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# Communication to the Aarhus Convention Compliance Committee Regarding the Failure of Greece to Comply with Article 6 and 7 of the Aarhus Convention

## **I. Information on correspondent submitting the communication**

Full name of organization submitting the communication:

**ClientEarth**

Permanent address: Fieldworks, 274 Richmond Road, Hackney, London, E8 3QW

Telephone: +44 (0)303 050 5958

E-mail: [ddoyle@clientearth.org](mailto:ddoyle@clientearth.org)

**The World Wide Fund for Nature (WWF) Greece**

Permanent address: 21 Lempesi Street

Telephone: +30 210 331 4893

E-mail: [g.chasiotis@wwf.gr](mailto:g.chasiotis@wwf.gr)

Contact person authorized to represent the organizations in connection with this communication:

Name: Dominique Doyle (ClientEarth)

Title/Position: Lawyer (Australian Qualified)

Telephone: +44 (0)303 050 5958

E-mail: [ddoyle@clientearth.org](mailto:ddoyle@clientearth.org)

Name: George Chasiotis (WWF)

Title/Position: Legal Coordinator

Telephone: +30 210 331 4893

E-mail: [g.chasiotis@wwf.gr](mailto:g.chasiotis@wwf.gr)

## **II. Party concerned**

1. The Party concerned is the Hellenic Republic (*Greece*).

## **III. Facts of the communication**

### **Relevant Law**

#### ***European Union law***

2. Directive 2010/75/EU of the European Parliament and the Council on industrial emissions (integrated pollution prevention and control) (the *Industrial Emissions Directive* or *IED*) is the main EU instrument regulating pollutant emissions from industrial installations.

3. The objective of the IED is to lay down “rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole”.<sup>1</sup>
4. The IED sets out special provisions for Large Combustion Plants (**LCPs**) in Chapter III and Annex V. These requirements include emission limit values (**ELVs**) for emissions of nitrogen oxides (**NO<sub>x</sub>**), sulphur dioxide (**SO<sub>2</sub>**), and dust from 1 January 2016.<sup>2</sup>
5. IED Article 32 provides that Member States, during the period from 1 January 2016 to 30 June 2020, may draw up and implement a transitional national plan (**TNP**). For each of the LCPs covered by the plan, the plan shall cover the emissions of one or more of NO<sub>x</sub>, SO<sub>2</sub>, and dust. LCPs covered by the TNP may be exempted from compliance with the ELVs referred to in Article 30(2) of IED for the pollutants that are subject to the plan.
6. Article 32(5) of the IED provides that Member States shall communicate their TNPs to the European Commission (**EC**), subject to their further acceptance by the EC.
7. Commission Implementing Decision 2012/115/EU sets further rules concerning TNPs, including specifications for setting ELVs and compliance, monitoring and reporting requirements.<sup>3</sup>

#### ***Domestic law***

8. The Aarhus Convention on Access to Information, Public Participation and Access to Justice (**the Convention**) was ratified by Greece on 12 December 2005 and entered into force on 13 December 2005. The ratification and adoption of the Convention was made through law 3422/2005 that transposed the whole body of the Convention into Greek Law.<sup>4</sup>
9. The IED was transposed into Greek law by Joint Ministerial Decision 36060/1155/E.103/13-6-2013 (**the JMD**) (Annex 2).<sup>5</sup> The procedure for adopting a TNP is set out in Article 28 of the JMD.
10. Under Article 28(7) of the JMD, the TNP is drawn up by a ‘technical inter-ministerial working group’ (**the technical working group**). The technical working group is tasked with both establishing and monitoring the TNP. The technical working group contains, at a minimum, representatives from the Ministry of the Environment (3 members) and the Ministry of Finance (1 member). Article 28 JMD also allows for the participation of technical experts, as well as of other representatives of the private or public sector. However, Article 28 does not *require* the Ministry of the Environment to consult the public on a draft TNP.

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<sup>1</sup> Industrial Emissions Directive, Article 1.

<sup>2</sup> Industrial Emissions Directive, Article 30(2).

