



**EUROPEAN ECO FORUM STATEMENT ON THE ROLE OF THE EUROPEAN UNION IN RELATION TO
THE FINDING THAT IT IS IN NON-COMPLIANCE WITH THE AARHUS CONVENTION**

**As delivered to the Joint High-Level Segment of the Meetings of the Parties to the Aarhus
Convention and the PRTR Protocol**

Budva, Montenegro, Thursday 14 September 2017

The European ECO Forum wishes to express its deep concern at the response of the European Union to the Aarhus Convention Compliance Committee finding that the EU is in non-compliance with the Convention due to the failure to provide adequate access to justice at the EU level.

The EU has come to Montenegro with a proposal that, in relation to this particular finding of non-compliance, the Meeting of the Parties (MoP) should end the longstanding practice whereby findings of non-compliance by the Committee are endorsed by the MoP, proposing instead that the MoP should only 'take note' of this finding. It has proposed further weakening amendments to the draft decision on EU non-compliance, notably that the actions recommended by the Committee and in the Bureau draft decision should only be 'considered' by the EU and that the recommendations should not explicitly address the very evident problems with the jurisprudence of the Court of Justice of the EU. It has adopted this position at the highest level, through an EU Council Decision, deliberately leaving very little flexibility to listen to and adapt its position in response to other Parties' positions. Here in Budva it has clarified that that limited flexibility effectively amounted to zero, and that it was a matter of 'take it or leave it'.

The hypocrisy in the EU's stance is palpable. Every single finding of non-compliance since the establishment of the compliance mechanism in 2002 has been endorsed by the MoP, with the full support of the EU. This is understandable, given that the members of this highly respected compliance review body are elected by the MoP itself, again always with the support of the EU, having been identified as 'persons of high moral character and recognized competence'. Only now, when the non-compliance concerns the EU itself, has the EU seen fit to challenge the output of the Committee. The legal argumentation that the European Commission has provided to justify the EU position has been embarrassingly flawed, ignoring some basic principles of international law and even implying that the EU is not capable of being subject to international law. It has misleadingly persisted in suggesting that the Committee's findings imply that an amendment to the EU Treaties would be required, even after the Committee has clarified that this is not the case.

Only yesterday in Brussels, European Commission President Jean-Claude Juncker delivered his annual State of the European Union address in which he highlighted the rule of law as one of three principles that must anchor the European Union. The irony could not be greater. Here in Budva, the EU has shown a worrying lack of respect for the rule of law.

We welcome the fact that the other Parties to the Convention have opted for the 'leave it' option. While it is regrettable that further consideration of this matter by the MoP will need to wait four more years, which sets a bad precedent, an even worse precedent would have been set by acceptance of the EU proposal. This could have seriously and permanently weakened the compliance mechanism and thereby the Convention itself, with detrimental effects across the region that fly in the face of the EU's claim to be a champion of democracy. Furthermore, by all Parties agreeing to strive for consensus and refrain (the EU in particular) from resorting to a vote, the UN spirit of cooperation was maintained. The integrity of the compliance mechanism has been, at least for now, preserved. And with or without a MoP decision, the finding of the Committee that the EU is in non-compliance stands intact for all the world to see.

While this has been a bad week for the Convention, it has been a humiliating week for the EU. Not a single other Party or stakeholder has spoken in support of the EU position, despite the EU's considerable political and economic influence in the region, and most if not all of those that have spoken have opposed it.

The role of the European Commission has been particularly regrettable, having originally proposed outright rejection of the finding of non-compliance in an apparent attempt to resist public accountability and deny NGOs the possibility to challenge its decisions before the courts – the same possibilities that it acknowledges should exist at Member State level.

We recognise that the outcome could have been even worse, e.g. if the Commission's original proposal to reject the findings had been adopted or if the EU had attempted to force through its position through insisting on a vote. And we applaud those Parties and entities within the EU whose efforts prevented those even worse outcomes, even if due to the non-transparent nature of the EU's internal decision-making processes we cannot know which they are and are unable to thank them directly.

This debacle has put the spotlight on the EU's internal decision-making processes. It is noteworthy that the EU Member States are the only Parties to the Convention whose individual positions during MoP negotiations are not public. The fact that the EU's internal decision-making processes mean that in theory only a few EU Member States with Commission can effectively determine the position of the entire EU, which represents a majority of the Parties, tends to undermine the democratic decision-making processes within the Convention bodies.

We now call on the EU to listen to the feedback it has got from Budva and to swiftly take the measures needed to bring the EU back into compliance. Most obviously, it should initiate without delay the process of revising the Aarhus Regulation which up to now, in combination with the jurisprudence of the Court of Justice of the EU, has effectively prevented NGOs from seeking access to justice in defence of the environment at the EU level in all but access to documents cases. Only if it does so will it avoid a further humiliation when the MoP reconvenes in 2021.
