

15 February 2024

Ms Fiona Marshall  
Secretary to the Aarhus Convention Compliance  
Committee  
UN Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10 Switzerland

By email: aarhus.compliance@un.org

Dear Ms. Marshall,

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Greece with regard to public participation in the preparation of a transitional national plan (ACCC/C/2017/149)**

We would like to express once again our appreciation for the serious consideration given by the Committee to this communication. With reference to the secretariat's letter of 1 February 2024, we would like to make the following observations:

1. In its essence, the Communication from the Public ACCC/C/2017/149 (hereinafter, the "Communication") claims that Greece failed to comply with article 7 of the Aarhus Convention in its preparation of the Transitional National Plan (hereinafter, TNP).
2. The preparation of a TNP is an option available to EU Member States under Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (hereinafter, IED). We recall that the issuance and the content of the TNP are regulated by art. 32 IED. As far as the internal legal order is concerned, the Greek TNP was authorized by Joint Ministerial Decision H.Π. 34062/957/E103/2015 (hereinafter, JMD).
3. The JMD is applicable to 6 combustion plants, totaling (as of 31.12.2010) 6447 MW of nominal thermal power (hereinafter, TNP combustion plants). Its stated aim is to ensure that "annual total emissions" of TNP combustions plants do not exceed, for each included pollutant,
  - (a) between 1.1.2016 and 30.6.2020, the emission limit values prescribed in the JMD, and
  - (b) after 1.7.2020, the emission limit values prescribed in IED Annex V (part 1).
4. Communication ACCC/C/2017/149 (hereinafter, the "Communication") was submitted on 3.8.2017. According to art. 32(1)(a) IED, TNPs are to be implemented "[d]uring the period from 1 January 2016 to 30 June 2020." The IED is currently under revision, but, to the best of our

knowledge, art. 32 is to remain in place. JMD does refer to the Greek legislation incorporating art. 32 IED, but it does not include an explicit expiration date.

5. The communicants are not aware of any factual or legal developments since the submission of the Communication which would have remedied Greece's non-compliance with Art. 7 Aarhus Convention in respect of the preparation of the TNP. As explained in the Communication and the further letter of 29 November 2019, no domestic remedies have been available to address this non-compliance.

6. In its essence, the present communication concerns the lack of public participation during the preparation of a plan or program relating to the environment – more precisely, to local pollution and public health (as the TNP essentially substitutes plant-specific limits with limits applicable collectively to all TNP combustion plants). This fundamental omission has not been remedied by the Party concerned. In fact, on 27.12.2021, the Party concerned issued a decision, which subjected 5 out of the 6 TNP combustion plants (Meliti I, Megalopolis IV, Aghios Dimitrios I-II, III-IV, V) to art. 15(4) IED derogation regime. Despite the IED's explicit requirement, public participation has taken place only in one out of 5 cases. Therefore, the essential environmental right of public participation continues to be violated.

7. This shows that the practice of shielding the aging and highly polluting lignite-fired plants from public participation is systemic and ongoing in Greece. It is this practice that is the subject of the Communication and that the communicants kindly request the ACCC to address.

8. The communicants would also like to note that art. 32 IED and the JMD adopt a regulatory technique which is widespread in environmental law: the adoption of collective pollution targets. Art. 32 IED provides for emission limit values for a "collectivity" of combustion plants. The same holds true for instance in the case of Art. 4 of Directive 2016/2264 ("on the reduction of national emissions of certain atmospheric pollutants") which specifies limits on annual anthropogenic emissions of certain pollutants (sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter) for the "collectivity" of each (and all) Member State (economy-wide limits). Similarly, Art. 4 of Regulation 2018/842 (on "binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement", commonly referred to as Effort-Sharing Regulation), specifies GHG emission limits for the "collectivity" of IPCC source categories of energy, industrial processes and product use, agriculture and waste, as specified for each Member State (sector-specific limits). The question of whether, and under which conditions similar arrangements constitute a plan or program under art. 7 of Aarhus Convention is therefore of acute relevance. The Committee's findings and recommendations, if issued, would clarify this issue, and would certainly contribute to a better application of art. 7 in the future.

15. The communicants therefore uphold all of the claims included in the Communication and kindly request the ACCC to proceed with the communication, and issue its findings.

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Yours sincerely,

George Chasiotis  
Senior Legal Advisor, WWF Greece

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