QUESTIONS TO BOTH THE PARTY AND COMMUNICANT

4. Question 1(a): how public concerned and public shall be informed about applications to permit activities listed in annex I of the Convention.

Integrated Prevention and Pollution Control and Environmental Impact Assessment (EIA) Spanish and Catalan legal regulations could certainly be enhanced in order to grant real and effective public participation; public participation of both directly concerned parts and general public, in the process of decision making as settled in art. 6 Aarhus Convention. As a matter of fact, these regulations just basically literally reproduce what is stated at this art. 6 of the Aarhus Convention without any further development.

Actually, it has to be reminded that the object of this specific communication here it is not to highlight all these public participation legislative regulations lacks –although it will be approached in part- but to stress that there is a precise and serious public administration practice (or malpractice to be exact) which has been taking place in the past, at present and provably in the future if this convention is not fixed; which is that the activity announced for participation does not state that the public participation in decisions on specific activities and EIA are required and which dissents from the one really taking place, required and authorized; which is, obviously simply anomalous.

Particularly, the main question here is, at the end of the day which specific information must be in the public notice when applications to allow activities and Environmental Impact Assessments are at stake. In this case, surprisingly, during the 20 days public consultation phase (called "informació pública") the object of the environmental permit required (substantial modification to use of municipal waste and dried sewage sludge) was replaced by another one (cement production and rock extraction) which, as already pointed, has been the cement company main activity during the last past decades. Moreover, during these 20 days public consultation phase, the fact that an EIA was required was not mentioned either. Peculiar indeed.

Hence, we plead that there is a manifest breach of articles 6.3 and 6.2 of the Aarhus Convention which state that a compulsory public participation process is needed and that such process must clearly specify the content of the application to permit activities. Therefore, the replacement of the object of the permit application (substantial modification to use of municipal waste and dried sewage sludge) for another one (cement production and rock extraction) is a clear breach of the Aarhus Convention. As a result, this misleading public consultation notice brought confusion and no awareness to the public. Consequently, the public was not accurately informed and could not effectively participate during the environmental activity decision-making. This "error" was not minor, it did not affect a minor-collateral matter, this enunciate substitution-replacement had consequences, public could not take action, could not respond to such a hazardous activity, and finally no action by the public could be taken. In short, the permit was issued without the public participation requirements and the aftermath was plainly and unfortunately the lack of public participation.

We would like to emphasize that this Committee has previously stated that not describing clearly the licensed activity during the public participation phase can be considered a

breach of the Aarhus Convention as stated in the ACCC/C/2006/16 Lithuanian Case. In this Lithuanian Decision the real activity was veiled too in the announcement and another one was published in its place replacing the one that actually was licensed and the Committee recognized that this absolutely jeopardized the public participation:

> "66. It has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning "development possibilities of waste management in the Vilnius region" rather than a process concerning a major landfill to be established in their neighborhood. Such inaccurate notification cannot be considered as "adequate" and properly describing "the nature of possible decisions" as required by the Convention. "

Provided that, there are grounds to believe that here this peculiar replacement of the real object of the environmental license and the concealment of the EIA requested responded to the fact that nowadays it is broadly acknowledged that the use of waste in cement plants has been questioned thanks to scientific and medical reasons for its severe impact on health and the environment beckoning huge opposition from society (and in this specific case the NGO).

Therefore, in the present case, although there is room for improvement, the problem is not caused by the regulations but caused by its implementation, by the public administration malpractices in such sensitive situations, as it can be observed in the regulation references provided by the Party.

Legislation in force at the time when the permit was processed is art. 14 and annex 5 (1.a, b and e and 2) of the Spanish Law 16/2002 of 1 July, of Integrated Prevention and Pollution Control. This Act clearly states the public concerned and general public must be informed of the following:

- The application for integrated environmental authorization or *substantial changes*.
- If applicable, the fact that the ruling on the a*pplication is subject to an environmental impact study*.
- If applicable, the *details relating to the* renewal or *modification* of the integrated environmental authorization.

Likewise, art. 16 Catalan Law 3/1998 of 27 February, on the integrated intervention of the environmental authorities related to information to public and art. 31 Decree 136/1999, of 18 May, which approves the general regulations for developing Law 3/1998 sets forth the same. Particularly, these last provision pins down that the municipal council shall submit the application for consultation by the neighbors closest to the place of the activity, for a period of 10 days. Moreover, it encloses that Catalan Government shall submit the application for public consultation for a period of 20 days, by publishing it in the Official Journal of the Catalan Government and by publishing it too on online information networks.

