



**COMMENTS TO THE DRAFT REPORT OF THE COMPLIANCE COMMITTEE TO BE ADOPTED BY THE
MOP TO THE AARHUS CONVENTION AT HIS SEVENTH SESSION (18-20 OCTOBER 2021)**

**IMPLEMENTATION OF DECISION VI/8J ON COMPLIANCE BY SPAIN WITH ITS OBLIGATIONS UNDER
THE CONVENTION**

We appreciate your draft conclusions in relation to Decision VI /8j and related to paragraph 3 of said decision we would like to point out the following:

In your second progress review of the implementation of Decision, you stated, related paragraph 3 of the Decision, that you welcomed the judgment of our Supreme Court of 16 January 2018, as a significant positive development towards fulfilling your requirements related to this paragraph of the Decision, adding that a single judgment by our Supreme Court is insufficient to establish jurisprudence, asking us to send you others judgments in line with the approach taken in the mentioned judgment.

To comply with your requirements we sent, not only the judgment of our Supreme Court of 13 March 2019 that ruled in the same direction, but also 5 judgment more adopted by our Regional Supreme Courts, all of them established that the NGOs that meet the criteria set forth in article 23.1 of Act 27/2006 of 18 July, are entitled to legal aid.

There are also several articles published in different Spanish magazines recognizing that, after the judgments of our Supreme Court, there is not any doubt that environmental NGOs that meet the requirements laid down in Act 27/2006 of 18 July, have the right to legal aid.

One of the mentioned articles was published in the Oficial lawyer magazine, other one was wrote by the General Manager of one of the most important international environmental NGO.

We have sent by email, to our regional focal points of Aarhus Convention, these judgments, with the purpose that the Legal Aid Commissions of the different regions may be informed about the case law established by our Supreme Court. Moreover, our email had being published on internet, to give it a broad dissemination.

In addition to this, we have also informed the Ministry of Justice about this issue and about the jurisprudence in favor of NGOs, so that the Ministry of Justice is aware of the legal issue related to Act 27/2006

This case law is more and more well known, so that it will be more and more difficult that the Legal Aid Commissions decisions ruled on the contrary of such consistent jurisprudence and the few cases that could produce in this sense could be object of judicial revision, as a decision adopted by an administrative institution.

Links magazines articles:

<https://www.abogacia.es/actualidad/opinion-y-analisis/las-costas-judiciales-en-el-ejercicio-del-derecho-de-acceso-a-la-justicia-en-materia-ambiental/>

<https://www.eleconomista.es/legislacion/noticias/9802247/04/19/El-Tribunal-Supremo-declara-que-las-organizaciones-ambientales-estan-exentas-de-pagar-costas.html>

<http://zaindezagunurdaibai.blogspot.com/2020/12/queda-acreditado-el-derecho-la.html>

In relation to the paragraph 7 of draft report decision VI/8j, Spain would like to make the following remarks.

- 1. Decision VI/8j includes the following recommendation with regard to this communication:*

“7. Also welcomes the willingness of the Party concerned to accept the Committee’s recommendation, namely, that the Party concerned take the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6, paragraph 9, of the Convention not only through the Internet, but also through other means, including but not necessarily limited to the methods used to inform the public concerned pursuant to article 6, paragraph 2, of the Convention”.

- 2. Paragraph 43 of the draft report states that article 23.4 of Act 16/2002 stipulates that “the autonomous communities shall publish the administrative rulings by means of which integrated environmental authorizations are granted or modified*



in their respective official journals”, and in the opinion of the Committee, and taking into account that the official journals were only published in digital format, by not informing the public about the decision to permit the activity subject to article 6 of the Convention by any other means than publishing the decision on the internet, the Party concerned failed to comply with article 6(9) of the Convention.

- 3. As we stated several times earlier in the process, the legislation in force to be consulted during the procedure at issue is the Royal Legislative Decree 1/2016, by means of which the consolidated text of the integrated pollution prevention and control law (Act 16/2002) is approved. The Act 16/2002 itself does not contain the complete text of the legislation regulating this matter, as it does not include the amendments consequence of the national transposition of Directive 2010/75, on industrial emissions.*
- 4. In particular, former article 23 of Act 16/2002 was renamed and modified, and now its content is included in article 24 of Royal Legislative Decree 1/2016 with the following wording:*

“Article 24. Notice and announcement

1. The competent body to grant the integrated environmental permit shall notify the following of the decision to grant, amend, and revise: the applicants, the council of the town where the facility is located, any of the bodies that issued a binding report, and, if appropriate, the body of the central government with the authority to grant the substantive permits indicated in Article 11.2.a) of this Act.

2. The public shall have the right to access decisions on integrated environmental permits, as well as their subsequent amendments and revisions, pursuant to Act 27/2006, of 18 July.

