



MINISTRY OF ENVIRONMENT

Strategy for the implementation of the Decision VI/8h regarding the compliance of Romania with the requirements of the Aarhus Convention



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Executive summary

Through this strategy, Romania sets up its national framework to implement new measures and take the necessary steps to ensure that national law is in line with the Aarhus Convention, following the recommendations of the Convention Compliance Committee. The strategy supports the practical implementation of the three pillars of the Aarhus Convention: access to environmental information, public participation in decision-making and access to justice in environmental matters by the public. In the field of the environment, better access to information and public participation in decision-making improve the quality and implementation of decisions, contribute to public awareness of environmental issues, give the public an opportunity to show their concerns and give public authorities the opportunity to take account of concerns.

The public should be aware of the procedures for participating in the decision-making process with implications for the environment, have free access to these procedures and know how to use them. Of particular importance is, in accordance with the Aarhus Convention, transparency in all branches of the executive, and the legislative authorities must implement the principles of this convention in their procedures.

Thus, with this strategy, we aim to improve the administrative sector by introducing practices aimed at facilitating ways of disseminating environmental information and understanding the importance of ensuring transparency in decision-making, thereby improving the relationship between public administration and citizen.

In this respect, the Ministry of Environment elaborated the Strategy for the implementation of the provisions of the Decision VI/8h regarding the compliance of Romania with the requirements of the Aarhus Convention in order to meet the requirements of the Aarhus Convention Compliance Committee regarding the access of the public to the environmental information.

The strategy is structured into three chapters:

- Chapter I: Presents the current context of Romania, in view of the ratification of the Aarhus Convention, together with the existing legislative framework in Romania.

Also, the Compliance Committee's recommendations reported in Decision VI/8h originate from two non-compliance cases of Romania, ACCC/C/2010/51¹ and ACCC/C/2012/69², together with the conclusions of the Committee.

- Chapter II: Presents the objectives and measures envisaged to remedy the irregularities identified by the Compliance Committee.
- Chapter III: Follows the reporting on the state of implementation of this strategy.

¹ <https://www.unece.org/env/pp/compliance/Compliancecommittee/51TableRO.html>

² <https://www.unece.org/env/pp/compliance/compliancecommittee/69tableromania.html>



Chapter I

1.1 Current context

Romania has ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), by Law no. 86/2000 and it entered into force on 11 July 2000.

Romania has pledged to implement the principles of the Convention by transposing the three pillars in the context of national legislation.

1. Guaranteeing the rights of natural or legal persons as defined by this Convention on **access to environmental information**, but also the active collection and dissemination of environmental information by public authorities;
2. **Public participation in decision-making** through specific activities that can have a significant effect on the environment as well as during the preparation of plans, programs and policies related to the environment. The Aarhus Convention also provides for the promotion of effective public participation in the preparation of generally applicable regulations, statutory and binding legal instruments;
3. **Access to justice in environmental matters** by the right to challenge a refusal or an inappropriate response as a result of requesting information. Also, contesting the legality of a plan, program, decision or activity, but also contesting omissions that violate national environmental law.

1.2 Legislative framework

Romania, as a member state of the European Union, transposes the European legislation into the national legislation, obligation which is stipulated in art. 288 of the Treaty on the Functioning of the European Union (TFEU). At national level, the provisions of the Aarhus Convention are implemented by the following normative acts:

Law no. 188 of 8 December 1999	On the status of civil servants
Law nr. 86 of 10 May 2000	For the ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998
Law no. 5444 of 12 October 2001	On free access to information of public interest
Law no. 52 of 21 January 2003 *** Republished	On decisional transparency in public administration
Law no. 554/2004 of 2 December 2004	Law of administrative contentious
Law no. 265 of 29 June 2006	For the approval of Government Emergency Ordinance no. 195/2005 on environmental protection
Law no. 292 of 3 December 2018	On the assessment of the impact of certain public and private projects on the environment
Government Emergency Ordinance no. 195/2005 of 22 December 2005	On environmental protection



Decision no. 123 of 7 February 2002	For the approval of the Methodological Norms for the application of Law no. 544/2001 on free access to information of public interest
Decision no. 1076/2004 of 8 July 2004	Establishing the procedure for carrying out the environmental assessment for plans and programs
Decision no. 878 of 28 July 2005	On public access to environmental information
Decision no. 564 of 26 April 2006	Concerning the framework for public participation in the elaboration of certain plans and programs related to the environment
Order no. 1325 of 22 September 2000	Involvement of the public, through its representatives, in the preparation of plans, programs, policies and environmental legislation
Order no. 1182 of 18 December 2002	For the approval of the Methodology for management and provision of environmental information, held by public authorities for the environmental protection
Order no. 1798/2007 of 19 November 2007	To approve the Procedure for the issuance of the Environmental Authorization

At EU level, the Aarhus Convention is implemented by Regulation (EC) 1367/2006 on the application to the Community institutions and bodies of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and by Regulation (EC) 1049/2009 on public access to European Parliament, Council and Commission documents.

