|  |  |  |
| --- | --- | --- |
|  | United Nations | ECE/MP.PP/2021/XX |
| _unlogo | **Economic and Social Council** | Distr.: Generalxx July 2021Original: English |

**Economic Commission for Europe**

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

**Seventh session**

Geneva, Switzerland, 18 – 20 October 2021

Item x (x) of the provisional agenda

**Procedures and mechanisms facilitating the implementation of the Convention:**

**Compliance mechanism**

 Draft report of the Compliance Committee[[1]](#footnote-2)\*

 Compliance by Romania with its obligations under the Convention

|  |
| --- |
| *Summary* |
|  This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee’s mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8). |
|  |

 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

1. On 2 February 2018, the Party concerned requested advice from the Committee regarding the types of measures it should take to implement the recommendations contained in decision VI/8h.
2. 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 the Party concerned both in person and by audio conference. Though invited, no communicants took part in the open session. The Committee informed the Party concerned 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.
3. On 16 May 2018, the Party concerned submitted information concerning its implementation of decision VI/8h.
4. On 12 July 2018, the Committee provided its advice to the Party concerned concerning possible measures it might take to implement decision VI/8h.
5. On 13 September 2018, the Party concerned requested an extension of the deadline to submit its first progress report. On 19 September 2018, on the instructions of the Chair, the secretariat sent a reply to the Party concerned indicating that in order to fully meet paragraph 8(a) of decision VI/8h, it was important that the Party concerned 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 before 10 October 2018 to supplement the first progress report.
6. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8h, on time. In its first progress report the Party concerned stated that the advice provided by the Compliance Committee on 12 July 2018 had been an important tool to help it in its understanding of how the implementation of a decision of the Meeting of the Parties on compliance must be carried out. The Party concerned stated that the Committee’s advice of 12 July 2018 represented very good support and guided its future steps in accomplishing its obligations as a Party to the Convention.
7. On 5 October 2018, the secretariat forwarded the first progress report of the Party concerned 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.
8. 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. On 25 February 2019, the secretariat forwarded the Committee’s first progress review to the Party concerned and the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.
9. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of decision VI/8h in open session, with the participation by audio conference and in person of representatives of the Party concerned. Though invited, no communicants took part in the open session.
10. On 20 March 2019, the Party concerned submitted a written version of the statement it had delivered during the open session on decision VI/8h at the Committee’s sixty-third meeting, and on the same day, it submitted its reply to a question raised by the Committee during the open session.
11. On 24 July 2019, the secretariat wrote to the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 8(a) of decision VI/8h for the Party concerned to provide its second progress report.
12. On 30 September 2019, the Party concerned submitted its second progress report, on time.
13. On 1 October 2019, the secretariat forwarded the second progress report to the communicants of communication ACCC/C/2010/51 and ACCC/C/2012/69, inviting their comments thereon. No comments were received.
14. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 5 March 2020. On the same day, the secretariat forwarded the second progress review to the Party concerned and the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.
15. On 26 March 2020, the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 provided comments on the Committee’s second progress review.
16. On 30 September 2020, the Party concerned submitted its final progress report on decision VI/8h, on time.
17. On 15 June 2021, the Committee requested further information from the Party concerned.
18. On 25 June 2021, the Party concerned provided the additional information requested by the Committee.
19. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/h through its electronic decision-making procedure on 6 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on that date to the Party concerned and communicants with an invitation to provide comments by 20 July 2021.
20. *At its seventy-first meeting (Geneva online, 7-9 July 2021), the Committee reviewed the implementation of decision VI/8h in open session with the participation via virtual means of XX.*
21. *Comments on the Committee’s draft report was received from XX*
22. *After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8h through its electronic decision-making procedure on xx July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicants.*

 III. Considerations and evaluation by the Committee

1. In order to fulfil the requirements of paragraph 2 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that public officials:
2. 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;
3. 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;
4. 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.
5. In order to fulfil the requirements of paragraph 3 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it has provided adequate information and training to public authorities about the above duties.
6. In order to fulfil the requirements of paragraph 4 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it has taken urgent measures to fully address the above recommendations.
7. In order to fulfil the requirements of paragraph 7 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it:
8. Has 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;

1. 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;
2. 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;
3. 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.
4. The Committee welcomes the three progress reports received from the Party concerned, all of which were submitted on time. The Committee moreover appreciates the request for advice received from the Party concerned on 2 February 2018 and the further information received from the Party concerned in addition to its progress reports.
5. The Committee also welcomes the comments provided by the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.

