

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision V/9g
on compliance by the European Union with its
obligations under the Convention**

Contents

| | <i>Paragraphs</i> | <i>Page</i> |
|---|-------------------|-------------|
| I. Introduction | 1 | 2 |
| II. Summary of follow-up action with decision V/9g..... | 2 | 2 |
| III. Considerations and evaluation by the Committee | 10 | 3 |
| IV. Conclusions and recommendations | 15 | 4 |

I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9g on compliance by the European Union with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9g

2. By letter of 28 November 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9g.

3. The Party concerned provided its first progress report on the implementation of decision V/9g on 18 December 2014.

4. At the Committee's request, on 2 January 2015 the secretariat forwarded the Party concerned's first progress report to the communicant of communication ACCC/C/2010/54, inviting him to provide his comments on that report by 23 January 2014. The communicant provided comments on 12 January 2015.

Party concerned's first progress report

5. In its first progress report, the Party concerned reported that the European Commission had reminded Member States of the provisions of the Convention on public participation, in the event that they would be in the situation of having a renewable energy sources (RES) share under the indicative trajectory set by Annex I of the Renewable Energy Directive¹ and thus they would have to prepare and submit an amended national renewable energy action plan (NREAP) under article 4(4) of that Directive. The European Commission had also drawn the attention of the Member States to the findings and recommendations of the Compliance Committee concerning compliance by the European Union.

6. The Party concerned reported that so far the European Commission had not concluded that a Member State was in a situation of having a RES share below the indicative trajectory set in Annex I of the Renewable Energy Directive in the immediately preceding two year period. Hence, no amended NREAPs had to be prepared and submitted to the European Commission under article 4(4) of the Directive. Should such a situation arise, the Party concerned reported that the European Commission would remind Member States of the provisions of the Convention regarding public participation.

Communicant's comments on the Party concerned's first progress report

7. In his comments on the Party concerned's first progress report, the communicant of communication ACCC/C/2010/54 submitted, inter alia, that it was evident from the progress report that the Party concerned had made zero effort with respect to compliance. He submitted that no progress had indeed been made since the findings and recommendations on communication ACCC/C/2010/54 were adopted more than two years before and not only was there no intent to achieve progress, the situation was deteriorating.

¹ Directive 2009/28/EC.

8. The communicant submitted that a more in-depth and active review of the compliance situation of the European Union was required, such as that envisaged in the Guidance Document on the Aarhus Convention Compliance Mechanism,² in particular as to why at Head of Unit level in the European Commission positions had been adopted, which were in clear opposition to the International Treaty arrangements ratified by the Council and upheld by the European Court.

9. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9g in open session with the participation by audio conference of the Party concerned and the communicant as well as observers present at the meeting. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9g in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6-9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and the communicant of communication ACCC/C/2010/54.

III. Considerations and evaluation by the Committee

10. In order to fulfil the requirements of the decision V/9g, the Party concerned would need to provide the Committee with evidence that:

(a) It had adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs;

(b) It ensures that the arrangements for public participation in its Member States are transparent and fair and that within those arrangements the necessary information is provided to the public;

(c) It ensures that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation;

(d) It had adapted the manner in which it evaluates NREAPs accordingly.

11. The Committee welcomes the first progress report of the Party concerned, which was submitted on time. The Committee is however, regrets the brevity of the report and is disappointed by the failure of the Party concerned to address the specific findings endorsed by decision V/9g.

12. The Committee in particular notes the repeated references in decision V/9g to the necessity for a proper regulatory framework and/or clear instructions. Whilst it is for the Party concerned to decide how to implement the decision, the Committee observes that a proper regulatory framework could include an amendment to current relevant applicable legislation, and that clear instructions would amount to a direction or order that had to be followed by Member States. These should be complemented with proper monitoring of the implementation.

13. The Committee expresses its concern that the activities described in the Party concerned's report are not sufficient to address any of the recommendations set out in paragraph 3 of decision V/9g nor does the report provide any plan of action, list of

² http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC_GuidanceDocument.pdf, page 33, paragraph (f).

proposed activities or explanation as to how the Party concerned proposes to fully implement those recommendations prior to its final progress report due on 31 October 2016. The Committee therefore finds that the Party concerned has not yet fulfilled the requirements of decision V/9g nor has taken any significant steps in that direction.

14. The Committee invited the Party concerned, in its second progress report due on 31 October 2015, to provide a detailed plan of action, including a timeline, as to how it proposes to address each of the recommendations set out in paragraph 3 of decision V/9g. The Committee reminds the Party concerned that the fifth session of the Meeting of the Parties considered that Party has failed to comply with the Convention; it follows that the second progress report should describe the relevant actions taken or planned by the Party since that session to comply with the Convention.

IV. Conclusions

15. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9g nor has taken any significant steps in that direction.

16. The Committee invites the Party concerned in its second progress report due on 31 October 2015 to provide a detailed plan of action, including a timeline, as to how it proposes to address each of the recommendations set out in paragraph 3 of decision V/9g.

17. The Committee reminds the Party concerned that the Meeting of the Parties have undertaken to review decision V/9g at its sixth session.

18. The Meeting of the Parties at its sixth session may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention in accordance with paragraph 37 of Decision I/7. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to the Party concerned regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;
- (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.