<sup>3</sup> Commission Implementing Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, 24 February 2012.

<sup>4</sup> National Gazette A’ 303/2005.

<sup>5</sup> National Gazette B 1450/24-6-2013 as amended by Article 58 paragraph 1, law 4342 /2015, national gazette A 143/19-11-2015.

11. The finalised TNP is approved by the Minister of the Environment, on a proposal of the General Environment Directorate.

#### Relevant Facts

12. The below table sets out a timeline detailing the process by which Greece has established and implemented its TNP.

Date	Event	Relevant Document
14 June 2012	The technical working group was established with a mandate of two (2) years ( <i>the first technical working group</i> ). <sup>6</sup>	Internal Ministerial Decision 212409/14.6.2012, ΑΔΑ <sup>7</sup> : Β4Λ00-Ψ5Π (Annex 3).
Between 14 June 2012 19 December 2012	The first technical working group prepared the draft TNP.	
25 October 2012 to 2 December 2013	Correspondence between Public Power Corporation (PPC) and the first technical working group regarding the TNP.	Joint Ministerial Decision Η.Π. 34062/957/Ε103/3-8-2015, Preamble, items 17 to 20 (Annex 4).
19 December 2012	Greece notified European Commission of TNP.	
14 June 2013	Joint Ministerial Decision 36060/1155/Ε.103/13-6-2013 entered into force (see above Annex 2). <sup>8</sup>	
26 November 2013	EC decision approving the TNP Proposal.	Commission Decision 2013/687/EU (Annex 5).
18 March 2014	Greece notified the European Commission of modifications to its TNP, removing plants Kardias 3 and Kardias 4.	
7 July 2014	European Commission decision approving the modified TNP.	Commission Decision 7.7.2014 C(2014) 4533 (Annex 6).
25 September 2014	New decision establishing a second technical working group due to the expiration of the mandate of the first technical working group ( <i>the second technical working group</i> ). <sup>9</sup>	Internal Ministerial Decision 163411/25.9.2014, ΑΔΑ: 6ΓΖ00-91Χ (Annex 7).
3 August 2015	TNP was adopted and signed by the Minister of the Environment.	Joint Ministerial Decision Η.Π. 34062/957/Ε103/3-8-2015.
20 August 2015	The JDM adopting the TNP was published in the National Gazette (in Edition Β, in which regulatory decisions by the Prime Minister and the Members of the Cabinet are published).	National Gazette Β 1793/2015, 20 August 2015.
20 August 2015	The TNP entered into force.	Joint Ministerial Decision Η.Π. 34062/957/Ε103/3-8-2015, Article 7.

13. In the first half of 2012, the Ministry of the Environment began preparing a TNP for Greece.

<sup>6</sup> Last part of the Ministerial Decision.

<sup>7</sup> ΑΔΑ stands for "Online Post Number".

<sup>8</sup> Without prejudice to Article 60 that transposes Article 80 of the IED and provides a retrospective entry into force of the Decision for particular installations.

<sup>9</sup> Last part of the Ministerial Decision.

