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Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Report of the Compliance Committee on compliance by Spain***

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).

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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/8j on compliance by Spain with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of decision VI/8j in open session with the participation by audio conference of representatives of the Party concerned and the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99. During the session, the Party concerned sought the Committee's view on whether certain measures that it proposed to take would fulfil paragraph 7 of decision VI/8j. The Chair requested that the Party concerned provide its request for advice in writing and the Party concerned duly did so directly after the session.

3. On 6 May 2018, the communicant of communication ACCC/C/2008/24 submitted the text of a legislative proposal on legal aid that had been submitted by a political party in the Party concerned.

4. On 22 August 2018, the secretariat sent a letter to the Party concerned enclosing the Committee's advice regarding its request for advice on paragraph 7 of decision VI/8j.

5. On 28 September 2018, the Party concerned submitted its first progress report on decision VI/8j, on time.

6. On 5 October 2018, the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99, inviting their comments by 1 November 2018.

7. On 8 October 2018, the communicant of communication ACCC/C/2009/36 provided comments on the Party concerned's first progress report. On 31 October 2018, the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99 provided comments on the first progress report.

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 18 February 2019. On 26 February 2019, the secretariat sent the Committee's first progress review to the Party concerned and the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99.

9. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of decision VI/8j in open session, with the participation by audio conference of a representative of the Party concerned. Though invited, the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99 did not take part in the open session.

10. On 19 March 2019, the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 provided their comments on the statement delivered by the Party concerned at the open session on decision VI/8j at the Committee's sixty-third meeting.

11. On 24 July 2019, the secretariat sent the Party concerned a letter reminding it of the deadline of 1 October 2019 set out in paragraph 8 (a) of decision VI/8j for it to submit its second progress report.

12. On 1 October 2019, the Party concerned provided its second progress report, on time.

13. On 2 October 2019, the secretariat forwarded the second progress report of the Party concerned to the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99 for their comments.

14. On 30 October 2019, the communicants of communications ACCC/C/2008/24 and ACCC/C/2014/99 each provided their comments on the Party concerned's second progress report.
15. The Committee prepared its second progress review, taking into account the information received, and adopted it through its electronic decision-making procedure on 1 March 2020. On 2 March 2020, the secretariat sent the Committee's second progress review to the Party concerned and the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99.
16. At its sixty-sixth meeting (Geneva, 9–13 March 2020), the Committee reviewed the implementation of decision VI/8j in open session, with the participation by audio conference of representatives of the Party concerned and the communicant of communication ACCC/C/2008/24.
17. On 14 March 2020, the communicant of communication ACCC/C/2009/36 provided an update. On 15 April 2020, the Party concerned sent comments on the communicant's update.
18. On 6 October 2020, the Party concerned provided its final progress report, after the deadline of 1 October 2020.
19. On 9 October 2020, the secretariat forwarded the Party concerned's final progress report to the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99, inviting their comments by 6 November 2020.
20. On 26 October 2020, the communication of communication ACCC/C/2014/99 submitted comments on the Party concerned's final progress report.
21. On 5 November 2020, the communicants of communications ACCC/C/2008/24 and ACCC/C/2009/36 each submitted comments on the Party concerned's final progress report.
22. On 26 November and 2 December 2020, respectively, the Party concerned submitted comments on the comments by the communicants of communications ACCC/C/2014/99 and ACCC/C/2009/36.
23. On 4 December 2020, the communicant of communication ACCC/C/2009/36 submitted comments on the comments of the Party concerned. On 21 December 2020, the Party concerned submitted comments on the communicant's comments of 4 December 2020. On 4 February 2021, the communicant of communication ACCC/C/2009/36 submitted comments on the Party concerned's comments of 21 December 2020. On 12 February 2021, the Party concerned submitted comments on the comments of 4 February 2021.
23. 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/8j through its electronic decision-making procedure on 30 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on 1 July 2021 to the Party concerned and communicants for their comments by 15 July 2021.
24. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8j in open session with the participation via virtual means of Party concerned. Though invited, the communicants of communications ACCC/C/2008/24, ACCC/C/2009/36 and ACCC/C/2014/99 did not take part in the open session.
25. On 19 July 2021, the Party concerned provided comments on the Committee's draft report.
26. After taking into account the information received, the Committee finalized its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8j in closed session. The Committee adopted its report through its electronic decision-making procedure on 26 July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicants.

