

**To:** Secretariat Aarhus Convention Compliance Committee  
**From:** Pat Swords  
**Date:** 13/12/2019  
**Re:** ACCC/M/2017/3 and comments on EU's Second Progress Report

Dear Fiona

With regard to your e-mail of October 29<sup>th</sup> and offer to send any comments on the Party concerned's second progress report, I was travelling extensively with work in November and early December and didn't get time to sit down and prepare anything sooner. However, I hope that these following points can be considered by the ACCC.

### 1.1 General

In summary is there the slightest bit of evidence that the EU is making any form of effort to actually comply with its legal obligations under the Conventions? I can't see any such evidence and what is actually happening is not just unprofessional, but also deeply cynical and a systematic abuse of citizens' rights. In this regard the EU does not act alone, as it clearly has a willing accomplice in its Member States, which are more than happy to bypass complete the obligations inherent to the Aarhus Convention and the rights, which their citizens are supposed to enjoy.

The rule of law simply does not apply, not least as it cannot be enforced, as there is no effective access to justice, a situation which did not develop by accident and for which it is clear that this 'status quo' will be maintained going forward to the next Meeting of the Parties. Decision I/7 'Review of Compliance' states:<sup>1</sup>

- *37. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:*
  - [...].
  - (e) Issue declarations of non-compliance;
  - (f) Issue cautions;
  - (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;

As I will point out in the following section, ACCC/C/2010/54 concerning compliance by the European Union was prepared by the Compliance Committee and adopted on 29 June 2012.<sup>2</sup> Not only was there an outright refusal by the EU to co-operate with the ACCC in relation to the non-compliances on the National Renewable Energy Action Plans (NREAPs), but also we have the EU and its Member States being serial offenders, in that they have gone and repeated the same non-compliances and abuses of rights to public participation, in the manner in which the new National energy and climate plans (NECPs) have been adopted, which are replacing the NREAPs.

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<sup>1</sup> <https://www.unece.org/fileadmin/DAM/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf>

<sup>2</sup> [https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Findings/ece\\_mp.pp\\_c.1\\_2012\\_12\\_eng.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Findings/ece_mp.pp_c.1_2012_12_eng.pdf)

There is also huge cynicism in the manner in which in relation to the limited compliance proceedings which were available to citizens, a complaint to the EU Ombudsman, the position of the EU Commission was made very clear:<sup>3</sup>

- *“... the Commission had considered in some detail Ireland’s National Renewable Energy Action Plan, prepared under the Renewable Energy Directive. Whilst no formal SEA had been carried out for this plan, the Commission concluded that there was no reason to believe that insufficient public participation had taken place prior to its adoption”.*

So clearly Decision V/9g is irrelevant and why not, when; (i) the EU can come into UNECE Compliance proceedings year after year since 2012 and just obfuscate, and; (ii) the citizen can do nothing about it, as the EU and its Member States can vote in bloc to prevent further decisions being taken against them in relation to the complete absence of access to justice. As far as I am therefore concerned with relation to Decision I/7, point (g) above should apply going forward, as we already have been through point (e), and year after year there has been absolutely no effort to adopt any form of measures, which could remotely be attributed to the concept of ‘compliance’.

## 1.2 Recap on NREAPs

The NREAPs were adopted in 2010 by the EU and its Member States in a process, which took barely a year. In subsequent compliance proceedings related to C/54 and Decision V/9g it took not just months, but years for the EU to write formally to these same Member States about public participation, allegedly evaluate the replies, and then do exactly nothing. The Committee’s “Second progress review of the implementation of decision V/9g” of February 2017<sup>4</sup> included a series of questions to be answered by 1 April 2017, which included the following:

- *Explain, for each member State whose information on their implementation of article 7 was either insufficient or revealed a possible failure to carry out public participation that fully met the requirements of article 7, the specific measures it proposes to take with respect to that member State.*

No reply was received by 1 April 2017 and when a reply was eventually forthcoming a month later it addressed none of the issues, which had been asked above. As the Compliance Committee’s report to the subsequent Meeting of the Parties documented that June:

- *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. 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*

<sup>3</sup> "Decision in case 1689/2016/MDC on the Commission's failure to reply in a satisfactory manner to an infringement complaint against Ireland":

<https://www.ombudsman.europa.eu/en/decision/en/74989>

<sup>4</sup>[https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9g\\_EU/Second\\_progress\\_review\\_on\\_V.9g\\_EU\\_final.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9g_EU/Second_progress_review_on_V.9g_EU_final.pdf)

*report on public participation in the preparation of their NREAPs and a further six member States had provided insufficient information.*

When I subsequently raised the failure to reply to these questions in teleconference proceedings held on ACCC/M/2017/3, all that results is more obfuscation from the EU as to how they responded to all these questions in their written response of May 2017.