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14. On 14 June 2012, the Ministry for the Environment established the first technical working group to draw up the TNP.<sup>10</sup> This first technical working group consisted of:
1. One representative of the Directorate of Atmospheric Pollution and Noise Control;
  2. One representative of the Ministry of the Environment, Energy and Climate Change;
  3. One representative of the General Energy Directorate, Ministry of Environment, Energy and Climate Change;
  4. One representative of the Ministry of Finance;
  5. One representative of PPC;
  6. One representative of Hellenic Petroleum; and
  7. One representative of Motor Oil.
15. On 25 September 2014, the membership of the first technical working group was modified, creating the second technical working group. The representatives of Hellenic Petroleum and Motor Oil were removed, while PPC's representative remained in the group.
16. The public was not informed of any documents prepared by either technical working group and the minutes of their discussion were not made public. The ministry did not clarify the selection criteria for choosing members of the technical working group. The ministry did not justify the presence of representatives of the regulated entities (the Joint Ministerial Decision simply states that “[r]epresentatives of other public or private sector bodies may participate in the working group, if it is deemed necessary, as well as experts from Higher Education Institutions who can contribute to the project due to their expertise”).<sup>11</sup>
17. The Ministry of Environment did not hold a public consultation on the draft TNP nor did it seek views of the public in preparing the TNP. There are two websites on which public consultations are notified via the internet in Greece. One is government-wide,<sup>12</sup> and one is maintained by the Ministry of the Environment.<sup>13</sup> The Ministry of the Environment also maintains a separate website where all press reports and announcements are filed.<sup>14</sup> No mention of the preparation or adoption of the TNP was made on any of those websites, and no information regarding the TNP was provided to the public on those websites, either prior to or after its enactment date. There was similarly no public notification nor any public submissions sought by any other means.
18. The TNP was adopted via Ministerial Decision on 3 August 2015 (*the Ministerial Decision*) and entered into force on the 20 August 2015 after publication in the Government Gazette.<sup>15</sup>
19. The first time that information was made available to the public regarding the contents of the TNP was notification of its entry into force and publication in the Official Government Gazette on 20 August 2015.<sup>16</sup>

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<sup>10</sup> Internal Ministerial Decision 212409/14.6.2012, AAA: B4A00-Ψ5Π, p2 onwards.

<sup>11</sup> Joint Ministerial Decision 36060/1155/E.103/13-6-2013 Article 28 (7)

<sup>12</sup> <http://www.opengov.gr/en/>.

<sup>13</sup> <http://www.ypeka.gr/Default.aspx?tabid=232>.

<sup>14</sup> <http://www.ypeka.gr/Default.aspx?tabid=367&language=el-GR>.

<sup>15</sup> Joint Ministerial Decision H.Π. 34062/957/E103/3-8-2015; National Gazette B 1793/2015.

<sup>16</sup> National Gazette B 1793/2015.

20. Any document, law, consultation, correspondence, report or other relevant action/document that relates to the adoption of the decision and affects the regulatory act that is the subject of the decision is referenced in the preamble of all ministerial decisions. The preamble of the Ministerial Decision adopting the TNP refers to the following:

- a. the IED;
  - b. the domestic laws that distribute competences between the Government and the administration;
  - c. the European Commission's decisions approving the TNP and its alteration;
  - d. correspondence between the relevant Greek administrative authorities and the European Commission; and
  - e. correspondence with the PPC.
21. The preamble of the Ministerial Decision does not mention that any public consultation took place.<sup>17</sup>
22. The facts and circumstances described above demonstrate a lack of compliance with the Convention. This is explored in detail in Section V below.

#### **IV. Alleged non-compliance with provisions of the Convention**

23. ClientEarth considers that Greece has failed to comply with **Article 7 and Article 6(3), (4) and (8)**, (as applied through Article 7), as transposed in the Greek legal order by means of law 3422/2015,<sup>18</sup> in relation to the preparation of the TNP. The full wording of the Aarhus provisions are attached below as Annex 1.

#### **V. Nature of alleged non-compliance**

##### **Preliminary Issue – applicability of the Convention to the TNP**

24. Article 7 of the Convention provides for public participation concerning plans, programmes and policies relating to the environment, whilst Article 6 concerns public participation in decisions on whether to permit certain activities. When categorising a decision under Articles 6 or 7 of the Convention, its label in domestic law is not decisive, it is the legal function and effects of the decision that are relevant.<sup>19</sup> ClientEarth considers that the TNP can be best characterised as a “*plan...relating to the environment*” under Article 7.

##### **A ‘plan’**

25. The UNECE Implementation Guide on the Convention states that a ‘plan’ for the purposes of Article 7 will typically be characterised as 1) a general act, 2) initiated by administrative authority, which 3) sets, often in a binding way, the framework for certain categories of

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<sup>17</sup> Joint Ministerial Decision H.II. 34062/957/E103/3-8-2015, Preamble.

<sup>18</sup> National Gazette A 303-13-12-2005.

