MINISTERIO
PARA LA TRANSICIÓN ECOLÓGICA
Y EL RETO DEMOGRÁFICO

SUBSECRETARÍA

SUBDIRECCIÓN GENERAL
DE RELACIONES
INTERNACIONALES

6 de marzo de 2024

First progress review of the implementation of decision VII/8p on compliance by Spain with its obligations under the Convention

STATEMENT BY SPAIN

At its seventh session (Geneva, Switzerland, 18–21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/8p on compliance by Spain with its obligations under the Convention.

On February 13th, 2024, the Compliance Committee sent an email to the Spanish National Focal Point for the Aarhus Convention, enclosing the First progress review of the implementation of decision VII/8p on compliance by Spain with its obligations under the Convention.

Spain would like to thank the Compliance Committee for offering the opportunity to express its views on the contents of the progress review. In this regard, Spain would like to highlight the following considerations on specific paragraphs of the progress review:

1. **On paragraph 27** of the First progress review of the implementation of decision VII/8p on compliance by Spain with its obligations under the Convention, the Committee expressed that the amendment of Royal Decree nº 815/2013, in its current form, is not sufficient to fully meet the requirements of paragraph 2(b) of decision VII/8p.

   Paragraph 2 (b) of decision VII/8p reads as follows: '*Take the necessary legislative, regulatory or other measures and practical arrangements to ensure that, in each of its Autonomous Communities, the public is promptly informed of decisions on integrated environmental permits taken under article 6 (9) of the Convention not only through the Internet, but also through other means, including, but not necessarily limited to, the methods used to inform the public concerned pursuant to article 6 (2) of the Convention;*'

   Article 6(2) of the Convention reads as follows: '*2. The public concerned shall be informed, **either by public notice or individually as appropriate**, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of: (…)*'

   The interpretation that, when granting an integrated environmental permit, it would be necessary to inform any municipality potentially affected by such activity does not take into account the true nature of the integrated environmental permit procedure. Such permit sets conditions for a given facility to operate, and those **conditions refer only to the emission limit values**, which are measured at the facility itself (chimneys of waste dump

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pipes, for example). The assessment of potential long-distance effects is carried out in a parallel process of environmental impact assessment, in which such potential effects are assessed, and all municipalities potentially affected are informed. Both administrative procedures are interlinked and complementary. An integrated environmental permit is not granted until the environmental assessment procedure has ended satisfactorily.

Articles 11.4 and 28 of Royal Legislative Decree 1/2016 sets out the obligations for state or regional administrations to coordinate both procedures and the requirement to obtain favourable environmental assessment before granting an integrated environmental permit.

Article 37 in Law 21/2013, on Environmental Assessment, establishes the obligation to consult with all affected administrations and interested parties. Corresponding to this interpretation, article 19 of Royal Decree 815/2013 reads as follows: '*The competent body of the Autonomous community will send a copy of the integrated environmental permit application file to the authorising body so that in 10 days time, the public information and consultation to public administrations and interested parties is carried out.* ***This act will be a single one for the procedures of Environmental Assessment and Integrated Environmental Permit grant****, and will last no less than 30 days'.*

Therefore, there are cross references in both the Law 1/2016 for integrated pollution prevention and control and Law 21/2013 for environmental assessment to ensure that both processes are carried out in parallel, and notification to other municipalities potentially affected is carried out in the framework of the latter procedure.

Furthermore, Decision VII/8p **does not specify the need to modify Royal Decree 815/2013 in that sense**. All mentions to that alleged need are contained in intermediate documents that do not have the binding character of a Decision, and disregard the nature of the administrative procedure to grant an integrated environmental permit and its relation with the procedure of environmental assessment.

Therefore, it is the view of this National Focal Point that with regard to the integrated environmental authorization procedure, publication in the notice board of the municipality where the facility is located meets the requirements of the Aarhus Convention. Publication of notices of other potentially affected municipalities is carried out as part of the Environmental Assessment procedure.

2. **Paragraph 29** of the First progress review reads as follows: '*29. Article 10 bis requires that the public be informed of decisions on integrated environmental permits through the means described in paragraph 28 (a) and (b) above. However, article 10 bis does not require that individuals living in the immediate vicinity and parties with a specific interest be personally notified of those decisions (see para. 28 (c) above).*'

It is the view of this National Focal Point that the most adequate way of informing individuals living in the vicinity of the facility is, in fact, the publication in the official bulleting and in the notice board of the municipality where the facility is located. Indeed, Law 39/2015 on the General Administrative Procedure establishes, in article 45, that '*(…) In every case, administrative acts will be subject to publication, and this will have the effects of a personal notification in the following cases: a) when an act is directed to an indeterminate plurality of people (…)*'. To support the applicability of this rule to the integrated environmental permit procedure, we also recall here article 14 of Royal Legislative Decree 1/2016, that reads as follows: '*In every aspect not covered by the present law, the procedure to grant an integrated environmental permit will follow Law 39/2015*'.

3. **Paragraph 30** of the First progress review reads as follows: '*30. With respect to personal notification, the Committee points out that all members of the public who submitted comments in the public participation procedure on the proposed decision should also be personally notified of the decision on the integrated environmental permit once taken.*'

   Article 40 of Law 39/2015 clearly states that '*The body adopting a resolution or administrative act will notify those interested parties with rights or interests affected by the act*'. Therefore, the notification of an Integrated Environmental Permit to interested parties **is already a requirement** according to General Administrative Procedure Law, and therefore it would be redundant to modify Royal Decree 815/2013 with this purpose, since the Law has a higher hierarchy and is directly applicable.

   Therefore, all notifications regarding the procedures of integrated environmental permits, both collective and individual are being carried out in full compliance with Spanish law and the Aarhus Convention.

For the reasons found in the paragraphs above, it is the view of this National Focal Point that there is no need to further modify Royal Decree 815/2013, since it meets the requirements set in Article 6.2 of the Aarhus Convention and paragraph 2 of Decision VII/8p, in full compliance with relevant Spanish Law.

We remain at the disposal of the Compliance Committee for any clarification they may deem necessary regarding the National Action Plan, and we will continue to work on its implementation towards a satisfactory closing of the matter in the final report due in October, 2024.