I raise these issues here, to highlight not just the chronic unprofessionalism which is occurring in international compliance proceedings, but that the EU has an established *modus operandi*, in that it will completely ignore any direct questions or advice provided to it and continue at will with ever increasing blatant non-compliances with its legal obligations.

### **1.3 The Same Blatant Non-Compliances with the Adoption of the NECPs**

Article 7 of the Convention is a fundamental provision, as without public participation at this tier, the public participation at the latter tier, namely that of project approval stage becomes a farce, as options are no longer open. An example of this is the detail on Communications C/112 Ireland and C/133 Netherlands. Is Regulation (EU) 2018/199 on the Governance of the Energy Union and Climate Action<sup>5</sup> a plan or programme related to the environment? Not only is the word plan mentioned some 275 times within that regulation but it establishes the mechanism at Member State level, the NECPs, to deliver the following:

- *“...at least 40% cut in economy wide greenhouse gas (“GHG”) emissions, at least 27% improvement in energy efficiency with a view to a level of 30%, at least 27% for the share of renewable energy consumed in the Union, and at least 15% for electricity interconnection”.*

So how can ‘options be open’, in particular the ‘zero option’ at later tiers? As far back as 2008 in their National Implementation Report to UNECE the EU made it clear that:<sup>6</sup>

- *90. Public participation concerning plans and programmes relating to the environment prepared and adopted by Community institutions and bodies is ensured through the application of Article 9 of Regulation No 1367/2006 (already mentioned above) in conjunction with the relevant definitions set out in Article 2 of that Regulation. In essence, the Regulation requires Community institutions and bodies to provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open, in particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.*

I have already raised in correspondence on ACCC/M/2017/3 the measures which actually happened.<sup>7</sup> First of all with respect to the over 500 million inhabitants in the

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<sup>5</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.328.01.0001.01.ENG&toc=OJ:L:2018:328:FULL](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.328.01.0001.01.ENG&toc=OJ:L:2018:328:FULL)

<sup>6</sup> [https://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece\\_mp\\_pp\\_ir\\_2008\\_EC\\_e.pdf](https://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_ir_2008_EC_e.pdf)

EU, it is worthwhile quoting below the introduction to the proposed Regulation, which states with respect to 'Stakeholder consultations':

- *The online survey received a total of 103 submissions with additional submissions by email, out of which 15 from Member States*

The requirement for effective public notice in public participation procedures requires an output to be achieved, rather than just going through procedures where online surveys are buried into the cavernous website of [www.europa.eu](http://www.europa.eu). Secondly as regards the Impact Statement accompanying the proposed Regulation for the Energy Union, the primary document being the Commission Staff Working Document Impact Assessment SWD(2016) 394 final.<sup>8</sup> Note: This document is only available in English, which is a language not available to the majority of the EU's 500 million citizens. Nowhere does this document discuss the 'zero option' or any alternatives to these objectives. The only alternatives discussed are different administrative approaches to achieving the same objectives.

The fundamentals of public participation simply did not happen, as; (i) there was no effective notice and; (ii) the necessary information was not provided to the public. In particular the impacts of this Regulation on the factors affecting the environment and the necessary mitigation measures were not addressed. Did the fundamentals of the Aarhus Convention occur? Namely "*the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information*". The answer is no.

