To: Ursula Von der Leyen, President of the European Commission
    Charles Michel, President of the Council of the European Union
    David Maria Sassoli, President of the European Parliament

Cc: Frans Timmermans, Executive Vice-President of the European Commission
    Christian Doleschal, Member of the European Parliament
    Milan Brglez, Member of the European Parliament
    Martin Hojsík, Member of the European Parliament
    Marie Toussaint, Member of the European Parliament
    Anna Zalewska, Member of the European Parliament
    Mick Wallace, Member of the European Parliament

From: Professor Alberto Alemanno, Director at The Good Lobby, on behalf of a group of academics and legal professionals from across Europe

Re: A call to the EU to comply with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

Dear President Von der Leyen, President Michel, President Sassoli,

We, the undersigned legal academics and professionals, call on the EU to comply with the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), ratified by the EU on 17 February 2005.

In 2017 the Aarhus Convention Compliance Committee (ACCC) – the body responsible for compliance – found the EU to be in breach of its Articles 9(3) insofar as it failed to provide access for members of the public to administrative or judicial review procedures to challenge EU administrative acts and omissions that contravene EU law relating to the environment.

The fulfilment of international law obligations is the hallmark of a State’s commitment to the rule of law. This is no different for the EU, which has ratified the Aarhus Convention in its own right. Additionally, public access to administrative or judicial review procedures is key to ensuring the accountability of EU institutions and observance of EU environmental law in administrative decision-making.

The ACCC found the EU to be in breach of Article 9(3) of the Convention on the basis that:

1. NGOs and individuals do not have legal standing to bring environmental cases directly before the Court of Justice of the EU under Article 263 TFEU;
2. While the preliminary reference procedure in Article 267 TFEU is an indispensable means of ensuring the consistent application and proper implementation of EU law, it is insufficient to guarantee access to justice at EU level due to structural and practical barriers inherent in the mechanism;

3. The Aarhus Regulation ([Regulation 1367/2006](http://example.com)) allows certain NGOs to request internal review of a very restricted category of administrative acts that contravene EU environmental law, leaving the vast majority unchallengeable.

Following a request from the Council of the EU, the Commission published on 15 October 2020 a legislative proposal to amend the Aarhus Regulation with the explicit aim of bringing the EU into compliance with international law. However, the Commission’s proposal would not achieve that objective. This was made clear by the ACCC in its advice to [the EU issued on 12th February 2021](http://example.com).

**We therefore urge the European Parliament, the Council of the EU and the European Commission to fully implement the ACCC’s findings and recent advice.** Specifically, the definition of “administrative acts” that can be subject to internal review must include all EU non-legislative acts and omissions that are capable of contravening EU law relating to the environment, including the provisions of acts for which EU law explicitly requires national implementing measures and the Commission’s State aid decisions. The EU must also take steps to allow certain individuals to access the internal review mechanism.

Article 27 of the Vienna Convention on the Law of Treaties states that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to comply with that treaty. In coming to its conclusion, the ACCC took the special features of the EU legal order into account, in particular the importance of the preliminary reference procedure, and recognised [the declaration by the EU](http://example.com) upon accession to the Convention. The recommendations in the ACCC
advice respect the allocation of competences between the EU and Member State courts as laid down in the EU Treaties.

As academics and legal professionals, we represent varied interests in our daily work of scholars and practitioners, but we are united in believing that the EU cannot unilaterally disregard its international law obligations and that the EU institutions must be accountable to the public for the lawfulness of their decisions. Members of the public must have the right to challenge EU administrative acts and omissions that contravene environmental law, in accordance with the Aarhus Convention. **The best way of achieving this is by implementing the ACCC advice in the current legislative process.**

We look forward to hearing from you.

Yours sincerely,

- Professor Alberto Alemanno  
  HEC Paris and founder of The Good Lobby
- Dr Vigjilenca Abazi  
  Maastricht University
- Dr Carolyn Abbot  
  University of Manchester
- Dr Laure Abramowitch  
  Lawyer, Legiplanet Avocats
- Robert GS Aitkin  
  Solicitor, England & Wales
- Gill Aitkin  
  Solicitor, England & Wales
- Assistant Professor Laurens Ankersmit  
  University of Amsterdam
- Estellia Araez  
  President of the French Lawyers' Union
● Professor Alexandra Aragão  Chair of EU environmental law at the Faculty of Law of the University of Coimbra
● Dr Chiara Armeni  Free University of Brussels
● Marcin Bachman  Radca Prawny (attorney-at-law), LL.M., Poland
● Professor Ch.W. Backes  Utrecht Centre for Water, Oceans and Sustainability Law at Utrecht University
● Dr Antoine Bailleux  Director, Institut d’Etudes européennes, University of Saint-Louis
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