

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

**Second progress review of the implementation of decision V/9j
on compliance by Romania 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/9j since the Committee's first progress review	2	2
III. Considerations and evaluation by the Committee	23	6
IV. Conclusions and recommendations	44	10

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/9j on compliance by Romania with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9j since the Committee's first progress review

2. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9j to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015, and at the latest by 31 December 2015, on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9j.

3. By letter of 9 November 2015 the Party concerned indicated that it would provide the second progress report by 31 December 2015 and duly provided it on that date.

4. At the Committee's request, on 7 January 2016 the secretariat forwarded the Party concerned's second progress report to the communicants of communication ACCC/C/2010/51, inviting them to provide their comments on that report by 28 January 2016. No comments were received from the communicants.

5. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9j in open session taking into account the Party concerned's second progress report as well as the oral statement made by the Party concerned by audio conference during the session. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9j in closed session.

6. Following the fifty-second meeting, on 18 March 2016 and 14 April 2016, the Party concerned provided additional information regarding its progress to implement decision V/9j.

7. The Committee continued the preparation of its second progress review at its virtual meeting on 13 May 2016 and at its fifty-fifth meeting (Geneva, 6-9 December 2016), taking into account the additional information provided by the Party concerned on 18 March 2016 and 14 April 2016. The Committee adopted its second progress review at its virtual meeting on 22 December 2016 and requested the secretariat to forward it to the Party concerned and the communicants of communication ACCC/C/2010/51.

Party concerned's second progress report

Paragraph 2(a) (i) of decision V/9j

8. In its second progress report submitted on 31 December 2015, the Party concerned repeated the view stated in its first progress report that there was no need for modifications of its legislation.

9. With respect to timeframes for responding to information requests from the public, in its additional information sent on 18 March 2016, the Party concerned stated that article 4, paragraphs 1 and 2 of Governmental Decision no. 878/2005 regarding public access to environmental information provides that:

(1) Environmental information shall be made available to the applicant, in compliance with the specified deadline, as soon as possible or no later than one month from the reception by the public authority.

(2) Should the requested information volume or complexity be so large that the one month deadline cannot be observed, the environmental information shall be made available to the applicant within two months from the application reception at the public authority. In such cases, the applicant shall be informed, as soon as possible or at least before the one month deadline expiry, regarding the extension of the deadline for response and the extension reasons.

10. The Party concerned did not provide any further information on the extent to which the requirement to state the reasons for a refusal was reflected in its legal framework.

Paragraph 2(a) (ii) of decision V/9j

11. In its second progress report dated 31 December 2015, the Party concerned reported that the Ministry of Environment, Waters and Forests was to organize a national roundtable with representatives of other central authorities in order to present the views of the Compliance Committee concerning the grounds for refusing access to environmental information.

12. In its additional information of 18 March 2016, the Party concerned stated that according to article 12 of the Government Decision no. 878/2005 the grounds for refusal should be interpreted in a restrictive manner, taking into account, for each case, the public interest served by information disclosure. In each case, the public interest served by disclosure was examined in comparison to the interest served by observing confidentiality.

Paragraph 2(a) (iii) of decision V/9j

13. In its second progress report, the Party concerned stated that the practice of the public authorities regarding the preparation of strategic documents had been assessed. It reported that the Ministry of Environment, Waters and Forests and holders of strategic documents offered the public the opportunity to participate in the drafting of such documents and that the observations and comments of the public were properly taken into account in the decision making. It stated that for all operational programmes 2014-2020, namely: the Regional Operational Programme, the Operational Programme for Big Infrastructure, the Regional Developing National Programme, and the Operational Programme for Fishing and Maritime Affairs, the responsible ministries had displayed the draft of the strategic document, the environmental report and appropriate assessment studies on their websites. The Party concerned stated that the Ministry of Environment, Water and Forests, as the responsible authority for the timetable of environmental assessments, created a special section on the website for the environmental assessment for each operational programme, together with the comments of the public concerned and information on how these comments were taken into account in the strategic document. The Party concerned provided the Committee with a link to the document showing how the public concerned's comments had been taken into account in the decision-making on the Operational Programme for Fishing and Maritime Affairs 2014-

2020.¹ The Party concerned stated that a similar approach had been followed for other strategic documents, including the Operational Programme for Big Infrastructure 2014-2020, the Regional Operational Programme 2014-2020 and the national Rural Development Programme 2014-2020.

