

Open session with the Aarhus Convention Compliance Committee on 12 March 2018 concerning file ACCC/C/M/2017/3

On 12 March 2018, the Commission, representing the EU, took part via audio-conference in an "open session" with the Aarhus Convention Compliance Committee ("the Committee") regarding file ACCC/C/M/2017/3. The Committee asked the Commission to submit *ex post* a written summary of its observations during the open session, notably on follow-up measures to the earlier Case ACCC/C/2008/32.

1) Follow-up to Case ACCC/C/2008/32 (access to justice in environmental matters at EU level)

The EU was asked to detail any progress so far.

On a preliminary basis regarding this item, the Commission wishes to recall that the Meeting of the Parties (MoP) has not yet endorsed the findings of the Committee in Case ACCC/C/2008/32. The information below is thus only provided on the basis of the EU's unilateral commitment, undertaken at the MoP in September 2017 in Budva, to "*continue exploring ways and means to comply with the Convention in a way that is compatible with the fundamental principles of the Union legal order and with its system of judicial review*".

The Commission stated that it is well aware of the importance of the issue and the need to organise the follow up. Given the complexity and the various dimensions of the case, the decision-making process is still ongoing. The aim is to have a clear roadmap for the work to be undertaken under this Commission.¹

The Commission is currently focused on gathering evidence, consulting Member States and initiating a wider public consultation to allow input from NGOs and other interested stakeholders. Any option to address the issues identified will have to be based on the guidelines that are established for Better Regulation.² Thus, having a solid evidence base is crucial. As part of this process, all options will be looked at especially in relation to their administrative and legal implications which are far-reaching. Moreover, the scope of the reflections should cover not only the situation at EU level but also that existing at national level.

In these efforts, the Commission works closely together with the Member States. It has called for a meeting of the Expert Group on Aarhus Implementation on 16 April 2018. The meeting will mainly look at the process for collecting evidence and preparing a planning for the further work. This specialist expert group will work under the broader umbrella of the "Environmental Compliance and Governance Forum", which comprises Member States' authorities and other public entities like networks of environmental practitioners, experts and observers.³

¹ The Commission Roadmap on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters (2018)2432060 was published on 8.5.2018 (https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2432060_en)

² Staff Working Document (2017)350 of 4.7.2017.

³ Commission Decision of 18.1. 2018 setting up a group of experts on environmental compliance and governance, C(2018)10 final.

2) Follow-up to Case ACCC/C/2010/54 - Decision V/9g (National Renewable Energy Action Plans)

The EU was asked to equally present any progress so far.

The Commission highlighted the importance of the adoption by the EU of the Regulation on the Governance of the Energy Union as the key tool addressing the recommendations in Decision V/9g in the earlier case ACCC/C/2010/54.

The Commission's view is that Article 10⁴ of the Commission's proposal for the Regulation on the Governance of the Energy Union, including its explicit reference to the Strategic Environmental Directive 2001/42, and the explicit reference also to the Aarhus Convention in recital 20, will ensure that the public is involved in the adoption by Member States of National Energy and Climate Plans (NECPs). These plans will include strategies as regards renewables and will replace the existing National Renewable Energy Action Plans (NREAPs).

Furthermore, Annex I of the referred proposal which details the contents of the NECPs refers specifically, in Section A.1.3⁵, to consultations "with stakeholders, including social partners, and engaging with the civil society" and their outcome. This creates the right framework for public involvement in the planning but also for monitoring by the Commission of such involvement.

It is worth mentioning for the information and background of the Committee and the communicant that the text of Article 10 may still undergo changes and it is not excluded that some further language taken from the Aarhus Convention may be agreed between legislators. This is, in any case, still fully open for discussion in the context of the negotiation process (trilogues).

In terms of timing, while it is difficult to predict adoption dates by co-legislators, there is a clear view that Governance is a key pillar to the Energy Union and the current Presidency is working towards agreement under its mandate, namely by June 2018.

⁴ Proposal for a Regulation of the European Parliament and the Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013 (COM/2016/0759 final/2 - 2016/0375 (COD))
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:759:REV1>

⁵ See above.