

# INTRODUCTION

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## BACKGROUND AND CONTEXT

The Foundation Discussion Document (FDD) for the ‘Mediterranean Accession Agenda to the Aarhus Convention’ is the research component of a three-task project. The task of the research component is the development of an FDD generating a foundation analysis of the multifarious issues related to the Mediterranean accession to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and showcasing the need for their holistic, interdisciplinary and relational understanding of their function and management. The foundation analysis will form the basis for a workshop component with the task to organize an interdisciplinary meeting of experts to discuss the FDD and identify the priorities and implications of the implementation of the Aarhus Convention in the Mediterranean. This will be followed by a report and communication component with the task to launch the Mediterranean Accession Agenda to the Aarhus Convention on the basis of the two previous tasks, including a report to the next Meeting of the Mediterranean Commission on Sustainable Development (MCSD) to be held in June 2023,<sup>1</sup> dissemination events and publications.

This project is launching the MSSD (Mediterranean Strategy on Sustainable Development 2016-2025) Flagship Initiative on Environmental Governance to encourage the accession to and implementation of the Aarhus Convention in all Mediterranean countries and promote stakeholder engagement, and, thus, make more effective and efficient the implementation, compliance and enforcement of the Barcelona Convention and its Protocols. It specifically implements a Concept Note drafted by the Circle of

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<sup>1</sup> The next meeting of the MCSD (June 2023) will be prepared by two MCSD Steering Committee meetings to be convened in June and December 2022.

Mediterranean Parliamentarians for Sustainable Development (COMPSUD), Mediterranean Information Office for the Environment, Culture and Sustainable Development (MIO-ESCDE) and the Mediterranean Programme for International Environmental Law and Negotiation (MEPIELAN Centre) to put in motion this MSSD Flagship Initiative, acknowledged by the MCSD at its 18<sup>th</sup> Meeting (Budva, Montenegro, 11-13 June 2019), while the 21<sup>st</sup> Meeting of the MCSD Steering Committee (teleconference, 13-14 May 2020) further acknowledged that MIO-ECSDE and MEPIELAN Centre will embark on the development of the legal and governance dimensions of this MSSD Flagship Initiative, facilitated by the UNEP/MAP – Barcelona Convention Secretariat.

The project is carried out in the framework of a Memorandum of Understanding (MoU), signed on 2 October 2020 between MEPIELAN/Panteion University of Athens and MIO-ECSDE for the Implementation of the MSSD Flagship Initiative to Encourage the Accession to the Aarhus Convention of the Mediterranean Non-Parties States, according to which MEPIELAN Centre will undertake this project “in collaboration with MIO-ECSDE and the UNEP/MAP-Barcelona Convention Secretariat” (Art. 2). On the basis of the MOU, a performative expertise agreement between them was signed (30 December 2020) to implement the research component of the project, namely the FDD, as a detailed, comprehensive document of interdisciplinary research, and the task was undertaken by MEPIELAN/Panteion University. The activities of the project have been launched with the support of the MIO-ECSDE through the European Union (EU) Life Programme<sup>2</sup> and the EU Water and Environment Support (WES) Regional Project.<sup>3</sup> The development of the FDD by MEPIELAN started in January 2021 and completed in September 2021. During this process, the UNECE-Aarhus Convention and UNEP/MAP – Barcelona Convention Secretariats provided cooperation. A revised version of the FDD has been completed in February 2022, taking into account review comments made by the UNEP/MAP – Barcelona Convention Secretariat and MIO/ECSDE. In parallel, a

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<sup>2</sup> <http://www.ec.europa.eu/life>

<sup>3</sup> <http://www.wes-med.eu>

*Summary for Policy Makers* has been prepared by the MEPIELAN Centre, which was submitted in February 2022 under separate cover.