14. The Party concerned reported on the dissemination of strategic documents with potential transboundary impacts² and stated that information regarding programmes of cross-border cooperation which include environmental assessment was disseminated in a similar manner.³ It also provided the link where all programmes, plans and strategies for which the Ministry of Environment, Waters and Forests conducted a strategic environmental assessment procedure were displayed.⁴

15. In its additional information provided on 18 March 2016, the Party concerned reported that the final alternatives of the draft operational programme, the environmental report and environmental assessment were disseminated to the public concerned 45 days before the public debate in order to give them complete information and enable them to submit comments. All comments received from the public concerned, including those received during the public debate, were analysed and those considered justified were integrated into the strategic document. The Party concerned submitted that the current legislation, as well as the regulatory and administrative framework, fulfilled the recommendation in paragraph 2(a)(iii) of decision V/9j satisfactorily.

16. In this regard, in its additional information of 14 April 2016, the Party concerned provided an English translation of Governmental Decision no.1076/2004 for setting up the environmental assessment procedure of certain plans and programmes. With respect to timeframes for the public to get acquainted with draft strategic documents and to submit their comments, Governmental Decision no. 1076/2004 states:

Article 28

(1) The competent authorities for environmental protection ensure the public information and participation to the environmental assessment procedure, through the following actions:

...e) establishing a reasonable time-frame that may allow public participation to the procedure stages;

Article 29

(2) During the screening stage, the plan or programme owner publishes in the newspaper, 2 times at 3 calendar days interval, and announces on its web site that the first version of plan and programme has been drawn up, its type, starting of the screening stage, the place and schedule for the public consultation and the possibility to send written comments and opinions in 15 calendar days from the last announcement.

(3) During the screening stage, the competent authority for environmental protection displays on its web site the decision of this stage and the

¹ The document is available from <http://www.mmediu.ro/articol/programul-operational-pentru-pescuit-si-afaceri-maritime-2014-2020/477>

² General Transport Master Plan, available from <http://www.mmediu.ro/categorie/evaluare-de-mediu-pentru-strategii-planuri-programe/60>

³ For example, the Joint Operational Programme Romania - Ukraine 2014-2020, the Joint Operational Programme Romania- Moldova 2014-2020, the European Neighbourhood Instrument Cross-Border Cooperation (ENI CBC) Programme Hungary -Slovakia-Romania - Ukraine 2014-2020.

⁴ Information available from <http://www.mmediu.ro/categorie/evaluare-de-mediu-pentru-strategii-planuri-programe/60>

possibility for public to send written proposals for its reappraisal, in 10 calendar days from the displaying, to the competent authority for environmental protection. The final decision is made available to the public by displaying on the web site of the competent authority for environmental protection.

Article 30

...(2) The plan or program owner publishes in newspaper, 2 times at 3 calendar days interval, and displays on its web page the availability of the draft plan or programme, the finalizing of the environmental report, the place and the ... consultations schedule and also that the public can submit written comments to the owner's and to the competent authority for environmental protection headquarter in 45 calendar days from the last announcement.

Article 31

(1) The plan or programme owner must publish in newspaper 2 times at a 3 days interval and displays on its own web site the organization of a public debate on the proposed draft plan or programme, including the environmental report with at least 45 calendar days before the date of the debate, or 60 calendar days, when the implementation of the plan or programme may have significant transboundary effects.

.....

(4) 70 calendar days before the public debate, the plan or programme owner must invite to the public debate, by means of the promoting central public authority, the competent environmental protection authorities and the health authorities from the potentially affected states, as well as the affected or potentially affected public of these states or the public having an interest in the decisions-making process regulated by this Governmental Decision, according to article 34.

17. The Party concerned reported that the above provisions had been applied to all operational programmes 2014-2020 (see para. 13 above).⁵

18. The Party concerned also reported that the Ministry of Energy had decided to submit its new draft Energy Strategy to an extensive process of public participation involving all stakeholders, including academia, non-governmental organizations and industry and that the development of the draft Strategy had taken place with substantial input from the various stakeholders. The process had begun in January 2016 and was expected to be concluded in June 2016, with regular meetings taking place during that period. In order to ensure full transparency and consistency of discussions, the Ministry of Energy had encouraged interested parties to appoint permanent representatives that could participate in all meetings. Further information about the public consultation was available on the Ministry of Energy's website.⁶ The Party concerned stated that it was confident that the process initiated by the Ministry of Energy would follow decision V/9j and would be used as a model for the development of future strategies.