1.3 Purpose of the strategy

Romania aims to bring to the attention of the public the proposed measures to be taken and to implement the recommendations of the Compliance Committee on ACCC/C/2010/51 and ACCC/C/2012/69. The Aarhus Convention Implementation Guide provides the necessary tools for understanding each person's rights to a healthy, adequate environment, and Romania, as part of the Convention, must ensure that the public is guaranteed access to information, participation in decision-making and access to justice environmental.

In order to meet these conditions, a number of objectives and measures have been set. Romania will take the initiative to monitor the progress of the targets it proposes to achieve, by mobilizing public authorities and the public. For this new vision to be understood, a partnership is needed between all public institutions identified as having environmental information, but also with all other stakeholders at national, regional and local level.

1.4 Summary of the findings of the Conformity Committee

As a result of the findings of the Compliance Committee, Romania finds itself in non-compliance with a number of provisions of the Aarhus Convention. Through this Strategy, Romania intends to implement the recommendations received from the Compliance Committee in order to fulfil its attributions established by the Convention.

Case ACCC/C/2010/51 refers mainly to the Energy Strategy 2007-2020, approved by GD no. 1069/2007 and consists in:

- non-compliance with Art. 4, par. (1), in conjunction with paragraph (2) and (7) of the Convention, by failing to respond to two requests for environmental information
- non-compliance with Art. 4, par. (1) and (4) of the Convention by not adequately justifying the refusal to disclose the requested environmental information
- non-compliance with Art. 7, corroborated with art. 6, par. (3) of the Convention, by not providing a reasonable time for the public to submit comments

In this case, the Compliance Committee noted the following:

- the public authorities did not respond to two requests for information submitted by the communicant, in regard to the decision-making process concerning the proposal for the construction of a new nuclear power plant
- regarding a request for information from the communicant, Romania did not provide the required information regarding the possible locations of the nuclear power plant and did not adequately justify the refusal to disclose the information to the public
- the public was not given sufficient time to get acquainted and to comment on the draft Energy Strategy 2007

In fact, in case ACCC/C/2010/51, Romania did not provide evidence to support its statements claiming that the public authorities have properly addressed all requests for information despite the Compliance Committee's request. Thus, the Compliance Committee considers that the communicant's allegation, that the first two requests for information have been ignored, is real. Since the public authorities did not respond at all to the first two requests for information submitted by the communicant, out of the three, regarding the decision-making procedure in relation to the proposal of building a new nuclear power plant, the Compliance Committee considers that Romania did not comply with the provisions of art. 4, par. (1), in conjunction with Art. 2 and art. 7 of the Convention.

The Compliance Committee concluded that in this case, Romania failed to show that any of the grounds for refusal provided by Art. 4 offers a sufficient basis for not disclosing the requested information on the possible locations of the nuclear plant. Although some of the information requested in first instance has been declassified and made available to the public, the rest of the requested information, in particular that requested by the communicant in its third application, was refused without providing sufficient reasons and without showing that the public interest was taken into account in the disclosure of information. Thus, in view of the communicant's third request for information, that the requested information on the possible locations of the nuclear power plant was not made available to the public and that the reasons



were not adequately justified in the refusal to disclose the information requested, based on the reasons given by art. 4, par. (4) of the Convention and considering that satisfying public interest by disclosing information held by a public authority should be a priority, Romania has failed to comply with the provisions of Art. 4, par. (1) and paragraph (4) of the Convention.

In addition, the Compliance Committee notes that although the draft Energy Strategy 2007 was indeed posted on the websites of the Ministry of Economy and the General Secretariat of the Government, the large public had formally only 11 days to get to know the draft and send comments. Despite the fact that some members of the public had the opportunity to comment also beyond the 11-day deadline, the Compliance Committee considers that Romania has failed to provide a reasonable timeframe for public participation in the case of such a document. Thus, by not having enough time for the public to get acquainted with the draft and to comment on it, Romania failed to respect art. 7, corroborated with art. 6, par. (3) of the Convention.

Case ACCC/C/2012/69 refers mainly to the authorization of the Rosia Montana project and consists of:

- non-compliance with Art. 4, par. (1) and (2) by failing to provide a physical or electronic copy of the requested environmental information, by refusing to provide access to information and by failing to validly issue a refusal to request environmental information
- non-compliance with Art. 4, par. (6) by not separating the confidential information from the non-confidential information
- non-compliance with Art. 4, par. (7) by failing to provide reasons for refusing the request for environmental information
- non-compliance with Art. 6, par. (3) and (7) by not providing to the public the opportunity to participate in the procedure for issuing the archaeological discharge certificate
- non-compliance with Art. 9, par. (4) by failing to ensure that review procedures are timely and provide an effective remedy

In this case, the Compliance Committee noted the following:

- the communicants were not provided with a copy of the archaeological study as requested and the access to information was refused on the grounds of the intellectual property right
- the mining-related information requested by the public has not been provided upon request, the refusal has not been in accordance with the grounds for refusal provided for in the Convention, and the information which was exempted from public disclosure has not been separated from the information that may be disclosed
- the confidential information was not separated from the non-confidential information
- no motivation was given for the refusal to disclose the mining-related information
- in the process of issuing the archaeological discharge certificate, the public was not given the opportunity to participate



- the review procedure regarding requests for information did not provide a timely and effective remedy

In fact, in case of ACCC/C/2012/69, Romania stated that, in order to comply with art. 4 of the Convention, it was enough that the public had the opportunity to examine the archaeological study free of charge at the headquarters of the Alba County Department of the Ministry of Culture. Furthermore, communicants have been informed that they have the possibility to make copies of the requested document at their own expense. Romania has said that such a conduct cannot be qualified as an unjustified refusal of access to justice.

According to the documentation submitted to the Compliance Committee, the motivation of the Alba County Department of the Ministry of Culture for failing to provide a copy of the required information was that it did not have the capacity to deal with such a request.

The Compliance Committee considers that, in accordance with Art. 4, paragraph (1) of the Convention, it is not sufficient to respond to a request for information from the public by simply providing access to examine the information free of charge. Article 4 (1) expressly requires that copies of the required documentation be provided to the communicant. Respecting the reference of Romania to art. 4, par. (1), lit. b), the Compliance Committee clarifies that art. 4, par. (1), lit. b) does not entitle the Party concerned to refuse to provide copies of the requested information, but refers to the form of the copies in which the requested information is provided. Providing free access to examine the requested documentation is not equivalent to providing a copy of the requested information. Thus, in this case, Romania cannot rely on art. 4, par. (1), lit. b) because the information was not provided to the communicants in a different form and was not made available to the public in any other form.

In his complaint, the communicant also claimed that he was denied access to the archaeological study on the grounds that the study would be the intellectual property of the archaeologist who carried out the study. The Ministry of Culture has successfully plead this legal exception in relation to access to information before the Bucharest Court of Appeal. The Compliance Committee considers it important to clarify that, with respect to intellectual property rights and their disclosure, the archaeological study should be treated similarly to EIA studies (for assessing the environmental impact).

In this regard, the Compliance Committee considers that Romania could not deny access to the archaeological study in this case, on the basis of Art. 4, par. (4), lit. e) of the Convention. Thus, the Committee claims that Romania has failed to comply with the provisions of Art. 4, par. (1) and paragraph (2) of the Convention on two occasions: by its failure to provide the communicants a physical or electronic copy and by denying access on the grounds of intellectual property rights.

Furthermore, the Compliance Committee considers that Romania should also provide access to information on mining licenses. Romania, on the other hand, considers that this type of information falls within the exceptions provided by art. 4, par. 4 (d), and their disclosure would affect the confidentiality of commercial and industrial information. The Compliance Committee claims that Romania, by failing to provide sufficient reasons for refusing to provide the requested information, significantly limits transparency and accountability as to how it implements the Convention and is therefore deemed not to act in the spirit of the Convention. The Committee also considers that if the National Agency for Mineral Resources had provided



the reasons for refusing the access to information, the discussion on the correct implementation of Article 4 4 (d), would have taken place in the context of the proceedings lodged before the Bucharest Court of Appeal.

The Committee therefore considers that, following the failure to provide the mining-related information or to draft those considerations in a valid manner, taking into account the provisions of Article 4, paragraph (4) and to disclose the rest of the information, Romania is in breach of Article 4, para. (1) and (2) of the Convention.

The Committee emphasizes that the Party concerned has a legal basis for the correct implementation of Article 4, paragraph (6), by art. 15, paragraph (1) of the Government Decision no. 878/2005. However, the Committee believes that there is sufficient evidence to conclude that, in reality, Article 4, paragraph (6) of the Convention is not properly implemented by the public authorities of Romania. Therefore, the Committee believes that, failing to ensure the availability of separation of confidential and non-confidential information, Romania is not in compliance with the provisions of Article 4, article (6) of the Convention.

When the mining license information was requested, the communicant did not receive a reply, this being considered as an unspoken reply. Therefore, the Committee believes that, failing to provide the reasons for the denying access referring to the mining-related information in 2010, the Party concerned is inconsistent with the provisions of Article 4, paragraph (7) of the Convention.

In addition, the procedure for the issuance of the archaeological discharge certificate should have provided sufficient time to inform the public and to enable the public to prepare and participate in the environmental decision-making [Article 6 (3)], to make comments, analyses or opinions [Article 6, paragraph 7]. The Committee believes that the issuing of the certificate is of great importance, being a fundamental step in the decision-making process. For the above reasons, the Committee considers that, by failing to take account of public participation during the procedure for issuing the archaeological discharge certificate, the Party concerned is inconsistent with the provisions of Article 6, paragraph (3) and (7) of the Convention.