**Scope of review**

1. The communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 refer to a number of court cases regarding the disclosure of the “forest management plans” for Natura 2000 sites. They claim that certain studies relating to these plans were not released although the cases were won in court, since the Minister of Environment and a state-owned company administering most of the Natura 2000 sites were refusing to execute the court decisions.[[2]](#footnote-3)
2. The Committee notes that the communicants have not specified which paragraph of decision VI/8h they consider the above allegations relate to. While not excluding that the factual situation described by the communicants may concern some of the aspects of decision VI/8h, the Committee considers that based on the information provided to it, it cannot conclude so. The Committee therefore decides to not further address these allegations in its review of decision VI/8h. This does not preclude the possibility of the Committee examining any allegations falling within the scope of the Convention if put before it in the context of a future communication.

**General observations**

1. The Committee commends the Party concerned for its very active engagement with the Committee up to its second progress report. The Committee considers that this constructive engagement may serve as a model to other Parties.
2. The Committee regrets that the Party concerned’s final progress report failed to adequately report on the measures it had by that date taken to implement decision VI/8h, nor to indicate which paragraph of decision VI/8h those measures it did report on were intended to implement. This has required the Committee to send additional questions to the Party concerned in order to be in a position to properly review the progress made.
3. The Committee acknowledges the difficulties caused to governments by the COVID 19 pandemic, as referred to by the Party concerned in its replies to the Committee’s questions on 25 June 2021.[[3]](#footnote-4) However, the Committee considers that the problems caused by the pandemic cannot serve as an excuse to Parties for not reporting in a timely and complete manner on their progress to implement the decision of the Meeting of the Parties concerning their compliance.

**Paragraph 4 of decision VI/8h: urgent measures to address paragraphs 2 and 3 of decision VI/8h**

1. Paragraph 4 of decision VI/8h requests the Party concerned to take urgent measures to fully address the recommendations in paragraphs 2(a), (b) and (c) and 3 of decision VI/8h. Since paragraph 4 does not set out any additional recommendation of a substantive nature the Committee examines the Party concerned’s fulfilment of paragraph 4 in the context of its examination of paragraphs 2(a), (b) and (c) and 3 of decision VI/8h below. To that end, the Committee points out that the requirements of paragraph 4 can only be fully met once the requirements of paragraphs 2(a), (b) and (c) and 3 of decision VI/8h have been fulfilled.

**Paragraphs 2(a) and 7(a)(iv) of decision VI/8h: respond to environmental information requests as soon as possible and state reasons for refusal**