3. The Autonomous Communities shall make public, in their respective official gazettes, the administrative decisions by means of which they may have granted, substantially amended, or revised integrated environmental permits, identifying the facility affected in the notice announcing the decision. Furthermore, they shall make available to the public, by electronic media, among others, the information referenced below in letters a), b), e) and f):

- a) The content of the decision, including a copy of the integrated environmental permit, and its annexes, and any subsequent conditions and adaptations.*

- b) *A report including the rationale for the administrative decision, including the results of consultations made during the public participation process, and an explanation of how these were taken into account.*
- c) *The title of the BATs reference documents applicable to the facility or activity.*
- d) *The method used to determine the conditions for the permit set forth in Article 22, including the emission limits in relation to the BATs, and the emission levels associated with the BATs.*
- c) *When an exemption is granted pursuant to Article 7.5, the specific motives therefor, based on the criteria established in said paragraph, and the conditions imposed.*
- f) *Information regarding the measures adopted by the permit holder after the definitive termination of the activities, pursuant to Article 23.*
- g) *The environmental inspection reports, within a period of 4 months after the end of the on-site visit.*
- h) *The results of emission measurements required pursuant to the conditions established in the integrated environmental permit, and which are held by the competent body”.*

*The wording of paragraph 3 states that, **additionally to the publication in the official journey, the autonomous communities shall make available to the public by electronic media, among others**, the content of the decision related to the granting of a permit, as well as the rationale for the administrative decision, including the results of consultations made during the public participation process and an explanation of how these were taken into account, and the information mentioned in subparagraphs e) and f).*

5. Article 14 and Annex IV of the Royal Legislative Decree 1/2016 complete the legal regulation included in the Spanish legislation on industrial emissions as regards public participation and access to information.

Article 14. Processing

In all matters not regulated in this law, the procedure for granting an integrated environmental permit shall be that established in Act 39/2015, of 1 October.

The Public Administrations shall promote real and effective participation by interested persons in the procedures for granting, significantly amending, and revising integrated environmental permits for facilities.

The Public Administrations shall ensure that the participation referred to in the preceding paragraph takes place from the initial stages of the respective



procedures, pursuant to Article 24. To this end, the provisions concerning participation in Annex 4 shall apply to said procedures.

ANNEX IV. Public participation in decision-making

1. The competent body of the Autonomous Community shall inform the public regarding the following matters in the initial phases of the procedures—and always before a decision is made or, at the latest, as soon as it is reasonably possible to provide such information through electronic media, if available:

- a) The application documents for an integrated environmental permit, for its substantial amendment, or if appropriate, the documents regarding the revision, pursuant to Article 16.*
- b) If appropriate, the fact that the decision on such an application is subject to an environmental impact assessment—national or cross-border—or to consultations among Member States, pursuant to Articles 27 and 28.*
- c) The identity of the bodies with the authority to make a decision, of those that could provide relevant information, and of those that could be sent observations or asked for answers to questions, expressly indicating the deadline for doing so.*
- d) The legal nature of the decision on the application or, if appropriate, of the draft decision.*
- e) If appropriate, details regarding the revision of the integrated environmental permit.*
- f) The dates and the place or places where the relevant information shall be made available, as well as the media used for this purpose.*
- g) The forms of public participation and public consultation, as defined in paragraph 5.*
- h) In any case, the granting, substantial amendment, or revision of a permit regarding a facility when the application of Article 7.5 is proposed.*

2. The competent bodies of the Autonomous Communities shall ensure that, within a reasonable period of time, the following information is made available to interested persons:

- a) In accordance with national legislation, the major reports and decisions sent to the competent authority or authorities, at the time when interested parties must be informed pursuant to paragraph 1.*
- b) In accordance with the legislation regulating rights of access to information and public participation in environmental issues, all information other than that mentioned in point 1 which may be relevant to deciding on the application, pursuant to Article 8, and which may only be obtained once the period ends for providing information to interested persons, regulated in paragraph 1.*



3. Interested persons shall have the right to express any observations and opinions they consider relevant to the competent bodies, before the application is decided upon.

4. The outcomes of the consultations organized under the present Annex shall be duly taken into account by the competent body when deciding upon the application.

5. The competent body of the Autonomous Community for granting integrated environmental permits shall determine the manner in which the public is informed and interested persons are consulted. In any case, reasonable periods of time shall be established for the different phases, providing sufficient time for informing the public and for interested persons to effectively prepare and participate in the environmental decision-making process under the provisions of the present Annex.

6. In order to follow the instructions made by the Committee during this procedure, the Directorate-General of Environmental Quality and Climate Change of the Department of Territories and Sustainability of the Autonomous Administration of Catalonia issued an instruction providing that the units under the aegis of the Directorate-General, once environmental permits have been granted or denied, when notifying the municipal council of the location where the activity for which the environmental permit is being granted or denied is to be undertaken, must indicate that this resolution shall be made available to the public on the corresponding municipal notice boards and on the municipal website.

The instruction was also disseminated among the different autonomous administrations, both in writing to the regional contact points for the Aarhus Convention in May 2019 and during a meeting held on 26 September 2019, in order for them to adapt their actions in their respective territories regarding this matter to the contents of the instruction and pursuant to the indications in decision VI/8j.