Reference is made to the lengthy court proceedings, which often take about two years, for which the communicant provides eight examples. Therefore, with regard to the length of time of the eight court proceedings referring to access to environmental information and taking into account that the Party concerned did not provide examples of court proceedings involving access to environmental information that were completed in a considerably shorter time, the Committee believes that Romania has not ensured that the redress procedures for access to information referred to in Article 9, paragraph (1), provide a timely and effective remedy, as required by Article 9, paragraph (4) of the Convention.

1.5 Recommendations submitted by the Compliance Committee of the Aarhus Convention

- **Paragraph 2 (a) of decision VI/8h:** “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”



- To prepare and disseminate administrative orders, instructions or guidance applicable throughout the entire public administration
 - To collect and publish statistics concerning requests for environmental information, in combination with monitoring by central public authorities
 - To establish, strengthen and/or enforce administrative penalties for public officials
- **Paragraph 2 (b) of decision VI/8h:** “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”
 - To request the public authorities to expressly specify how the public interest was taken into account by disclosing the information
- **Paragraph 2 (c) of decision VI/8h:** “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”
 - To submit evidence which demonstrate that Romania took measures to assure the application in practice of the timeframes established in legislation
- **Paragraph 3 of decision VI/8h:** “Provide adequate information and training to public authorities about the above duties”
 - To develop appropriate information materials to address the recommendations in paragraph 2 of decision VI/8h
 - To carry out two separate training modules, one regarding the access to environmental information and one regarding drafting plans, programmes and strategies
- **Paragraph 7 (a) of decision VI/8h:** “Take 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, paragraph 3: the definition of “environmental information;
 - ii. Article 4, paragraph 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, paragraph 6: the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;
 - iv. Article 4, paragraph 7: the requirement to provide reasoned statements for refusing a request for access to information;
- **Paragraph 7 (b) of decision VI/8h:** “Review 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, paras. 3 and 7), and take the necessary legislative and regulatory measures to ensure that such situations are adequately remedied”



- To compile a list that contains each of the permits/approvals required to be granted prior to it being finally permitted for each of the activities set out in Annex I of the Convention. Also, it is necessary to also indicate which ones are required under national law to be the subject of public participation meeting the requirements of article 6 of the Convention, and in case not, what is the reason why this is happening.
- **Paragraph 7 (c) of decision VI/8h:** “Review its legal framework and undertake 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”
 - To ensure that the courts give priority to access to environmental information cases or a requirement that they deal with them within a specified time frame.
- **Paragraph 7 (d) of decision VI/8h:** “Provide 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”
 - To put in place adequate practical arrangements to ensure the broad participation of the relevant public authorities and the public concerned when fulfilling the recommendations in paragraph 7 (a)-(c) set out above.
- **Paragraph 8 (a) of decision VI/8h**
 - To submit a report to the Committee on a draft strategy to implement the recommendations in decision VI/8h.

Chapter II. The objectives of the Strategy for the implementation of the Decision VI/8h regarding the compliance of Romania with the requirements of the Aarhus Convention

To achieve the stated purpose, this strategy defines the following general objectives, in three dimensions: normative, strategic and organizational.

Objective I: Normative dimension: 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.

Objective II: Strategic dimension: understanding by the civil servants of central and local administration of the importance of complying with the provisions of the Aarhus Convention

Objective III: Organisational dimension: tool for the collecting and monitoring of requests received which refer to public access to information

Objective I: Normative dimension: determination of measures to modify the legislation in force

Specific objective: Proposal to amend normative acts

Measures:

- a) Proposal to amend GD. no. 878/2005 on public access to environmental information, to ensure transparency regarding environmental information, in relation to the requirements of para. 7, lit. a) of Decision VI/8h. Also, following the report of the Compliance Committee³ at the 6th Meeting of the Parties to the Aarhus Convention, regarding the implementation of Decision V/9j, it was found that Art. 15, par. (3) of GD. no. 878/2005 on public access to environmental information stipulates that *"The rejection of the request for environmental information shall contain the reasons for the refusal, as well as the information regarding the review procedure provided in art. 16-19 "*. The provision is incomplete, in relation to the provisions of Decision VI/8h, para. (2), lit. a) and lit. b). Thus, according to par. (2), lit. b) of Decision VI/8h, it will be necessary to complete the paragraph (3) of art. 15 of the Government Decision, so that the refusal will expressly provide the way in which the public authorities took into account the public interest.
- b) Amendment of Order no. 1182 of 18 December 2002, for the approval of the Methodology for management and provision of environmental information, held by public authorities for the environmental protection
- c) Public participation is necessary in the procedure for issuing archaeological discharge certificates issued by structures subordinated to the Ministry of Culture and in the procedure for issuing mining licenses, by the National Agency for Mineral Resources. In the non-compliance case ACCC/C/2012/69, regarding Roşia Montană, the Convention was breached by not allowing the public to participate in the procedure of issuing the archaeological discharge certificate for the mining project, which led in breaching of the provisions of art. 6, par. (3) and paragraph (7) of the Convention. Thus, in order to meet the recommendations made in paragraph (7), letter (b) of Decision VI/8h, a list of authorizations to be issued for the activities listed in Annex I of the Aarhus Convention is envisaged. For each of the identified authorizations, it will be indicated which of these, according to national legislation, requires public participation, according to art. 6 of the Convention, and if the public does not participate, what is the reason.
- d) It is necessary to provide a remedy in a timely manner by the national courts, in case of court actions referring to environmental issues. For the implementation of par. (7), letter (c), it has been pointed out that the national courts do not provide a timely remedy with regard to access to environmental information cases since, in context considered in these cases, they lasted for 2 years or more until resolution. Thus, it will seek to identify solutions for streamlining case files in national courts with regard to access to environmental information, with a focus on giving priority to cases involving the refusal of access to environmental information and setting a fixed term within to which the courts will deal with the cases.