1. Concerning the implementation of paragraph 2(a), in its advice of 12 July 2018 the Committee suggested that the Party concerned may consider taking the following measures:
2. To prepare and disseminate administrative orders, instructions or guidance applicable throughout the entire public administration;
3. To collect and publish statistics concerning requests for environmental information, in combination with monitoring by central public authorities;
4. To establish, strengthen and/or enforce administrative penalties for public officials.
5. With respect to “administrative orders, instructions or guidance” (see paragraph ‎36 (a) above), in its final progress report and in its additional information sent on 25 June 2021, the Party concerned reports upon its “Guide to public authorities for public access to environmental information” (the Guide), which it submits provides guidance to civil servants on handling environmental information requests in accordance with the provisions of article 4 of the Convention.[[4]](#footnote-5) The Party concerned does not report on any other administrative orders, instructions or guidance it has put in place to ensure that public officials meet the requirements of paragraph 2(a) of decision VI/8h.
6. Regarding the collection and publication of statistics on environmental information requests, with accompanying monitoring (see para. ‎36 (b) above), in the final version of its “Strategy for the implementation of the Decision VI/8h regarding the compliance of Romania with the requirements of the Aarhus Convention” (Strategy), provided to the Committee on 25 June 2021, the Party concerned sets itself the objective to periodically publish statistics on environmental information requests received by public authorities, including information on whether these requests were addressed “as soon as possible and at the latest within one month of submitting the request”, and in case of refusal, information on the reasons for refusal.[[5]](#footnote-6)
7. As to administrative penalties for officials (see para. ‎36 (c) above), the Strategy describes the Party concerned’s existing legal framework regarding penalties for civil servants who violate their duties, as well as the legal framework on access to justice relating to access to information more generally and relating to environmental information specifically.[[6]](#footnote-7)
8. The Committee understands the fact that the Party concerned refers to the Guide in the context of paragraph 2(a) of decision VI/8h to mean that the Party concerned considers the Guide a measure to address the Committee’s advice summarized in paragraph ‎36 (a) above, namely that the Party concerned “prepare and disseminate administrative orders, instructions or guidance applicable throughout the entire public administration”.[[7]](#footnote-8)
9. Having reviewed the Guide in its entirety, the Committee considers that it has the character of an educational document to inform public officials, and others, about the general obligations of article 4 of the Convention, with helpful references to national and European law provisions and court decisions.
10. The Committee points out, however, that the chapeau of paragraph 2 of decision VI/8h requires the Party concerned to take the necessary legislative, regulatory, administrative or practical measures to *ensure* that public official meet the requirements of paragraph 2(a).
11. Accordingly, any “administrative orders, instructions or guidance” that the Party concerned puts it place for the purposes of paragraph 2(a) of decision VI/8k should instruct officials on how to address requests for environmental information in accordance with national law and the requirements of the Convention. As the Committee explained in its advice, the orders, instructions or guidance should have effect throughout the entire public administration[[8]](#footnote-9) and should outline the consequences under national law for the public authority or official that noncompliance with article 4 of the Convention will entail.
12. Therefore, the Committee concludes that the Guide, while a very important tool for education and awareness-raising, does not amount to an administrative order, instructions or guidance that will *ensure* that public officials meet the requirements of paragraph 2(a) of decision VI/8h. Rather, the Committee will examine the Guide further in the context of its review of paragraph 3 of decision VI/8h below.
13. The Committee welcomes the plans of the Party concerned, set out in its Strategy (see para. ‎38 above), to monitor officials’ responses to environmental information requests and publish statistics addressing the deficiencies identified in paragraph 2(a) of decision VI/8h. The Committee understands that this measure is intended to implement its specific advice regarding paragraph 2(a).[[9]](#footnote-10) However, the Committee regrets that it has not been provided with a time schedule for when the Party concerned intends to implement this measure, nor with any more detailed information on the exact steps the Party concerned is planning to take in this regard.
14. Concerning the information provided by the Party concerned on its legal framework regarding penalties for civil servants who violate their duties, as well as the legal framework on access to justice relating to access to information (see para. ‎39 above), the Committee takes notes of the requirements in the Party’s legal system in this regard. However, the Committee notes that large parts of the described legal framework appear to already have been in place by the time when the Committee made its findings on communications ACCC/C/2010/51 and ACCC/C/2012/69 and did not prevent the Party’s non-compliance in these cases. As the Committee explained in its advice to the Party concerned, in order to move closer to fully meeting the requirements of paragraph 2(a) and 7(a)(iv) of decision VI/8h, the Party concerned would need to show to the Committee that it closely monitors any cases of breach of article 4 of the Convention by public officials and imposes administrative penalties or other sanctions in cases of noncompliance.[[10]](#footnote-11)
15. In light of all of the above, the Committee, while welcoming the steps taken so far, finds that the Party concerned has not yet met the requirements of paragraphs 2(a) and 7(a)(iv) of decision VI/8h.

**Paragraphs 2(b) and 7(a)(ii) of decision VI/8h: restrictive interpretation of grounds for refusal, taking into account the public interest and specifying how public interest was taken into account**

1. In its additional information of 25 June 2021, the Party concerned provides the text of proposed legislative amendments to articles 12 and 15 of “Government Decision 878/2005 on public access to environmental information” (Decision 878/2005). Among these are amendments specifying the requirement to give precedence to the public interest when deciding on grounds of refusal regarding requests for environmental information, as well as the requirement that a refusal contain the manner in which the public interest has been taken into account.[[11]](#footnote-12)
2. The Party concerned moreover provides the text of article 29 of “Law no.292/2018 on environmental impact assessment for public and private projects” (the EIA Law), adopted in 2018, which states in its first two paragraphs:

(1) In the application of this Law, the competent authorities shall respect the restrictions imposed by legislation on commercial and industrial secrecy, including intellectual property, taking into account the need to protect the public interest.

