

**Statement by the Hellenic Ministry of Environment and Energy**  
**concerning the communication**  
**PRE/ACCC/2017/149**

(Aarhus Convention Compliance Committee regarding the failure of Greece to comply with art. 6 and 7 of the Aarhus Convention.)

**I. The objections raised by the communicants**

The main issue raised by the communicants is the alleged breach of the right of the public to participate in the drafting of the Transitional National Emission Reduction Plan (hereinafter referred to as "TNP"), provided by Directive 2010/75 / EU which has been transposed into Greek national law by Ministerial Decision 36060/1155/2013 ( OJG B 1450/2013).

More especially, main arguments/ allegations of the communicants are as follows:

- a) The TNP is a plan, thus, falls within the provision of the Article 7 of the Aarhus Convention.
- b) The technical inter ministerial working group (hereinafter referred to as IMWG) was established with neither participation by the representatives of local community nor by the public concerned (Joint Ministerial Decision 36060/1155/2013).
- c) There was neither public consultation procedures held during preparation of TNP nor uploading of the adopted TNP in the official sites operating at national level.

**II. Main arguments of the public administration (Hellenic Ministry of Environment and Energy.**

- 1) The TNP is not considered as a plan as defined in the Article 2(a) of the Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the Environment (hereinafter referred to as SEA Directive). According to the aforementioned article "plans" shall mean *"plans, including those co-financed by the European Community ....: a) which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption through a legislative procedure by Parliament or*

*Government and b) which are required by legislative, regulatory or administrative provisions”.*

Additionally, according to the article 3 (par.2a) of the aforementioned directive “...an environmental assessment shall be carried out for all plans and programmes: a) which are prepared for .... Industry... and which set the framework for future development consent of projects for which an environmental assessment is required.

Greek authorities support that the TNP does not meet the requirements for its inclusion in the abovementioned definition of "plan" for the implementation of Article 7 of the Aarhus Convention, for the following reasons:

(a) According to the article 32 of Directive 2010/75/EE (article 28 of the JMD 36060/1155/2013), MS **may** draw up and implement a TNP. It is at the discretion of Member States. If MS decide to do so, the regulatory framework for its contents (TNP) **is strictly defined** in the EU directive and there is no real margin for maneuver or other possible interpretation of the EU provisions. Thus, Member States' **discretion is limited to the choice to have or not TNP** and, practically, there is no room for other regulatory interpretation.

In particular, according to the article 32 of the Directive 2010/75/EE and the Implementing Decision 2012/115/EU laying down rules concerning the TNP referred to in Directive 2010/75/EU, the TNP covers existing combustion plants **aa)** which continue to operate during the period from 1 January 2016 to 30 June 2020 with the obligation to maintain established EU emission limit values for sulphur dioxide, nitrogen oxides and dust, applicable on 31 December 2015, **bb)** where the maximum total annual emissions for all the plants of TNP, were calculated on the relevant emission limits value set out in LCP for 2016 and IED for 2019, **cc)** which contains the measures (anti-pollution technology) foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from 1/7/2020 as well as provisions on their monitoring.

Due to the strict EU legislative framework **regarding the plants that could be included in the TNP** (Directives 2010/75/EU and Implementing

Decision 2012/115/EU), there is no margin for different interpretation as or alternate options/measures by the Member States.

(b) The TNP is transitional national plan for 4 years period (2016-2020) covering large combustion plants which strictly meet the aforementioned requirements. The TNP does not constitute a generally applicable plan or act but a specific applicable act which is envisaged as **limited life time derogation** in the EU legislation. It does not cover all the plants or those plants of a specific category. Thus, a) the narrowly described content of TNP by the EU Directive , b) its transitional/temporary character substantially differentiate the TNP from the concept of "plan" of the Article 2a of Directive 2001/42 / EC and hence from the application of the Article 7 of the Aarhus Convention.

(c) For the aforementioned reasons, the Directive 2010/75/EU does not impose directly or indirectly any obligation for public consultation or participation during the preparation of TNP. Additionally, there is no reference in its recital about the implementation of Aarhus Convention (Article 6 & 7) in relation with TNP.