³ ECE/MP.PP/2017/42



Deadline: 2020/2021

Objective II: Strategic dimension: understanding by the civil servants of central and local administration of the importance of complying with the provisions of the Aarhus Convention

Specific objective 1: Identification of the central and local public administration authorities whose activity interferes with that of the competent authorities for environmental protection and the submission of the strategy to them

Measures:

- Identifying the authorities whose activity interferes with those of environmental authorities;
- The draft strategy will be forwarded to ministries and public authorities responsible for addressing requests for access to environmental information; ministries and public authorities that are responsible for developing strategic environmental documents; ministries and other public authorities are involved in the implementation of para. (7), letter (b) of Decision VI / 8h.

The authorities identified are: Ministry of Environment, Ministry of Regional Development and Public Administration, Ministry of Waters and Forests, Romanian Water Administration, Ministry of Agriculture and Rural Development, Ministry of Economy, Ministry of Energy, Ministry of Transport, Minister for the Business Environment, Commerce and Entrepreneurship, the Ministry of Health, the Ministry of Culture and National Identity, the Ministry of Communications and Information Society, the Ministry of Tourism, the National Agency for Mineral Resources, the Nuclear Agency for Radioactive Waste, the National Commission for Nuclear Activities Control, the National Institute for Public Health, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Public Finance, the Ministry of Justice.

Draft submission deadline: 03.04.2019

Deadline for comments: 17.04.2019

Specific objective 2: Training activities for central and local public administration civil servants, instructional workshops for magistrates and development of a FAQ brochure for public authorities responding to environmental information requests

Measures:

- According to art. 75, letter (c) of G.E.O. 195/2005 on environmental protection, the Ministry of Environment coordinates the training in the field of environmental protection. Therefore, training sessions for central and local public administration authorities will be organized.



Period of training public authorities: 2 sessions / 2019, 2 sessions / 2020 during each 2 days each (spring and autumn)

- Instructive workshops for magistrates with experience in the field of administrative contentious, within the National Institute of Magistracy

Instructive workshop term: 1 session of 2 days / 2019/2020/2021

- Developing a FAQ brochure for public authorities that will facilitate access to the basic notions of the Aarhus Convention in addressing environmental information requests

Brochure Deadline: 01.05.2019

- Flyer for the public

Flyer deadline: 01.06.2019

We further continue to develop the training measures and the brochure planned to achieve the specific objective 2.

Training sessions for public authorities:

Referred to par. (3) of Decision VI/8h, the training of public authorities, both those dealing with environmental information requests and those responsible for developing plans and programs, including sectoral strategies and other similar programs, will be pursued. Training for public authorities developing plans, programs, strategies will focus on the requirements of art. 7 of the Aarhus Convention, highlighting the need to ensure reasonable deadlines for the public wishing to get involved by providing comments and proposals in the preparation of plans, programs and policies related to the environment or strategies. The public authorities will be trained to apply the provisions of GD no. 564/2006 regarding the framework of public participation in the elaboration of certain plans and programs related to the environment, with subsequent amendments and completions.

A general curriculum for the proposed training will refer to the duties and responsibilities of the civil servant so that at the end of the training sessions the following are understood:

- i) Identification of types of environmental information based on art. 2, paragraph (3) of the Convention, from documents/databases by public and local authorities.
- ii) Provide examples to central and local public administration about the separation of non-confidential and confidential information, in order to ensure the correct application of the provisions of the Convention.

The need to separate confidential information from non-confidential information must be highlighted in the implementation of the Compliance Committee's recommendations, in particular in the training of public authorities that have to deal with environmental information requests.

- iii) Reasoning of the refusal of a request for a request for environmental information, according to art. 4, paragraphs (3) and (4) of the Aarhus Convention

For the correct implementation of the Aarhus Convention, the reasons for refusal and the interpretation of these reasons must be made in a restrictive way, taking into account the



priority to satisfy the public interest by disclosing the information in accordance with art. 4, par. (4) of the Convention.