III. Consideration and evaluation by the Committee

27. In order to fulfil the requirements of paragraph 3 of decision VI/8j, the Party concerned would need to provide the Committee with evidence that it had taken measures, as a matter of urgency, to ensure that the remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention with respect to legal aid for non-governmental organizations (NGOs) identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36¹ have been overcome.

28. In order to fulfil the requirements of paragraph 7 of decision VI/8j, the Party concerned would need to provide evidence that it had taken the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6 (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 (2) of the Convention.

Paragraph 3 of decision VI/8j

29. With respect to paragraph 3 of decision VI/8j, in its second progress review, the Committee had invited the Party concerned, together with its final progress report, to provide:

(a) The text of the legislative measures, together with English translation thereof, it had by that date taken to ensure; or

(b) The text of the Supreme Court decision of 19 March 2019 and any other relevant decisions of the Supreme Court issued since 16 January 2018, together with English translations thereof, and to comment on the extent to which the Supreme Court's decisions together establish a consistent jurisprudence recognizing the right of environmental associations to legal aid which conclusively demonstrates;

that the remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention with respect to legal aid for NGOs identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 have been overcome.

30. In its progress reports, the Party concerned has indicated that, in its view, there are two paths for implementing the recommendation in paragraph 3 of decision VI/8j, namely through developments in its courts' jurisprudence or through legislative reform. The Party concerned submits that it had been its intention to amend Act 27/2006 of 18 July 2006 (which implements the Convention) in order to meet the requirements of paragraph 3 of decision VI/8j. However, the political situation in the past years has meant that the Government, as a caretaker government for much of that time, has been without the capacity to implement legislative reform in the Parliament.²

31. Regarding developments in jurisprudence relevant to the implementation of paragraph 3 of decision VI/8j, the Party concerned reports upon two decisions of the Administrative Chamber of the Supreme Court dated 16 January 2018 and 13 March 2019, in which the Court recognized the right of an environmental association to legal aid.³ In each case, the Court found that an association meeting the requirements in article 23 of Act 27/2006 need not meet the additional requirements of Act 1/1996 on Legal Aid.⁴

32. The Party concerned states that these two decisions enshrine the settled case law of the Supreme Court and that thereby any remaining obstacles to the full implementation of the Convention with respect to legal aid for NGOs have been overcome.⁵ The Party concerned

¹ ECE/MP.PP/C.1/2010/4/Add.2.

² Party's second progress report, 1 October 2019, pp. 1–2; Party's final progress report, 6 October 2019, pp. 1–2.

³ Party's second progress report, 1 October 2019, p. 2, and annex 1, p. 4; Party's final progress report, 6 October 2019, p. 2, and annex 1.

⁴ Party's second progress report, 1 October 2019, annex 1, pp. 2–4; Party's final progress report, 6 October 2020, annex 1, pp. 2–4.

⁵ Party's statement delivered at the Committee's sixty-third meeting, 15 March 2019, p. 2; Party's final progress report, 6 October 2020, p. 2.

states that it has disseminated these judgments through the Aarhus Convention focal points for its Autonomous Communities so that environmental NGOs are aware of the judgments and may cite them in their requests for legal aid⁶ and also so that the Legal Aid Commissions of the different regions are informed of the judgments. It states that its email was published on the Internet to ensure its broad dissemination and that it has also informed the Ministry of Justice about the judgments in order to raise the Ministry's awareness of this issue. It reports that there have also been several articles published in Spanish magazines recognizing that, in the light of the Supreme Court judgments, there is no doubt that environmental NGOs have the right to legal aid.⁷

33. The communicant of communication ACCC/C/2008/24 states that the situation on legal aid for environmental NGOs remains unclear. It claims that the Party concerned is relying on judicial orders whereas judicial judgments are needed to create jurisprudence. It submits that the Party concerned should amend its legislation to make clear that environmental NGOs do not need to fulfil the requirements of Law 1/1996 in order to qualify for legal aid.⁸

