

Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland

15 February 2024

Re: Communication concerning compliance by Spain with regard to public participation in the preparation of its transitional national plan under the Industrial Emissions Directive (ACCC/C/2017/159)

Dear Madam,

I am writing in response to your letter dated 1 February 2024 requesting IIDMA and ClientEarth to provide an update regarding the allegations set out in the communication referred to above (hereinafter, the “Communication”).

The Communication was based on Spain’s lack of compliance with Article 7 and Article 6, paragraphs (3), (4) and (8) of the Convention as it had failed to undertake any public participation procedure during the preparation of the first, second and fourth versions of the Transitional National Plan (hereinafter, “TNP”) and failed to provide for adequate, timely and effective public participation during the preparation of the third TNP proposal. This constitutes a specific violation of the public participation rights of members of the public in Spain.

As explained in the communication, the TNP was a regulatory act initiated by the former Ministry of Agriculture, Food and the Environment (hereinafter, “MAGRAMA”) and the Ministry of Industry, Energy and Tourism in line with Article 32 of 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”). The TNP set the framework for exempting certain large combustion plants from the emission limit values for NO_x, SO₂ and dust established in Article 30(2) and Annex V of the IED during the period from 1 January 2016 to 30 June 2020. It covered 29 large combustion plants, of which 21 used coal as fuel, regulating the ceiling of total emissions from those plants. It was not sufficient on its own to authorize an individual plant’s activity in the absence of a separate individual permitting decision. Therefore, it qualified as a plan relating to the environment for the purposes of the Convention and had to be subject to the public participation requirements under Article 7.

Since the submission of the Communication on 3 August 2017 and up to the present date, the communicants are not aware of any factual or legal developments which would have remedied Spain's non-compliance with Art. 7 Aarhus Convention in respect of the TNP.

In fact, quite the opposite. As we indicated in the Communication, IIDMA filed a judicial procedure before the Spanish Supreme Court against the TNP in January 2017. The judgment from the Supreme Court was issued on 12 July 2018. The Supreme Court stated that the TNP did not meet the requirements for it to be subject to Strategic Environmental Assessment and therefore, did not consider it was necessary to carry out a public participation procedure in line with the Aarhus Convention. In addition, the Court also failed to provide remedy for Spain's non-compliance with Art. 7 of the Convention as it considered that the lack of public participation procedure during the preparation of the first, second and fourth versions of the TNP and the insufficient public participation procedure which took place during the preparation of the third TNP proposal were in line with the requirements of the Convention: *"it can be concluded that the public participation procedure for the public participation of the TNP was carried out in accordance with Law 27/2006(...) which transposes the Convention into (...) Spanish law, (...) and it must be understood that the period of time was reasonable and having submitted the final version of the Plan for consultation does not imply a breach(...)"*.

Although the TNP is no longer in force, it is important to highlight that the present communication concerns the lack of public participation during the preparation of a plan or program related to the environment. This fundamental omission has not been remedied by the Party concerned.

In light of this, it is important to underline the existence of other cases in which the Party concerned has continued and continues to violate the essential environmental right of public participation, for example in relation to the Spanish Strategic Framework for Energy and Climate (hereinafter "the Framework"). The Framework includes several strategies, plans and legislative instruments whose purpose is to achieve the decarbonisation of the economy by providing a regulatory and legal framework for all the measures that must be implemented. One of the cornerstones of the Framework is the National Integrated Energy and Climate Plan (hereinafter, "NECP"), foreseen by Art. 3 of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action (hereinafter, "the Governance Regulation").

NECPs must cover ten-year periods, provide an overview of the current energy system and policy situation and set national objectives for each of the five dimensions of the Energy Union as well as corresponding policies and measures to meet those objectives. The preamble of the Governance Regulation sets out that *"(28) The implementation of policies and measures in the areas of energy and climate has an impact on the environment. Member States should therefore ensure that the public is given early and effective opportunities to participate in and to be consulted on the preparation of the integrated*

national energy and climate plans in accordance, where applicable, with the provisions of (...) the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998". In addition, Art. 14 of the Governance Regulation, sets out that *"by 30 June 2023, (...) each Member State shall submit to the Commission a draft update of the latest notified integrated national energy and climate plan(...) where it shall modify its national objective, target or contribution to any of the quantified Union objectives (...) in order to reflect an increased ambition"*.

NECPs fall under the category of "plans and programmes related to the environment" and therefore, Article 7 of the Aarhus Convention is also applicable.

The first NECP covered the period 2021-2030 and was submitted by Spain to the European Commission on 31 March 2020, before the end of the public participation phase. The draft update of the Spanish NECP was sent to the European Commission on 30 June 2023, and the public participation procedure was only opened 2 days before – on 28 June 2023, providing no real chance for public participation. Therefore, the essential environmental right of public participation during the preparation of plans and programmes relating to the environment continues to be violated.


The Committee's findings and recommendations, if issued, would set a precedent, applicable not only to Spain but to all parties of the Convention which would certainly contribute to a better application of Art. 7 in the future.

For all these reasons, and with the ultimate aim of ensuring adequate and effective environmental protection, the communicants once again uphold all of the claims included in the Communication and kindly request the ACCC to proceed with the communication and issue its findings.

Please do not hesitate to contact us if you require any further information.

Yours sincerely,

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