

Statement of the communicant of communication ACCC/C/2008/32 (EU) during the open session at the Committee's 66th meeting on the second progress review relating to MOP request ACCC/M/2017/3 (EU)

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Distinguished Compliance Committee members, dear members of the secretariat,

1. We would first like to thank you for this opportunity to discuss the progress of the Party concerned in implementing the recommendations contained in this MOP request.
2. Second, we would like to express our agreement with the Committee's findings and conclusions expressed in its second progress review, both in relation to communication ACCC/C/2008/32 and in relation to ACCC/C/2010/54.

**ACCC/C/2008/32 (EU)**

3. Starting first with the issues related to the Committee's findings on ACCC/C/2008/32, we welcome the Roadmap published by the European Commission shortly before this meeting. As we have emphasized throughout this procedure, we believe that the amendment of the Aarhus Regulation (Regulation 1367/2006) is the only measure the European Commission can adopt to remedy the Party's non-compliance. We appreciate that the Roadmap clearly acknowledges this point and that it sets a clear timeline and procedure to achieve this amendment.
4. At the same time, the devil will now be in the details. It will be decisive that the European Commission uses the opportunity of this legislative amendment to address all the aspects of the Aarhus Regulation that currently prevent its compliance with the Convention.
5. We appreciate the statement in the Roadmap that the concerned legislative amendment would ensure that the scope of the Aarhus Regulation is extended to acts of general scope and that all acts that "contravene" environmental law are to be covered. It appears to us that these points are in line with the Committee's findings.
6. However, we also noticed that the Roadmap fails to mention a number of other important points. For one, the Roadmap does not mention the fact that the Aarhus Regulation is currently limited to acts that produce "external and legally binding effects", which was found to be in non-compliance with the Convention by the Committee (see para. 104 of Part II of the findings). Secondly, the Roadmap does not make reference to the exclusion of measures or omissions taken by the EU institutions in the capacity of an "administrative review body" (Art. 2(2) Aarhus Regulation). In particular, no reference is made to Commission acts related to state aid, which are at the heart of the currently pending communication ACCC/C/2015/128 (EU). We have to prevent a situation where the Aarhus Regulation needs to be amended again in a short period from now because the issue raised in the context of that communication are not addressed in the current amendment procedure. Thirdly, the Roadmap makes no mention of ensuring that the request for internal review procedure does in fact produce an adequate

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and effective remedy by allowing for a review of the underlying decision. We highlight that this aspect of the Committee's findings already clarify that such a review must be possible, even if there is no finding of non-compliance due to the lack of information that was available at the time (see paras 118-19 of Part II of the findings). These and other points must be included in the current legislative amendment of the Aarhus Regulation to make sure that the Regulation is fit for purpose and fulfils the Party's obligations under the Convention.

7. There is now an ongoing public consultation procedure in which we, and other NGOs and members of civil society, will participate and express our views. Until the legislative proposal is published, there is still time to make sure that it delivers. We hope that the European Commission will constructively engage with us and the wider public as part of this process to ensure that the amendment will indeed cover all the necessary points.

#### ACCC/C/2010/54

8. In regard to case ACCC/C/2010/54, we first reiterate that we agree with all the conclusions of the Compliance Committee in its second progress review in relation to this communication.
9. We refer in this regard to the Study submitted by the observer Justice & Environment last Friday (6 March 2020), which confirms the failures in ensuring public participation in preparing the National Energy and Climate Plans (NECPs) also in practice. We consider that this report demonstrates very well how the failures observed by the Committee in relation to the Governance Regulation trickle down and manifest in concrete failures by the Member States authorities to organize effective public participation. The Study confirms that public participation was generally not organized at an early stage, that not all relevant information was provided to the public and that the results of the public participation were not adequately taken into account (see page 7 of the Study), which directly confirms the Committee's conclusions on these very points in its second progress review (see paras 48, 51 and 54).
10. We find that the second progress review is very clear on the fact that additional, concrete actions are required (see especially paras 59 and 67). The progress review further leaves no doubt that the responsibility for these actions lies with the institutions of the Party concerned and cannot be passed on to the Member States.
11. We therefore call on the Party concerned to take concrete actions, both by issuing clear instructions for future upcoming public participation phases on the NECPs and by taking effective enforcement measures against those Member States where public participation has been inadequate.

Thank you very much.

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