



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

COMPLIANCE COMMITTEE OPEN SESSION, September 19<sup>th</sup>, 2024

### STATEMENT BY SPAIN

Spain would like to thank the Compliance Committee for offering the opportunity to express its views on the contents of the progress review, in the light of the opinions shared by some interested parties a few months after its assessment. In this regard, Spain would like to highlight the following considerations:

1. **Spain** holds in the highest consideration the rights and principles set in the Aarhus Convention, and it is the duty of this focal point to promote adequate application within all the different administrative procedures that may have an impact on the environment and throughout all the different Spanish administrative levels. When we detect an issue, we strive to enhance the regulatory framework as well as the application of the convention. For these reasons we have thoroughly implemented the conclusions of decision VII/8p and our national plan.
2. In this case, decision VII/8p has been implemented by a regulatory reform introducing a new article 10 bis in the Royal Decree 815/2013, approved by Royal Decree 34/2023, 24 January.<sup>1</sup>

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<sup>1</sup> Article 10 bis – Publicity of the integrated environmental permit.

*Without prejudice to the provisions of Article 24(3) of the consolidated text of the Law on integrated pollution prevention and control, approved by Royal Legislative Decree 1/2016 of 16 December 2016 and Law 27/2006 of 18 July 2006 regulating the rights of access to information, public participation and access to justice in environmental matters, the Autonomous Communities and cities of Ceuta and Melilla shall make available to the public on their website the text of the administrative decisions by which the integrated environmental authorisations have been granted, substantially amended or revised, together with the reasons and considerations on which that decision is based. They shall also send to the municipalities the aforementioned announcement to the public for display on the notice boards of the municipalities in which the facilities are located for a minimum period of twenty calendar days. The municipalities must provide citizens who request it with a printed copy of the text of these resolutions.*

<https://www.boe.es/buscar/act.php?id=BOE-A-2013-10949>



The procedure leading to the enactment of this reform has guaranteed the participation of the public as well as the special participation of certain subjects, including those involved in procedures substantiated before this Compliance Committee. The aforementioned regulatory reform has been endorsed by the State Council.<sup>2</sup>

3. In the light of the additional information regarding decision VII/8p provided by the Party concerned on 6 March and 5 September and the comments from the communicant in communication ACCC/C/2014/99 on 23 August, the Committee invited Spain, the communicants and observers to attend this online open session to discuss the additional information received.
4. During the open session, the Committee asked the Party concerned questions intended to clarify its understanding of Spain's applicable legal framework and administrative practice. The members of the Committee requested for a written submission including some of the specific pieces of legislation quoted by the representative of Spain during his interventions, and this paper intends to fulfil that request.
5. The concerns raised by the committee and a representative of interested parties in case ACCC/2014/99, regarding the National Progress Report touch upon 2 issues:
  - a. The decision of granting, modifying and reviewing integrated environmental authorisations **should be notified to all municipalities** potentially affected by the facility.
  - b. The following parties should be notified **individually**:
    - i. Individuals living in the **immediate vicinity**,
    - ii. parties with a **specific interest**
    - iii. all members of the public who **submitted comments** during the public participation procedure
6. This National Focal Point would like to provide the following remarks to explain how this is currently done:
  1. Article 14 of Royal Legislative Decree 1/2016 <sup>3</sup>clearly sets out that, *'In all those aspects not regulated in this law, the procedure for granting the integrated environmental authorisation will be in accordance with the provisions of Law 39/2015, of 1 October'*. In turn, article 4 of Law 39/2015 defines the concept of 'interested party':

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<sup>2</sup> Dictamen del Consejo de Estado nº 1345/2022, de 22 de septiembre. <https://www.boe.es/buscar/doc.php?id=CE-D-2022-1345>

<sup>3</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2016-12601>



1. The following are considered to be interested parties in the administrative procedure:

a) Those who promote it as holders of individual or collective rights or legitimate interests.

b) Those who, without having initiated the procedure, **have rights that may be affected** by the decision adopted therein.

c) Those whose **legitimate interests**, individual or collective, **may be affected by the resolution and appear in the proceedings** until a final decision has been issued.

2. **Associations and organisations representing economic and social interests** shall have collective legitimate interests in the terms recognised by law.

- a. On the matter of **notification of the decision to affected municipalities**, articles 11.4 and 28 of Royal Legislative Decree 1/2016 set out the obligations for state or regional administrations to coordinate both the Integrated Environmental Permit (IEP) and the Environmental Impact Assessment (EIA) procedures and the requirement to obtain favourable environmental assessment before granting an IEP. Article 37 in Law 21/2013<sup>4</sup>, 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, the requirements of notifying all municipalities potentially affected is fulfilled. On top of that, the mere fact that on the IEP procedure itself a neighbouring municipality could be affected, **would qualify them to be interested parties** in accordance to para b) of article 4.1 of Law 39/2015 above, so they would have to be notified anyway.
- b. On individual notifications:

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<sup>4</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12913>