## **METHODOLOGY**

### **A. Conceptual Element**

Using an inter-disciplinary, relational and process approach, and a qualitative and quantitative evaluation of the Aarhus Convention regime<sup>4</sup> and its expansive process, the research component aims to develop a FDD on the legal, governance and policy aspects for the appropriate construction of an accession process of the Mediterranean non-Parties to the Aarhus Convention regime, unveiling the insights, benefits, opportunities and challenges for the acceding states associated with an exploratory and integrated analysis of the following aspects:

- The diverse fields of universality of the Aarhus Convention's principles associated with relevant international treaty/Conventional regimes, global declarative instruments and modern constitutions of Mediterranean States.
- The challenging legal and governance architecture of its international common interest regime, evaluating its structural, process and participatory aspects, the effectiveness of its operation, as well as the key benefits for a country's participation
- The normative function of interlinkages promoting transparency and participatory environmental/sustainability governance with various international institutional structures and processes: IFIs, IOs, International Trade, International Technology and Human Rights.
- The extensive and regionally-expansive instrumental interlinkages related to the attainment of the Sustainable Development Goals (SDGs) through the implementation of the Aarhus Convention regime.
- Building capacity in participatory governance related to the enhancement of transboundary environmental decision-making process, the strengthening of

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<sup>4</sup> For a detailed analysis, see Part 2, sections 2.11-2.18.

negotiating capacities for promoting the Aarhus Convention's principles and procedures in diverse international fora, and the development of a structured talanoa-type of dialogue<sup>5</sup> in sustainability governance.

- Negotiating creatively and effectively the accession to the Aarhus Convention, building a multilateral structured approach to the existing management and practice of its accession procedure.

## **B. Empirical Element**

In the framework of the methodological approach and guided by an evolving FDD outline, MEPIELAN Centre prepared and carried out:

### ***(a) The Aarhus Project Questionnaire - A Quantitative Method***

- MEPIELAN Centre drew up an online Questionnaire of 21 questions combining multiple choice and space for further elaborations. Inputs to final draft of the Questionnaire were given by the UNECE-Aarhus Convention Secretariat.
- MEPIELAN Centre finalized the link for the Questionnaire:  
[https://docs.google.com/forms/d/e/1FAIpQLScsVJBbMQlmyt40PdbCPSJW9N4Yn\\_gY-ShqMxHF2\\_h5i2Tzqw/viewform](https://docs.google.com/forms/d/e/1FAIpQLScsVJBbMQlmyt40PdbCPSJW9N4Yn_gY-ShqMxHF2_h5i2Tzqw/viewform)
- The Questionnaire was sent by UNECE-Aarhus Convention Secretariat on 1 March 2021 to all Parties of the Convention and NGOs, Regional Environmental Centers and Aarhus Centers (March and April 2021)
- It contains questions about all levels (local, national, regional, and international) and relevant aspects (legal, governance and policy) of the implementation of the Aarhus Convention regime by its Parties, including issues related to the of accession process.
- The Questionnaire more specifically addresses:
  - ✓ issues related to the quality, effectiveness of, and response to, the implementation of the Aarhus Convention at the national level[*Questions 1-8*]
  - ✓ the general impact of the implementation of the Aarhus Convention for these countries at the international, regional, bilateral and national levels, including

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<sup>5</sup> See below, Part 5, section 5.14.

the level of its interaction with, and promotion of, important Environmental Agreements [*Questions 9-16*]

- ✓ the social impact of the implementation of the Aarhus Convention on special conditions similar to those of the States to accede (persons or groups in vulnerable situations, participation of the poorest segments of society and rural communities), and the level of communication of the Compliance Committee decisions in the domestic orders of the Parties [*Questions 17-19*]
- ✓ the preparatory phase of accession to the Aarhus Convention and the actions required for its promotion [*Question 20*]
- ✓ The specific environmental fields to which the Convention has contributed to improvement in implementation [*Question 21*]
- 24 Responses from 18 Parties were received during March and April 2021, and a survey has been carried out