Paragraph 2(b) of decision V/9j

19. In its second progress report, the Party concerned reported that the Ministry of Environment, Waters and Forests was implementing a project "Training of staff of competent environmental authorities on environmental impact assessment and

⁵ Information provided by the Party concerned on 14.04.2016

⁶ <http://energie.gov.ro/strategia-energetica-nationala/consultare-publica/>

environmental assessment of the programming period 2014-2020". From July to October 2015, fifteen training sessions were organized for 400 participants from environmental authorities with presentations and case studies devoted to environmental information and its inclusion in documents related to regulatory proceedings. In its additional information of 18 March 2016, the Party concerned provided the lists of participants and the agenda of fifteen training sessions carried out in 2015. It reported that all aspects of the recommendations made by the Compliance Committee in its findings on communication ACCC/C/2010/51 had been discussed during the training sessions.

20. The Party concerned stated that the second stage of the project would be carried out from April to December 2016 and would include 13 training sessions for staff of the environmental agencies (the Ministry of Environment, Water and Forests, National Environmental Protection Agency and Local Environmental Protection Agencies), the staff of the managing authorities of structural funds and the focal points for the Aarhus Convention (about 400 participants).⁷

21. For the project, the Ministry of Environment, Water and Forests had sought the assistance of the European Union's Joint Assistance to Support Projects in European Regions (JASPERS). JASPERS' assistance was aimed to improve the professional performance of the personnel from the environmental authorities regarding the implementation of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. In this context, JASPERS and the Ministry were to give presentations to participants on public access to information.

22. Finally, in its additional information of 18 March 2016, the Party concerned reported that during the year it would organize a national roundtable with representatives of other Romanian central authorities in order to present the Committee's views concerning the grounds for refusing access to environmental information.

III. Considerations and evaluation by the Committee

23. In order to fulfil the requirements of the decision V/9j, the Party concerned would need to provide the Committee with evidence that it had:

(a) Taken the necessary legislative, regulatory and administrative measures to ensure that public officials are under a legal and enforceable duty:

(i) To respond to requests of members of the public to access environmental information as soon as possible, and at the latest within one month after the request was submitted, and, in the case of a refusal, to state the reasons for the refusal;

(ii) To interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure, and in stating the reasons for a refusal to specify how the public interest served by disclosure was taken into account;

(iii) To provide reasonable time frames, commensurate with the nature and complexity of the document, for the public to get acquainted with draft strategic documents subject to the Convention and to submit their comments; and

⁷ Additional information provided by the Party concerned on 18 March 2016

(b) Provided adequate information and training to public authorities about the above duties.

24. In its first progress review, which reviewed the Party concerned's first progress report, the Committee invited the Party concerned in its second progress report due on 31 October 2015 or otherwise by 30 December 2015:

(a) With respect to the recommendations set out in paragraph 2(a)(i) and (ii) of decision V/9j, to report to the Committee on the outcomes of its assessment and the legislative, regulatory and administrative measures it proposes to take in the light of that assessment, including a timeline for the adoption of those measures;

(b) In relation to the recommendation set out in paragraph 2(a)(iii) of decision V/9j, to report to the Committee on the outcomes of its evaluation and the legislative, regulatory and administrative measures it proposes to take in the light of that evaluation, including a timeline for the adoption of those measures;

(c) With respect to the recommendation set out in paragraph 2(b) of decision V/9j, to detail all the activities that it has by then undertaken to train its public authorities in accordance with the recommendation set out in paragraph 2(b), and also those it intends to complete prior to the submission of its final progress report due on 31 October 2016.

25. The Committee welcomes the second progress report of the Party concerned which was received on time and the additional information provided on 18 March and 14 April 2016.

26. Regarding paragraph 2(a)(i) of decision V/9j and the requirement in article 4, 1 of the Convention to respond to information requests within one month, in its additional information on 18 March 2016, the Party concerned drew the Committee's attention to Decision no. 878/2005 which it submitted fulfilled this requirement.

27. The Committee points out that Decision no. 878/2005 was already in force at the time of the events examined in the Committee's findings on communication ACCC/C/2010/51. Despite that, the one-month time-frame was not complied with in that case and the Committee found that the Party concerned had failed to comply with article 4, paragraphs 1 and 4 of the Convention in conjunction with paragraphs 2 and 7 with respect to two of the three information requests put before the Committee by the communicant.⁸

28. The Committee considers that article 4, paragraph 1, of Governmental Decision no. 878/2005, does indeed contain a requirement for public authorities to respond to requests for environmental information within one month. The problem is that, even though Decision no. 878/2005 was in effect at the time of the information requests that were the subject of communication ACCC/C/2010/51, the public authorities in that case did not comply with article 4, paragraph 1 of the Decision in practice. In order to fulfil the requirements of paragraph 2(a)(i) of decision V/9j, the Party concerned will need to provide evidence of the measures it has taken to ensure that public authorities do in fact now fully comply with the requirements of Decision no. 878/2005 in practice.

