



## **European ECO Forum Statement to the Sixth Meeting of the Parties to the Aarhus Convention and to the Third Meeting of the Parties to the Protocol on Pollutant Release and Transfer Registers**

### **“Today paves the way for the future”**

We, the representatives of civil society from more than 80 non-governmental organisations from countries of Europe, Caucasus and Central Asia, agreed the following on 10 September 2017, in Becici/Budva, Montenegro.

Since the Aarhus Convention was adopted in 1998, the environmental crisis has continued and deepened. While progress has been made in tackling some specific environmental problems, the overall impact of human activity continues to take us inexorably towards passing a point of no return in relation to climate change, biodiversity loss and soil degradation, to mention a few. In other words, we, human society, are not winning the battle to save the environment.

We celebrated the adoption in 2015 of the 2030 Agenda for Sustainable Development and Paris Agreement on climate change, and rightly so, but the impact of both of these instruments depends almost entirely upon the level of ambition in their implementation, and there the signs are so far discouraging. And that level of ambition will depend, crucially, on the extent to which the voices of civil society calling for a swift transition to genuine sustainability are listened to by governments. Because against this background of continuing environmental decline, we can be sure of two things: the situation would have been even worse without the pressure from civil society; and increasing civil society involvement is a crucial tool to help us turn the corner and make the transition to sustainability.

This is why we would have hoped that by now the Aarhus Convention would have become more or less irrelevant – that its provisions would be by now so well integrated into laws, policies and practices throughout the region that it would simply be a rarely used safety net. Alas, the Convention has never been more relevant or more needed. The Convention’s innovative compliance mechanism, which has identified many cases of non-compliance over the years, provides clear proof of this. Which makes it all the more regrettable that in the preparation for the sixth session of the Meeting of the Parties, the EU, a group of countries

that tend to consider themselves as strong advocates of democracy, has sought to end the longstanding practice whereby the MOP endorses the Compliance Committee's findings, thereby undermining the authority of the Committee and the weakening the mechanism. The Convention also continues to prove its relevance in relation to the harassment of environmental activists who attempt to exercise their rights under the Convention. Yet it needs to provide practical and quick tools for protecting activists under imminent threat of harassment, persecution or penalisation.

As we approach the 20<sup>th</sup> anniversary of the adoption of the Convention, Parties should be stepping up, not reducing, their ambition for the Convention, not least by reaffirming their support for the compliance mechanism but also by committing to address the various weaknesses in the Convention, as we identify below.

In the context of Brexit, and the extent of uncertainty that obtains as to how decisions made in the UK post Brexit will be influenced by obligations consistent with and enforceable under EU law – this Convention takes on an even greater importance. This is particularly relevant in relation to transboundary impacts and consultation thereon. The Convention in relation to consultation requirements has therefore never been more important, as is the case in the separate, yet complementary Espoo Convention.

## **I. ACCESS TO INFORMATION**

Public access to environmental information is an integral part of human rights and is regarded as an important aspect of public participation and achieving sustainable development. A public that is well-informed has a lot to offer the decision-making process by contributing a wide-range of opinions and views leading to the better decisions. This can both help identify more immediate and evident consequences of policy as well as potentially unforeseen effects, particularly those whose impact may not have become apparent in the short-term and might easily have gone without being detected until too late. Therefore, the continuous work of the Task Force on Access to Information is of a crucial importance.

The European ECO Forum supports the work started by the Task Force on, among others, broadening the scope of environmental information, removing existing barriers in access to information, reviewing the application of restrictions on access to environmental information, active and effective dissemination of environmental information using wide range of electronic information tools and linking together activities of this Task Force with other international forums dealing with access to environmental information. We also welcome the initiative of the Task Force to update the Recommendations on electronic information tools to provide public access to environmental information adopted by the MOP in Almaty, Kazakhstan in 2005 (Decision II/3). We fully endorse the draft decision VI/1

on promoting effective access to information and look forward to its implementation during the next inter-sessional period.

Despite the ongoing work in the field of public access to environmental information and some progress achieved there are a wide range of problems to be tackled urgently. Firstly, the right to access information under the Convention should be fully implemented and enforced not only formally (in theory and words) but in practice at all levels (international, national and local).

Secondly, it is necessary to develop and agree on a clear and broad definition of what is environmental information in order to prevent its often narrow interpretation by public authorities, business and media. In particular, commercial confidentiality should not be used by applicants to prevent information being released key to understanding environmental impacts in the decision-making processes. Privatised industries providing public functions must also be open and transparent, and help to account by respective Governments to provide the requisite information.