<sup>19</sup> Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, at [65]; Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, at [50]; United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, at [82].

specific activities and which 4) not sufficient for any individual activity to be undertaken without an additional individual permitting decision.<sup>20</sup>

26. The TNP is a regulatory act initiated by the Ministry of the Environment, setting the framework for exempting particular LCPs from the ELVs in the IED. The TNP is a general act because it covers several coal-fired power plants, regulating the ceiling of total emissions from those plants. It is not sufficient on its own to authorise individual LCP activity in the absence of a separate permitting decision. However, the TNP contributes to permitting decisions made under the IED. It is therefore best characterised as a plan rather than a decision on a specific activity.
27. Furthermore, Commission guidance on the IED confirms that for the purposes of the Strategic Environmental Assessment Directive (*SEAD*), TNPs are considered ‘plans/programmes’ “*as they are applicable to LCPs that fall under the ‘industry’ or ‘energy’ sectors described in SEAD Article 3(2)(a)*”.<sup>21</sup> The Commission has further stated that whether or not a TNP was subject to a Strategic Environmental Assessment “*is without prejudice to the application of...Article 7 of the Aarhus Convention*.”<sup>22</sup> This supports an interpretation of the TNP as a ‘plan/programme’ for the purposes of Article 7 of the Convention.

#### *Relating to the environment*

28. The interpretative scope of ‘relating to the environment’ is very broad. It encompasses plans that have an effect on the environment, but does not impose any test or threshold requirement in terms of the significance or likelihood of that effect.<sup>23</sup> The ACCC has previously found that a plan which “*proposes measures in the energy sector that affect or are likely to affect elements of the environment*” relates to the environment.<sup>24</sup> A plan may also be considered to ‘relate to’ the environment if it is simply intended to help to protect the environment.<sup>25</sup>
29. The TNP is applicable to energy generation plants and allows LCPs to be exempted from the ELVs specified in Article 30(2) of the IED. LCPs within the TNP are instead required to comply with the less strict ELVs set out in their permits as of 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants and 2008/1/EC concerning integrated pollution prevention and control.<sup>26</sup> Such LCPs do remain subject to the other substantive requirements in the IED, for example, the obligations under Articles 11(b) and 15(2) regarding application of the best available techniques when setting permit conditions,

<sup>20</sup> United Nations Economic Commission for Europe ‘The Aarhus Convention: An Implementation Guide’ (2nd ed, 2014), at p124, citing J Jendroška, “Public participation in the preparation of plans and programs: some reflections on the scope of obligations under Article 7 of the Aarhus Convention”, *Journal for European Environmental & Planning Law*, vol. 6, No. 4 (December 2009), pp. 495-515, at p505. ‘General act’ is not defined in the Implementation Guide, however ClientEarth understands it to mean a piece of legislation, regulation, secondary guidance or other administrative act that applies ‘generally’ rather than to a particular site or individual application,

<sup>21</sup> European Commission ‘Industrial Emissions Directive (IED) Frequently Asked Questions (FAQ)’, published online at <http://ec.europa.eu/environment/industry/stationary/ied/faq.htm> (last accessed 6 July 2017).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, at p175-177.

<sup>24</sup> Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, at [50].

<sup>25</sup> *Ibid.*, at p177.

<sup>26</sup> In addition, Article 32(2) IED requires LCPs with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, to comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

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such as the ELVs. However, those obligations are insufficient to ensure an environmental performance comparable to that of LCPs that are not included within the TNP.

30. Consequently, by inclusion in the TNP LCPs can emit polluting substances into the atmosphere at a higher concentration (often significantly so) than would otherwise be permitted under the IED. Emission of pollutants at higher concentrations is likely to have negative effects on the environment and on human health compared to the situation under the 'counterfactual' (namely, the situation where the LCPs are subject to the ELVs specified by Article 30(2) IED). There is a clear effect on the environment arising from the TNP, and it must therefore be considered to relate to the environment.

### ***Conclusion***

31. ClientEarth submits that, in light of the above, Greece's TNP qualifies as a plan relating to the environment for the purposes of the Convention and is subject to the public participation requirements under Article 7.