(iv) Who benefits from access to environmental information

v) The importance of providing timely information. The information must be made available as soon as possible or within maximum one month after the request has been submitted (or two months if the volume and/or complexity of the information justifies the extension of the one-month period; the communicant needs to be informed of any extension and of its reasons) in accordance with the provisions of: the Aarhus Convention and the national legislative framework; Law no. 86/2000 on the ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998; and GD. 878/2005 on public access to environmental information.

vi) Public participation in decision-making

In order to implement the provisions of the Aarhus Convention, the public must: be notified in advance of the participation, be properly informed and consulted effectively. Public authorities should take account of the outcome of public consultations in decision-making, and when the decision is taken by the public authority, the public must be promptly informed about it. Public access to the text of the decision, the reasons and considerations on which it is based must be ensured.

vii) Access to justice

Public authorities should ensure that the public can address the competent court if the environmental information request has been ignored, mistakenly denied (partially or totally) or received an inappropriate response. The court proceedings must not be extremely costly and must provide an effective remedy in a timely manner.

viii) Rates

Tariffs for the large amount of information provided in a physical copy may be charged. A spreadsheet will be posted on the websites of public and local government authorities with the fees for making copies of documents, which cover the cost of copying. Tariffs will be accessible without being an impediment to obtaining the requested information

ix) Sanctions

Penalties that can be applied, according to the provisions of the Law 188/1999 on the status of civil servants and Law 544/2001 on free access to information of public interest and GD no. 123/2002, implementing Law 544/2001.

To accomplish these training sessions, the following are proposed:

- The organization and support of the training sessions, with the involvement of the members of the Romanian Environmental Association 1998, as well as from the academic environment, respectively from the board of the Ecological University in Bucharest, in the person of univ. Prof. Dr. Mircea Duțu - President of the Ecological University of Bucharest.



- To request representatives of interested non-governmental organizations, as trainers on the Aarhus Convention thematic.

Instructive workshops for magistrates

The Aarhus Convention occurs in disputes of administrative litigations which have a pronounced technical character. At the level of the High Court of Cassation and Justice, 11 decisions were pronounced in the period 2005-2016 (years 2005-2018), in which the Convention was incidental. Also, in both litigations that led to the complaints against Romania (cases ACCC/C/2010/51 and ACCC/C/2012/69), administrative courts were involved (files no. 6584/118/2008 and 59715/3/2010).

The Aarhus Convention is related to the field of environmental law and deserves a deepening from magistrates which are specialized in the area of administrative contentious.

We plan to organize at least one workshop/year, for two-days, for magistrates with experience in administrative matters within the National Institute of Magistracy (NIM), following recommendations from the Aarhus Convention Compliance Committee, concerning Decision VI/8h on non-compliance of Romania.

The purpose of this workshop is to provide relevant information on the implementation of the Aarhus Convention provisions at national level, but also to identify the challenges encountered by national courts in litigations concerning access to environmental information.

To accomplish these workshops, NIM's contribution is as follows:

- to ensure the logistic resources: the hall and the equipment necessary for the training activity;
- to ensure the participation of magistrates in the workshop;
- to contribute to the appointment of an academic/trainers to support the courses.

Another possible modality to assure trainers for the mentioned workshops:

- The Ministry of Environment, in cooperation with the Ecological University of Bucharest, the Romanian Environmental Association 1998 and other interested NGOs, will provide trainers for the support of the instructive courses/workshops.

The curriculum proposed for these courses follows, in particular, the following topics:

1. Environmental information, in the general context of information of public interest and classified information, in accordance with Law 182/2002

- Definition of the environmental information;
- Assessing the fulfilling of the public interest in the provision of the environmental information against the confidentiality provided by legal provisions;
- Separation of confidential information from non-confidential information and the provision of the latter.

2. Addressing the requests to provide environmental information, which are refused by authorities

- Total refusal;



- Information provided in part;
- Refused on confidential terms;
- Preliminary administrative procedure;
- Actions in court as a result of refusal.

3. Access to justice under art. 9 of the Aarhus Convention

- Prioritized and swift settlement of environmental cases in national courts;
- Settlement procedure - Law no. 544/2004 of administrative litigation;
- Recent statistics on environmental cases settled in national courts.

Informative FAQ brochure

Related to paragraph 2, letter. a), subparagraph (i) of the Compliance Committee's recommendations, an informative brochure will be developed which will effectively contribute to the guidance and training of all civil servants involved in the process of addressing requests for environmental information. The brochure will have a clear form in order to be used efficiently throughout the public administration. The brochure will also contain instructions and steps to be followed by the civil servant responsible for addressing environmental information requests under Art. (4) of the Convention, especially in view of the recommendations on access to information provided in paragraph 2, letter a) and b), as well as paragraph 7 of Decision VI/8h. In order to implement this objective, increased attention will be paid to the legal provisions governing access to public information, access to environmental information and classified information, in particular as regards the classification of information as a secret service.

