

## **Minutes of the virtual meeting with the communicants and observers to discuss the Plan of action for Decision VII/8f concerning compliance by the European Union with its obligations under the Convention, adopted by the Meeting of Parties (MOP) to the Aarhus Convention**

**25 April 2022, 10:00h-12:30h**

**Participants:** The European Commission services (ENV, ENER, CLIMA and SJ), the chair (ENV) and external participants from European Environmental Bureau (EEB), ClientEarth, a communicant to case ACCC/C/2010/54, a Sustainability Reporter from POLITICO and a representatives from the French EU Presidency.

### **Opening and quick introductions/tour de table (ENV.E4.)**

The chair explained that the purpose of this meeting is to solicit comments and reactions in relation to the EU action plan to be submitted to the Aarhus Convention Compliance Committee (ACCC), following up on Decision VII/8f concerning the compliance of the EU. The ACCC requested the EU to submit a Plan of action, including a time schedule, to the ACCC by 1 July 2022 regarding the implementation of the recommendations contained in that decision. This covers the three compliance cases against the EU where the ACCC findings have been endorsed: the case concerning the Industrial Emissions Directive, the case on the National Energy and Climate Plans (NECPs) and the case on projects of common interest (PCI).

The draft Plan of action has been prepared by the COM, jointly by DG Energy, DG Climate Action and DG Environment, and after consultation of other relevant COM services. The public has been informed at an early stage. In particular, the draft Plan of action has been published on the website of DG Environment and has also been sent to the communicants and observers, with a 4-week period open for written comments. Communicants and observers were invited to submit written comments by 26 April 2022. After the meeting, following the comments received, the action plan may be updated where relevant and then submitted to the ACCC.

### **Case ACCC/C/2014/121 concerning the Industrial Emissions Directive (IED)**

COM presented the Aarhus Convention-related provisions envisaged in the context of the revision of Directive 2010/75/EU (the industrial emissions Directive or IED). As part of the Green Deal, COM committed to review EU measures to address pollution from large agro-industrial installations and to consider how to make them fully consistent with climate, energy and circular economy policies.

COM recalled that MOP7 recommended that the EU puts in a 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 IED, the provisions of Article 6 (2)-(9) of the Convention will be applied, *mutatis mutandis* and where appropriate, bearing in mind the objectives of the Convention.

COM therefore proposes to broaden the instances where the public is invited to participate in the permitting process by amending Article 24 IED. If this amendment will be endorsed by co-legislators, the public will be invited to participate in updating permits or permit conditions when permits need to be updated following the publication of new best available techniques conclusions (BATC); when developments in BAT allow for the significant reduction of emissions; when operational safety requires other techniques to be used; and where it is necessary to comply with a new or revised environmental quality standard (EQS). This will make the EU legislative framework compliant with the ACCC findings and recommendations.

COM also introduced other Aarhus-related proposed amendments, such as a broader definition of ‘the public concerned’; enhanced transparency, public information, monitoring and reporting; and amendments aiming at improving access to justice and redress mechanisms, including a new compensation provision for damages to human health. Moreover, COM referred to the parallel proposed revision of the E-PRTR Regulation.

EEB referred to their comments sent by email and available on the Internet<sup>1</sup>. EEB supports the proposed steps to address the findings and recommendations of the ACCC. However, in EEB’s view, the EU should go a step further, to also address additional possible compliance issues. Inspection plans are missing – they are not explicitly covered. The implementation of site remediation measures and ground water protection measures should also be covered by public participation provisions, including the suggested new transformation plans to be drawn up by operators. Access to Justice should be open to all actions within the scope of the IED, not only those listed in Art. 24 IED.

EEB expressed concerns on the proposed amendment to Art. 4.1 IED (option of a registration system for livestock installations) thus derogating from the obligation to hold a permit. EEB views this as also derogating from the public participation requirements of Chapter VIa and not Aarhus compliant. As regards the proposed deletion of current Annex II IED, EEB would prefer it remains, and suggests that the list of pollutants of the proposed new Regulation on an Industrial Emissions Portal should be additional to the Annex II list of pollutants.