29. With respect to paragraph 2(a)(i) of decision V/9j and the requirement to state the reasons for a refusal, the Committee notes that although it has not been cited by the Party concerned in its second progress report, according to the English

⁸ See paragraphs 112(a) and (b) of the Committee's findings on communication ACCC/C/2010/51.

translation of Decision no. 878/2005 provided by the Party concerned on 18 March 2016, article 15, paragraph 2, of Decision no. 878/2005 states:

The partial or total rejection of the environmental information supply application is sent to the application in written or electronic format, in the case in which the application has been formulated or written or the applicant has requested it, within the term provided at art. 4 paragraph (1) or, if appropriate, at art. 4, paragraph (2).

30. Article 15, paragraph 3, of the Decision provides:

The rejection of the environmental information supply application contains the motives of the rejection and also the information concerning the revision procedure provisioned at art. 16-19.

31. The Committee considers that article 15, paragraphs 2 and 3, of Governmental Decision no. 878/2005 contain requirements for public authorities, in the case of a refusal, to provide the refusal within one month, and to state the reasons for the refusal. However, in keeping with paragraph 28 above, even though Decision no. 878/2005 was in effect at the time of the information requests examined in communication ACCC/2010/51 the public authorities in that case did not comply with article 15, paragraphs 2 and 3 of the Decision in practice. In order to fulfil the requirements of paragraph 2(a)(i) of decision V/9j, the Party concerned will need to provide evidence of the measures it has taken to ensure that public authorities do in fact now fully comply with the requirements of Decision no. 878/2005 in practice.

32. In the light of the above, the Committee finds that the Party concerned has not yet satisfied the requirements of paragraph 2(a)(i) of decision V/9j.

33. With respect to paragraph 2(a)(ii) of decision V/9j, the Party concerned submits that this recommendation is already addressed in article 12 of Decision no. 878/2005. Article 12, paragraphs 2 and 3 states:

(2) The grounds for refusal set out in paragraph (1) and in art. 11, paragraph (1) shall be interpreted in a restrictive manner, taking into account for each case, satisfying public interest by information disclosure.

(3) For each case, public interest satisfied by disclosure is analysed in comparison to the interest served by observing confidentiality.

34. The Committee considers that article 12, paragraph 2 of Decision no. 878/2005 does indeed contain a requirement for public authorities to interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure.

35. The Committee notes that, while article 15, paragraph 3 of Decision no. 878/2005 may require a refusal of an environmental information request to provide the reasons for the refusal, there is nothing in the Decision expressly requiring the public authorities to specify how the public interest served by disclosure was taken into account. The Committee thus invites the Party concerned to explain the measures it has taken to ensure that this aspect of paragraph 2(a)(ii) of decision V/9j has been met.

36. Regarding paragraph 2(a)(iii) of decision V/9j and the requirement to provide reasonable time frames, commensurate with the nature and complexity of the document for the public to get acquainted with draft strategic documents and to submit their comments, in its additional information of 14 April 2016, the Party concerned submitted that this requirement was fully met through Governmental Decision no. 1076/2004. As set out in paragraph 16 above, article 28, paragraph (1)(e) of Governmental Decision no. 1076/2004 requires competent authorities to establish a reasonable time-frame for the environmental assessment procedure that may allow public participation to the procedure stages. Article 29, paragraphs (2)

and (3) respectively provide for a minimum time-frame of 15 calendar days to comment at the screening stage of a draft plan or programme and 10 calendar days to send written proposals for a re-appraisal of the screening decision once taken. Article 30, paragraph (2) requires the public to have 45 calendar days to submit written comments on a draft plan or programme. Pursuant to article 31, paragraph (1), the public is to be given 45 calendar days notice before the public debate on a draft plan or programme and 60 calendar days notice if the implementation of the plan may have significant transboundary effects.

37. The Committee considers that the above time-frames may, if implemented in practice, meet the requirement to ensure reasonable time-frames, however, the Committee once again points out that Decision no. 1076/2004 was in force at the time of the SEA procedure on the Energy Strategy examined in communication ACCC/C/2010/51, and the public was only given 11 days to comment in that case.