The brochure will be forwarded to all civil servants and agencies dealing with environmental information requests, including agencies from other environmental domains, as well as all public authorities, regardless of rank, and will be made available to the public, in electronic and physical form, at the headquarters of the authority in order for the public to be informed about their rights. To this end, a list of all authorities dealing with or relating to environmental information requests will be attached.

The guidelines will focus on how authorities identify environmental information in documents or databases, and how the exceptions provided in art. (4), paragraph 3 and 4 of the Convention are determined.

The brochure will include examples on the application of the provisions of art. (2), paragraph 3 and art. (4), paragraphs 3 and 4 of the Aarhus Convention.

Objective III: Organisational dimension: tool for the collecting and monitoring of requests received which refer to public access to information

- **Specific objective: Publishing of periodic statistics on public authorities' website about the environmental information requests which are addressed and their monitoring**



Measure: Related to paragraph 2, letter a), subparagraph (ii) of the Compliance Committee's recommendations, publication of documents/annual statistics on the website of the central and local government authorities (authorities referred to under Objective I), demonstrating the fulfilment of the provisions of paragraph 2, letter a) and b), and paragraph 7, letter a) of Decision VI/8h, respectively:

- how the requests for environmental information from the public were addressed, as soon as possible and at the latest within one month of submitting the request, and in case of refusal, the reason for refusal;
- how and if the grounds for denying access to environmental information were interpreted restrictively, taking into account the fulfilment of the public interest by disclosing the information, and by indicating in the refusal how the public interest was taken into account;
- if the requested environmental information was provided to the public, by separating confidential information from the non-confidential information, wherever possible, and making available the non-confidential part.

Related to paragraph 2, letter (a), subparagraph (iii) of the Compliance Committee's recommendations: Description of the existing legal framework for the enforcement of penalties as a result of non-fulfilling service tasks by civil servants

The status of civil servants, including the persons who have competence to address the requests for environmental information, is regulated by Law no. 188/1999, as subsequently amended and supplemented.

Chapter VIII of this law defines the legal framework for disciplinary sanctions and civil servants' liability if they are guilty of violating their duties.

Article 76, paragraph (1) stipulates that "Any person who considers that his/her right or legitimate interest is harmed may address the court, in accordance with the law, against the public authority or institution which issued the document or refused to resolve the request relating to a subjective right or a legitimate interest. "

In addition, article 77 also provides in paragraph (1) a legal definition of the disciplinary misconduct, which is "The violation with guilt by civil servants of the duties corresponding to their public position and the rules of professional and civic conduct stipulated by the law". Paragraph (2) of art. 77 includes an enumeration of the activities that draw disciplinary liability; thus, correlated with art. 4 of the Law no. 86/2000, which ratified the Aarhus Convention on "Access to Environmental Information", it can be inferred that the civil servant's failure to respond to a request for environmental information may fall into the following points:

- a) systematic delay in carrying out the works;
- b) repeated negligence in solving the works; and
- i) refusal to perform his / her duties;

Paragraph (3) of art. 77 provides the applicable disciplinary sanctions, namely:

- a) written reprimand;
- b) reduction of salary rights by 5 - 20% for a period of up to 3 months;



- c) suspension of the right to advance in salary grades or, as the case may be, the promotion of the public position for a period of 1 to 3 years;
- d) relegation of the public position for up to one year.
- e) dismissal from the public position.

Also, Law no. 544/2001, on free access to public information, with the subsequent supplements and amendments, by art. 6, par. (1) and (2) states that "any person has the right to request and obtain from public authorities and institutions, under the present law, information of public interest", and "public authorities and institutions are obliged to provide to people, at their request, the information of public interest requested in writing or verbal. "

Article 7, paragraph (1) stipulates the deadlines applicable to this framework, therefore "public authorities and institutions have the obligation to reply in writing to the request for public interest information within 10 days or, as the case may be, within 30 days from the registration of the request, depending on the difficulty, the complexity, the volume of the documentary work and the urgency of the request. If the time required to identify and disseminate the requested information exceeds 10 days, the response shall be communicated to the applicant within 30 days, provided that the applicant notifies the applicant in writing within 10 days. "

Art. 21 of Law no. 544/2001 also provides the system of penalties applicable in case of non-compliance with the abovementioned obligations. Thus, by par. (1) and (2) "the explicit or tacit refusal of the designated employee of a public authority or institution to apply the provisions of this law represents an offense and entails disciplinary liability of the culprit" and "against the refusal provided in paragraph (1), a complaint may be lodged to the head of the respective authority or public institution within 30 days of the acquaintance of the harmed party."

