetings, denying them even the most basic information, such as the agenda for such sessions. ICAO requires States and observers who participate in the ICAO CAEP processes to sign strict confidentiality agreements (see "*CAEP Secure Site Terms of Use Agreement*" attached below) and threatens them with unlimited financial liability if they disseminate information or documents from CAEP meetings (see Agreement at paragraph 6). These measures contradict paragraphs 21, 23 and 25 of the Almaty Guidelines, and, as NGOs, they greatly affect our ability to fulfill our social mission of informing and protecting the general public. Most recently, ICAO has taken further steps against free-speech by blocking climate scientists from interacting with the Organization on the social media platform Twitter, and has even taken to mocking those who attempted to follow ICAO on Twitter.

While some documents are made public, often with significant delay after their adoption, these documents are typically only made public for on-screen view. Fundamental documents are available for States on the ICAO website for purchase, e.g. USD\$95 for the rules governing the aviation sector's carbon market. Non-State stakeholders are not even permitted to *buy* the documents, which means that the only access granted to the public is a "view-only" online version. This greatly inhibits our ability to disseminate information, and prevents access to all communities with no access to the internet. This is the situation for documents *which have been formally adopted* and have entered into force, or are scheduled to. Official negotiating documents are not publicly available at all. Nor are official responses of States to ICAO State Letters. For example, under ICAO processes, States are required to notify ICAO of any differences between ICAO environmental standards and States' laws and regulations. While various States have sent ICAO official letters notifying ICAO of these differences, the official letters are not publicly available. This lack of transparency hampers the ability of civil society to understand the extent to which States are following ICAO environmental standards.

Virtually all of the 47 Parties to the Aarhus Convention have also ratified the Chicago Convention on International Civil Aviation, and are therefore Member States of ICAO. Several Parties to the Aarhus Convention are members of ICAO's Executive Council and/or ICAO's CAEP. Adherence to ICAO's confidentiality rules and practices is incompatible with the Aarhus Convention's objectives. ICAO's policies have greatly restricted our ability to engage widely, impacting civil society's ability to promote environmental integrity.

The response of States who are Parties to the Aarhus Convention to this situation has been mixed - with many complicit in the continuation of this lack of transparency. For example several

Parties made public their response to draft rules for the global offsetting scheme for international aviation (CORSIA) while other Parties refused access. In effect, many Parties are hiding behind ICAO's rules in order to avoid their obligations under the Aarhus Convention.

Over the coming months and years, ICAO will continue to host important discussions, negotiations, and actions on climate policies for the aviation sector - policies with important ramifications for broader climate and environmental policy - as well as potential discussions on the adoption of a long-term climate goal for the sector. It is therefore important that the organization's transparency is improved, in order to allow the public to more effectively engage in the discussions.

In light of the above, we would like to ask you to allow a **specific debate** to take place during the thematic session, **on the topic of the application and respect of the Aarhus convention within ICAO**. We encourage the organization of a panel discussion with representatives of ICAO, States, and NGOs.

Should it be impossible to organize such a panel discussion, we would like to propose the below **questions to serve as a basis for discussions** during the thematic session:

- A few ICAO CAEP issues require the sharing of confidential data warranting some form of protection. While these are the exceptions to CAEP's work, non-disclosure rules are applied in a draconian manner with no exceptions. How could ICAO make its work transparent and accessible to those not directly involved in the process to facilitate better input?
- As the majority of states are not represented on ICAO's Council, would Parties welcome the publication of Council agendas, papers and decisions?
- How can Parties ensure they meet their obligations under the Convention?

We hope that you will be able to respond positively to our request, and look forward to your reply.

Yours Sincerely,

Members of the International Coalition for Sustainable Aviation

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