

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 VI/8h
on compliance by Romania with its
obligations under the Convention**

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I. Introduction

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), 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 VI/8h on compliance by Romania with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. On 2 February 2018, Romania requested advice from the Committee regarding the types of measures it should take to implement the recommendations contained in decision VI/8h.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8h in open session with the participation of representatives of Romania both in person and by audio conference. Though invited, no communicants took part in the open session. The Committee informed Romania that it would provide it with some written advice on ways in which it might fulfil the recommendations of decision VI/8h after the meeting.

4. On 16 May 2018, Romania submitted information concerning its implementation of decision VI/8h.

5. On 12 July 2018, the secretariat sent Romania a letter enclosing the Committee's advice concerning possible measures Romania might take to implement decision VI/8h.

6. On 13 September 2018, Romania requested an extension of the deadline to submit its first progress report. On the instructions of the Chair, the secretariat sent a reply to Romania indicating that in order to fully meet paragraph 8(a) of decision VI/8h, it was important that Romania provide its progress report by 1 October 2018, as this was the date set by the Meeting of the Parties. The secretariat's reply also stated that the Chair had indicated that further information could be added to supplement the progress report until 10 October 2018.

7. On 1 October 2018, Romania submitted its first progress report on decision VI/8h on time. In its first progress report Romania states that the advice provided by the Compliance Committee on 12 July 2018 has been an important tool to help Romania in its understanding of how the implementation of a decision of the Meeting of the Parties on compliance must be carried out. Romania states that the Committee's advice of 12 July 2018 represents very good support and guides its future steps in accomplishing its obligations as a Party to the Convention.

8. On 5 October 2018, the secretariat forwarded Romania's first progress report to the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69, inviting their comments by 1 November 2018. No comments were received.

9. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Romania, the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.

III. Considerations and evaluation by the Committee

10. In order to fulfil the requirements of paragraph 2 of decision VI/8h, Romania would need to provide the Committee with evidence that it had taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that public officials:

(a) 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;

(b) 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;

(c) 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.

11. In order to fulfil the requirements of paragraph 3 of decision VI/8h, Romania would need to provide the Committee with evidence that it had provided adequate information and training to public authorities.

12. In order to fulfil the requirements of paragraph 4 of decision VI/8h, Romania would need to provide the Committee with evidence that it had taken urgent measures to fully address the above recommendations.

13. In order to fulfil the requirements of paragraph 7 of decision VI/8h, Romania would need to provide the Committee with evidence that it:

(a) Had taken the necessary legislative, regulatory, or administrative measures and practical arrangements, as appropriate, to ensure the correct implementation of the Convention with respect to:

- (i) Article 2(3): the definition of “environmental information”;
- (ii) Article 4(4): the grounds for refusal and the requirement to interpret those grounds in a restrictive way, taking into account the public interest served by disclosure;
- (iii) Article 4(6): the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;
- (iv) Article 4(7): the requirement to provide reasoned statements for refusing a request for access to information;

(b) Reviewed its legal framework in order to identify cases where decisions to permit activities within the scope of article 6 of the Convention are conducted without effective participation of the public (article 6(3) and (7)), and taken the necessary legislative and regulatory measures to ensure that such situations are adequately remedied;

(c) Reviewed its legal framework and undertaken the necessary legislative, regulatory and administrative measures to ensure that the court procedures for access to environmental information are timely and provide adequate and effective remedies;

(d) Provided adequate practical arrangements or measures to ensure that the activities listed in subparagraphs (a), (b) and (c) above are carried out with broad participation of the public authorities and the public concerned.

14. In order to fulfil the requirements of paragraph 8(a) of decision VI/8h, Romania has to submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations.

Paragraphs 2(a) and (b), 4 and 7 (a), (b), (c) and (d) of decision VI/8h

15. In its first progress report, Romania states that as a first step on the way of implementing the Committee’s recommendations a draft strategy has been initiated.¹ It states that the strategy will be widely discussed at national level with all stakeholders.² It reports that the draft strategy comprises a series of proposals for legislative, regulatory and

¹ Party’s first progress report, 1 October 2018, p. 26.