If we consider the subsequent implementation of this Regulation at Member State level, by taking as an example the implementation by the Republic of Ireland. In its first National Implementation Report to UNECE on the Aarhus Convention the Irish administration made it clear that compliance with Article 7 of the Convention is achieved either by Regulatory Impact Analysis or SEA procedures.<sup>9</sup> This Irish Regulatory Impact Analysis procedure includes a detailed analysis addressing not just costs and benefits, but also environmental impacts, and requires associated public participation. The procedure applies among others to:<sup>10</sup>

- *Proposals for EU Directives and significant EU Regulations when they are published by the European Commission*

As I have documented already on the same correspondence related to ACCC/M/2017/3, this Regulatory Impact Analysis simply did not get done. Indeed, the Oireachtas (Parliament) oversight committee simply came to the conclusion in February 2017 that:

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<sup>7</sup>[https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests\\_from\\_the\\_MOP/ACCC-M-2017-3\\_European\\_Union/Correspondence\\_with\\_the\\_communicants\\_observers/frCommC54\\_22\\_10.2018.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests_from_the_MOP/ACCC-M-2017-3_European_Union/Correspondence_with_the_communicants_observers/frCommC54_22_10.2018.pdf)

<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1540235848078&uri=CELEX:52016SC0394>

<sup>9</sup>[http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf\\_Countries=IE&wf\\_Q=Q19&wf\\_Q=Q20&wf\\_Q=Q21&Quer\\_ID=&LngIDg=EN&YearIDg=2017](http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf_Countries=IE&wf_Q=Q19&wf_Q=Q20&wf_Q=Q21&Quer_ID=&LngIDg=EN&YearIDg=2017)

<sup>10</sup> <https://publicspendingcode.per.gov.ie/conducting-a-regulatory-impact-assessment/>

- *It was agreed that this proposal does not warrant further scrutiny.*

Turning to the adoption of the NECPs, Ireland's initial Draft NECP 2021-2030 was submitted to the European Commission by 31/12/2018, while a second draft NECP was open for public consultation until 22 February 2019.<sup>11</sup> This second draft NECP was a lengthy document, but it is worthwhile focussing on some key aspects, such as the “Overview table with key objectives, policies and measures of the plan”. This highlighted:

- *For NECP 1 - With existing measures (WEM): Electricity generation: Wind increases at 140MW per annum*

Similar trajectories for wind generation were included in the other three NECP scenarios. Indeed, Table 12 from the Draft NECP is also informative in this regard.

**Table 12: NECP Scenario 1 (With Existing Measures, high oil price) – Modelled trajectories by renewable energy technology, existing policies and measures, high oil price, 2017-2040.**

Renewable Electricity - installed capacities (MW)	2017	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2040
Hydro	234	234	234	234	234	234	234	234	234	234	234	234
Biodegradable Municipal Solid Waste	24	40	40	40	40	40	40	40	40	40	40	40
Biogas	54	54	54	54	54	54	54	54	54	54	54	54
Biomass CHP	0	60	60	60	60	60	60	60	60	60	60	60
Biomass co-firing	29	110	110	110	110	110	110	110	110	110	110	0
Onshore wind	3259	4225	4364	4503	4643	4782	4921	5060	5201	5342	5474	6058
Offshore wind	0	25	25	25	25	25	25	25	198	396	592	1513
Solar PV	20	80	90	100	100	100	100	118	125	131	137	200
Ocean	0	0	0	0	0	0	0	0	0	0	0	0

In simple terms, a rapid increase in installed on-shore wind generation from 3,259 MW in 2017 to 5,474 MW in 2030, with an additional installation of 592 MW of offshore wind generation. The Strategic Environmental Impact Assessment (SEA) Directive 2001/42/EC<sup>12</sup> applies to plans and programmes, which are likely to have significant environmental effects and:

- *which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC.*

Where Directive 85/337/EEC refers to the original Environmental Impact Assessment Directive, which is applicable to wind energy projects. Again in simple terms, the Draft NECP defined, among others, the amount of wind energy generation to be delivered and the mechanisms by which it should be delivered, such as in relation to funding amounting to €21.8 billion and the delivery of supporting infrastructure. Note:

<sup>11</sup> <https://www.dccae.gov.ie/en-ie/energy/consultations/Pages/Ireland%E2%80%99s-Draft-National-Energy-and-Climate-Plan-2021-2030.aspx>

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0042>

Much of this supporting infrastructure, such as interconnectors and similar upgrades to the high voltage grid structure, fell also within the scope of the Environmental Impact Assessment Directive.