COM thanked NGOs for their active participation in the revision process and their support for an ambitious outcome. COM noted that this meeting was not the most appropriate forum to discuss proposed amendments beyond those related to revising Article 24 IED; that the principles of subsidiarity and proportionality have to be respected; and offered to set up a dedicated meeting with environmental NGOs on the industrial emissions package.

### **Case ACCC/C/2010/54 on the national energy and climate plans (NECPs)**

COM: mentioned that the lack of the involvement of the public in the adoption by Ireland of its National Renewable Action Plan contributed to triggering the concerns regarding the EU compliance with Aarhus Convention and led to the opening of this case. COM recalls that the EU has made significant progress towards compliance with the requirements of the Aarhus Convention when it comes to public participation in the adoption of the NECPs by MS. COM has adopted the Governance Regulation replacing the National Renewable Action Plans by NECPs and incorporating provisions (Article 10) requiring MS to involve the public in the context of the preparation of their NECPs in line with the Aarhus Convention obligations.

COM presented the draft Plan of action published in DG ENV web site for consultation. COM explained that it is committed to continue its work to ensure full compliance with the Aarhus Convention and intends to take the following further measures to ensure that when adopting NECPs, public participation in its Member States is transparent and fair and that, within those arrangements, the necessary information is provided to the public, that early public participations is allowed when all options are open and that due account of the outcome of the public participation is taken into account. Firstly, COM is committed to engage with Member States at the technical level for development of NECPs, in time before the draft updated NECPs’ submission; secondly, to assist the Member States with due preparation of their draft NECPs and to accompany them to provide in the NECPs for a description on how they ensured that their NECP was drafted in accordance with the Aarhus Convention and Governance Regulation requirements; thirdly, to assess the draft updated NECPs, in accordance with Article 9(2) of Governance Regulation; and

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<sup>1</sup> <https://eeb.org/library/ngo-preliminary-assessment-of-the-european-commissions-proposal-for-revised-ied-and-e-prtr/>

finally to report on the operation of Governance Regulation and assess the opportunity to review the Governance Regulation (in line with Article 45).

The communicant reminded that its written analysis of the draft Plan of action was sent by email. It is stating that the draft Plan of action does not fulfil Article 3(1) of the Convention and hence Decision V/9g and therefore Decision VII/8f. The communicant claimed the fundamental problem is being repeated, NECPs fall under Strategic Environmental Assessment (SEA), and therefore such plans have to be open to public participation. It has been a decade of noncompliance with Aarhus Convention in this case.

ClientEarth, reminded that he is making comments as an observer. With regard to the concrete action – what is missing is the comparison with the actions already undertaken in relation to the first set of the NECPs. Sees a risk that we are going to repeat the same procedure. He also reminded that Art. 7 of Aarhus Convention (on public participation concerning plans, programmes and policies relating to the environment) forms a part of EU law and may be directly relied on by the Commission when acting vis-à-vis the Member States.

COM reminded that DG ENER recalled the different steps that have been taken, e.g. that the Governance Regulation has been adopted. In 2023 COM will assess the draft updated NECPS.

COM's first attempt was to address the findings and recommendations by adopting the Governance Regulation. A legislative framework alone is not sufficient, we take this comment, and the second element is now how to take further action and to ensure compliance on the ground.

COM complemented it intends to put public participation as a priority, and it is working on the implementation of the current Governance Regulation, the point is to work in the close collaboration with MS when implementing it.

### **Case ACCC/C/2013/96 on projects of common interest (PCI)**

COM: reminded that the case concerns access to information and public participation. The Meeting of the Parties recommends that the EU takes measure so that the main consultation documents, including the notification to the public, are provided in all the official languages of the Party concerned and due account of the outcomes of the public participation is taken, in a transparent and traceable way, in the decision-making.