**According to the Directive, it is the European Commission and not the MS that evaluates and endorses the TNP. Where the Commission has raised no objection within 12 months of the receipt of a plan, the MS concerned shall consider its plan to be accepted. In the framework of this endorsement, EU do not impose to MS any obligation for public participation or public consultation. If the public consultation for the preparation of TNP were obligatory, the EU would not approved the TNP of Greece.**

(d) The Greek TNP was prepared and submitted to the European Commission (the first in 2012 and the modified in 2014) according to the provisions of IED and the Implementing decision 2012/115/EU. The Greek TNP had been approved by the European Commission, after a full thorough examination and submission of additional clarifications by the Greek authorities, by the decisions C (2013) 8133 final/26-11-2013 (the first) και C(2014) 4533 final/7-2014.

Thereinafter, the Greek competent authorities have issued the Joint Ministerial Decision No. 34062/957/2015 (OJG 1793 B) in order to

effectively integrate the Commission's approval in its domestic legislative order.

## **2) References in the Directive 2010/75/EU to the public participation and consultation**

In the recital of the Directive (27) there is a reference to the Aarhus Convention and its provisions for effective public participation in decision making and access to justice in environmental matters. This reference is linked with the article 24 of the operational part of the Directive which includes provisions for the access to information and public participation in the permit procedure. However, the aforementioned article concerns only specific cases: (i) the granting of a permit for new installations, (ii) the granting of a permit for any substantial change, (iii) the granting or updating of a permit for an installation where the application of Article 15 (4) is proposed (iv) the updating of a permit or permit conditions for an installation in accordance with Article 21(5) (a).

TNP does not come under any of the aforementioned categories of permits for which there is an obligation for the Member States to ensure that the public concerned are given early and effective opportunities to participate. Thus, according to the Directive's provision, the preparation of TNP is excluded from any public consultation/participation obligation.

## **3) Preparation of TNP by the IMWG**

The effective implementation of the Directive 2010/75/EU and the scientific preparation of TNP was the main goal of the established IMWG. For that reason, the IMWG consisted of experts with specific scientific knowledge.

## **4) Publicity of TNP**

The TNP data were published twice prior its approval by the European Commission. The first time with the agreement of the competent Ministry in response to a request from an interested party submitted to the European Commission, and secondly, in response to a relevant

request from the WWF Hellas, when both data of TNP and the relevant correspondence with PPC SA was also published. Additionally, the data included in the Greek TNP were also published after its approval by the European Commission, through the adoption of the Joint Ministerial Decision 34062/957/E103/2015 which was published in Official Government Gazette (free access to the Official Government Gazette is provided through the National Printing House of Greece <http://www.et.gr>) and additionally was uploaded in the official site of the Ministry of Environment and Energy (<http://www.ypeka.gr>)

Therefore, any interested party could request data regarding the preparation of TNP, given the fact that the JMD 36060/1155/2013 (article 28) incorporating Directive 2010/75 / EU has been uploaded from 2/5/2013 in the official website of the Ministry of the Environment. Additionally, the decisions for the establishment of Inteministerial working group are also available through the Diavgeia website (transparency programme initiative). It should be pointed out that according to the national regulatory framework, all authorities are obliged to upload their acts and decision on “diavgeia” portal. Acts that are not published in the Official Gazette, are valid and get into force only if they are published on the aforementioned portal. Uploaded acts can be used by all citizens.

## **5) The Right to appeal**

Given the fact that the TNP is not a plan as defined in the article 7 of the Aarhus Convention but a regulatory act which contains rule of law and concerns an indeterminate number of persons, may be appealed to the courts with a request for its invalidation at any time, as part of an individual administrative act (environmental permit) based on it. In other words, in case of challenging in court of environmental permit which has been issued based on, inter alia, the legal basis of TNP, the applicant can also raise reasons concerning the legitimacy of TNP and even succeed in its invalidation.

According to the abovementioned, indeed, it is very strange that the communicant WWF Hellas: (a) has not yet exercised the right to challenge directly the JMD of TNP in Council of State by submitting a petition for invalidation, (b) The communicant has not challenged the legitimacy of TNP even through its three pending petitions for

invalidations before the Council of State of environmental permit for lignite power plant included in the TNP. If they have challenged the legitimacy of TNP through the other existing petitions, they would avoid the cost of a different case.

The allegations of costly and time-consuming procedures are unfortunately not correct. In particular, the cost for the discussion of petition of invalidation is 972€. The determination of the petition discussion day, indeed needs more time, however, the applicants can ask the acceleration of discussion date with the submission of application preference. Indicatively, petition for invalidation submitted in November 2017 by the communicants and seeking the cancellation of the decision approving the environmental conditions of Megalopolis A and B, has been determined to be discussed in the Council of State on 23 May 2018.