

Statement on behalf of Justice and Environment
Agenda no. 4 Stocktaking of recent and upcoming developments
15th Meeting of the Task Force on Access to Justice
Geneva, 4-5 April 2023

Thank you for the floor, Chair. My name is Summer Kern, and for purposes of this intervention I speak on the behalf of Justice and Environment, which is a network of 14 environmental NGOs, including notably ÖKOBÜRO, which is our member organization in Austria, and happens to be one of the communicants of communication ACCC/C/2015/128 (EU), which is now known as ACCC/M/2021/4; in short, the “the state aid case,” or M4.

I confess to being surprised that, apart from Mr. Nagy’s short reference to undertaking studies as to access to justice to challenge state aid measures at the Member State level, the EU has failed to address the elephant in the room, which is this precisely this case.

As my ECO Forum colleague just mentioned, the Commission had announced (and reported to the Aarhus Convention Compliance Committee in its Plan of Action) that a communication was to be published concerning M4 by the end of 2022. Yet it is now already April 2023, and no such communication has been published. At this pace we fear the EU will not be able to timely implement the Committee’s recommendations by the time of the eighth session of the Meeting to the Parties of the Aarhus Convention, which would be a truly regrettable outcome.

Moreover, we fear we can expect the communication to contain little in the way of concrete measures that the Commission intends to take, given that the Commission has multiple times expressed that the intention of the communication is to analyze the implications of the findings and assess the options available with regard to these findings. This does not inspire much confidence in the communicants or NGO community at large. This is a far cry from similar Plans of Action filed by countries like Armenia, Bulgaria, and Germany, for example, which named specific proposed legislative changes and the prospective timelines for implementation. And again, this means only more delays.

As regards the study to evaluate opportunities for members of the public to challenge state aid decision-making at the Member State level, mentioned by Mr. Nagy, we look forward with great interest to reading this and are in fact looking into this topic ourselves. We would welcome a functioning state aid system with appropriate opportunities for NGOs and members of the public to engage in such decision-making and, as a last resort, bring legal challenges at the Member State level.

That being said, the flaws identified by the Committee, and the recommendations that ensued will not be solved at the Member State level. To recall, we are talking about the EU level here. Anything gained by improving access at the Member State level is to be welcomed. But the “homework” that the EU has to do is to either amend the Aarhus Regulation to remove the exclusion for state aid cases from the requests for internal review procedure, or adopt new legislation to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures *taken by the European Commission under article 108(2) TFEU that contravene European law relating to the environment, in accordance with article 9(3) and (4) of the Convention.*

Thank you.