

From: Pat Swords
To: aarhus compliance <aarhus.compliance@unece.org>, "fiona.marshall" <fiona.marshall@unece.org>
Date: 06/26/2018 11:08 PM
Subject: Statement to the Compliance Committee 61st Meeting in relation to ACCC/M/2017/3 European Union

Dear Fiona

I have articulated both at the Meeting of the Parties in Budva and also at Compliance Committee meetings the constant obfuscation and obstruction that the EU delegates are engaged in with respect to the compliance mechanisms on Decision V/9g and now ACCC/M/2017/3. I would therefore like to point out two issues in this regard following on from the last Compliance Committee meeting:

Firstly the EU delegation stated that they would write to the Committee informing them of recent developments in relation to the Aarhus Regulation and compliance with Article 9(3) of the Convention. There is no evidence that this actually happened, as was expressly agreed at that meeting. However, I would in this absence of information like to point out that the EU Commission did publish a roadmap on this issue, for which the link is provided below (Inception Impact Assessment: EU implementation of the Aarhus Convention in the area of access to justice in environmental matters):

- <http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2432060>

With respect to the spirit of the Convention and the relevant compliance proceedings, I cannot help but point out the following from this document:

- *The findings do not recognise that the EU system of remedies is already complete, consisting of the EU courts and the national courts, which are linked as ordinary courts of EU law to the Court of Justice of the EU within the system of preliminary references under Article 267 of the Treaty on the Functioning of the European Union (TFEU).*

I would contrast this with the actual "Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union":

- <https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-57/ece.mp.pp.c.1.2017.7.e.pdf>
- *Scope of the Committee's considerations*
- *41. Part II must be read alongside part I; the two parts form the whole of the Committee's findings on communication ACCC/C/2008/32. While part I must be read in its entirety, the following findings from part I are particularly important for the purposes of understanding this part:*
- *While the system of judicial review in the national courts of the EU member States, including the possibility to request a preliminary ruling, is a significant element for ensuring consistent application and proper implementation of EU law in its member*

States, it cannot be a basis for generally denying members of the public access to the EU Courts to challenge decisions, acts and omissions by EU institutions and bodies.

Yet again as I have pointed out on Decision V/9g, the position of the EU is instead of taking measures to ensure compliance, is instead to go around denying that there is a matter requiring compliance.

The second issue I wish to raise, is again the failure of the EU Commission to respond to the Committee's written questions in their Second Progress Review of Decision V/9g of 24/2/2017. According to my questioning at the last Compliance Committee meeting, I was told by the EU Delegation that these written questions had been answered in their correspondence of 16/5/2017 and that there was therefore no need to reply with further information. This is a point I find highly bizarre, as it can only mean that the EU delegation do not chose to read the Compliance Committee documentation or have a prerogative to ignore it as irrelevant, as the Compliance Committee's Report to the Meeting of the Parties on compliance by the European Union with its obligations under the Convention (ECE/MP.PP/2017/39) of 7/6/2017 was very clear:

- https://www.unece.org/fileadmin/DAM/env/pp/mop6/English/ECE_MP.PP_2017_39_E.pdf
- *41. The Committee requested the Party concerned to provide the above information by 1 April 2017.*
- *42. The Committee expresses its concern that the Party concerned has entirely failed to respond to the Committee's questions as set out in paragraph 40 above. In its further information provided on 16 May 2017, the Party concerned provided examples of four member States that had provided for public participation in the preparation of certain measures in the field of renewable energy, apparently as examples of good practice by its member States.²³ However, the Party concerned did not reply at all to the Committee's actual questions (see para. 40 above). As noted in paragraph 39 above, the Party concerned itself has stated that ten member States had entirely failed to report on public participation in the preparation of their NREAPs and a further six member States had provided insufficient information. In its second progress review, the Committee thus asked the Party concerned to explain the specific measures it proposes to take with respect to each of these sixteen member States. To date, the Party concerned has provided no information on this point. The Committee therefore finds that the Party concerned has not fulfilled the final sentence of paragraph 3 of decision V/9g either*

The Compliance Committee has a limited amount of time, as do I. Furthermore, not only is the Party not in compliance with its legal obligations, but it has blatantly abused and continues to abuse the rights of its citizens. I really do find this constant obfuscation and time wasting by the Party's delegation to not only to be tiresome, but also insulting. However, given that there is every indication that the Party's delegation expects to keep up this charade, I can only urged that they be issued with a caution at the next Meeting of the Parties.

Regards

Pat