² Ibid., p. 1.

administrative measures, as well as practical arrangements to ensure the correct implementation of the Convention, especially regarding the grounds of refusal of information requests and the requirement to interpret those grounds in a restrictive way, taking into account the public interest served by disclosure.³ Romania reports that it is also aiming to tackle the issue of not providing, in all cases, reasoned statements for refusing a request for information as well as the separation of confidential from non-confidential information whenever possible.⁴ It reports that it has also taken note of the good practice examples recommended by the Committee⁵ regarding handling the access to information cases in an expedited manner (Portugal, Malta etc.).⁶

16. While welcoming Romania's statement that it has initiated a process to prepare a draft strategy to implement decision VI/8h, lacking any further details as to proposed content of the strategy, or timeline for its implementation, the Committee cannot determine the extent to which concrete progress, if any, has been made in implementing paragraphs 2(a), (b), 4 and 7(a), (b), (c), and (d) of the decision. The Committee accordingly invites Romania, together with its second progress report due on 1 October 2019 to provide the text of its strategy, together with the timeline for its implementation, as well as English translations thereof.

17. In this regard, the Committee notes that the summary of the elements of the draft strategy provided by Romania in its first progress report does not address all of the recommendations in decision VI/8h. The Committee invites Romania to structure its second progress report due on 1 October 2019 in a format (e.g. a table) that clearly explains what measures have been taken, or are being taken, to address each of the recommendations in paragraphs 2 (a), (b), (c), 3, 4, 7 (a) (i)-(iv), (b), (c) and (d) of decision VI/8h.

18. Finally, the Committee draws Romania's particular attention to the Committee's advice of 12 June 2018 concerning paragraph 8(a) of decision VI/8h.⁷ In order to fulfil paragraph 7(d) of decision VI/8h, it will be necessary for Romania to demonstrate that the strategy to implement decision VI/8h has been both prepared and carried out with the broad participation of the public authorities and the public concerned.

19. In light of the above, while welcoming the initial steps taken, the Committee finds that Romania has not yet met the requirements of paragraphs 2(a), (b), 4 and 7(a) (i)-(iv), (b), (c) and (d) of decision VI/8h. The Committee examines the progress made by Romania with respect to paragraph 2 (c) and 3 of decision VI/8h in more detail below.

Paragraph 2(c) of decision VI/8h

20. In respect of paragraph 2(c) of decision VI/8h, in its advice of 12 July 2018, the Committee advised Romania that, in order to demonstrate to the Committee that it has fulfilled the recommendation in paragraph 2(c) of decision VI/8h, it should:

“(a) Compile a list of strategic documents related to the energy sector within the scope of article 7 of the Convention adopted since the Committee's findings on communication ACCC/C/2010/51. This list should include:

(i) The Energy Strategy for 2016-2030 as well as any other energy strategies adopted;

(ii) The operational programmes for 2014-2020 referred to in the Party's second progress report on decision V/9j dated 31 December 2015;

³ Ibid., pp. 26-27.

⁴ Ibid., p. 27.

⁵ Advice from the Committee to the Party concerned concerning possible measures to implement decision VI/8h, 12 July 2018, pp. 6-7.

⁶ Party's first progress report, 1 October 2018, p. 27.

⁷ Advice from the Committee to the Party concerned concerning possible measures to implement decision VI/8h, 12 July 2018, p. 7.

(iii) Any other strategic documents related to the energy sector within the scope of article 7 of the Convention adopted by the Party concerned since the Committee's findings on communication ACCC/C/2010/51.

(b) For each of the documents in the above list, inform the Committee of the number of days that the public had to get acquainted with the draft strategic document prior to the start of the written commenting period, and the number of days that the public had to send written comments on the draft strategic document.”⁸

21. In its first progress report, Romania provided a list of strategic documents, including those identified by the Committee, as well as a considerable amount of information concerning them.⁹ The Committee notes that much of the information provided is not relevant to the fulfilment of paragraph 2(c) of decision VI/8h, is focused on the number of days the public had to get acquainted with the document and provide comments. In relevant part, Romania reports as follows:

22. The Energy Strategy for 2016-2030 is in the process of being updated as the “Energy Strategy of Romania for 2018-2030, with the perspective of 2050”. Romania states that a first draft of the strategy was published on 13 February 2017 and the public had 15 calendar days to comment during the screening stage.¹⁰ Romania claims that, after finalizing the Environmental Report, the draft strategy will be made available and public participation, including a period for written comments and a public hearing will follow.¹¹