7. *In the Annex to this document, you can find the wording of the instruction issued by Cataluña. This document was sent to the rest of the Autonomous Communities for its knowledge and effects.*
8. *To our understanding, the publication of the Instruction by the Catalan regional administration, together with the mentioned articles of the Royal Legislative Decree 1/2016, comply with the provisions of the Convention.*



9. *In any case, Spain is about to undertake the revision of the national IPPC legislation, as regards the review of the Industrial Emission's Directive (IED), and will include in this legal text the recommendations made by the Committee in this report, taking into account the amendment of the instruction mentioned in paragraph 50, so as to clarify that the public is promptly informed of decisions on integrated environmental permits through at least the means used to notify of the proposed decision-making itself. This new provisions will, indeed, be applicable and binding to all the competent authorities of the Autonomous Communities.*

ANNEX
INSTRUCTION ISSUED BY CATALONIA REGARDING PUBLIC PARTICIPATION IN THE ISSUING OF IPPC PERMITS

Instrucción sobre la participación pública en la tramitación de los expedientes de autorizaciones ambientales de la Ley 20/2009, de 4 de diciembre, de prevención y control ambiental de actividades.

En fecha 22 de agosto de 2018, el Comité de Cumplimiento del Convenio Aarhus dio traslado del escrito "recomendaciones en relación con la implementación de la decisión VI/8j". Las recomendaciones mencionadas indican que la Instrucción de 19 de marzo de 2018, de la directora General de Calidad ambiental y Cambio Climático en la que se ordena que en la publicación de las autorizaciones ambientales consten las dependencias físicas donde pueden consultarse íntegramente estos documentos, no es suficiente para dar cumplimiento a los requerimientos del párrafo 7 de la decisión VI/8j de 19 de junio de 2017.

El párrafo 7 de la decisión VI/8j recomienda llevar a cabo las medidas legislativas, reglamentarias u otro tipo de medidas, aparte de las disposiciones prácticas necesarias, con el fin de garantizar que el público sea informado rápidamente en relación con las decisiones adoptadas en base al artículo 6, párrafo 9 del Convenio, a fin de que estas decisiones no se difundan exclusivamente a través de internet, sino también a través de otros medios, incluidos, pero no necesariamente limitados a los métodos utilizados para informar al público afectado, de acuerdo con el artículo 6.2 del Convenio.

Con respecto al marco normativo, la Ley 20/2009, de 4 de diciembre, de prevención y control ambiental de las actividades recoge en su preámbulo la necesidad, entre otras, de adaptar la normativa de intervención integral a las determinaciones de la Ley 27/2006, del 18 de julio, reguladora de los derechos de acceso a la información, de participación pública y acceso a la justicia en materia de medio ambiente, de acuerdo con el Convenio de Aarhus.

Es en esta determinación que la Ley recoge aspectos de organización, cuando establece una unidad encargada de satisfacer el derecho de la ciudadanía en el acceso a la información ambiental y, evidentemente, de procedimiento, al determinar una serie de trámites conducentes a asegurar la eficaz publicidad y participación ciudadana en los procedimientos de autorización ambiental.



De acuerdo con el artículo 30.1 de la Ley 20/2009, la resolución por la cual se otorga o se deniega la autorización ambiental se notifica a las personas interesadas, se comunica al ayuntamiento del término municipal en el cual se proyecta emplazar la actividad y a las administraciones que hayan emitido un informe. Además, de acuerdo con el artículo 30.2, la parte dispositiva de la resolución y la declaración de impacto ambiental se publican en el Diario Oficial de la Generalitat de Catalunya. El contenido íntegro de las autorizaciones ambientales es de acceso público a través de la página web del Departamento. En aplicación de la Instrucción de 19 de marzo de 2018, se encuentran también disponibles en papel para los ciudadanos que quieren acceder en este apoyo.

A su vez, y como principios generales de participación, la Ley 19/2014, del 29 de diciembre, de transparencia, acceso a la información pública y buen gobierno se fundamenta en el conocimiento de la actividad pública, la incentivación de la participación ciudadana y la mejora de la calidad de la información pública y de la gestión administrativa.

Por ello, en sintonía con estos principios, de acuerdo con las “recomendaciones en relación con la implementación de la decisión VI/8j”, de 22 de agosto de 2018, comunicadas por el Comité de Cumplimiento del Convenio Aarhus y en orden a fomentar el eficaz conocimiento de las resoluciones adoptadas sobre las autorizaciones ambientales, haciendo uso de las competencias atribuidas por el artículo 88.1 j) del Decreto 277/2016, de 2 de agosto, de reestructuración del Departamento de Territorio y Sostenibilidad, relativas a la aprobación de criterios en las materias competencia de la Dirección General y con el fin de ampliar las actuaciones que se llevan a cabo para poner en conocimiento del público el otorgamiento de las autorizaciones ambientales, se dicta la instrucción siguiente:

- Las unidades que dependen de esta dirección general, una vez otorgadas o denegadas las autorizaciones ambientales, cuando comuniquen a los ayuntamientos dónde se emplaza la actividad la resolución por la cual se otorga o se deniega la autorización ambiental, tienen que indicar que esta decisión se tiene que poner a disposición del público en los correspondientes tableros de anuncios municipales y a su página web