(2) In dealing with a request for environmental information subject to the restrictions laid down in paragraph 1, the competent authorities shall be obliged to interpret the grounds for refusal restrictively, giving priority to the public interest in disclosing and providing information that can be separated from that which is restricted.[[12]](#footnote-13)

1. In its additional information submitted on 25 June 2021, the Party concerned also points to a section of the Guide that mentions a 2015 decision of the High Court of Cassation and Justice, which provides that “refusal of access to information of public interest, where information on personal data is anonymised, is unjustified”.[[13]](#footnote-14)
2. The communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 contend that the legislation concerning access to environmental information has not been improved and that they had still encountered many situations when public information was denied to the public and requests were rejected. As an example, the communicants refer to an information request on the emissions of certain coal power plants. They claim that the requested information was not released despite a court deciding that it was public.[[14]](#footnote-15)
3. The Committee welcomes the proposed legislative amendments to articles 12 and 15 of Decision 878/2005, as well as the relevant provisions of article 29 of the EIA Law, provided by the Party concerned. The Committee considers that the proposed legislative amendments appear to be in line with the requirements of the Convention. Yet, the Committee regrets that the Party concerned has re-scheduled the deadline for its planned legislative amendments to 2023. Recalling paragraph 4 of decision VI/8h, the Committee urges the Party concerned to take the necessary steps to fulfil the requirements of decision VI/8h as soon as possible.
4. The Committee also welcomes the fact that the requirements of paragraphs 2(b) and 7(a)(ii) are addressed as part of the Party’s proposed measures to monitor officials’ responses to environmental information requests and publish statistics addressing possible noncompliance with article 4 of the Convention.
5. In light of the above, the Committee, while welcoming the steps taken so far, finds that the Party concerned has not yet fully met the requirements of paragraphs 2(b) and 7(a)(ii) of decision VI/8h.

**Paragraph 2(c) of decision VI/8h: reasonable time frames for the public to get acquainted with draft strategic documents and to submit their comments**

1. The Committee recalls that in its first progress review, it considered that the Party concerned had 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. Therefore, the Committee decided that in the absence of any evidence to the contrary in the meantime, it would, in its report to the seventh session of the Meeting of the Parties, report that the Party concerned has fulfilled the recommendation in paragraph 2(c).[[15]](#footnote-16)
2. In its second progress review, the Committee reiterated its first progress review and concluded that it had not received any evidence that would demonstrate that the Party concerned had in fact not fulfilled the recommendations in paragraph 2(c).
3. The Committee notes that, since the adoption of its second progress review, it has received no information that would contradict its earlier conclusions regarding the Party’s fulfilment of paragraph 2(c) of decision VI/8h.
4. In light of the foregoing, the Committee finds that the Party concerned has fully met the requirements of paragraph 2(c) of decision VI/8h 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.