### **Substantive Issue – details of alleged non-compliance**

32. The public was not informed of the preparation and proposed contents of the TNP, nor was there public participation carried out, aside from consultation with PPC. Therefore, the TNP is currently in force without having been subject to adequate, timely and effective public participation, as required by Article 7 of the Convention, read in conjunction with Article 6(3), (4) and (8). The details of this non-compliance are set out below.

33. Article 7 requires Greece to:

- a. make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment;
- b. within a transparent and fair framework (applying Article 6(3), (4) and (8));
- c. having provided the necessary information to the public.

34. Article 7 provides further that "*the public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.*"

35. These components are addressed separately below.

### ***Appropriate practical provision for the public to participate during the TNP's preparation***

36. Article 7 applies to 'the public', rather than the narrower 'public concerned' to which other parts of the Convention apply.<sup>27</sup> The definition of 'public' in the Convention encompasses any natural or legal person and their associations, organisations or groups.<sup>28</sup> Therefore, the right to participate in decision-making concerning plans relating to the environment must be guaranteed to the general public as a whole.

37. Participation in the TNP preparation was limited to those members of industry invited to take part in the technical working group, which included a representative of PPC. The general public and other members of industry (without prejudice to the participation in the first

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<sup>27</sup> Ibid, at p179.

<sup>28</sup> Aarhus Convention, Article 2(4).

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technical working group of two refining companies), environmental NGOs, and groups or individuals likely to be directly exposed to the additional pollutants that LCPs are allowed to emit under the TNP provisions were excluded entirely. Therefore, Greece failed to make appropriate provision for the public to participate during the preparation of the TNP.

***Transparent and Fair Framework (applying Article 6(3), (4) and (8))***

38. Greece did not develop the TNP within a transparent and fair framework. The general public was unaware that the TNP was being developed. Information provision and participation in decision-making was limited to certain members of industry only, to the exclusion of all other members of the public. This process lacked transparency. Further, using the specific requirements of the national law regarding the composition of the technical working group, Greece allowed the participation in the development of the TNP of only a certain section of industry but no other members of the public and the society, and it has acted in an unfair and arbitrary way.
39. Crucial documents in the TNP process that were never made publicly available include:
  - a) the draft TNP produced by the first technical working group;
  - b) the General Environment Directorate's proposal to the Minister of the Environment;
  - c) the TNP as initially notified to EC and subsequently notified on 18 March 2014.
40. In addition, the relevant requirements of **Article 6** were not applied:
  - a. **Article 6(3)** requires that public participation procedures include reasonable time-frames, allowing sufficient time to inform the public in accordance with Article 6(2) and to allow the public to prepare and participate effectively during the environmental decision-making. There were no general public participation procedures held during preparation of the TNP, therefore the wider public had no ability to prepare and participate effectively during the environmental decision-making. This represents a failure to comply with Article 6(3).
  - b. **Article 6(4)** requires Greece to provide for early public participation when all options are open and the participation can be effective. As there was no general public participation carried out on the TNP, and only certain members of industry were able to participate effectively, Greece has failed to comply with Article 6(4).
  - c. Finally, **Article 6(8)** requires Greece to ensure that due account is taken of the outcome of public participation in the decision to adopt the TNP. As no general public participation took place, Greece was unable to take account of public submissions or comments aside from those of Motor Oil Hellas, Hellenic Petroleum and PPC and therefore failed to comply with Article 6(8).

***Having provided the necessary information to the public***

41. Greece failed to provide the necessary information about the TNP to the public. The UNECE Implementation Guide states that the information listed in Article 6(2) as necessary with regards to activities is also necessary in the case of plans and programmes in the Article 7



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context and might be applied *mutatis mutandis* to guide consideration of what is the ‘necessary information’ required by Article 7.<sup>29</sup>