38. In relation to paragraph 2(a)(iii) of decision V/9j, the Committee welcomes the report of the Party concerned on the steps taken to comply with the decision, but notes that in paragraph 15 of the Committee's first progress review it had explained that the Party concerned would need to provide for reasonable timeframes, commensurate with the nature and complexity of the document, for all draft strategic documents relating to the environment.

39. The Party concerned has provided the text of Decision no. 1076/2004, which the Committee considered in its findings on communication ACCC/C/2010/51, and added that the decision has been applied to all operational programmes between 2014 and 2020. The Committee welcomes this latter statement.

40. Having examined the contents of the Decision, the Committee considers the time-frames provided for in the Decision would comply with the Convention if they are applied in practice. Nevertheless though the Decision was in force at the time of the events before the Committee in communication ACCC/C/2010/51, its time-frames were not adhered to in that case, and the Committee accordingly found that in practice the Party failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention. The Committee is now looking for evidence that the Party concerned has taken measures to ensure its public authorities will comply, in practice, with those provisions in the future.

41. Also with respect to paragraph 2(a)(iii) of decision V/9j, the Committee in paragraph 16 of its first progress review invited the Party concerned to report to the Committee on the outcomes of its evaluation and the legislative, regulatory and administrative measures it proposes to take in the light of that evaluation, including a timeline for the adoption of those measures. It is not clear to the Committee what conclusions the Party concerned drew from the evaluation, what measures the Party intends to take, and whether there will be any legally enforceable duty to comply with those measures. In the light of the above, the Committee is unable, therefore, to find that the Party concerned has fulfilled the requirements of paragraph 2(a)(iii).

42. With respect to paragraph 2(b) of decision V/9j, the Committee welcomes the steps that the Party concerned has taken to train environmental authorities. The Committee notes that with the additional information from the Party concerned dated 18 March 2016 there was an agenda, which was for a training of the staff of competent authorities on environmental impact assessment. But the Committee seeks further information regarding the content and requirements of training which would address the non-compliance referred to in decision V/9j, including:

- (a) An English translation of any relevant course outline; and in particular;
- (b) Evidence that officials from the authorities were told that:
 - (i) They must respond to information requests as soon as possible, and at the latest one month;
 - (ii) In cases of refusal, reasons must be stated;

- (iii) Any grounds for refusal must be interpreted restrictively, taking into account the public interest served by disclosure;
- (iv) In stating the reasons for refusal, how the public interest in disclosure was taken into account should be specified; and
- (v) Reasonable time frames, commensurate with the nature and complexity of document, must be provided for the public to get acquainted and submit comments on draft strategic documents.

43. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9j.

IV. Conclusions

44. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9j, but welcomes the initial steps taken by the Party concerned to date in that direction.

45. In order for the Committee to prepare its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9j, the Committee invites the Party concerned by 31 January 2017:

- (a) With respect to the recommendations set out in paragraph 2(a)(i) and (ii) of decision V/9j, to report to the Committee on the outcomes of its assessment and the legislative, regulatory and administrative measures it proposes to take in the light of that assessment in order to ensure the implementation of the Convention, including a timeline for the adoption of those measures;
- (b) In relation to the recommendation set out in paragraph 2(a)(iii) of decision V/9j, to report to the Committee on the outcomes of its evaluation and the legislative, regulatory or administrative measures it proposes to take in the light of that evaluation in order to ensure the implementation of the Convention, including a timeline for the adoption of those measures;
- (c) With respect to paragraph 2(b) of decision V/9j, the Committee welcomes the steps that the Party concerned has taken to instruct environmental authorities, but seeks further information regarding the content and requirements of training which would address the non-compliance referred to in decision V/9j, including:
 - (i) An English translation of any relevant course outline; and in particular;
 - (ii) Evidence that officials from the authorities were told that:
 1. They must respond to information requests as soon as possible, and at the latest one month;
 2. In cases of refusal, reasons must be stated;
 3. Grounds for refusal must be interpreted restrictively, taking into account public interest served by disclosure;
 4. In stating reasons for refusal, to specify how public interest in disclosure was taken into account; and
 5. Reasonable time frames, commensurate with nature and complexity of document, must be provided for public to get acquainted and submit comments on draft strategic documents.

46. The Committee informs the Party concerned that all measures necessary to implement decision V/9j must be completed by, and reported upon by no later than 31 January 2017, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9j.