**Paragraph 3 of decision VI/8h: adequate information and training for public authorities**

*Adequate information to public authorities*

1. In its final progress report, the Party concerned reports that the “Guide to public authorities for public access to environmental information” has been published on the website of the Ministry of Environment, Waters and Forests (MEWF) and the Ministry has furthermore sent letters to other public authorities at national and local level asking them to disseminate the Guide. These have included a large number of ministries, the prefectures of each county, different national authorities responsible for issues relating to the environment and public health, as well as national research and development institutes. The Party concerned reports that the MEWF also advised the ministries to request the authorities under their supervision to publish the Guide on their respective websites.[[16]](#footnote-17) The Party concerned provides abundant proof of different ministries, prefectures and further institutions having published the Guide on their websites.[[17]](#footnote-18) It submits that 1000 copies of the Guide have been prepared in print form, most of which are displayed at the entrances of the MEWF.[[18]](#footnote-19)
2. In addition to the Guide, the Party concerned, in its additional information submitted on 25 June 2021, reports upon its “informative brochure” on public access to environmental information which is addressed towards the general public.[[19]](#footnote-20)
3. The Committee welcomes the information provided by the Party concerned. As stated in its second progress review, the Committee considers the Guide to be well-structured and provides a useful overview of the obligations in article 4 of the Convention.[[20]](#footnote-21)
4. The Committee recalls that in its second progress review it explained that, in order to fulfil paragraph 3 of decision VI/8h, the Party concerned would also need “to actively take steps to disseminate the Guide amongst all its public authorities that receive requests from the public for environmental information.”[[21]](#footnote-22) The Committee accordingly welcomes the efforts by the Party concerned in this regard described in paragraph ‎59 above, which demonstrates that the Party concerned has taken active steps to disseminate the Guide amongst all its public authorities that receive environmental information requests.
5. Based on the above, the Committee finds that the Party concerned has fulfilled the requirement in paragraph 3 of decision VI/8h to provide adequate information to public authorities about the duties in paragraph 2(a) of decision VI/8h.

*Trainings*

1. In its second progress report, the Party concerned had reported on the trainings it planned to carry out for magistrates and public authorities.
2. Regarding the proposed training sessions for magistrates and public authorities outlined in the final version of its Strategy, the Party concerned reports that all information contained therein “is valid and must be implemented as soon as the COVID 19 restrictions are relaxed and human and funding resources are found”.[[22]](#footnote-23) It submits that the training sessions described in the Strategy have been rescheduled for 2022 and 2023 for public authorities and for 2022, 2023, and 2024 for magistrates.[[23]](#footnote-24)
3. With respect to the trainings to be provided by the Party concerned, the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 submit that environmental law, including access to information, is not included in the curricula of any “Law University” in the Party concerned. They report that there are no Master or doctoral studies in this area, with environmental law being an optional course that is usually not followed by students. The communicants also state that “from the attitude of the public administration towards access to information it is very clear that even if there were studies the level and the quality were not aligned with the Aarhus Convention standards”.[[24]](#footnote-25)
4. The Committee recalls that in its second progress review, the Committee considered the proposed trainings described in the then-draft Strategy and made clear that:[[25]](#footnote-26)

as the Committee explained in its advice to the Party concerned of 12 July 2018, in order to meet the requirement of paragraph 3 of decision VI/8h, it will be necessary for the Party concerned to demonstrate to the Committee that as many as possible of its public officials that handle matters within the scope of paragraph 2 of decision VI/8h have received the trainings. The Committee will need to examine the content of the trainings and a list of participants, including the name, position and organization of each participant. Both the content of the trainings and the list of participants will need to be provided to the Committee in English.[[26]](#footnote-27)

1. The Committee invites the Party concerned to bear the above advice in mind when reporting to the Committee on the trainings once they have been carried out.
2. In this regard, the Committee expresses its concern about the significant delay in the planned trainings as scheduled by the Party concerned. While acknowledging that the COVID-19 pandemic has caused diverse challenges for governments, the Party concerned has not explained why the trainings are now set to take place three years later than originally planned. The Committee points out that, throughout the COVID-19 pandemic, trainings are being carried out by many entities electronically on a daily basis, and moreover, the electronic format of the trainings has often resulted in a higher level of participation than might have been possible in person.
3. The Committee also notes that the first sets of trainings were initially scheduled to take place in 2019,[[27]](#footnote-28) i.e. before the start of the pandemic. The Committee has to date received no information on whether these trainings actually took place, and if they did not, what were the reasons for them not having taken place.
4. Based on the above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 3 of decision VI/8h with regard to the training of public authorities.

*Concluding remarks regarding paragraph 3 of decision VI/8h*

1. In light of the foregoing, the Committee finds that, while the Party concerned has fulfilled the requirement in paragraph 3 of decision VI/8h to provide adequate information to public authorities about the duties in paragraph 2(a) of decision VI/8h, it has not yet met the requirement to provide training to public authorities about these duties.

