

AARHUS CONVENTION COMPLIANCE COMMITTEE

United Nations Economic and Social Council

Economic Commission for Europe

Geneva, Switzerland

COMMUNICATION FROM MEMBER OF THE PUBLIC

NO.CASE PRE/ACCC/C/2023/202(Italy)

**FILED PURSUANT TO CHAPTER VI OF THE DECISION OF THE MEETING OF THE PARTIES N. 1/7 OF 21-23
OCTOBER 2002**

CASE PRE/ACCC/C/2023/202

STATEMENT BY ITALY

At the 19/9/2023 Compliance Committee open session discussion of preliminary admissibility of new communications, Italy wishes to thank the Committee for the opportunity to participate in this open session to consider preliminary admissibility.

Italy has taken note of the communication ACCC/C/2023/202 and it is its deferential submission that the criteria set out in the annex to decision I/7 of the Meeting of the Parties, and the further criteria identified by the Committee for deeming a communication inadmissible are fulfilled in the case 202.

It is the view of Italy that the request is unreasonable and should therefore not be admissible in accordance with Decision I/7, for the following reasons:

Regarding case 202, we would like to raise the following points.

1. The communicant did not participate in the disputed administrative procedure to authorize the construction of a photovoltaic system near the town of Sant'Angelo in Vado. Six months after the expiry of legal terms to present observations, the communicant sent to the local authority a paper.
2. Contrary to what is claimed by the communicant, the disputed procedure did not yet authorize the construction of the PV plant but only determined whether the environmental impact assessment is necessary. The communicant can have access to all information needed by requesting them to the competent authority and in participating in the authorization procedure.
3. The communicant did not provide useful and corroborating evidence to support his arguments that there was no possibility to access to information and to participate in the procedure.
4. Moreover, administrative justice in Italy is made up of two levels of judgment: the first is enforced before the Regional Administrative Courts and the second, relating to any control activity on the decisions of the judge of first instance, is constitutionally guaranteed by the Council of State which performs the functions of appellate judge.
5. Moreover, he art. 111 paragraph 8 of the Constitution, enunciating the legal principle according to which the appeal to the Court of Cassation is allowed against the decisions of the Council of State and the Court of Auditors only for reasons concerning the jurisdiction.
6. Administrative justice is an effective tool in the Italian legal system to challenge acts of the public administration and private citizens, and it presents provisions for legal aid for those who do not have the necessary financial resources to exercise this right. The communicant on its own initiative did not resort to administrative justice. Therefore, it has not experimented with the internal remedies that the Italian legal system envisages. The administrative judge is expected to protect the fundamental rights in case those are unduly restricted by the public powers. On the basis of articles 24 and 111 of the Italian Constitution, article 6 of European Convention on Human Rights (ECHR), article 19 Treaty on European Union (TEU), the jurisdictional guarantees offered by the administrative courts need to be, in any case, full and effective. The communicant should therefore have had to exhaust the internal remedies envisaged by the Italian legal system to protect its own reasons.
7. To conclude, in other words, communicant has not explored any possibilities for resolving the issue either through national administrative or judicial review procedures.

8. Moreover, in the meanwhile, there has been access to justice on the same matter since the Municipality of Sant'Angelo in Vado has presented an appeal to the Regional Administrative Court on the incompleteness of the data and on the administrative discrepancies of the project, that is, there is a procedure ongoing in front of a national judge (n. 100/2023). Because of that, it is proposed the Aarhus Compliance Committee refrains to take up the case at this moment.

We thank again the Committee for taking these arguments into consideration when assessing the admissibility of the case.