23. The Energy Strategy 2007-2020, which was the subject of the Committee's findings on communication ACCC/C/2010/51 was subsequently revised through a SEA procedure carried out 20 November 2009 from December 2012. During the SEA procedure, the public had 45 days to get acquainted with the revised energy strategy prior to the public hearing. The resulting strategy, the “Energy Strategy of Romania 2007-2020, updated for 2011-2020” was issued on 10 December 2012.¹²

24. With respect to Operational Programmes for 2014-2020, Romania states that the public had the opportunity to submit comments and opinions from the beginning of the SEA procedure for each programme from immediately after notification, during the 45/60 days prior to the public hearing, as well as during the public hearing itself:¹³

(a) Regarding the Large Infrastructure Operational Programme, the public had 50 days from the date of public notice on 28 November 2014 until the public hearing on 19 January 2015 to get acquainted and analyse the environmental report, draft programme and appropriate assessment study.¹⁴

(b) With respect to the General Transport Master Plan, the public had 62 days from the date of public notice on 10 November 2014 until the public hearing on 12 January 2015 for getting acquainted and analysing the environmental report and the General Transport Master Plan.¹⁵

(c) For the Regional Operational Programme, the public had at least 45 days from the date of the last public notice on 25 August 2014 to acquaint themselves with the environmental report and draft programme before the hearing on 9 October 2014.¹⁶

⁸ Ibid., pp. 3-4.

⁹ Party's first progress report, 1 October 2018, pp. 5-26 and annexes 2-11

¹⁰ Ibid., pp. 5-6.

¹¹ Ibid., p. 6.

¹² Ibid., pp. 6-7.

¹³ Ibid., p. 1.

¹⁴ Ibid., pp. 8-9.

¹⁵ Ibid., pp. 11 and 13.

¹⁶ Ibid., pp. 1-15.

(d) Regarding the National Rural Development Programme, the public had 45 days, from 18 August to 2 October 2014, for getting acquainted with the documentation, preparing for the hearing and sending in written comments.¹⁷

(e) For the Fisheries and Maritime Affairs Operational Programme, the public had 45 days, from 21 September to 5 November 2015, to get acquainted with the documentation and prepare for the hearing.¹⁸

(f) For the National Strategy on Climate Change and Growth Based on Low-carbon Economy for the period 2016 – 2020 and the National Action Plan on Climate Change 2016-2020, the public had 45 days, from 28 September 2015 to 12 November 2015, to get acquainted with the documentation and prepare for the hearing.¹⁹

25. With respect to other strategic documents related to the energy sector, Romania reports:

(a) The National Mid-and Long Term Strategy for Safe Management of Spent Fuel and Radioactive Waste is currently undergoing a strategic environmental assessment procedure. It reports that the developer informed the public about the initiation of the process of developing the strategy and the first version of the strategy by publishing two notices in a newspaper on 14 and 19 July 2017, and by displaying it on its own website.²⁰ On 18 August 2017, the Ministry of Environment published the first version of the draft strategy on its website.²¹ Romania reports that when the environmental report is finalized, the developer will notify the public of its opportunities to participate through the mass media.²²

(b) The Mining Strategy of Romania 2017-2035 is reported as also being at the beginning of a strategic environmental assessment procedure. The developer published two announcements on 16 and 20 February 2017 in a newspaper concerning the development of the first version of the strategy and on its own website.²³ On 31 May 2017, the Ministry of the environment published the first draft strategy on its website.²⁴

(c) For the National Transition Plan for Large Combustion Plants, the Ministry of Environment published the first version of the draft national transition plan on 20 November 2012 and the public had the opportunity to submit comments until 19 December 2012.²⁵ The public subsequently had 45 days to submit comments on the revised draft national transition plan and the environmental report.²⁶

26. The Committee welcomes the careful and detailed overview of the decision-making procedures concerning each of the above plans and programmes provided by Romania in its first progress report, and in particular its confirmation that in each case for which the decision-making is concluded, the public had a minimum of 45 days to become acquainted with draft strategic documents and to submit comments. The Committee also notes that Romania's first progress report was sent to the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 on October 2018 for their comments by 1 November 2018 but to date no comments have been received.