**Paragraph 7(a)(i) of decision VI/8h: definition of “environmental information”**

1. The Committee recalls that in its advice to the Party concerned, it held that

the Party concerned should ensure that the correct definition of environmental information in article 2, paragraph 3, of the Convention, is expressly highlighted in all measures taken to fulfil paragraph 2 (a) and (b) of decision VI/8h, as well as in the trainings under paragraph 3 for public authorities dealing with information requests.[[28]](#footnote-29)

1. None of the three progress reports submitted by the Party concerned addresses the Party’s measures regarding paragraph 7(a)(i) specifically. However, the Party concerned lists the “identification of types of environmental information based on art. 2, paragraph (3) of the Convention, from documents/databases by public and local authorities”[[29]](#footnote-30) as well as the “definition of the environmental information”[[30]](#footnote-31) as part of the trainings for public authorities and magistrates announced in its Strategy. Moreover, the Guide addresses the issue of the correct definition of environmental information.[[31]](#footnote-32)
2. The Committee welcomes the fact that the Party is addressing the correct definition of environmental information in its Guide and is planning to address it in its trainings to be provided under paragraph 3 of decision VI/8h. The Committee however considers that the Party cannot be considered to have fulfilled the requirements of paragraph 7(a)(i) so long as it has not yet implemented its trainings in accordance with paragraph 3 of decision VI/8h.
3. Based on the above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 7(a)(i) of decision VI/8h.

**Paragraph 7(a)(iii) of decision VI/8h: requirement to separate confidential from non-confidential information**

1. The Committee recalls that in its advice it explained that the requirements of paragraph 7(a)(iii) “should be included in the measures taken for paragraph 2(a) and (b) of decision VI/8h as well as in the trainings under paragraph 3 for public authorities dealing with information requests.”[[32]](#footnote-33)
2. The Party concerned reports on a planned amendment to article 15 of Decision 878/2005, which would impose a duty on public authorities to redact confidential information within the scope of article 11(d) and (e) and anonymize information within the scope of article 12(1)(f) and (g) prior to disclosing the rest of the environmental information.[[33]](#footnote-34)
3. The Committee takes note of the Party’s proposed legislative amendment to article 15 of Decision 878/2005 and encourages the Party concerned to implement the relevant legislative amendments intended to address the requirements of decision VI/8h as a matter of urgency.
4. The Committee furthermore notes that the Guide instructs officials, when handlng requests for environmental information, to separate confidential from non-confidential information[[34]](#footnote-35) and that according to its Strategy, the Party concerned is also planning to include the issue of separation of confidential from non-confidential information in its trainings for public authorities and magistrates.[[35]](#footnote-36)
5. While welcoming the above steps, the Committee explains that, as for paragraph 7(a)(i) of decision VI/8h, the Party cannot be considered to have fulfilled paragraph 7(a)(iii) so long as it has not implemented the trainings in accordance with paragraph 3 of decision VI/8h.
6. In light of the foregoing, the Committee finds that the Party has not yet met the requirements of paragraph 7(a)(iii) of paragraph VI/8h.

**Paragraph 7(b) of decision VI/8h: effective participation of the public in decisions to permit activities within the scope of article 6 of the Convention**

1. In its advice to the Party concerned, the Committee held that:

 In order to fulfil the recommendation in paragraph 7(b) of decision VI/8h, the Party concerned should take the following steps:

 (a) For each of the activities set out in annex I of the Convention (as well as any activities covered by article 6, paragraph 1 (b) of the Convention), list each of the permits/approvals required to be granted prior to it being finally permitted.

 (b) For each of the permits/approvals identified above, indicate which ones are required under national law to be the subject of public participation meeting the requirements of article 6 of the Convention, and which ones are not.

 (c) For each of the permits/approvals not required by national law to be the subject of public participation meeting the requirements of article 6 of the Convention, provide an explanation of why not.[[36]](#footnote-37)

