



Partnership for  
nature and people



Mr. Frans Timmermans  
First Vice-President of the European Commission  
Better Regulation, Interinstitutional Relations, the Rule of Law  
and the Charter of Fundamental Rights

Cc: Mr. Karmenu Vella  
Commissioner for Environment, Maritime affairs and Fisheries

Mr. Daniel Calleja Crespo  
Director-General for Environment

27/03/2017

Dear Vice-President Timmermans,

### **Access to Justice: Addressing the EU's non-compliance with the Aarhus Convention**

We are writing to urge you to ensure that the EU endorses the recent finding of the Aarhus Convention Compliance Committee that the EU is not in compliance with the access to justice provisions of the Aarhus Convention and implements without delay the changes needed to bring the EU into compliance.

On 17 March 2017, the Aarhus Convention Compliance Committee (ACCC) found the EU to be in breach of Article 9(3)(4) of the Aarhus Convention<sup>1</sup>, by reason of its failure to provide adequate access to justice to individuals and NGOs in environmental matters. No NGO or individual has ever been granted legal standing before the Court of Justice of the EU to challenge decisions taken by EU institutions, agencies or bodies, except in relation to refusals to disclose documents. Yet, these decisions impact EU citizens' health as well as the environment they live in, whether it is in relation to the use of chemicals, air or water pollution, use of natural resources, biodiversity or climate and energy policies. Only the

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<sup>1</sup> United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in Aarhus, Denmark, in June 1998.

Member States, the EU institutions and businesses have been granted the right to defend their interests before the Courts.

The Committee's findings and recommendations will now be submitted for endorsement by the Meeting of the Parties at its sixth session which will take place in September 2017. Since the establishment of the compliance mechanism in 2002, the main findings of the Committee have always been endorsed by the MoP, with the support of the EU. It is of crucial importance that the EU supports the endorsement of the findings of the Committee. Failure to do so simply because the EU is the subject of the findings would set a dangerous precedent and send a stark message to its citizens, other non-EU Parties to the Convention and the rest of the world that the EU has a highly selective approach when it comes to the rule of law.

At a time when alarming numbers of Europeans are questioning the value and legitimacy of the EU itself, never has it been so essential for EU leaders to demonstrate their commitment to the democratic values written into the EU Treaties. And citizens having access to justice to directly challenge decisions of the EU institutions is a prerequisite to democratic accountability.

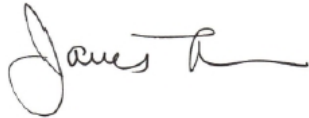
We call upon you to seize this opportunity to increase the legitimacy of the EU institutions by closing the gap between decision-makers and citizens; to protect the public interest by allowing individuals and civil society to better hold EU institutions to account for the legality of their decisions; and to show the international community that the EU does not ignore its international obligations and restrict individual rights. The EU should endorse the finding of the Aarhus Convention Compliance Committee and consequently take the following specific actions to come into compliance with the Convention in the light of the ACCC's findings:

The European Commission should introduce a legislative proposal to amend Regulation 1367/2006 on the implementation of the Aarhus Convention (the so-called Aarhus Regulation) to ensure, inter alia, that the scope of the internal review request procedure is brought in line with the provisions of the Convention, both with respect to the acts that may be challenged and the persons or entities that may challenge them;

The European Court of Justice should revise its interpretation of the standing criteria in the fourth paragraph of Article 263 TFEU to ensure that acts of the EU institutions that impact the environment are of "direct and individual concern" to environmental NGOs.

We would be grateful for the opportunity to meet with you at your earliest convenience to discuss these issues in person. In the meantime, we thank you in advance for giving attention to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "James Thornton". The signature is fluid and cursive, with a long horizontal stroke at the end.

**James Thornton**  
CEO, ClientEarth

*Also on behalf of:*

BirdLife Europe  
CEE Bankwatch Network  
Climate Action Network (CAN) Europe  
Environmental Pillar  
European Environmental Bureau  
Friends of the Earth Europe  
Greenpeace Europe  
Health & Environment Alliance (HEAL)  
Instituto del Medio Ambiente (IDMA)  
Justice and Environment Network  
Naturefriends International  
Pesticide Action Network (PAN) Europe  
Transport & Environment  
WWF Europe