There is a rather new demand for access to information regarding impacts of armed conflicts on the environment and human health, an issue which may seriously alter sustainable development efforts in the region, including occupied territories.

Although the quality of information has improved over the last years, the problem of the reliability of information provided by authorities in some countries still exists. Issues also arise in the failures to adequately provide for proactive dissemination of information in accordance with the obligations, and to take advantage of technological advancements to facilitate greater and more timely access. In addition, there are cases when the information provided is too complex to be used by citizens (general public). But equally access to underlying data is essential to those concerned validation of analysis and conclusions. There are also some countries where public authorities charge high fees for providing environmental information upon request. This all needs to change and we request Parties and Signatories to the Convention to ensure that the information provided by authorities is reliable, trustworthy, user-friendly and, in most cases, free of charge, in particular, historical data. Under no circumstances the costs charged should aim at making the profit.

Governmental authorities also should ensure that requested information is provided in a timely manner and step up their efforts to actively disseminate environmental information using modern electronic information tools and initiatives like e-government, Open Government Data Initiatives and others. The development of "one-stop portal" for environmental information would be a great achievement in linking together databases now based in different governmental bodies and agencies and enabling citizens and those interested in obtaining environmental information to find all necessary information without searching through tens or sometimes hundreds of different websites.

The European ECO Forum also wants to stress the importance of the Shared Environmental Information System (SEIS) created by the European Environmental Agency (EEA) to improve the collection, exchange and use of environmental data and information across Europe. The SEIS helps simplify, streamline and modernise existing systems and processes, and makes

them web-enabled. It is a decentralized, yet, integrated system that improves the quality, availability, accessibility and understanding of environmental information. We strongly encourage Parties and Signatories to the Convention to use it, CSOs and independent experts should be involved into all activities, starting from designing of national/international systems, international cooperation as well as monitoring and control.

We also note ever growing role of on-line social networking for dissemination of information and facilitating dialogue among stakeholders on environment related issues.

Substantial efforts are needed in some countries to gather and disseminate health-related environmental information. Citizens have a right to know how environmental pollution affects their health.

The Clearinghouse mechanism, enabling the public to learn about the implementation of the access rights, is a good tool to enhance the impact of the Aarhus Convention. However, sufficient resources have to be allocated to maintain its quality and broaden its content.

Last but not least, the European ECO Forum wants to see expansion of the scope of the Task Force on access to information itself by inviting also those other than environmental authorities to join its work, as a lot of environmental information is held by non-environmental agencies and offices.

The European ECO Forum thanks the Republic of Moldova for its leadership of this Task Force.

## **II. PUBLIC PARTICIPATION**

Not only does public participation serve environmental democracy by providing a voice to those communities likely to be most affected by environmental decision-making, it broadly leads to better transparency, accountability and good governance. Numerous studies have affirmed that public participation is an effective means to address conflicting needs, provide decision-makers with much-needed expertise, and ensure enhanced environmental protection and sustainable development. In fact, as the preamble of Draft Decision VI/2 underscores, effective public participation plays “a critical role [...] for successful implementation of the SDGs”. In this regard we refer also to a report of Together2030 which shows major flows of public participation by stakeholders for the preparation of the Voluntary National Reports to the High-Level Political Forum (Newcastle, May 2017).

Yet, practice in the last inter-sessional period shows public participation in many cases continues to be treated as a mere tick-box exercise. In order for participation to be meaningful and reflect full implementation of the Convention, there must be effective identification and notification of the public concerned, involvement at an early stage when options are open, and reasonable time frames to enable truly effective participation. The results of participation must also be considered and reflected in final outcomes. At all stages, special care should be taken to ensure the participation of marginalized groups.

We also note with alarm that in some Parties, participatory rights are in fact being rolled back, not just in terms of actual practice in specific cases, but through proposed sweeping legislative reforms as well. We remind the parties that legislative reform must also be subject to public participation. We call upon the Parties to stop such actions, which are in keeping with neither the letter nor spirit of the Convention, and constitute clear threats to democracy.