1. The Committee also stressed that “it would be important that the above information be provided to the Committee as soon as possible during the intersessional period”.[[37]](#footnote-38)
2. In its Strategy, the Party concerned states that it envisages a list of authorizations to be issued for the activities listed in annex I of the Convention. It provides that it would be indicated which of these authorizations require public participation under national law in accordance with article 6 of the Convention, and if no such public participation is required, it would explain why this is the case.[[38]](#footnote-39)
3. While taking note of the Party concerned’s intentions as set out in the Strategy, the Committee regrets that the Party concerned has to date not provided the Committee with any of the information listed in paragraph ‎83 above, nor reported on any other steps it has taken to fulfil the requirements of paragraph 7(b) of decision VI/8h. The Committee reminds the Party concerned that the provision of the information requested by the Committee would only be the first step to the Party’s fulfilment of paragraph 7(b). The Committee would subsequently have to consider the information provided and advise the Party concerned whether any of the permits/approvals that are not currently required by national law to be the subject of public participation would in fact require public participation in accordance with article 6 of the Convention.[[39]](#footnote-40)
4. In light of the foregoing, the Committee finds that the Party has not yet met the requirements of paragraph 7(b) of paragraph VI/8h.

**Paragraph 7(c) of decision VI/8h: ensure that court procedures for access to environmental information are timely and provide adequate and effective remedies**

1. Regarding paragraph 7(c), the Committee held in its advice that the Party concerned “may decide to introduce a requirement to ensure that its courts give priority to access to environmental information cases or a requirement that they deal with them within a specified time frame.”[[40]](#footnote-41)
2. In its Strategy, the Party concerned provides that it would “seek to identify solutions for streamlining case files in national courts with regard to access to environmental information, with a focus on giving priority to cases involving the refusal of access to environmental information and setting a fixed term within to which the courts will deal with the cases”.[[41]](#footnote-42)
3. The Committee takes note of the Party concerned’s willingness to implement the Committee’s advice. However, the Committee also notes that the Party concerned has to date not provided the Committee with any information on actual steps it has taken to implement paragraph 7(c) of decision VI/8h, nor has it provided a time schedule in this regard.
4. In light of the foregoing, the Committee finds that the Party has not yet met the requirements of paragraph 7(c) of paragraph VI/8h.

**Paragraph 7(d) of decision VI/8h: ensure that the activities listed in subparagraphs (a), (b) and (c) above are carried out with broad participation**

1. With regards to the Party concerned’s then-draft Strategy, in its second progress review the Committee stated that it:

 welcomes the extensive consultation that the Party concerned has carried out thereon, which demonstrates its efforts to ensure that the Strategy has been prepared with the broad participation of the public authorities and the public concerned in line with paragraph 7(d) of decision VI/8h.[[42]](#footnote-43)

1. The Committee encourages the Party concerned to maintain its commitment to broad participation in the implementation of the measures it takes to implement paragraph 7(a)-(c) above.
2. While welcoming the significant efforts with respect to paragraph 7(d) by the Party concerned to date, since the Party concerned has not yet fully implemented paragraph 7(a)-(c), the Committee finds that the Party concerned has not yet met the requirements of paragraph 7(d) of decision VI/8h either.

 IV. Conclusions

1. The Committee welcomes the constructive engagement demonstrated by the Party concerned during the intersessional period.
2. The Committee finds that the Party concerned has fully met the requirements of paragraph 2(c) of decision VI/8h 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.
3. While welcoming the progress made, the Committee finds that the Party concerned has not yet fully met the requirements of paragraphs 2(a) and (b), 3, 4 and 7(a)-(d) of decision VI/8h.
4. The Committee recommends to the Meeting of the Parties that it reaffirm decision VI/8h and recommend the Party concerned:

 (a) To provide the Committee with evidence that it has, as a matter of urgency, taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that public officials:

(i) 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, state the reasons for the refusal;

(ii) Correctly implement the Convention with respect to:

 a. Article 2(3): the definition of “environmental information”;

 b. Article 4(6): the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;

(ii) 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;

 (b) To provide the Committee with evidence that it has provided training to public authorities about the above duties;

 (c) To review 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 to take the necessary legislative and regulatory measures to ensure that such situations are adequately remedied;

(d) To review its legal framework and undertake 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;

1. To provide adequate practical arrangements or measures to ensure that the activities listed in subparagraphs (a)-(d) above are carried out with broad participation of the public authorities and the public concerned;
2. The Committee also recommends that the Meeting of the Parties request the Party concerned:
3. To submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;
4. To provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the above recommendations;
5. To provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the above recommendation;
6. To participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendation is to be considered.

