

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**Second progress review of the implementation of decision VI/8h  
on compliance by Romania with its  
obligations under the Convention**

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## **I. Introduction**

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), 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 VI/8h on compliance by Romania with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## **II. Summary of follow-up**

2. On 2 February 2018, the Party concerned requested advice from the Committee regarding the types of measures it should take to implement the recommendations contained in decision VI/8h.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8h in open session with the participation of representatives of the Party concerned both in person and by audio conference. Though invited, no communicants took part in the open session. The Committee informed the Party concerned that it would provide it with some written advice on ways in which it might fulfil the recommendations of decision VI/8h after the meeting.

4. On 16 May 2018, the Party concerned submitted information concerning its implementation of decision VI/8h.

5. On 12 July 2018, the secretariat sent the Party concerned a letter enclosing the Committee's advice concerning possible measures the Party concerned might take to implement decision VI/8h.

6. On 13 September 2018, the Party concerned requested an extension of the deadline to submit its first progress report. On 19 September 2018, on the instructions of the Chair, the secretariat sent a reply to the Party concerned indicating that in order to fully meet paragraph 8(a) of decision VI/8h, it was important that the Party concerned provide its progress report by 1 October 2018, as this was the date set by the Meeting of the Parties. The secretariat's reply also stated that the Chair had indicated that further information could be added before 10 October 2018 to supplement the first progress report.

7. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8h, on time. In its first progress report the Party concerned stated that the advice provided by the Compliance Committee on 12 July 2018 had been an important tool to help it in its understanding of how the implementation of a decision of the Meeting of the Parties on compliance must be carried out. The Party concerned stated that the Committee's advice of 12 July 2018 represented very good support and guided its future steps in accomplishing its obligations as a Party to the Convention.

8. On 5 October 2018, the secretariat forwarded the first progress report of the Party concerned to the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69, inviting their comments by 1 November 2018. No comments were received.

9. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019. The Committee requested the secretariat to forward the first progress review to the Party concerned, the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.

10. On 25 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicants to communications ACCC/C/2010/51 and ACCC/C/2012/69.

11. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of decision VI/8h in open session, with the participation by audio conference

and in person of representatives of the Party concerned. Though invited, no communicants took part in the open session.

12. On 20 March 2019, the Party concerned submitted a written version of the statement it had delivered during the open session on decision VI/8h at the sixty-third meeting, and on the same day, it submitted its reply to a question raised by the Committee raised during the open session.

13. On 24 July 2019, the secretariat wrote the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 8(a) of decision VI/8h for the Party concerned to provide its second progress report.

14. On 30 September 2019, the Party concerned submitted its second progress report, on time.

15. On 1 October 2019, the secretariat forwarded the second progress report to the communicants of communication ACCC/C/2010/51 and ACCC/C/2012/69, inviting their comments thereon. No comments were received.

16. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 5 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned and the communicants of communication ACCC/C/2010/51 and ACCC/C/2012/69.

### **III. Considerations and evaluation by the Committee**

17. In order to fulfil the requirements of paragraph 2 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that public officials:

(a) Respond to requests of members of the public to access environmental information as soon as possible, and at the latest within one month after the request was submitted, and, in the case of a refusal, to state the reasons for the refusal;

(b) Interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure, and in stating the reasons for a refusal to specify how the public interest served by disclosure was taken into account;

(c) Provide reasonable time frames, commensurate with the nature and complexity of the document, for the public to get acquainted with draft strategic documents subject to the Convention and to submit their comments.

18. In order to fulfil the requirements of paragraph 3 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it has provided adequate information and training to public authorities about the above duties.

19. In order to fulfil the requirements of paragraph 4 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it has taken urgent measures to fully address the above recommendations.