COM presented the proposed measures to fulfil the recommendations. COM recalled that in the context of PCI lists, two steps should be differentiated. First, the PCI selection process is a result of an assessment by COM of each candidate project on the basis of criteria measuring their contribution to energy policy objectives pursuant to Article 4 of Trans-European Networks for Energy Regulation (EU) No 347/2013 (“TEN-E Regulation”). Then, projects selected on the list are subject to national legislation with regards to their implementation. Therefore, the selection on the Union list of PCIs does not pre-empt further due diligence and assessment in line with transparency, participation and environmental legislation at national level. As such, the public consultation process at this stage is not aimed to address aspects of local implementation of the projects. For local implementation, separate permitting and strategic as well as environmental impact assessment procedures apply as appropriate, in line with the applicable legal frameworks.

At the PCI selection process stage, the related technical and background information of individual candidates subject to assessment and consultation is available only in English. It is often more effective to communicate in a single language throughout the process, while the PCI selection process relies heavily on the outcome of various stakeholder groups and would be practically impossible to provide all documents and all technical and other project details in all 24 EU official languages.

The accessibility of the information provided for each candidate project has been strengthened in the process of revising the TEN-E Regulation. To ensure a wider and proportionate access to information, COM provides links to project-specific websites. The aim is that the project-specific websites will include translations of their content in all languages of the Member States concerned by the project.

Project-specific permit granting process carried out by the promoter will be carried out in the local language(s), so that all information disclosed to stakeholders and members of the public will also be available in the local language(s). Consequently, before any binding decision is taken by national authorities with regard to any PCI, local communities and individuals living in close vicinity of the project will receive information about that project and will be able to communicate their views on that project in their own languages.

COM also took further steps to improve the current framework as regards the way account is taken of the outcomes of public participation in the implementation of PCI at the local level. The EU is therefore currently reviewing the TEN-E Regulation. Article 9(4) of the revised TEN-E Regulation is aiming to oblige project promoters to draw up a report summarizing the outcomes of public consultations as well as the manner in which the feedback was considered. This report will become a part of the application file submitted to national competent authorities and will be considered in the issuing of decisions by such authorities.

The communicant: reminded that he submitted a written analysis. Is of the opinion that the PCIs should be subject to the Strategic Environmental Assessment and that the draft Plan of action is not resolving the issue. While the case concerns Art. 7 of Aarhus Convention, the draft Plan of action proposed by the Commission is referring to Art. 6 which has nothing to do with the compliance issue.

ClientEarth, will provide comments in writing, including some short comments also on the NECP case. The Commission's draft Plan of action is not very clear on how the concerns regarding the PCI list selection will be addressed. He flagged in particular that the ACCC's recommendations appear to relate to the public consultation undertaken by COM (i.e. on EU-level), while the proposed actions in the Action Plan seemed to focus on the preceding consultations undertaken on the national level / as part of the regional group process. He also noted that there appears to be some lack of clarity on the side of COM as to which actions would suffice to fulfil the requirements of the Convention, so ClientEarth believes that the process of preparing the Plans of Action and then having feedback from the ACCC should be very helpful to that end.

ClientEarth, had additional question on state aid case: they requested, in particular, more information regarding the planned date for public consultation.

The chair shared a link to it in reply to the question concerning ACCC/C/2015/128:

<https://ec.europa.eu/environment/aarhus/pdf/Request%20M4%20-%20EU%20plan%20of%20action.pdf>

The draft plan of action announces that during spring 2022, the Commission intends to launch a call for evidence and 12-weeks open public consultation on the initiative

The chair: closed the meeting, reminded that the final comments should be submitted by 26 April, indicated that the text of action plan will be carefully reviewed to take account of the results of the public consultations so that it could be submitted to the ACCC in time.

- Encl.: 1. COM presentation on IED proposal  
2. Response by Communicant, reg. number Ares(2022)3895838  
3. Comments submitted by ClientEarth, reg. number Ares(2022)3372547  
4. Comments submitted by European Environmental Bureau, reg. number Ares(2022)3895838