Large scale infrastructure and energy projects, which are subject to difficult, sometimes ad-hoc decision-making procedures, are of a source of heightened public concern, and thus participation in these contexts takes on a particularly crucial role. A frequent feature of such projects, moreover, is that they involve potential transboundary impacts; the implementation and enforcement of procedures to enable participation of the foreign public is thus needed. Here we remind the Parties of their observation in the Maastricht Declaration, that the Convention is neither dependent on nor duplicative of other MEAs (such as the Espoo Convention), but rather presents “a unique opportunity to build synergies” with such instruments to foster environmental democracy and sustainable development. In the context of Brexit, the role of this convention and Espoo have never been more important, in both facilitating consultation on the negotiations, and offsetting issues encountered in other trade agreements, and in influencing the environmental considerations in every aspect of the negotiations and the various inevitable trade-offs and concessions agreed. We remind the parties that time is required for proper public participation, essential to build trust and confidence in the outcomes.

We regret the position some Parties have taken with regards to the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters. Even in those Parties which have extensive procedures governing public participation by virtue of their European or domestic obligations, the Recommendations can inform and enhance such procedures. For example, we note that the Recommendations is one of the few documents surrounding the Convention that specifically addresses the need to outreach to women in order to guarantee equal participation.

Finally, we would like to express our special thanks to the Task Force on Public Participation in Decision-making under a renewed mandate and our appreciation to Italy for its commitment to continue its leadership of this body.

### **III. ACCESS TO JUSTICE**

It is with profound regret that we note that yet again, our statement on access to justice remains hardly changed since our statements to previous MOPs. Indeed, not only has little progress been made, but in some cases the situation has worsened. This is of critical concern, as limitations on access to justice block not only the effective implementation of the other two pillars of the Convention, but also the enforcement of environmental protection laws quite generally. We call upon the Parties to take concrete and determined actions now to remove all barriers to access to justice.

Burdensome costs are a clear example of such. For many Parties this has been a problem for quite some time, while for others this is a new, emerging problem. Here we recommend the removal of rules exposing the public to prohibitive costs, the introduction improved of cost-caps and similar measures for lawsuits in the public interest, and new or expanded financial support for public interest litigation, such as legal aid schemes. Any such measures need to be compliant with the other characteristics for review specified in the Article 9(4), in particular those around fairness and equity of procedures and the ability of the review mechanism to provide for adequate remedies. In many instances review procedures are too long and drawn-out to be effective, and the possibilities for interim relief quite limited. This seriously undercuts the effectiveness in many countries of what are otherwise good and robust laws. It occurs all too often that the effects of decisions have already been realized and cannot be rolled back by the time the courts have ruled on the substantive matter, particularly where complex legal issues arise. We thus urge all efforts to speed up procedures and provide for more effective possibilities for interim relief.

Justiciability issues, too, are among the mostly-cited frequent barriers. This includes notably restrictive standing criteria, which continues to be a serious problem in many Parties. Indeed, in some cases existing rights have even been stricken. We call upon the Parties to reinstate pre-existing rights and otherwise expand standing criteria so as to finally come in line with the Convention. At the same time, justiciability concerns more than the question of standing; accordingly, we emphasize the need to remove improper restrictions on the scope of review, namely what claims certain parties may bring, general court competence to review claims, and the standard of judicial review.

All of the above problems require systemic solutions. As noted in our Statement to MOP5, we had called for the adoption of binding, horizontal legislation at the EU level, as this would have contributed meaningfully towards ensuring proper access to justice in a significant number of the Parties. Additionally, such an instrument would be consistent with and facilitate homogeneity in market conditions across the Member States – a principle fundamental to the single market, and its associated freedoms and benefits. We very much regret that this has not occurred, as it is clear that access to justice is best achieved not in a piecemeal fashion, but through binding legislation. At the same time, we recognize the important role the judiciary plays in addressing many of access to justice issues, particularly in terms of cost assessments and standing. We thus call upon the Parties to undertake meaningful capacity building efforts, so that the judiciary is fully aware of the Convention, and can interpret and apply laws in accordance with its provisions.

As the chapeau of the Draft Decision VI/3 on promoting effective access to justice affirms, access to justice in this context is of key importance to the rule of law itself. It is also absolutely vital that the safe exercise of access rights by whistle-blowers, activists, and others be ensured without the fear of penalization or harassment. We note with great appreciation that the Draft Decision specifically addresses this and provides that the Task Force's mandate in the future should focus on this aspect.

Europe hosts a scarce number of environmental public interest law organizations. We repeat our call to parties to consider establishing a public interest litigation fund to support access to justice in environmental matters, especially in the countries where citizens and

NGOs have no opportunity to get support from non-profit law organizations.

We also express our gratitude to Sweden for its excellent leadership of this Task Force.