34. The communicant of communication ACCC/C/2009/36 likewise submits that the situation remains unclear, not least because NGOs still have to be declared as public interest organizations in order to benefit from legal aid and this has a particular impact on small NGOs.⁹ To support its claims, the communicant refers to an order of the Clerk of the Superior Court of Catalonia of 16 November 2020 that denied legal aid to an environmental NGO¹⁰ and a 2019 report of the Ombudsman stating that there is a need to harmonise the mismatch between the provisions of Act 27/2006 and Act 1/1996.¹¹ The communicant considers that the Party concerned must modify its legislation so that there is no possibility of misinterpretation.¹²

35. With respect to the communicants' comments, the Party concerned contends that the Supreme Court's case law is clear that the requirements of Act 1/1996 do not apply to the award of legal aid under article 23 of Act 27/2006;¹³ that the order of the Superior Court of Catalonia is not a final decision and does not have the status of a ruling;¹⁴ and that the Ombudsman's opinion carries no legal weight. It also questions whether the Ombudsman was aware of the Supreme Court's recent case law.¹⁵

36. The Committee welcomes the orders of the Supreme Court of 16 January 2018 and 13 March 2019 as significant positive developments towards fulfilling the requirements of paragraph 3 of decision VI/8j.

37. In order to fully meet the requirements of paragraph 3 of decision VI/8j, however, the Party concerned would need to provide the Committee with evidence that it has taken measures to *ensure* that the remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention with respect to legal aid for NGOs identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 have been overcome.

⁶ Party's final progress report, 6 October 2020, p. 2; Party's comments on Committee's draft report, 19 July 2021, p. 1.

⁷ Party's comments on Committee's draft report, 19 July 2021, p. 1.

⁸ Comments by communicant of communication ACCC/C/2008/24 on Party's final progress report, 5 November 2020, p. 1.

⁹ Ibid., pp. 1–2.

¹⁰ Comments by communicant of communication ACCC/C/2009/36 on Party's comments, 4 December 2020, annex 1.

¹¹ Comments by communicant of communication ACCC/C/2009/36 on Party's comments, 4 February 2021, pp. 1–2.

¹² Comments by communicant of communication ACCC/C/2009/36 on Party's statement, 19 March 2019, p. 2.

¹³ Party's comments on comments by communicant of communication ACCC/C/2009/36, 2 December 2020, pp. 1–2.

¹⁴ Party's comments on comments by communicant of communication ACCC/C/2009/36, 21 December 2020, p. 1.

¹⁵ Party's comments on comments by communicant of communication ACCC/C/2009/36, 12 February 2021, p. 1.

38. The Committee makes clear that if, despite the Supreme Court orders of 16 January 2018 and 13 March 2019, Legal Aid Commissions are still in practice denying environmental NGOs legal aid on the grounds that the NGOs do not meet the requirements of Act 1/1996, then the “remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention” have not yet been fully overcome. This point applies even if, upon the NGO appealing the Legal Aid Commission’s decision to the court, the court may ultimately overturn that decision. If Legal Aid Commissions are still denying legal aid in practice and thus environmental NGOs are having to bring court proceedings to overturn those wrongful decisions, with the ensuing delays and uncertainty involved, that means that the remaining obstacles have not yet been fully removed.

39. In this regard, the Committee notes that, in addition to the two Supreme Court orders, the Party concerned has provided two more recent High Court orders decided in which the High Court overturned decisions by Legal Aid Commissions that had denied environmental NGOs legal aid.¹⁶ While the Committee welcomes the High Court orders as providing some limited evidence that the High Court is following the Supreme Court case law, the decisions of the Legal Aid Commissions at issue were themselves decided after the Supreme Court’s orders.

40. On this point, the Committee also notes the order by the Superior Court of Catalonia dated 16 November 2020 in which the Court rejected an appeal by an environmental NGO against the Legal Aid Commission’s refusal of legal aid on the grounds that the NGO did not meet the requirements of Act 1/1996.¹⁷

41. Since each of the three decisions by Legal Aid Commissions in paragraphs 39 and 40 above were decided after the Supreme Court orders of 16 January 2018 and 13 March 2019, the Committee considers that further efforts are required by the Party concerned to ensure that the Legal Aid Commissions themselves are applying article 23 of Act 27/2006 so as to grant small environmental NGOs legal aid.

