

From: Pat Swords
To: aarhus compliance
Date: 27/10/2016 21:07
Subject: Fwd: Aarhus 3rd progress report on Decision V-9g

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From: **Pat Swords**
Date: Thu, Oct 27, 2016 at 8:07 PM
Subject: Re: Aarhus 3rd progress report on Decision V-9g
To: Robert Konrad
Cc: aarhus compliance , Angelika Wiedner, Fiona Marshall, Delegation-Geneva-UN

Dear Fiona

As Communicant on this issue I have no option, but to respond on the strongest terms. The Decision of Non-compliance of the Meeting of the Parties (MoP) can be read and understood clearly by all:

http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9g_on_compliance_by_the_European_Union.pdf

•(a) *That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement article 7 of the Convention with respect to the adoption of National Renewable Energy Action Plans (NREAPs) by its member States **on the basis of Directive 2009/28/EC**, has failed to comply with article 7 of the Convention;*

However, after year on year obfuscation by the EU Commission, we now see that this MoP Decision is to be rewritten to suit the occasion, namely the EU Commission's Agenda of pursuing their own programme outside the scope of both International and Community Law; namely as is concluded by the EU Commission:

•"*determination to comply with these requirements in its future legislative framework*".

So we have a vague promise that in future the EU Commission may comply, **note not 'will comply'**; yet the MoP Decision was clear with respect to

•"*adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of [National Renewable Action Plans (NREAPs)].*

In other words, **the compliance measures were to be taken with respect to the current legislative framework, namely the implementation of Directive 2009/28/EC, which runs through to 2020.**

To provide some short background to the significance of this, as was documented in Communication ACCC/C/2010/54, the EU Commission was fully informed several months before the adoption of the NREAPs of outstanding requirements with respect to Strategic Environmental Assessment, which is the primary measures the EU has commitment to, with respect to implementation of Article 7 of the Convention on public participation on plans and programmes related to the environment.

http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/Response_08.01.2012/frCommC54LetterIrishAd2ECreNREAP.pdf

The choice of the EU Commission was then, as is now, to do absolutely nothing about the necessary legal compliance related to the public's right to participate. In other words deliberately denying the public right across Europe, the opportunity to participate in countless permitting decisions on this renewable infrastructure, in a manner in which they were legally entitled. Namely, as is documented in the MoP decision; **"when all options**

are open and effective public participation can take place". Instead the public are to be emasculated, the 'zero option' or consideration of other alternatives do not exist, the whole process is 'pro forma' with all the main decisions already taken behind closed doors at central level. This is clearly the intent of the EU Commission going forward. To highlight this position once again, the findings and recommendations on ACCC/C/2010/54 were adopted by UNECE in August 2012, zero progress has been made on these since then, i.e. over more than four years. This is now also the documented intent going forward through to 2020.

So where does this leave us? Clearly the EU Commission sees it has an entitlement to lecture others on Aarhus Compliance, such as Belarus and Turkey:

- <http://www.unece.org/fileadmin/DAM/env/pp/mop5/Statements/Compliance - Belarus decision - EU MS statement 1.7.2014 FINAL.pdf>

- *This being said, from the point of view of substance, we are extremely concerned about the non-compliance by Belarus with regard to the implementation of key provisions of the Aarhus Convention. Should full compliance not be achieved by Belarus by the next MOP, the EU and its Member States would have to consider the option of recommending to the MOP to issue a caution to Belarus*

- See Page 77: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf

- *Provisions on access to information, public participation and access to justice in environmental matters established in the UN Economic Commission for Europe Aarhus Convention also have yet to be aligned with. This would in particular provide a clear framework for solving ongoing disputes on investment decisions with substantial impacts on the environment and climate change.*

Yet at the same time as lecturing others, the EU Commission does not see that it needs to address compliance with this MoP decision, which in essence reflects, what is the largest infrastructural programme Europe has seen since the war and a noncompliance, which has left hundreds of millions of citizens without their rights for effective participation in the relevant permitting procedures. To me as Communicant, you can't have it both ways. Pretending you are a compliant Party and lecturing others, while making no efforts to be compliant yourself. If the EU has no intent of being compliant and providing the rights enshrined in the Convention to its citizens, then it should do the honourable thing and withdraw. Failing that I see no other option but in time that they should be asked to withdraw.

Regards

Pat