20. In order to fulfil the requirements of paragraph 7 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it:

(a) Has taken the necessary legislative, regulatory, or administrative measures and practical arrangements, as appropriate, to ensure the correct implementation of the Convention with respect to:

(i) Article 2(3): the definition of “environmental information”;

- (ii) Article 4(4): the grounds for refusal and the requirement to interpret those grounds in a restrictive way, taking into account the public interest served by disclosure;
- (iii) Article 4(6): the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;
- (iv) Article 4(7): the requirement to provide reasoned statements for refusing a request for access to information;

(b) Reviewed its legal framework in order to identify cases where decisions to permit activities within the scope of article 6 of the Convention are conducted without effective participation of the public (article 6(3) and (7)), and taken the necessary legislative and regulatory measures to ensure that such situations are adequately remedied;

(c) Reviewed its legal framework and undertaken the necessary legislative, regulatory and administrative measures to ensure that the court procedures for access to environmental information are timely and provide adequate and effective remedies;

(d) Provided adequate practical arrangements or measures to ensure that the activities listed in subparagraphs (a), (b) and (c) above are carried out with broad participation of the public authorities and the public concerned.

21. In its second progress report, the Party concerned reports on three main activities that it has undertaken in the year since its first progress report:

(a) The development of its draft strategy to implement decision VI/8h (see paras. 26-34 below);

(b) The publication of information documents for the public authorities and the general public in order to raise awareness about the rights and obligations under the Convention (see paras. 35-39 below);

(c) The preparation of training sessions for magistrates, in collaboration with the National Institute of Magistracy (see paras. 43-48 below).

22. The Committee welcomes the second progress report by the Party concerned, which was submitted on time, and contains detailed and relevant information, including translations, for the Committee's review. The Committee examines the three main activities reported by the Party concerned in its second progress report in paragraphs 26-48 below. Before doing so, the Committee examines whether there have been any relevant developments regarding paragraph 2(c) of decision VI/8h since its first progress review.

#### **Paragraph 2(c) of decision VI/8h**

23. With regard to paragraph 2(c), the Committee firstly recalls that, based on the information before it at the time of the adoption of its first progress review, the Committee considered that the Party concerned had provided sufficient evidence demonstrating that it provides reasonable time frames, commensurate with the nature and complexity of the document, for the public to get acquainted with draft strategic documents subject to the Convention and to submit their comments. Accordingly, the Committee decided that in the absence of any evidence to the contrary in the meantime, it would, in its report to the seventh session of the Meeting of the Parties, report that the Party concerned has fulfilled the recommendation in paragraph 2(c).<sup>1</sup>

24. In reply to a question from the Committee at its sixty-third meeting, the Party concerned provided information concerning consultations held with respect to its draft National Energy and Climate Plan (NECP) for the period 2021-2030. Specifically, the Party concerned reports that an initial consultation on the draft was provided between 29 November 2018 and 10 December 2018, or 12 days. The Party concerned reports that thereafter an extended period for public consultation took place between 13 February 2019 to 15 March

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<sup>1</sup> Committee's first progress review, 25 February 2019, para. 27.

2019, which is 30 days.<sup>2</sup> The Committee has received no information in the scope of decision VI/8h to suggest that these timeframes were inadequate.

25. Based on the above, the Committee reiterates that, unless provided with evidence to the contrary in the meantime, the Committee will report to the seventh session of the Meeting of the Parties that the Party concerned has implemented paragraph 2(c) of decision VI/8h.

**Draft strategy to implement paragraphs 2 (a) and (b), 4 and 7 of decision VI/8h**

26. In its second progress report, the Party concerned reports on the preparation by the Ministry of Environment of its draft strategy for the implementation of decision VI/8h.<sup>3</sup> It reports that the recommendations received from the Committee through its advice of 12 July 2018 have been thoroughly presented and addressed within the draft strategy.

27. The Party concerned reports that the draft strategy is structured into three chapters that:

(a) Present the current context in the Party concerned, in view of the ratification of the Convention, together with the existing legislative framework, which directly or indirectly implements the provisions of the Convention in the Party concerned, and address the findings and recommendations which led to decision VI/8h (Chapter I);

(b) Present the objectives and measures envisaged to remedy the deficiencies identified by the Committee, by following and using the advice received from the Committee (Chapter II); and

(c) Follow the reporting on the state of the implementation of the measures and efforts of the Party concerned to reach compliance with the Convention (Chapter III).<sup>4</sup>

28. With respect to chapter II, the draft strategy defines general objectives in three dimensions:

(a) *Normative*, which includes the determination of measures to modify the legislation in force by proposing amendments to the provisions regarding the administrative sector, where public participation is necessary in the context of issuance of permits/agreements, licenses or authorizations, or by the development of new normative acts;