#### **IV. IMPLEMENTATION AND COMPLIANCE**

We note with concern that a number of Parties have still failed to submit their 2017 round of National Implementation Reports. Some reports that have been submitted, moreover, contain gaps, are selective in what is reported on, or are of generally poor quality. Some Parties also failed to provide members of the public with meaningful opportunities to comment on drafts of the reports. We note, however, that other Parties have demonstrated best practices in this regard, producing high quality reports that reflect the outcomes of transparent and effective consultations with the public. This is truly salutary and should serve as a model to other Parties.

As in our previous Statements to MOPs 4 and 5, we cannot emphasize enough the importance of and critical need for the compliance mechanism. Indeed, this need is all the greater considering threats to the foundations of democracy occurring in Parties to the Convention, including of harassment of activists as the Draft Budva Declaration acknowledges. We would thus like to echo that same document: The Convention's compliance mechanism is not only a great model for other international instruments and inspiring actions to promote democracy and rule of law in environmental matters across the globe; it also plays an important role in the implementation of the Convention amongst its Parties. This has been particularly evident in its contribution towards strengthening the involvement of civil society.

During the last years the compliance mechanism has come under considerable political pressure and faced systemic attacks. We disapprove of these developments in the strongest terms, and regret that this has already weakened procedures by making them lengthier and more restrictive, with reduced transparency. In this context we express our concerns regarding the MOP decision implementation review process, which has resulted in determinations that certain Parties have come into compliance, where developments in fact suggest the contrary. This review process has particularly consumed an inordinate amount of time, as Parties have often made little or insufficient progress in the intersessional period. This contributes significantly to the ACCC's workload and is inconsistent with the *bona fide* rule of international law.

#### **V. PUBLIC PARTICIPATION IN INTERNATIONAL FORA**

More and more international forums are dealing with issues related to the environment, making public participation in such forums more relevant than ever. Article 3 (7) of the Convention requires that "Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organisations in matters relating to the environment". Back in

2005, the Parties to the Convention adopted the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums.

In practice, however, many key international processes related to the environment fail to guarantee public participation and public access to information in their proceedings. Limited access for civil society to negotiations through decreasing numbers of accreditations, lack of negotiating documents, negotiations behind closed doors, and the absence of adequate means for civil society to participate effectively in ongoing processes undermine the legitimacy of some of these processes and the effectiveness of their outcomes.

The European ECO Forum regrets that parties to the Convention do not systematically champion the principles of the Convention in these forums as they committed to. It is each Party's responsibility to ensure that its representatives in such forums understand the implications of the Convention and duly uphold their obligations to promote its principles when negotiating in the context of relevant forums. Therefore, it is of a crucial importance to improve coordination and interaction between and within different governmental ministries and offices in order to bridge this gap.

The European ECO Forum welcomes further implementation of European Neighborhood Policy ( ENP ) and increased role of Civil Society Forum in Eastern Partnership, public participation in implementation of Association Agreements between EU and EaP countries (Georgia, Moldova, Ukraine).

The European ECO Forum welcomes the decision of Parties to the Convention to continue its work on promoting the application of the principles of the Convention in international forums under the authority of the Working Group of the Parties and thanks France for its willingness to continue leadership of this work. We also support the selection of forums to focus on as indicated in the draft decision VI/4, namely climate change, chemicals and waste, biosafety and trade negotiations. That being said, we want this to be opened for other issues as well.

Key decisions are expected to be made in the next few years in relation to the implementation of the Paris Agreement, to trade agreements or to chemicals management. The European ECO Forum calls on Aarhus parties to seize these opportunities to strengthen environmental democracy at the international level.

## **VI. PRTR PROTOCOL**

The European ECO Forum welcomes ratification of the PRTR Protocol by Malta and Ukraine but is very disappointed that there are still many countries in the UNECE which have not ratified or acceded to it. We urge governments of these countries to make the ratification of the PRTR Protocol a priority.

The main objective of the PRTR Protocol is "to enhance public access to information through the establishment of coherent, integrated, nationwide pollutant release and transfer registers (PRTRs) in accordance with the provisions of the Protocol; which could facilitate



public participation in environmental decision-making as well as contribute to the prevention and reduction of pollution of the environment”. The work on developing such registers has started but needs to be intensified and further developed. We fully support the Budva Declaration calling upon “ *...Parties and signatories to develop and further operate efficient user-friendly pollutant release and transfer registers, to further raise awareness about them and to ensure that people everywhere have convenient and digital access to relevant information on releases of hazardous substances and the transfer of waste. We also recognize the need to address the problem of chemical substances in products and their releases into the environment*”. We hope that countries will take up this work seriously.