***(b) The Aarhus Project Interviews – A Qualitative Method***

- MEPIELAN Centre organized and conducted 10 “in-depth” interviews (March and April 2021)
- A semi-structured interview approach was used closer to a dialogue and adjustable – a list of indicative, open-ended interview questions was prepared for each interview to guide the process and maintain the coherence and scope of the conversation while remaining explorative of relevant topics not considered before.
- The selection of interviewees included persons with complementary perspectives and roles: NGOs (2), state representatives (1), Aarhus Convention officials (3), Escazú Agreement officials (2), individual experts (2) A basic criterion of the selection of the interviewees was their personal competence, broad knowledge and experience in the field of the Aarhus Convention regime and beyond.
- All Interviews were conducted online and in person. Each interview lasted from one hour to one hour and an hour and a half.

## STRUCTURE

The FDD is prepared by MEPIELAN Centre/Panteion University of Athens as a detailed, comprehensive document of interdisciplinary research, for policy-makers at all levels, relevant stakeholders and a broader expert audience, and is intended to be communicated to the public through appropriate means of communication. The FDD is structured in six parts, addressing the corresponding six aspects of the Conceptual Elements stated above, as follows:

- **Part I** presents an overview of the universality of the Aarhus Convention's principles associating them with: the Rio Declaration of Environment and Development and its Principle 10; international environmental agreements; the UNEP/MAP-Barcelona Convention regime for the protection of the Mediterranean environment; its counterpart the Escazú Agreement in Latin America and the Caribbean; the African, Inter-American and European systems of human rights; and, the Constitutions of North African Mediterranean States.
- **Part II** offers an integrated analysis of the architecture and function of the Aarhus Convention regime: its three pillars (right to information, right to participation and access to justice), its governance and process, its effectiveness, and illustrates the benefits and opportunities for countries acceding to it.
- **Part III** throws light into the various interlinkages between the Aarhus Convention regime and relevant Conventional environmental or environment-related regimes and other related processes, demonstrating the important normative aspects of this interlinkaging in their process of bridging. More specifically, it unfolds the importance of working with these interlinkages and implementing them in relation to International Financial Institutions (IFIs) (World Bank, EBRD, EIB), the decision-making processes of international institutions (International Civil Aviation Organization / ICAO), the trade negotiation process, the international technological processes (Geo-engineering, Genetically Modified Organisms / GMOs), and the protection of environmental defenders.

- **Part IV** focuses on the complementary interlinkages between the Aarhus Convention regime and the attainment of the 2030 Agenda for Sustainable Development (2030 Agenda) with the Sustainable Development Goals (SDGs) unveiling the richness of these interlinkages which embrace public access to resources, access to information, public participation, access to Justice and international activities, as well as denoting the importance of these interlinkages for the acceding Mediterranean countries in their effort to attain a Mediterranean implementation of the SDGs, including through the MSSD.
  - **Part V** advances progressive aspects of participatory environmental governance which refer to: enhancing the transboundary scope of environmental decision-making; strengthening the capacities of the Aarhus Parties for negotiating effectively and efficiently interlinkages in the various international fora depicting the participatory and thematic aspects, as well as the esoteric dimension of this process; and shedding light in the potential role of Aarhus Centres to build capacity for participatory environmental governance-by-dialogue through the introduction of a structured talanoa-type of dialogue between authorities and stakeholders, and the facilitation of citizen knowledge.
  - Finally, **Part VI** provides an innovative approach to negotiating the Mediterranean accession to the Aarhus Convention process. After exploring the architecture and management of accession for countries outside the ECE region and the case of Guinea Bissau accession, it proceeds to propose the infusion of multilateralism into accession procedure through the collective construction of a structured Pre-Accession/Pre-negotiation Phase with the aim to produce a possible political Declaration of Mediterranean Accession to the Aarhus Convention. In parallel, a similar Pre-negotiation process may be also initiated within the framework of the UNEP/MAP–Barcelona Convention system.
- The FDD contains Annexes presenting the Survey Questionnaire (Annex I), the graphic results of the Survey Questionnaire (Annex II), and the list of interviewees (Annex III).