1. \* The present document is being issued without formal editing. [↑](#footnote-ref-2)
2. Communicants’ comments, 26 March 2020, p. 1. [↑](#footnote-ref-3)
3. Party’s additional information, 25 June 2021, p. 1. [↑](#footnote-ref-4)
4. Party’s additional information, 25 June 2021, p. 1-2. [↑](#footnote-ref-5)
5. Party’s additional information, 25 June 2021, annex 1, p. 18. [↑](#footnote-ref-6)
6. Party’s additional information, 25 June 2021, annex 1, pp. 18-20. [↑](#footnote-ref-7)
7. Committee’s advice to the Party concerned, 12 July 2018, p. 2. [↑](#footnote-ref-8)
8. Committee’s advice to the Party concerned, 12 July 2018, p. 2. [↑](#footnote-ref-9)
9. Committee’s advice to the Party concerned, 12 July 2018, p. 2. [↑](#footnote-ref-10)
10. Committee’s advice to the Party concerned, 12 July 2018, pp. 2-3. [↑](#footnote-ref-11)
11. Party’s additional information, 25 June 2021, pp. 3-4. [↑](#footnote-ref-12)
12. Party’s additional information, 25 June 2021, p. 5. [↑](#footnote-ref-13)
13. Party’s additional information, 25 June 2021, p. 2. [↑](#footnote-ref-14)
14. Communicants’ comments, 26 March 2020, p. 1. [↑](#footnote-ref-15)
15. Committee’s first progress review, 25 February 2019, para. 27. [↑](#footnote-ref-16)
16. Party’s final progress report, pp. 1-2 and annexes 1-4. [↑](#footnote-ref-17)
17. Party’s final progress report, annex 5. [↑](#footnote-ref-18)
18. Party’s final progress report, pp. 1-2 and annex 6. [↑](#footnote-ref-19)
19. Party’s additional information, 25 June 2021, p. 2. [↑](#footnote-ref-20)
20. Committee’s second progress review, para. 38. [↑](#footnote-ref-21)
21. Committee’s second progress review, para. 39. [↑](#footnote-ref-22)
22. Party’s additional information, 25 June 2021, p. 3. [↑](#footnote-ref-23)
23. Party’s additional information, 25 June 2021, pp. 3 and 6. [↑](#footnote-ref-24)
24. Communicants’ comments, 26 March 2020, p. 1. [↑](#footnote-ref-25)
25. Committee’s second progress review, paras. 40-48. [↑](#footnote-ref-26)
26. Committee’s second progress review, para. 47. [↑](#footnote-ref-27)
27. See Party’s second progress report, annex 1, p. 14. [↑](#footnote-ref-28)
28. Committee’s advice to the Party concerned, 12 July 2018, p. 5. [↑](#footnote-ref-29)
29. Party’s additional information, 25 June 2021, annex 1, p. 14. [↑](#footnote-ref-30)
30. Party’s additional information, 25 June 2021, annex 1, p. 16. [↑](#footnote-ref-31)
31. See Party’s second progress report, annex 3, pp. 4-5. [↑](#footnote-ref-32)
32. Committee’s advice to the Party concerned, 12 July 2018, p. 5. [↑](#footnote-ref-33)
33. Party’s additional information, 25 June 2021, p. 4. [↑](#footnote-ref-34)
34. See Party’s second progress report, annex 3, p. 15. [↑](#footnote-ref-35)
35. Party’s additional information, 25 June 2021, annex 1, pp. 14 and 17. [↑](#footnote-ref-36)
36. Committee’s advice to the Party concerned, 12 July 2018, p. 6. [↑](#footnote-ref-37)
37. Committee’s advice to the Party concerned, 12 July 2018, p. 6. [↑](#footnote-ref-38)
38. Party’s additional information, 25 June 2021, annex 1, p. 12. [↑](#footnote-ref-39)
39. See Committee’s advice to the Party concerned, 12 July 2018, p. 6. [↑](#footnote-ref-40)
40. Committee’s advice to the Party concerned, 12 July 2018, p. 7. [↑](#footnote-ref-41)
41. Party’s additional information, 25 June 2021, annex 1, p. 12. [↑](#footnote-ref-42)
42. Committee’s second progress review, para. 31. [↑](#footnote-ref-43)