

To: David Maria Sassoli
President of the European Parliament
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Belgium

Cc: Chairs of the political groups of the European Parliament: Manfred Weber, Iratxe García, Dacian Cioloș, Marco Zanni, Ska Keller, Philippe Lamberts, Ryszard Legutko, Raffaele Fitto, Manon Aubry, Martin Schirdewan

Chairs and Vice-Chairs of ENVI and JURI Committees of the European Parliament: Adrián Vázquez Lázara, Sergey Lagodinsky, Marion Walsmann, Ibán García Del Blanco, Raffaele Stancanelli, Pascal Canfin, Bas Eickhout, César Luena, Dan-Ștefan Motreanu, Anja Hazekamp

Rapporteurs and Shadow Rapporteurs for Aarhus Regulation revision file: Christian Doleschal, Martin Hojsík, Milan Brglez, Marie Toussaint, Mick Wallace, Anna Elżbieta Zalewska, Jiří Pospíšil, Franco Roberti, Pascal Durand, Manon Aubry

Brussels, 11 March 2021

Dear President Sassoli,

Re: Ensuring compliance with international law through Aarhus Regulation revision

We are writing to express our deep concern at the direction that the discussions in the European Parliament on the revision of the Aarhus Regulation are taking. If there is not a change of course, there is a real risk that the revision process will fail to achieve its central purpose of ending the EU's longstanding non-compliance with the [Aarhus Convention](#), the UN's flagship treaty on environmental democracy. This would not only perpetuate an accountability deficit at the heart of the EU; it would also be highly damaging to the EU's credibility as a proponent of rule of law and could weaken efforts to promote democracy in the wider European region.

The [Aarhus Regulation](#) was adopted in 2006 in order to apply the provisions of the Aarhus Convention to the EU institutions. A complaint to the Convention's Compliance Committee in 2008 led after many years to a finding by the Committee in March 2017 that the EU was in non-

compliance with the Convention due to the insufficient possibilities for access to justice at the level of the EU institutions. Regrettably, when the finding was presented to the sixth session of the Convention's Meeting of the Parties (MoP-6, Montenegro, Sept 2017), the EU took the unprecedented step of blocking the MoP's endorsement of the finding of non-compliance, drawing strong criticism from other Parties and stakeholders. However, the EU did undertake to explore ways and means to address the issue and three years later, in October 2020, the European Commission issued a [legislative proposal](#) for revision of the Regulation.

While the Commission proposal addresses one major obstacle to access to justice at EU level, it fails to address a number of other significant obstacles. That the Commission's proposal is deeply flawed has been confirmed in [advice](#) that was provided, at the request of the Commission, by the Convention's Compliance Committee on 12 February 2021. The Compliance Committee was established for the explicit purpose of reviewing compliance by the Parties with their obligations under the Convention. Its independent members have always been elected by consensus by the MOP, i.e. with the full support of the EU. It is thus the most authoritative source available as to what constitutes compliance with the Convention. It is therefore essential that the EU respects and follows the Committee's advice, and that the European Parliament's input to the co-decision process is in line with it.

It is not the purpose of this letter to go into the details of the shortcomings in the Commission's proposal – this is clearly set out in the Committee's advice as well as [other documentation](#). It is however important to underline here that what is at stake is the accountability of the EU institutions, and in particular the European Commission, as it would primarily be the acts and omissions of the Commission that would be affected. Up to now, the Commission has pleaded a kind of EU exceptionalism whereby the EU's special character and unique internal legal order provide justification for not applying certain provisions of the Convention. However, contrary to the Commission's claims, and leaving aside the fact that international law does not allow a party to a treaty to invoke its internal legal order as a justification for non-compliance, the changes required to achieve compliance can be implemented within the framework of the EU's existing legal order.

Unlike the EU's harsher critics, we believe in the need for strong EU institutions. But with strength must come accountability. Lack of accountability will only feed Euroscepticism and hold back the further development of the EU. The Commission's resistance to allowing its acts to be challengeable by NGOs and the wider public before the courts, similar to the way in which such acts are challengeable in Member States' courts, is already sounding alarm bells and raising serious concerns about the EU's commitment to rule of law. It hardly needs to be said that this is not at all helpful in the context of e.g. the EU-UK relationship. Ensuring full compliance with the Convention will also support the rollout of the European Green Deal: access to justice is a key tool for improving the implementation and enforcement of environmental law.

We are aware that this matter is not expected to reach the plenary of the Parliament until May. However, as some parties to the negotiations within the two Parliamentary Committees responsible (ENVI and JURI) seem to consider the advice of the Compliance Committee as just an optional reference point rather than a clear benchmark for achieving compliance with international law, we consider it appropriate to raise our concerns more widely within the Parliament so that corrective action can be taken before the process advances too far.

Yours sincerely,



Jeremy Wates,

Current Chair of the Green 10 and Secretary General of European Environmental Bureau (EEB)

Also on behalf of the following Green 10 Directors:

Mark Martin, Executive Director, Executive Director - Bankwatch Network

Wendel Trio, Director - Climate Action Network (CAN) Europe

Ariel Brunner, Acting Director & Senior Head of Policy - BirdLife Europe

Jagoda Munić, Executive Director - Friends of the Earth Europe

Jorgo Riss, Director - Greenpeace European Unit

Genon K. Jensen, Executive Director - Health and Environment Alliance (HEAL)

Andrea Lichtenecker, Executive Director - Naturefriends International

William Todts, Executive Director- European Federation for Transport and Environment (T&E)

Ester Asin, Director - WWF European Policy Office