42. Based on the foregoing, the Committee considers that, while the orders of the Administrative Chamber of the Supreme Court of 16 January 2018 and 13 March 2019 are significant positive developments, until the Legal Aid Commissions are themselves applying article 23 of Act 27/2006 so as to grant small environmental NGOs legal aid, the remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention will not yet have been fully overcome. The Committee therefore finds that, while welcoming the positive steps in that direction, the Party concerned has not yet fully met the requirements of paragraph 3 of decision VI/8j.

Paragraph 7 of decision VI/8j

43. In its findings on communication ACCC/C/2014/99, the Committee noted that, at the time that the permit at issue in that communication was granted, article 23 (4) of Act 16/2002 on integrated pollution and control stipulated 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.¹⁸

44. At that time, the official journal of each of the Autonomous Communities in the Party concerned were published exclusively in digital format.¹⁹

45. In its findings, the Committee found that, by not informing the public about the decision to permit the activity subject to article 6 of the Convention by any other means than

¹⁶ Party’s comments on the comments by communicant of communication ACCC/C/2009/36, 2 December 2020, annex; Party’s comments on comments by communicant of communication ACCC/C/2009/36, 21 December 2020, annexes 1–4.

¹⁷ Comments by communicant of communication ACCC/C/2009/36, 4 December 2020, annex.

¹⁸ ECE/MP.PP/C.1/2017/17, para. 22.

¹⁹ *Ibid.*, para. 28.

by publishing the decision on the Internet, the Party concerned failed to comply with article 6 (9) of the Convention.²⁰

46. In paragraph 103 of its findings, the Committee also held that:

As a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned.²¹

Subsequent legislative developments

47. In its comments on the Committee's draft report, the Party concerned states that article 23 (4) of the Law 16/2002 has been amended and its content is now set out in article 24 of Royal Legislative Decree 1/2016.²²

48. Article 24 (3) (a) of Royal Legislative Decree 1/2016 provides that, in addition to publication in the official journal, the Autonomous Communities shall make available to the public by "electronic media, among others", the content of the decision, including a copy of the integrated environmental permit.²³

49. The Committee regrets that, given the apparent relevance of article 24 (3) of Royal Legislative Decree 1/2016 to paragraph 7 of decision VI/8j, the Party concerned has informed the Committee of this provision for the first time only in its comments on the Committee's draft report to the seventh session of the Meeting of the Parties. The fact that the Committee has been provided with the text of article 24 (3) for the first time at such a late stage means that it is not possible for the Committee to clarify with the Party concerned and the communicants how article 24 (3) is applied in practice. This is all the more unfortunate given that it is not clear from the wording of article 24 (3) whether it covers just the means through which the public can access the text of the decision on the integrated environmental permit or it also covers how the public is to be notified that the decision on the permit has in fact been taken. Neither does the Committee have any information before it on how article 24 (3) (a) has been applied in practice by the Autonomous Communities and, specifically, whether in the light of article 24 (3) (a), each Autonomous Community is, in practice, notifying the public of decisions on integrated environmental permit by means other than publishing the decision on the Internet.

50. Moreover, the Committee recalls paragraph 103 of its findings on communication ACCC/C/2014/99 (see para. 46 above) and notes that, while article 24 (3) (a) requires the Autonomous Communities to make decisions on integrated environmental permits available to the public through "electronic media, among others", there is nothing in article 24 (3) to require that the means used to notify the public of the decision once taken include, as a minimum, the means used to notify the public concerned of the proposed decision-making under article 6 (2) of the Convention.

Catalonia's instruction

51. The Party concerned reports that, on 28 September 2018, 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 (Catalonia's instruction).²⁴ Catalonia's instruction provides that:

The units under the aegis of this 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

²⁰ Ibid., para. 105.

²¹ Ibid., para. 103.

²² Party's comments on Committee's draft report, 19 July 2021, p. 3.

²³ Ibid., p. 4.

²⁴ Party's second progress report, 1 October 2019, p. 3, and annex 2.