(b) *Strategic*, which aims to improve understanding by the civil servants of central and local administrations of the importance of complying with the provisions of the Convention; and

(c) *Organizational*, which includes collecting and monitoring of requests received which refer to public access to information.<sup>5</sup>

29. In its second progress report, the Party concerned reports that, in line with the Committee's advice of 12 July 2018,<sup>6</sup> there has been broad participation of public authorities and the public concerned in the preparation of the draft strategy. On 29 March 2019, the draft strategy was submitted for an inter-institutional consultation to all the public authorities whose activities relate to the implementation of the Convention. The draft strategy was also sent to members of the Romanian Environmental Association 1998 and the Ecological University in Bucharest, in order to receive feedback from environmental NGOs and academia.<sup>7</sup> The Party concerned submits that in doing so it has respected the Committee's advice as regards the entities to whom it should send the draft strategy.<sup>8</sup>

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<sup>2</sup> Party's reply to the Committee's question, 20 March 2019, pp. 1-2, and annexes 1-4.

<sup>3</sup> Party's second progress report, 30 September 2019, pp. 1, 5-7, and annex 1.

<sup>4</sup> Party's second progress report, 30 September 2019, pp. 5-6.

<sup>5</sup> Party's second progress report, 30 September 2019, p. 5, and annex 1, pp. 11-18.

<sup>6</sup> Committee's advice to the Party concerned, 12 July 2018, p. 7.

<sup>7</sup> Party's second progress report, 30 September 2019, pp. 6-13.

<sup>8</sup> Party's second progress report, 30 September 2019, pp. 7-13.

30. The Party concerned reports that on 24 July 2019, the Ministry of Environment published the draft strategy on its website in order to receive comments, observations and proposals from the general public by 24 October 2019.<sup>9</sup> The Party concerned states that, once the public's comments were received, the Ministry of Environment would take all the comments into account and amend the draft strategy accordingly.<sup>10</sup> The Party concerned reports that additionally, on 22 August 2019, the Ministry of Environment individually notified the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 about the publication on the ministry's website of the draft strategy and of their opportunity to provide comments.<sup>11</sup>

31. The Committee welcomes the extensive work undertaken by the Party concerned in order to prepare its draft strategy to implement decision VI/8h. The Committee commends the detailed and comprehensive nature of the draft strategy. The Committee also welcomes the extensive consultation that the Party concerned has carried out thereon, which demonstrates its efforts to ensure that the Strategy has been prepared with the broad participation of the public authorities and the public concerned in line with paragraph 7(d) of decision VI/8h.

32. While the Committee welcomes the proposal in the draft strategy to amend several normative acts in order to fulfil the recommendations in decision VI/8h, since the Party concerned has not to date provided the Committee with the text of the proposed amendments, the Committee cannot provide a view as to whether those amendments would fully meet the requirements of decision VI/8h.

33. Finally, the Committee notes that, according to the timeline proposed in the draft strategy, the implementation of some of its elements (e.g. Objective I, amendment of the normative acts) is planned for 2020/2021.<sup>12</sup> Recalling that, in accordance with paragraph 8(a) of decision VI/8h, all measures to implement decision VI/8h must be taken and reported upon by 1 October 2020, the Committee expresses concern that the 2020/2021 timeframe may be too late for the Party concerned to be able to demonstrate that it has taken all the necessary measures to fulfil the requirements of decision VI/8h by the time of its final progress report on 1 October 2020.

34. In the light of the above, while welcoming the clear and focused efforts of the Party concerned to develop its strategy to implement decision VI/8h, the Committee considers that, pending the implementation of the strategy and the reporting thereon, the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraphs 2, 3, 4 and 7 of decision VI/8h.

### **Paragraph 3 of decision VI/8h**

#### *Adequate information to public authorities*

35. In its second progress report, the Party concerned reports that an informative brochure for the general public, as well as a guide addressed to public authorities, have been developed with the aim of raising awareness regarding the rights and obligations in matters related to access to environmental information under the Convention.<sup>13</sup>

36. The Party concerned states that the Guide to Public Authorities for Public Access to Environmental Information aims to ensure that public institutions and authorities are properly informed of the rights and obligations established by the Convention and focuses on providing guidance to civil servants involved in the process of addressing requests for

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<sup>9</sup> Party's second progress report, 30 September 2019, pp. 7, 14-15.