Article 22 of the Law no. 544/2001 provides access to justice for the public if they are considered to be harmed as a result of the non-compliance of the public authorities. Thus, par. (1) mentions that "if a person considers that his/her rights, provided for in this law, are harmed, he/she may file a complaint to the administrative court of the tribunal in whose territorial jurisdiction he is domiciled or in whose territorial jurisdiction the headquarters of the authority or public institution is located. The complaint shall be made within 30 days from the date of expiry of the term stipulated in art. 7 ". Also, by paragraph (2), "the court may oblige the public authority or institution to provide the requested public information and to pay moral and/or patrimonial damages".

Methodological Norms for the Application of Law no. 544/2001 are established by the Government Decision no. 123/2002, in which there is a special chapter on sanctions. Thus, in Chapter 6, art. 31 "the disciplinary liability of the designated official for the application of the provisions of Law no. 544/2001 shall be established according to the Statute of civil servants, special statutes or, as the case may be, the Labour Code".

Article 32 of GD no. 123/2002 states that "if a person considers that the right to access information of public interest has been violated, he may address an administrative complaint to the head of the public authority or institution to which the information was requested".

Furthermore, article 33 of GD no. 123/2002 states that "the person who considers that his/hers rights are harmed, may submit the administrative complaint provided in art. 32, within 30 days



from the acknowledgment of the explicit or tacit refusal of the employees within the public authority or institution, for the application of Law no. 544/2001 and the present methodological norms ".

Also, according to art. 36, par. (1) of GD no. 123/2002, it is stipulated that "the applicant who, after receiving the reply to the administrative complaint, still considers that his/her rights, provided by the law, are harmed, may file a complaint to the tribunal's administrative division within 30 days from the expiration of the terms provided in art. 7 of Law no. 544/2001 ".

The aforementioned legal texts must be corroborated with GD no. 878/2005 on public access to environmental information, which is the specific legislation applicable in the field of public access to environmental information.

Government Decision No. 878/2005 transposes Directive 2003/4/EC on public access to environmental information and ensures the implementation of Pillar I of the Aarhus Convention. This normative document describes the obligations of civil servants responsible for solving environmental information requests from the public.

Thus, according to art. 3, par. (3), "public authorities are required to make available to any applicant, at his request, environmental information held by or for them without justifying the purpose for which such information was requested".

The public requesting for environmental information has two mechanisms to defend their rights under this law:

- by art. 16, par. (1) stating that "any applicant who considers that his request for the provision of environmental information has been rejected unreasonably, partially or wholly has been ignored or resolved with an inappropriate response from a public authority or that has not respected the provisions of art. 3-8, art. 11 - 15 and art. 29 to 31, may address the head of the public authority with a preliminary complaint, requesting reconsideration of the acts or omissions "; also, according to paragraph (3), "the preliminary administrative procedure provided for in paragraph (1) is exempt from tax ".
- by art. 17, paragraph (1), which provides access to justice, and therefore "the applicant who, following the application of the provisions of art. 16 par. (1), is deemed to have his/her right harmed under the present Decision or has not received an answer to his/her prior complaint within the statutory time limit, may file a complaint with to the competent administrative court where the acts or omissions of the public authority concerned are reviewed."

In this respect, we consider that in the Romanian legal system there is a sanctioning mechanism for civil servants charged with solving requests for information of public interest, including environmental information, by disciplinary sanctions for not performing the duties during service, provided by Emergency Governmental Ordinance no.57/2019, art.492 and 493.

Chapter III. Reporting

Romania must report to the Compliance Committee on the progress made in implementing the measures set out in this Strategy throughout three reports scheduled for 1 October 2018, 1 October 2019 and the final report on 1 October 2020.



In this respect, on **1 October 2018**, the first progress report was submitted to the Compliance Committee of the Aarhus Convention. The report contained three main points, namely:

- Point 1 - on the training of public authorities holding environmental information, in line with paragraph 3 of Decision VI/8h (presentation of the content of the round table held on 10 May 2018, together with the detailed list of participants);
- Point 2 - regarding a presentation of strategic documents related to the energy sector, according to art. 7 of the Aarhus Convention, in relation to paragraph 2, letter c) of Decision VI / 8h, which contains: a) The Energy Strategy for 2018-2030 with the 2050 perspective; b) Operational programs deployed in 2014-2020; c) other strategic documents related to the energy sector;
- Point 3 - the progress report, presenting the draft elements of the strategy implementing the recommendations of paragraph 8, letter a) of Decision VI/8h

Along with the progress report, which was submitted in electronic form, 11 attachments were also attached to support the veracity of the affirmations in the report, through evidence (scans and print screens). The Progress Report is available online on the UNECE website⁴.

The present strategy represents a document published for comments and proposals, which will be finalized and consequently monitored by the public, public authorities and the Aarhus Convention Compliance Committee in order to assess the compliance with the provisions of Decision VI/8h.

⁴ <https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/implementation-of-decisions-of-the-meeting-of-the-parties-on-compliance-by-individual-parties/sixth-meeting-of-the-parties-2017/romania-decision-vi8h.html>