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.²⁵

52. The Party concerned reports that Catalonia's instruction "has been disseminated among its 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."²⁶

53. The communicant of communication ACCC/C/2014/99 claims that Catalonia's instruction is not an appropriate measure to implement paragraph 7 of decision VI/8j. It submits that making permits available not only on the Internet and in the Official Journal, but also on the corresponding municipal notice boards and on the municipal website still fails to ensure that the public is effectively informed. It states that more effective measures should be implemented, such as putting up posters announcing the authorization of the project in the area in which it is to be carried out and placing notices in the local press.²⁷

54. The communicant of communication ACCC/C/2014/99 submits that Catalonia's instruction moreover has binding effects only for the public workers of the Directorate-General of Environmental Quality and Climate Change of the Department of Territories and Sustainability of the Autonomous Administration of Catalonia. The communicant claims therefore that the instruction does not apply to municipalities because they are a separate level of public administration and that a modification of the Spanish or Catalan legislation is required in order to have binding effects for municipalities.²⁸

55. The Committee welcomes the adoption of Catalonia's instruction, and the implementation of the instruction in practice, as positive steps towards implementing the recommendation in paragraph 7 of decision VI/8j. The Committee examines below the extent to which Catalonia's instruction fully meets the requirements of paragraph 7 of decision VI/8j.

Decision VI/8j applies to all Autonomous Communities

56. The Committee underlines that, as it already made clear in its first and second progress reviews, decision VI/8j concerns the compliance of Spain, not just that of Catalonia.²⁹

57. The Committee appreciates that the Party concerned has disseminated Catalonia's instruction among its Autonomous Communities, both in writing to its Aarhus Convention regional contact points in May 2019 and during a meeting on 26 September 2019 in order for them to adapt their actions in their respective territories to the contents of the instruction and decision VI/8j.³⁰ The Party concerned has not however put any evidence before the Committee that would indicate that, as a result of these steps, the other Autonomous Communities are under a legal obligation to adapt their actions in line with Catalonia's instructions. The Committee points out that, in order to meet the requirements of paragraph 7 of decision VI/8j, the Party concerned will need to take the necessary measures to *ensure* that the public in all the Autonomous Communities of the Party concerned are promptly informed of decisions taken under article 6 (9) of the Convention.

58. In this regard, the Party concerned has not to date provided the Committee with the text of any administrative instructions or other measures taken by the other Autonomous Communities that would indicate that they have indeed adapted their actions in line with Catalonia's instruction. In order to conclude the Party concerned has met the requirements of

²⁵ Party's second progress report, 1 October 2019, annex 2, p. 2; Party's final progress report, 6 October 2020, p. 3.

²⁶ Party's second progress report, 1 October 2019, p. 3; Party's final progress report, 6 October 2020, p. 3; Party's comments on Committee's draft report, 19 July 2021, p. 6.

²⁷ Comments by communicant of communication ACCC/C/2014/99 on Party's second progress report, 30 October 2019, p. 1; Comments by communicant of communication ACCC/C/2014/99 on Party's final progress report, 26 October 2020, p. 1.

²⁸ Ibid.

²⁹ Committee's first progress review, 26 February 2019, para. 22.

³⁰ Party's second progress report, 1 October 2019, p. 3.

paragraph 7 of decision VI/8j, the Committee will need to be provided with the administrative instructions or other measures taken to ensure that the requirements of paragraph 7 are met for *each* Autonomous Community.

59. Accordingly, the Committee concludes that the Party concerned has not yet met the requirements of paragraph 7 of decision VI/8j with respect to each of its Autonomous Communities.