Current legislation has not changed much the situation: art. 14 and annex 4 (1.a, b and e) of the Spanish Law 16/2002 of July 1st, of Integrated Prevention and Pollution Control and art. 20 Law 20/2009, of 4 December, on environmental prevention and control of

activities. The news are that now the parties concerned shall be notified and that it enlarges up to 30 days the public consultation phase.

Article 6.2 of the Aarhus Convention also requires that the specific "proposed activity" has to be publicly issued too, public has to be informed about it. Spanish Law 16/2002 of 1 July , of Integrated Prevention and Pollution Control does not demand such condition. This could be improved under the Spanish legislation may we suggest it. Despite this should be the commonsense practice logically in order, another little Spanish legal framework amelioration that we may suggest too is that the Spanish regulations could also require, as obvious as it is, that public notice must refer to the same object as the application submitted to make sure to avoid future Administrative incoherences. Nevertheless, may we insist that it is above common-sense that public notice has to refer to the same activity as the one submitted, required, processed and finally admitted. And also that if regulations require EIA it has to be clearly posted too.

Indeed, Aarhus Convention infringement here is the result of a miscevious public administration malpractice that finally avoids general public and public concerned participation when activities that arise public and social concern because of the possible dangers to the health and persons at stake. It is because of this that it is decisive that this Committee roundly declares that this not uncommon public administration misconduct is against the Aarhus Convention and the inadmissibility of the administrative claims ex officio submitted against this serious infringement especially considering that at the end of the day what occurred was that public participation was denied. Therefore, we believe that this Committee should declare that Public Administration must transact administrative claims ex officio and enact a decision on the merits. If not, the Aarhus Convention will end up being just paper tiger.

5. Question 1(b) about how public concerned and public shall be informed about decisions taken with respect to activities listed in annex I of the Convention

Legislation in force at the time when the permit is processed are art. 23 Law 16/2002, of July 1st, on Integrated Prevention and Pollution Control, art. 23 Catalan Law 3/1998 of 27 February, on the integrated intervention of the environmental authorities related to information to public and art. 37 Decree 136/1999, of 18 May, which approves the general regulations for developing Law 3/1998. It states that the decision shall be notified to the public concerned. And, in relation to the public, autonomous communities shall publish the administrative rulings by means of which comprehensive environmental authorizations are granted or modified in their respective official journals and shall make some information available to the public.

Therefore, decisions must be notified to public concerned and they are just mentioned at the official journals to the public, regardless whether they are declared public information or not.

In this case, the following provisions are vulnerated as well as art. 6.9 Aarhus Convention:

a) The NGO Col·lectiu Bosc Verd was not informed or notified when they actually are public concerned, as clearly recognized by everybody and specially by the Party at the 2 July 2015 meeting. This condition was already according to art. 2.5 Aarhus

Convention since the very beginning and the Spanish legal framework and cases. NGO Col.lectiu Bosc Verd is a wellknown NGO by everybody, also by the City Council and the Catalan Government. In short, by all the parts. Everybody knew that this NGO was against and had been fighting for years against waste treatment in the cement plant.

b) Regarding the public, administrative ruling by means of which environmental authorization is granted was not publish in the official journal. Party answer to Question Three admits that it was not published at the official journal stating that –which is against the Spanish regulations--: "The legislation did not require the publication of these rulings in the official journal". It also declares the full text of the ruling in question was published on the website of the department immediately after 14 June 2010. Nevertheless, it is undoubtedly that an informal web post can replace official publication.

Current Spanish and Catalan legal framework is quite similar: art. 23 Law 16/2002, of July 1st, on Integrated Prevention and Pollution Control and art. 30 Law 20/2009, of 4 December, on environmental prevention and control of activities. This last provision also states that "The operative part of the ruling by means of which the environmental authorization for activities indicated in Appendix I is granted or modified, and, if applicable, the environmental impact statement, shall be published in the Official Journal of the Catalan Government and included in the database of environmental activities, with the information determined by the regulations." As a matter of fact, the decision must be publish in the Official Journal and database of environmental activities.

There is not here either a notorious regulatory deficiency regarding the Aarhus Convention but again, a public administration misconduct practice that is against the Aarhus Convention and the Spanish legal framework.