Decision VII/8f concerning compliance by the European Union with its obligations under the Convention

Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its seventh session

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,1

Recalling paragraph 63 of its report of its sixth session (Budva, Montenegro, 11–13 September 2017), through which it requested the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to review any developments that had taken place regarding the implementation of decision V/9g concerning compliance by the European Union2 and the Committee’s findings and recommendations on communication ACCC/C/2008/32 (part II) concerning access to justice to challenge acts and omissions by institutions and bodies of the European Union that contravene European Union law relating to the environment,3 and to report to the Meeting of the Parties accordingly,4

Taking note of the report of the Committee on the implementation of the above request by the Meeting of the Parties, under the case reference request ACCC/M/2017/3, concerning the compliance of the European Union,5 the findings of the Committee on communication

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1 ECE/MP.PP/2/Add.8.
2 ECE/MP.PP/2014/2/Add.1.
3 ECE/MP.PP/C.1/2017/7.
4 ECE/MP.PP/2017/2.
5 ECE/MP.PP/2021/51.
Endorses the findings of the Committee in its report on the implementation of request ACCC/M/2017/3 that, with respect to decision V/9g:

(a) The Party concerned has put in place a regulatory framework that meets the requirements of article 6 (3) of the Convention with respect to National Energy and Climate Plans but has not yet demonstrated that it has adopted either a proper regulatory framework or clear instructions to ensure that the other requirements of article 7 are met in the adoption of National Energy and Climate Plans, as required by the first three sentences of paragraph 3 of decision V/9g;

(b) While welcoming the fact that the Party concerned has carried out an assessment of public participation on each member State’s National Energy and Climate Plan, albeit in brief, the Party concerned has not yet met the requirements of the final sentence of paragraph 3 of decision V/9g;

2. Reaffirms its decision V/9g and, in particular, requests the Party concerned, as a matter of urgency:

(a) To provide the Committee with evidence that it has adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of National Energy and Climate Plans, and, in particular, to take the necessary legislative, regulatory or practical measures to:

(i) Ensure that the arrangements for public participation in its member States are transparent and fair and that, within those arrangements, the necessary information is provided to the public;

(ii) Ensure that the adopted regulatory framework and/or clear instructions ensure that the requirements of article 6 (4) and (8) of the Convention are met, including allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation;

(b) To adapt the manner in which it evaluates National Energy and Climate Plans accordingly;

3. Endorses the findings of the Committee with regard to communication ACCC/C/2008/32 (part II) that the Party concerned failed to comply with article 9 (3) and (4) of the Convention with regard to access to justice by members of the public because neither the Aarhus Regulation, nor the jurisprudence of the Court of Justice of the European Union implements or complies with the obligations arising under those paragraphs;

Encouraged by the willingness of the European Union to discuss in a constructive manner with the Committee the compliance issues in question,

ACCC/C/2013/96 concerning the compliance of the European Union in connection with the adoption by the European Commission of a list of “Projects of Common Interest” and the findings of the Committee on communication ACCC/C/2014/121 concerning the compliance of the European Union in connection with the reconsideration or updating of permits under the Industrial Emissions Directive,
4. Also endorses the findings of the Committee in its report on the implementation of request ACCC/M/2017/3 that, with respect to the Committee’s findings on communication ACCC/C/2008/32 (part II), the co-legislators’ agreement of 12 July 2021\(^\text{10}\) to amend the Aarhus Regulation, if enacted in that form prior to the opening of the seventh session of the Meeting of the Parties, would fulfil the requirements of paragraph 123 of the Committee’s findings on communication ACCC/C/2008/32 (part II);

5. Notes that, following the adoption of the Committee’s report on the implementation of request ACCC/M/2017/3, on 5 and 6 October 2021, respectively, the European Parliament and the Council of the European Union have each approved the legislative amendment to the Aarhus Regulation in the form agreed by the co-legislators on 12 July 2021 and that the legislative amendment will enter into force on 28 October 2021, twenty days following its publication in the Official Journal of the European Union; therefore, the Meeting of the Parties considers that, in accordance with the Committee’s report on the implementation of request ACCC/M/2017/3, upon its entry into force the Party concerned will have fully met the requirements of paragraph 123 of the Committee's findings on communication ACCC/C/2008/32 (part II);

6. Welcomes the committed action by the Party concerned to fully address the recommendations in paragraph 123 of the findings of communication ACCC/C/2008/32 (part II) and to bring its legislation and practice into compliance with the Convention in this regard;

7. Endorses the findings of the Committee with respect to communication ACCC/C/2013/96 that:
   a) By not informing the applicant that longer time frames would be needed to reply to the information requests and of the reasons therefor, the Party concerned failed to comply with article 4 (2) of the Convention;
   b) By failing to ensure at least one review procedure that was expeditious, the Party concerned failed to comply with the requirement in article 9 (1), second sentence, of the Convention to ensure an “expeditious” procedure for the reconsideration of information requests;
   c) By failing to demonstrate, in a transparent and traceable way, how due account was taken of the public participation on the first list of “Projects of Common Interest”, the Party concerned failed to comply with article 7 in conjunction with article 6 (8) of the Convention;
   d) By not making the main consultation documents, including the notification to the public, available to the public in its official languages other than English, the Party concerned discriminated against non-English-speaking members of the public in the European Union and thus failed to comply with article 3 (9) of the Convention;

8. Recommends that the Party concerned take the necessary legislative, regulatory or other measures and practical arrangements to ensure that in public participation procedures

within the scope of article 7 of the Convention carried out under the Trans-European Networks for Energy Regulation,\textsuperscript{11} or any superseding legislation:

(a) The main consultation documents, including the notification to the public, are provided to the public in all the official languages of the Party concerned;

(b) Due account of the outcomes of the public participation is taken, in a transparent and traceable way, in the decision-making;

9. Endorses the findings of the Committee with respect to communication ACCC/C/2014/121 that, by putting in place a legal framework that does not envisage any possibility for public participation in relation to reconsiderations and updates under article 21 (3), (4) and (5) (b) and (c) of the Industrial Emissions Directive, the Party concerned fails to comply with article 6 (10) of the Convention;

10. Recommends that the Party concerned put in place a legally binding framework to ensure that, when a public authority in a member State of the Party concerned reconsiders or updates permit conditions pursuant to national laws implementing article 21 (3), (4) and (5) (b) and (c) of the Industrial Emissions Directive, or the corresponding provisions of any legislation that supersedes that Directive, the provisions of article 6 (2)--(9) will be applied, mutatis mutandis and where appropriate, bearing in mind the objectives of the Convention;

11. Requests the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraphs 2, 8 and 10 above;

(b) 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 recommendations in paragraphs 2, 8 and 10 above;

(c) 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 recommendations in paragraphs 2, 8 and 10 above;

(d) 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 recommendations in paragraphs 2, 8 and 10 above is to be considered;

12. Undertakes to review the situation at its eighth session.