Every day hazardous chemical substances are released into the environment from industrial and other sites and PRTRs are to help to effectively record these pollutants and make this information accessible to the public making PRTRs not a static inventories but constantly changing (dynamic) systems. Adopted fourteen years ago PRTR Protocol covers only 86 substances, which does not correspond to current situation. Therefore, the European ECO Forum calls on the Parties to the PRTR Protocol to start working on a revision of the list of pollutants in Annex II, as well as activities under the Annex I, and expand these lists according to the current realities with new hazardous chemicals and new activities. Parties should look for ways to lower existing thresholds in order to make sure that also smaller facilities which release hazardous substances below existing thresholds fall under the reporting obligations. By doing so, Parties would finally be able to achieve the goals agreed on in the Strategic Plan 2015-2020 – Focal area III – Development of the Protocol.

The European ECO Forum also calls Parties and Signatories to tackle the issue of obsolete storage places of different pollutants and other hazardous materials which pose a serious threat to human health and the environment. This is a serious problem particularly but not exclusively in EECCA countries. Obsolete storage places continue to pollute air, water and soil without anybody being held accountable.

Although progress has been made in implementation of the PRTR Protocol in countries, many challenges remain and we encourage Parties and Signatories to step up their efforts in this area. The document “Systemic issues concerning the implementation of the Protocol on Pollutant Release and Transfer Registers and recommendation on how to address them” developed by the Protocol’s Compliance Committee provides useful recommendations and can be used as a guidance. In particular, the user-friendliness of the existing PRTR/data portals should be improved and ensure it serves to promote benchmarking and progress in environmental performance of industries, allows identifying hotspots and priorities for prevention measures as well as fostering compliance promotion in a timely manner through more pro-active access to information before the decisions are taken.

We are very disappointed that, despite increased international cooperation and efforts made by the Secretariat, some Parties and other organisations, none of the countries outside the UNECE region have ratified the PRTR Protocol, leaving the Focal area II of the Protocol’s Strategic plan not accomplished.

## **VII. GMO AMENDMENT**

The European ECO Forum congratulates France, Georgia and Malta for their ratifications of the GMO Amendment during the last inter-sessional period. However, it is our great concern that twelve years after the adoption of the GMO Amendment it has not entered into force. Therefore, we urge countries who were Parties to the Convention<sup>1</sup> at the time of the adoption of this amendment but have not ratified it yet to do so urgently. In order to establish and protect the right of the public to be involved in informed decision-making related to GMOs it is essential for this Amendment to be ratified by all the Parties to the Convention. This is even more important taking into account further developments in the field of GMOs (for example with Synthetic Biology or so-called "new breeding technologies") independently of the question of whether a specific technology is classified as genetic modification or not.

In the meantime, we urge all Parties and signatories to transpose its provisions into their national legislation and to ensure full implementation and enforcement of its provisions. We also call all Parties and Signatories to the Convention to establish an effective system of access to information regarding GMOs that would allow NGOs and all other interested stakeholders to receive information in timely manner. And we also encourage the authorities to establish a system enabling effective and inclusive public participation in decision-making with regards to GMOS.

We welcome the report of the "Global Round table regarding living/genetically modified organisms" jointly organized by the Aarhus Convention and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and we urge on the Aarhus Convention to continue this fruitful cooperation with the CBD and its secretariat.

## **VIII. SUPPORTING PRINCIPLE 10 IMPLEMENTATION GLOBALLY**

The European ECO Forum highly values the progress made in Latin America and the Caribbean to develop a regional instrument on Principle 10 of the Rio Declaration on Environment and Development, and has contributed to this process. We also strongly encourage all Parties and Signatories as well as other stakeholders to promote the spread of Principle 10 in other regions outside the UNECE.

Several countries outside the UNECE region have shown an interest in acceding to the Convention, with Guinea-Bissau being the latest. The Budva Declaration indicates that "We invite interested States to accede to the Convention ....." which we certainly support. However, Article 19 para 3 of the Convention requires approval of the MOP for accession by

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<sup>1</sup> Albania, Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, the Former Yugoslav Republic of Macedonia, Turkmenistan and Ukraine.

non-UNECE countries and, thus, creates a barrier for those countries willing to accede to the Convention. With this in mind, the European ECO Forum urges Parties to amend the Convention and remove this unnecessary requirement as soon as possible. This would put all countries on an equal footing, and enable the Convention to be more effective in promoting environmental democracy around the world.

## **IX. CONCLUDING REMARKS**

***You are the masters of its faith. Yet, we are the captains of its soul.***