42. Applying Article 6(2) as a guide in the Article 7 context, the public should be informed of the proposed plan on which a decision will be taken, the nature of possible decisions or the draft decision, the responsible public authority, and the envisaged procedure.<sup>30</sup> Article 6(2)(d) also specifies that the public should be given information (as and when it can be provided) regarding the commencement of the procedure, opportunities to participate, time and venue of any public hearing, the authority from which relevant information can be obtained and where information can be examined by the public, the body to which comments or questions can be submitted, and an indication of what information is available.
43. The Ministry of the Environment did not provide any information on the TNP preparation or decisions as to its contents to the public in the present case, aside from providing information to PPC, Motor Oil Hellas and Hellenic Petroleum, as evidenced by their participation in the technical working group and PPC’s further correspondence with the Ministry. As noted in section III above, the first time that the wider public was, or at least could have been, made aware of the TNP was when it was officially published in the National Gazette.
44. Several websites (discussed above) exist in Greece through which notification of environmental information can be, and is regularly, made. Information about the TNP preparations could have been provided to the public early in the process via those websites. Information relating to (at a minimum) the commencement, terms of reference, and procedure of the TNP working group, any reports or drafts produced by that group, and other documents relevant to the TNP preparation should have been published. Even if no formal hearing on the TNP was envisaged, information could nevertheless have been provided to the public indicating the relevant body to which comments or questions could be submitted.

***The relevant public authority shall identify the public, which may participate***

45. The Ministry of the Environment, as the relevant public authority, failed to identify the public that may participate in decision-making related to the preparation of the TNP. The Ministry identified some members of industry that it considered could participate in the technical working group, but failed to identify all members of the public that should have been included in the process, taking into account the objectives of the Convention.
46. While Article 7 envisages that it may be appropriate for a public authority to exercise some discretion in identifying the section of the public that ‘may participate’, this must be done taking into account the objectives of the Convention. In particular, Article 1 emphasises that rights of access to information and public participation in decision-making are core objectives of the Convention, connected to the protection of the right of every person to live in an environment that supports his or her health and wellbeing. Furthermore, the preamble of the Convention emphasises the desire to encourage public awareness of and participation in decisions affecting the environment. In addition, Article 3 specifically provides for the promotion of public access to information and participation in decision-making. The

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<sup>29</sup> UNECE Implementation Guide, above n 20, at p178-179.

<sup>30</sup> Aarhus Convention, Article 6(2)(a)-(d).

objectives of the Convention do not support restricting the section of the public that an authority considers may participate to just a few members of the industry affected.

47. UNECE Guidance, affirmed in the 2014 ACCC Decision relating to the Czech Republic, notes that, “[i]n keeping with the objective in the fourteenth preambular paragraph ‘to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development’, the obligation to identify the public which may participate should not be seen as a tool to limit participation, but rather as a way to streamline the participation in order to make it more effective.”<sup>31</sup>
48. The guidance adds further that representatives of special interest groups are traditionally included in such processes, but other members of the public that learn about the process may also express their interest in participating.<sup>32</sup> While closer inclusion of private industry stakeholders in the process may be justified, there is still an obligation to act in accordance with the objectives of the Convention and involve (among others) NGOs promoting environmental protection.<sup>33</sup> The involvement of environmental NGOs is particularly relevant in the context of the TNP because the IED’s primary objective is to protect and improve the environment by reducing emissions of NO<sub>x</sub>, SO<sub>2</sub> and dust from industrial sources. The Ministry cannot abuse this provision in Article 7 to effectively bar or significantly reduce the effective public participation of other members of the public.<sup>34</sup>
49. In the present case, participation should have been open to the general public as a whole in light of the broad definition of ‘public’ in the Convention and the fact that the TNP concerns Greece’s industrial emissions and air quality at a national level, and relates to matters of public interest such as pollution, air quality, and public health. Therefore, Greece is obliged to allow other members of the public to participate and to consider the outcome of such participation in preparing the TNP.
50. Even if the ACCC disagrees that the general public as a whole should have been identified to participate in the TNP process, ClientEarth and WWF consider that at a minimum, the Ministry should have sought participation from the following parties in the development of the TNP:
- a. individuals living in the vicinity of the power plants that are or may be included in the TNP, including community groups and other associations;
  - b. any other members of the public expressing an interest in participation having learned about the process via notification;
  - c. environmental NGOs such as WWF Greece; and
  - d. all members of industry affected by the TNP.
51. For that reason, these affected groups may also qualify, according to the guidance, as ‘special interest groups’, therefore they should at least have been notified of and invited to participate in the development of the TNP plan.