<sup>10</sup> Party's second progress report, 30 September 2019, p. 7.

<sup>11</sup> Party's second progress report, 30 September 2019, pp. 7, and 16.

<sup>12</sup> Party's second progress report, 30 September 2019, and annex 1, pp. 12-13.

<sup>13</sup> Party's second progress report, 30 September 2019, pp. 1-2, and annexes 2 and 3.

environmental information, in accordance with the provisions of article 4 of the Convention.<sup>14</sup> The Party concerned reports that both the Guide, as well as the brochure, are available on the website of the Ministry of Environment and at its headquarters, in hard copies.<sup>15</sup>

37. The Committee, while welcoming the brochure as a positive measure in general, points out that this does not address paragraph 3 of decision VI/8h which concerns providing adequate information to public authorities about their duties.

38. Having reviewed the Guide, the Committee considers that the twenty-two page publication is clear and well-structured and provides a useful overview of the obligations in article 4 of the Convention. The Committee welcomes the preparation of the Guide as a significant positive step towards meeting the requirements of paragraph 3 of decision VI/8h with respect to access to environmental information.

39. However, as explained at page 4 in the Committee's advice of 12 July 2018,<sup>16</sup> in order to fulfil paragraph 3 of decision VI/8h, the Party concerned will need to provide adequate information to all of its public officials involved in implementing the recommendations in decision VI/8h. Accordingly, the Committee encourages the Party concerned to not only make the Guide available on the website of the Ministry of Environment and its Headquarters, but to actively take steps to disseminate the Guide amongst all its public authorities that receive requests from the public for environmental information. This should include both the public authorities at the national level listed in the first paragraph of page 4 of the Guide, but to other authorities which may constitute public authorities within the meaning of article 2(2) of the Convention, including public authorities at the local and regional level.

### *Trainings*

#### For public authorities

40. The Party concerned in its draft strategy proposes a general curriculum for the proposed training that will refer to the duties and responsibilities of public authorities. The Party concerned submits that this training will be for both public authorities dealing with environmental information requests as well as those responsible for developing plans and programmes so that at the end of the training sessions participants will be knowledgeable regarding specific issues regarding access to environmental information, public participation, access to justice, and sanctions against noncompliant public authorities.<sup>17</sup>

41. The draft strategy indicates that there would be two training sessions in 2019, and two sessions during spring and autumn 2020.<sup>18</sup> The draft strategy states that the trainings are proposed to be conducted with the organization, support and involvement of members of the Romanian Environmental Association, academia, and that the Party concerned will request that representatives of interested non-governmental organizations serve as trainers.<sup>19</sup>

42. The Committee welcomes the proposed trainings for public authorities on the recommendations in paragraph 2(a), (b) and (c) of decision VI/8h, which appear to be a clear step in the right direction. With respect to training on matters relevant to paragraph 2(a) and (b) and 7(a), it would be important that the trainings also cover the measures that the Party concerned proposes to take to implement those paragraphs so that public authorities become familiarized with those measures.

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<sup>14</sup> Party's second progress report, 30 September 2019, pp. 1-2, and annex 3.

<sup>15</sup> Party's second progress report, 30 September 2019, p. 2, and annex 3, p. 22.

<sup>16</sup> Committee's advice to the Party concerned, 12 July 2018, p. 4.

<sup>17</sup> Party's second progress report, 30 September 2019, annex 1, pp. 14-16.

<sup>18</sup> Party's second progress report, 30 September 2019, annex 1, p. 14.

<sup>19</sup> Party's second progress report, 30 September 2019, annex 1, pp. 15-16.

#### For magistrates

43. The Party concerned in its draft strategy states that it plans to organize at least one two-day workshop for administrative magistrates on the recommendations in decision VI/8h.<sup>20</sup>

44. To this end, in its second progress report, the Party concerned reports that the Ministry of the Environment met with the National Institute of Magistracy on 31 July 2019 to inform it of decision VI/8h, the draft strategy to implement decision VI/8h, and the necessity of organizing training for magistrates in order ensure a common understanding and implementation of the Convention's provisions on access to justice.

