

Sant'Angelo in Vado 21.11.2023

To the Secretary of the Supervisory Body
of the Aarhus Convention
aarhus.compliance@un.org

Subject: Determination of irreceivability of the communication to the Compliance Committee of the Aarhus Convention regarding Italy's compliance in relation to a proposed photovoltaic plant in Sant'Angelo in Vado (ACCC/C2023/202).

Dear Committee for the Aarhus Convention,

I am responding to your notice of irrecivability of my proposed appeal by arguing that the construction of the photovoltaic plant in Sant'Angelo in Vado falls under the legislation concerning citizen participation and therefore under point 20 of Annex 1 of the Convention. Let me explain. Italian Law No. 241/1990 on administrative procedures, deals with any project from construction to energy, from roads to agricultural and industrial production, both with and without Environmental Impact Assessment (EIA).

In Art. 7 co. 1, this rule writes exactly "1. Where there are no reasons for impediment arising from special requirements for the speed of the procedure, the initiation of the procedure itself shall be communicated, in the manner provided for in Article 8, to those against whom the final measure is intended to produce direct effects and to those who by law must intervene in it. Where, likewise, the aforementioned reasons for impediment do not exist, if harm may result from a measure to identified or easily identifiable persons other than its direct addressees, the administration is required to provide them, in the same manner, with notice of the commencement of the proceedings."

This means that neighboring citizens, who in any case have anything to do with the project, must be involved. In addition, all other citizens, can intervene under Article 9, either as public or private stakeholders (including individual citizens) or through widespread stakeholders such as associations and committees, by sending appropriate comments, Article 10, or by direct participation, if accepted, in the appropriate service conferences related to the approval of the project. Precisely this involvement of directly affected citizens and the opportunity provided, for others, has been lacking.

To reinforce what I wrote, I refer to the Fifth Update of the National Report for the Implementation of the AARHUS Convention in ITALY 2021 last produced by the Ministry of Ecological Transition (Ministry of the Environment). In this update, L. 241/1990 is reported 11 times as the law that recognizes citizen participation in proceedings and in particular on p. 47, it states, "*It should be noted that the principles of the (Aarhus) Convention are contained in the general rules of participation in administrative proceedings provided by L. 241/1990 and subsequent amendments, and implemented in the provisions governing participation in specific environmental proceedings, such as EIA, SEA, AIA procedures.*" Also as I stated, it also applies to all other proceedings.

However, Law 241/1990 does not provide for facilitated recourse to the Regional Administrative Tribunal TAR for which there is also the payment of the unified contribution for the State (Art. 25). In order to have access to the facilitated administrative justice provided for by the Aarhus Convention, it is necessary to refer to Legislative Decree 195/2005 of the Italian state, which transposing the European legislation, 2003/4/EC, also provides in art. 2, the possibility of intervention for citizens, in many environmental sectors including energy.

Legislative Decree 195/2005 is mentioned in the Fifth Update 8 times, but always pertaining to access to environmental information.

This combination of L.241/1990 and L.D. 195/2005 does not solve the right of participation of citizens, who in case of problems find the Ombudsman who responds that he is only interested in access to documents; moreover, recourse to the TAR is not facilitated with L. 241/1990. It would be more appropriate for the purposes of the Aarhus Convention, D. L.vo 195/2005 which provides for access to environmental information, facilitated recourse, but nothing about participation. I should add that Art. 8 of L.D. 195/2005 in co. 3 provides for the implementation of databases that contain in point f) "the authorizations and opinions issued by the competent authorities in application of the rules on environmental impact assessment and environmental agreements".

I wonder, "If there are no communications to directly affected neighbors, if they are not published in the web spaces of municipalities, how does the citizen know about the projects looming on their territory?"

I would also add that the opposite of public is not private, but obscure, hidden!

I hope I have clarified what I see as an error in the evaluation of Article 7 of 241/1990 that I cited in the comments and during the video call intervention, where I argued the criticality of citizen participation.

Sincerely

Giuseppe Dini

