

From: EC ARES NOREPLY DIGIT-NOREPLYARES
To: Aarhus Compliance, Fiona Marshall
Cc: DELEGATION GENEVA UN EEAS Europa, WIEDNER Angelika, KONRAD Robert Pat Swords
Date: 09/12/2016 10:42
Subject: Ares (2016) 6876640 - Follow-up to the open session on Decision V/9g concerning the European Union

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Sent by KONRAD Robert (ENV) <Robert.KONRAD@ec.europa.eu>. All responses have to be sent to this email address.

Envoyé par KONRAD Robert (ENV). Toutes les réponses doivent être effectuées à cette adresse électronique.

Dear Ms Marshall,

As a follow-up to the open session on Decision V/9g of 6 December 2016 which the European Commission attended via audio-conference, the Commission is hereby pleased to provide the clarifications requested by the Honourable Members of the Aarhus Convention Compliance Committee (ACCC).

The Commission would also like to take the opportunity of this written clarification to provide the ACCC members with the link to the proposal for a Regulation on the Governance of the Energy Union (COM(2016) 759 final) and draw their attention in particular to recital (20) and Article 10 thereof:

http://ec.europa.eu/energy/sites/ener/files/documents/1_en_act_part1_v9_759.pdf

- *On which date did the Commission send letters to the Permanent Representations of the Member States reminding them of their obligations under the Aarhus Convention with regard to the adoption of the National Renewable Energy Action Plans (NREAPs)?*

The letters mentioned in the second and third EU progress reports were sent by the Commission on 14 October 2015. Please find enclosed as an example the letter addressed to Ireland:

Previously, already on 12 September 2013 and even before the adoption of Decision V/9g, letters were sent to all Member States' authorities, reminding them of their obligations under the Convention and drawing their attention to the findings and recommendations of the ACCC in case ACCC/C/2010/54. Please find examples of such letters attached for your convenience:

- *What is the legal status of such letters?*

In the letters, the Commission quoted the ACCC findings and recommendations before reminding the Member States of their responsibilities under the Aarhus Convention when they implement the obligations stemming from Directive 2009/28/EC, notably Article 4(4) thereof which requires Member States to submit an amended NREAP to the Commission in case their share of energy from renewable sources would fall below the indicative trajectory. The letters made a clear link between the obligation for the Commission to implement the ACCC recommendations, including the obligation to report on the progress made, and the obligation for the Member States to report to the Commission the measures and procedures in force that ensure public participation in the decision-making process in accordance with the requirements of the Convention.

The Commission therefore holds the letters to be a clear instruction to the Member States to implement Article 7 of the Convention with respect to the adoption of NREAPs, in accordance with the recommendation by the ACCC in Decision V/9g. The form taken by the instruction – a letter – does not alleviate or lighten the obligations and responsibilities it puts on Member States.

Member States have the duty of sincere cooperation with the European Union as laid down in Article 4(3) of the Treaty on European Union. This duty includes a mutual legal obligation for the EU and the Member States to “*assist each other in carrying out tasks which flow from the Treaties*” and specifically requires the Member States to “*facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives*”. The letters substantiate this obligation with regard to compliance with the Aarhus Convention.

- *How many Member States failed to report on the public participation measures and procedures in force in their progress reports due by 31 December 2015?*

10 Member States have not provided any explanation at all on the public participation measures and procedures in force. In addition, it is the Commission services' assessment that 6 other Member States have not provided a fully satisfactory reply to the request made to them. As said in the third progress report, the European Commission will ask those 16 Member States specific questions in order to determine if the national legal framework in place for implementing the Convention requirements is sufficient.

Best regards,

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Head of Unit

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