Means of notification under article 6 (2) as a minimum

60. Recalling paragraph 103 of its findings on communication ACCC/C/2014/99 (see para. 46 above), the Committee in its first and second progress reviews stated that in order to fulfil paragraph 7 of decision VI/8j:

Spain will need to demonstrate to the Committee that it has put in place the necessary measures to ensure that, for each decision-making procedure subject to article 6 of the Convention, the means used in practice to notify the public of its opportunities to participate in a particular decision-making procedure under article 6 (2) will also be used, as a minimum, to inform the public of the decision once it has been taken.³¹

61. To that end, in its second progress review, the Committee asked the Party concerned, together with its final progress report, to provide the text of the relevant provisions of Law 16/2002 or other law setting out the means to be used by Autonomous Communities to notify the public concerned of applications for permits subject to article 6 of the Convention.³²

62. In reply, the Party concerned states that its domestic legislation requires that the 30-day period of public consultation on an integrated environmental permit be announced in the Official Journal and disseminated on the website of the administration concerned. Documentation must be publicly displayed for a specific period of time at the town hall of the municipality where the activity is to be carried out. Individuals living in the immediate vicinity and parties with a specific interest are required to be personally informed.³³

63. The Party concerned points out that the Industrial Emissions Directive³⁴ envisages different means of notification regarding the proposed decision-making and the decision on the permit once taken. It submits that point 1 of Annex IV of the Directive expressly states that the “arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) [of the proposed decision-making] shall be determined by the Member States”. In contrast, article 24 (2) of the Directive provides that “when a decision on granting... a permit has been taken, the competent authority shall make available to the public, including via the internet” the specified information. It submits that member States thus have a margin of appreciation in deciding which means to use to comply with article 6 (9) of the Convention. It also cites the judgment of the Court of Justice of the European Union in Case C-280/18 *Flausch and others*,³⁵ which it submits held that publication of the decision on development consent on the Internet is sufficient for the purposes of the Directive on Environmental Impact Assessment.^{36,37}

64. The Committee takes note of the submissions by the Party concerned that, under the Industrial Emissions Directive, the means used to notify the public of the proposed decision-making and the decision on the integrated environmental permit once taken differ and that Parties have a margin of appreciation when deciding which means to use to notify the public of the permit. The Committee also notes the Party concerned’s reference to the ruling in Case C-280/18 *Flausch and others*. The Committee underlines that the Convention’s requirements

³¹ Committee’s first progress review, 26 February 2019, para. 23; Committee’s second progress review, 1 March 2020, para. 35.

³² Committee’s second progress review, 1 March 2020, para. 37.

³³ Party’s final progress report, 6 October 2020, p. 4.

³⁴ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

³⁵ ECLI:EU:C:2019:92.

³⁶ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

³⁷ Party’s final progress report, 6 October 2020, pp. 4–5.

are established by the text of the Convention and not by the text of European Union legislation or the case law of the European Union courts.

65. The Committee points out that the Meeting of the Parties, in paragraph 7 of decision VI/8j, recommended 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 (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 (2) of the Convention. Accordingly, in order to fulfil the requirements of paragraph 7 of decision VI/8j, the Party concerned would need to ensure that the public is promptly informed of decisions on integrated environmental permits through at least the means used in the Party concerned to notify of the proposed decision-making itself, that is, the means listed in paragraph 62 above.

66. In that regard, the Committee notes that the only apparent difference between the means listed in Catalonia's instruction and those used by the Party concerned to notify the public concerned of the proposed decision-making is that individuals living in the immediate vicinity and parties with a specific interest are required to be personally informed of the proposed decision-making whereas Catalonia's instruction does not include such a requirement. Accordingly, in order to meet the requirements of paragraph 7 of decision VI/8j, Catalonia's instruction would need to be amended to specify that these members of the public must be personally informed of the decision on the integrated environmental permit. Likewise, the corresponding administrative instructions or measures to be taken to ensure that the requirements of paragraph 7 are met in each of the other Autonomous Communities (see para. 58 above) would need to include such a requirement also.

Binding on municipal authorities

67. The communicant of communication ACCC/C/2014/99 submits that Catalonia's instruction is only binding on entities acting under the direction of the Directorate-General of Environmental Quality and Climate Change of the Department of Territories and Sustainability of the Autonomous Administration of Catalonia, and not municipal authorities.³⁸

68. In its second progress review, the Committee noted that this raised the question as to whether Catalonia's instruction would be sufficient to prevent a situation where a municipal authority failed to act on a request from the Directorate-General to make a particular environmental permit available to the public on its notice boards and website. The Committee thus invited the Party concerned to clarify whether Catalonia's instruction would indeed be binding on a municipal council which receives such a request.³⁹

69. In response, the Party concerned has provided a number of examples of notices published by municipal authorities in accordance with the instruction of the Directorate-General.⁴⁰ Noting these examples, and having no evidence before it that municipal authorities in Catalonia are not publishing environmental permits in accordance with the instruction of the Directorate-General, the Committee will not examine this aspect further.