First of all, we must bear in mind that Law 39/2015, 1 October, on the General Administrative Procedures applies to all administrative procedures, including IEP and EIA procedures, as we showed before. Their regulations are in line with this Law, so the following comments take into account this principle:

- i. Regarding **individuals living in the immediate vicinity**, we must consider article 45 of Law 39/2015<sup>5</sup>, 1 October, on the General Administrative procedure, stating that a publication will have the effects of an individual notification when *'the act is addressed to an indeterminate plurality of persons'*. There is no legal definition of what 'immediate vicinity' means. It could mean households within one kilometre, or 100 metres, or only bordering plots. But there simply is no legal definition. And regarding their potential affection, it depends on so many factors that it is virtually impossible to set a single criterium to establish what immediate vicinity entails. It should take into account type of activity, size of the facility, distance to the nearest household, emission limits, even weather conditions. Thus, it is very clear to us that immediate vicinity is the perfect example of indeterminate plurality of people. And therefore **the publication of the permit is legally considered as a personal notification**, since it is addressed at an indeterminate plurality of people. That publication is, of course, **additional to any personal notification**, as we will explain now.
- ii. Parties with a **specific interest** will always be notified. Article 40 of law 39/2015 establishes that *'The body that issues the resolutions and administrative acts shall notify them to the interested parties whose rights and interests are affected by them'*. We recall here article 4 of Law 39/2015, defining interested parties. Any **party that has expressed interest in the procedure** falls within para c) of article 4.1 above so they will be notified. Any party that, without even participating in the procedure, could have **rights that may be affected** by the decision, falls within para b) above, so they will be notified as well.

Furthermore, with respect to the scope of the legislation on pollution prevention and control in which the IEP procedure is incardinated, the definition of interested party included in article 3.19 of Royal Legislative Decree 1/2016, in line with Aarhus Convention provisions, **goes even beyond** the definition of this article 4 of Law 39/2015, likewise:

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<sup>5</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2015-10565>



“19. Interested parties:

a) All those who meet any of the circumstances provided for in **article 4** of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations.

b) Any **non-profit legal persons** that meet the following requirements:

1. That have among the purposes accredited in their statutes the **protection of the environment** in general or that of one of its elements in particular, and that such purposes may be affected by the taking of a decision on the granting or revision of the integrated environmental permit or its conditions.

2. That it has been legally constituted for two years and is actively carrying out the activities necessary to achieve the purposes provided for in its statutes.

3. That according to its statutes it carries out its activity in a territorial area that is affected by the installation for which the integrated environmental authorization is requested”.

iii. Finally, all **members of the public who submitted comments** during the public participation procedure will also be personally notified because they fall under the definition of interested party in paragraph c) above and para a) of article 3.19 of Royal Legislative Decree 1/2016, on Integrated Pollution Prevention and Control.

iv. Additionally, on the question on the concept of the need to claim **legitimate interests**, and in relation to the possibility of any individual to participate in the procedure, Article 3 in Law 27/2006<sup>6</sup> on the rights of access to information, public participation and access to justice in environmental matters (incorporating Directives 2003/4/EC and 2003/35/EC and effectively implementing the Aarhus convention), states the following:

Article 3. Environmental rights.

*In order to give effect to the right to an environment suitable for the development of the person and the duty to preserve it, **everyone may***

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<sup>6</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2006-13010>



**exercise the following rights in their relations with the public authorities,** in accordance with the provisions of this Law and the provisions of Article 7 of the Civil Code:

1) In relation to **access to information:**

a) To access environmental information held by the public authorities or by other subjects on their behalf, **without being obliged to declare a specific interest**, regardless of their nationality, domicile or headquarters.

(...)

2) In relation to **public participation:**

a) To **participate effectively** in the preparation, modification and review of those plans, programmes and provisions of a general nature related to the environment included in the scope of application of this Law.

b) To have sufficient **access** in advance to the relevant information relating to the aforementioned plans, programmes and provisions of a general nature.

c) To make **allegations and observations** when all options are still open and before the decision is taken on the aforementioned plans, programmes or provisions of a general nature and to have them duly taken into account by the corresponding Public Administration.

d) To have **the final result of the procedure in which it has participated** made public and to be informed of the reasons and considerations on which the decision adopted is based, including information relating to the public participation process.

e) To participate effectively, in accordance with the provisions of the applicable legislation, in the **administrative procedures** for the granting of the authorisations regulated in the legislation on **integrated pollution prevention and control**, for the granting of the administrative titles regulated in the legislation on genetically modified organisms, and for the issuance of environmental impact statements regulated in the legislation on environmental impact assessment, as well as in the planning processes provided for in the water legislation and in the legislation on the assessment of the effects of plans and programmes on the environment.

Logically, since everyone has the right to participate, and in doing so they would be exercising a legally recognised right, it would make no sense to deny participation on the grounds of lack of legitimate interest.

7. In conclusion 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: (...)’.

8. As we have explained, all legal provisions necessary to guarantee that the public concerned is informed by public notice or individually, as appropriate, are currently in place.