45. The Party concerned also reports that the Ministry of Environment has sent a proposal for a curriculum on possible topics for the training sessions to the National Institute of Magistracy. The proposed curriculum (which is also contained in the draft strategy)<sup>21</sup> is intended to address the main issues in communications ACCC/C/2010/51 and ACCC/C/2012/69, including the definition of environmental information, the public interest in disclosure, refusals of requests for environmental information, the separation of confidential and non-confidential information, and administrative and judicial review procedures for requests for environmental information.<sup>22</sup>

46. The Committee welcomes the initial steps taken by the Party concerned to organize training for magistrates. With respect to training on matters relevant to paragraph 2(a) and (b) and 7(a), it would be important that the trainings also address the measures that the Party concerned proposes to take to implement those paragraphs in order that magistrates can be familiarized with those measures. The Committee invites the Party concerned to submit together with its final progress report on decision VI/8h, further information on the trainings for magistrates that have by that date been carried out.

#### Concluding remarks regarding trainings

47. The Committee welcomes the steps taken to date by the Party concerned to organize trainings for public authorities and magistrates on the recommendations in decision VI/8h. As the Committee explained in its advice to the Party concerned of 12 July 2018, in order to meet the requirement of paragraph 3 of decision VI/8h, it will be necessary for the Party concerned to demonstrate to the Committee that as many as possible of its public officials that handle matters within the scope of paragraph 2 of decision VI/8h have received the trainings. The Committee will need to examine the content of the trainings and a list of participants, including the name, position and organization of each participant. Both the content of the trainings and the list of participants will need to be provided to the Committee in English.<sup>23</sup>

48. In the light of the above, while welcoming the initial steps made by the Party concerned to organize trainings for public authorities and magistrates on the recommendations in decision VI/8h, since the trainings have not yet been carried out and reported upon, the Committee considers that the Party concerned has not yet met the requirements of paragraph 3 of decision VI/8h.

## **IV. Conclusions**

49. The Committee welcomes the second progress report by the Party concerned, which was submitted on time, and contains detailed and relevant information, including translations, for the Committee's review.

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<sup>20</sup> Party's second progress report, 30 September 2019, annex 1, p. 16.

<sup>21</sup> Party's second progress report, 30 September 2019, annex 1, pp. 16-17.

<sup>22</sup> Party's second progress report, 1 October 2019, pp. 2-5.

<sup>23</sup> Committee's advice to the Party concerned, 12 July 2018, p. 7.



50. In the absence of any evidence to the contrary in the meantime, the Committee will, in its report to the seventh session of the Meeting of the Parties, report that the Party concerned has fulfilled the recommendation in paragraph 2(c) of decision VI/8h.

51. While welcoming the initial steps made by the Party concerned to organize trainings for public authorities and magistrates on the recommendations in decision VI/8h, since the trainings have not to date been carried out and reported upon, the Committee considers that the Party concerned has not yet met the requirements of paragraph 3 of decision VI/8h.

52. While welcoming the clear and focused efforts of the Party concerned to develop its strategy to implement decision VI/8h, the Committee considers that, pending the implementation of the strategy and the reporting by the Party concerned thereon, the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraphs 2, 3, 4 and 7 of decision VI/8h.

53. The Committee invites the Party concerned to provide, as a matter of urgency, its strategy to implement the recommendations in paragraphs 2, 3, 4 and 7 of decision VI/8h once adopted, together with a timeline for its implementation and an English translation thereof;

54. The Committee invites the Party concerned together with its final progress report due on 1 October 2020 to provide:

(a) The text of any legislative, regulatory and administrative measures to implement the recommendations of decision VI/8h that are available either in draft or final form at the time of submitting its final progress report, together with English translations thereof, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form;

(b) Evidence of any practical arrangements it has by then taken, or proposes to take, in order to implement the recommendations in decision VI/8h, including to ensure that the activities in its strategy to implement decision VI/8h are carried out with the broad participation of public authorities and the public concerned.

55. The Committee reminds the Party concerned that all measures necessary to implement decision VI/8h must be completed by, and reported upon, by no later than 1 October 2020, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VI/8h.

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