

From: Raphael Soffer [REDACTED]  
Sent: 06 May 2019 09:09  
To: ECE-Aarhus-Compliance; Fiona Marshall  
Cc: [REDACTED] Anais Berthier; Maria Kleis; James K. Thornton;  
[REDACTED]

Subject: RE: ACCC/M/2017/3 (European Union) - Statement from the Party concerned following the Committee's 63rd meeting

Dear Ms. Marshall, dear Ms. Kern,

Thank you for forwarding the comments of the Party's statement following the 63<sup>rd</sup> meeting.

We believe it is not necessary to restate the points made in our letter of 5 March 2019 or to comment on any aspects already clearly decided in the Committee's progress review.

Nonetheless, it may be useful for the Committee to express our views on one paragraph of the Party's statement, which concerns the steps that the Party proposes to take in response to the already established non-compliance of the Governance Regulation with the Aarhus Convention.

The Party states in point e) on page 4 of its Statement that "*when issuing its recommendations on the draft plans, the Commission will reiterate, as appropriate, to the Member States their obligation to conduct a public consultation in preparing their final plans, following the Aarhus Convention and all other relevant provisions of Union law.*" We would like to emphasize that this falls short of what is necessary to demonstrate compliance with the requirements of para. 3 of decision V/9f.

Rather, the Party concerned should communicate, whether or not at the time when it issues its recommendations on the draft plans or earlier, to each Member States (and not, "*as appropriate*") all concrete requirements of Article 7 of the Aarhus Convention as reiterated in para. 3 of decision V/9f. The Party should at the same time make clear that it considers that all these concrete requirements are a prerequisite to complying with the Governance Regulation.

It appears that the Party continues to assume that it can demonstrate compliance with the Convention by simply applying the regular procedures under the Governance Regulation. However, the very point of the findings of the Committee in its first progress review is that these procedures are lacking.

We would therefore respectfully suggest to the Committee that it would be of assistance to the Party concerned if it was provided with more concrete proposals on how it can bring about compliance with the Convention. Our proposal for such recommendations were set out in paragraph 11 of our letter of 5 March 2019.

We remain at your disposal for any requests for clarification, including with regard to our letter of 5 March 2019 or any other aspect concerning this follow-up.

Kind regards,

Raphaël Soffer  
**Lawyer, Energy**



[Redacted]

[Redacted]

[Donate](#) | [Website](#) | [Newsletter](#) | [Facebook](#) | [Twitter](#) |

Please consider the environment before printing this email. This email and any files attached are confidential and intended solely for the use of the individual or entity to whom it was addressed. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent the views of ClientEarth. ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218. [Access our privacy notice.](#)