27. Based on the information before it at the date of the adoption of the present progress review, the Committee considers that Romania has provided sufficient evidence demonstrating that it provides 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. Accordingly, in the absence of any

¹⁷ Ibid., pp. 15-17.

¹⁸ Ibid., p. 18.

¹⁹ Ibid., pp. 20-21.

²⁰ Ibid., p. 21.

²¹ Ibid.

²² Ibid., p. 22.

²³ Ibid., p. 23.

²⁴ Ibid.

²⁵ Ibid., p. 24.

²⁶ Ibid., pp. 25-26.

evidence to the contrary [in the meantime], the Committee will, in its report to the seventh session of the Meeting of the Parties, report that Romania has fulfilled the recommendation in paragraph 2(c) of decision VI/8h.

Paragraph 3 of decision VI/8h

28. In its first progress report, Romania reports that a round table was held on 10 May 2018 at the headquarters of the Ministry of Environment in order to raise awareness of decision VI/8h. Thirty-three participants from different public authorities, including representatives of the public authorities concerned by the communications ACCC/C/2010/51 and ACCC/C/2012/69 were present.²⁷

29. Romania also reports that the non-governmental organization, Romanian Environmental Association, has indicated its willingness to facilitate meetings with public officials from the justice sector as a way to achieve the objective of having timely judicial procedures regarding access to environmental information cases.²⁸

30. It also reports that it intends to prepare a brochure in order to inform and assist its recipients of their rights, their obligations, and explanations of the definitions from the Convention and practical examples of how the procedure of accessing information, of public participation in decision-making and access to justice should take place.²⁹

31. The Committee welcomes the information on training and awareness-raising provided by Romania in its first progress report, and comments about the round table held on 10 May 2018 as a useful first step. However, as explained in the Committee's advice of 12 July 2018, in order to fulfil paragraph 3 of decision VI/8h, Romania will need to provide adequate information and training to all officials involved in implementing the recommendations in decision VI/8h. The Committee draws Romania attention to the specific advice on paragraph 3 of decision VI/8h contained in the Committee's advice of 12 July 2018.

32. In the light of the above, while welcoming the initial steps made, the Committee finds that Romania has not yet met the requirements of paragraph 3 of decision VI/8h.

IV. Conclusions

33. The Committee welcomes Romania's first progress report on decision VI/8h, which was submitted on time.

34. Based on the information before it at the date of the adoption of the present progress review, the Committee considers that Romania has provided sufficient evidence demonstrating that it provides 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. Accordingly, in the absence of any evidence to the contrary in the meantime, the Committee will, in its report to the seventh session of the Meeting of the Parties, report that Romania has fulfilled the recommendation in paragraph 2(c) of decision VI/8h.

35. The Committee finds that Romania has not yet fulfilled the requirements of paragraphs 2(a) 2(b), 3, 4 and 7(a)-(d) of decision VI/8h.

36. The Committee invites Romania to structure its second progress report due on 1 October 2019 in a format (e.g. a table) that clearly explains what measures have been taken, or are being taken, to address each of the recommendations in paragraphs 2 (a), (b), 3, 4, 7 (a) (i)-(iv), (b), (c) and (d) of decision VI/8h.

²⁷ Ibid., pp. 1-4 and annex 1.

²⁸ Ibid., p. 27.

²⁹ Ibid.

37. The Committee invites Romania, together with its second progress report due on 1 October 2019:

(a) To provide the text of its strategy to implement the recommendations in paragraphs 2, 3, 4 and 7 of decision VI/8h, together with a timeline for its implementation, as well as English translations thereof;

(b) To report on the practical arrangements it has taken to ensure the broad participation of the relevant public authorities and the public concerned in the preparation and implementation of the above strategy. The Committee draws Romania's attention to its advice of 12 June 2018 on paragraph 8(a) of decision VI/8h in this regard;

(c) To provide the Committee with the text of any legislative, regulatory and administrative measures to implement the recommendations of decision VI/8h that are available either in draft or final form at the time of submitting its second progress report, together with English translations thereof, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form;

(d) To provide the Committee with evidence of any practical arrangements it has by then taken, or proposes to take, in order to implement the recommendations in decision VI/8h.