<sup>31</sup> UNECE ‘The Aarhus Convention: An Implementation Guide’, above n 20, at p179; Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014 at [59].

<sup>32</sup> Ibid.

<sup>33</sup> Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, at [59].

<sup>34</sup> Ibid.

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### **Conclusion**

52. By failing to provide any information on the TNP to the public and failing to provide for any public participation at all aside from consultation with PPC, Motor Oil Hellas, and Hellenic Petroleum, Greece has failed to comply with Article 7 (including the relevant provisions of Article 6 applied to plans, programmes and policies by Article 7) of the Convention. This is a specific violation of the public participation rights of members of the public in Greece.
53. ClientEarth considers that Greece could have provided for public participation at various stages in the process of preparing its TNP, but particularly:
- a. In accordance with Articles 7 and 6(4), public participation should be early and effective, and should take place “*when all the options are open*”.
  - b. It follows that public participation should have taken place while the TNP was under preparation by the technical working groups. At the latest, public participation should have concluded by 26 November 2013 (when the first draft TNP was sent to EC), or 18 March 2014 (when the modified TNP was sent to EC). The earliest possibility was 14 June 2012, when the technical working group was formed.

### **VI. Use of domestic remedies**

54. The TNP was not challenged by any organisation in Greece within the relevant timeframes for challenge.
55. One major reason is the fact that the relevant law and regulations (as well as their environmental impact) were unknown. This is outlined above at paragraphs 42-43.
56. With respect to WWF, the following reasons were also considered:
- a. the strong deferential attitude of Greek courts to administration, especially where technical regulations are at stake;
  - b. concern over the impact of European Commission Decision 2013/687 (as amended), according to which the European Decision “*raised no objections*” to the plan;
  - c. concern over the practical impact of any legal action (as complex cases often take 3-5 years of litigation in Greece);
  - d. lack of funds. The cost of a hearing in the competent Court, which is the Council of State starts from a minimum of approximately 4,000.00 euros, a cost that is considered as prohibiting access to justice under the current Greek financial crisis. Unfortunately, WWF does not qualify to receive financial support for access to justice under the existing Greek legislative framework.

### **VII. Use of other international procedures**

57. No other international procedures are available in this case.

### **VIII. Confidentiality**

58. This communication may be published and made publicly available.

### **IX. Supporting documentation (copies, not originals)**

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59. The following documents are attached in support of this communication:

- a. Annex 1: Articles 6 and 7 of the Aarhus Convention;
- b. Annex 2: Joint Ministerial Decision 36060/1155/E.103/13-6-2013;
- c. Annex 3: Internal Ministerial Decision 212409/14.6.2012, ΑΔΑ: Β4Λ00-Ψ5Π;
- d. Annex 4: Joint Ministerial Decision Η.Π. 34062/957/Ε103/3-8-2015;
- e. Annex 5: Commission Decision 2013/687/EU;
- f. Annex 6: Commission Decision 2014/C 225/05;
- g. Annex 7: Internal Ministerial Decision 163411/25.9.2014, ΑΔΑ : 6ΓΖ00-91Χ;

**X. Signature**

**I confirm that I am authorised to sign this communication on behalf of ClientEarth.**



Dominique Doyle  
Lawyer (Australian Qualified)

Dated: 2 August 2017

I confirm that I am authorised to sign this communication on behalf of WWF



World Wide Fund for Nature.  
WWF Greece  
Public welfare foundation  
21, Lembessi str. 117 43 Athens, Greece  
Tel.: +30 210 3314693. Fax: +30 210 3247578  
V.A.T. No 050347275. Tax Authority: 12 Athens

[Demetres Karavellas]  
[CEO WWF Greece]

Dated: 2 August 2017

**XL. Address**

This communication has been sent by e-mail and by registered post to the following address:

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

E-mail: [aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org)

Clearly indicate:

"Communication to the Aarhus Convention Compliance Committee"