Concluding remarks regarding paragraph 7

70. While taking note of article 24 (3) (a) of Royal Legislative Decree 1/2016 and welcoming Catalonia's instruction, its implementation and the distribution thereof to the other Autonomous Communities as positive steps, in the light of the issues identified above, the Committee considers that the Party concerned has not demonstrated that either Royal Legislative Decree 1/2016 or Catalonia's instruction meet the requirements of paragraph 7 of decision VI/8j. The Committee also reminds the Party concerned that compliance with

³⁸ Comments by communicant of communication ACCC/C/2014/99 on Party's second progress report, 30 October 2019.

³⁹ Committee's second progress review, 1 March 2020, para. 43.

⁴⁰ Party's comments on comments by communicant of communication ACCC/C/2014/99, 26 November 2020, p. 3.

European Union law does not necessarily result in compliance with the Convention, which places standalone obligations on the Party concerned as a matter of international law.

71. The Committee considers that Catalonia's instruction (with the necessary amendment highlighted in paragraph 66 above) could serve as a useful template to be replicated in each of the other Autonomous Communities. Alternatively, the Party concerned may decide to implement paragraph 7 through a legislative measure at the national level, such as an amendment to the law setting out the means to be used to notify the public of decisions granting or modifying integrated environmental permits, provided that such an amendment will be binding on all Autonomous Communities.

72. In this regard, in its comments on the Committee's draft report, the Party concerned states that it is about to undertake a revision of its national legislation on integrated pollution prevention and control and will include in its legislative proposal the Committee's recommendations, so as to clarify that the public is to be promptly informed of decisions on integrated environmental permits through at least the means used to notify the public concerned of the proposed decision-making. The Party concerned reports that the new legislation will be applicable and binding on all competent authorities of the Autonomous Communities.⁴¹

73. The Committee welcomes the above statement by the Party concerned and invites the Party concerned to provide the Committee with the text of the draft legislation to address the Committee's recommendations as soon as possible in the next intersessional period.

74. On this point, the Committee underlines that, in order to fulfil paragraph 7 of decision VI/8j, the legislative amendment at the national level should require Autonomous Communities to publish the administrative decisions by means of which integrated environmental permits are granted or modified: (a) not only in their official journals but also through any other means used to inform the public concerned of the application for the permit under article 6 (2) of the Convention; and (b) that the means used are not to be limited to the Internet.

75. Based on the above, the Committee finds that, while welcoming the positive steps made in that direction, the Party concerned has not yet met the requirements of paragraph 7 of decision VI/8j.

IV. Conclusions

76. The Committee welcomes the constructive engagement with the Committee demonstrated by the Party concerned throughout the intersessional period.

77. The Committee finds that, while welcoming the positive steps made in that direction, the Party concerned has not yet fully met the requirements of paragraphs 3 or 7 of decision VI/8j.

78. The Committee recommends to the Meeting of the Parties that it reaffirm decision VI/8j and recommend that the Party concerned to:

(a) Take measures, as a matter of urgency, to ensure that the remaining obstacles to the full implementation of article 9 (4) and (5) of the Convention with respect to legal aid for NGOs identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 are overcome, and in particular that its Legal Aid Commissions act in accordance with the decisions dated 16 January 2018 and 13 March 2019 of the Administrative Chamber of the Supreme Court in practice;

(b) Take the necessary legislative, regulatory or other measures and practical arrangements to ensure that, in each of its Autonomous Communities, the public is promptly informed of decisions on integrated environmental permits taken under article 6 (9) of the Convention not only through the Internet, but also through other means, including but not

⁴¹ Party's comments on Committee's draft report, 19 July 2021, p. 7.

necessarily limited to the methods used to inform the public concerned pursuant to article 6 (2) of the Convention;

(c) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(d) 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 plan of action and the above recommendations;

(e) 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 recommendations;

(f) 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 recommendations is to be considered.