Clearly by both their own legal structure and their commitments to UNECE, both the EU and Ireland should have ensured that this NECP underwent an SEA procedure. However, it didn't. It is also recognised that while Article 7 required public participation on plans and programmes related to the environment, this does not necessarily have to be in the form of an SEA. However, it does require as a minimum; effective notice, early and effective public participation when all options are open, and taking due account of the public participation when all options are open.

In the findings on C/54 it was recorded:

- *82. The communicant submits that the targeted consultation was only open to entities that supported Government policy and that the public was not adequately informed of the public consultation. The Committee takes these allegations to mean that the communicant claims that the targeted consultation was conducted without adequately "taking into account the objectives of this Convention", as required by article 7 of the Convention and that the public consultation was not conducted in conformity with article 6, paragraph 3, of the Convention.*

Note the introduction to the Convention highlights as to how: "*the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them.*" While some 77 submissions were received on this second Draft NECP consultation, this was dominated by public and private organisations involved in the promotion of renewable energy. There was a glaringly very limited involvement by private citizens. In this regard it is worthwhile recording some of the submission of one of these private citizens, Mary Martin, who pointed out:<sup>13</sup>

- *This public consultation does not comply with the law because there is no notification, nothing on local radio and signs in newspapers, shops etc. Take note of the Maastricht Recommendations on implementation of the Aarhus Convention which requires proper notification.*
- *You have to publish a draft environmental report and take submissions from the Public. The final Environmental Report must be subject to judicial review.*

To reiterate the Convention places an obligation on achieving an actual result. Moving on to the next requirement of Article 7, with respect to "when all options are open": As the Draft NECP stated:

- *Ireland's draft NECP 2021-2030 is based on 4 scenarios – 2 baseline (with existing measures) scenarios and 2 advance (with additional measures) scenarios.*

These scenarios are all limited variations of the Table 12 show above. No consideration of the 'zero option' or 'do nothing option' occurred on this draft NECP or the initial consultation draft NECP, which preceded it. Furthermore, while Section 5 of the Draft NECP is entitled "Impact Assessment of Planned Policies and

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<sup>13</sup> [https://www.dccae.gov.ie/en-  
ie/energy/consultations/Documents/42/submissions/Mary%20Martin.pdf](https://www.dccae.gov.ie/en-<br/>ie/energy/consultations/Documents/42/submissions/Mary%20Martin.pdf)

Measures”, nowhere does it address the environmental impacts of constructing all of this new renewable infrastructure. Particularly so with wind generation, where the Irish countryside is already characterised by a scattered rural community, a significant percentage of which have already been exposed to unacceptable noise impacts from wind turbines.

Indeed Section 5.2 of the Draft NECP is entitled:

- *Macroeconomic and, to the extent feasible, the health, environmental, employment and education, skills and social impacts including just transition aspects (in terms of costs and benefits as well as cost-effectiveness) of the planned policies and measures described in section 3 at least until the last year of the period covered by the plan, including comparison to projections with existing policies and measures*

It runs to less than half a page of a two hundred and ninety four page document and fails completely to assess the environmental impact of the proposed infrastructure.<sup>14</sup> This certainly demonstrates the degree of “*environmental considerations in decision making*” and the extent to which the public were provided with the “*necessary information*”.

As regards “*taking due account of the public consultation*”, the written documentation related to evaluation of the initial consultation held in October 2018 was incorporated into the Draft NECP.<sup>15</sup> However, this was solely answers to defined specific questions. Those who raised other relevant issues were simply ignored.<sup>16</sup> No documentation exists as to how the later February 2019 consultation of the draft NECP was ever evaluated.

#### 1.4 Evaluation by the EU Commission of Ireland’s Draft NECP

The advice provided by the ACCC to the EU in May 2019 was both welcome and specific with regard to how the public participation objectives were to be achieved, in particular:

- “*When assessing the draft NECPs, the Commission shall monitor whether and how Member States **have complied or intend to comply** with their obligation to involve the public early and effectively in the preparation of the final national energy and climate plans.*”<sup>17</sup>

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<sup>14</sup> See page 286 of: <https://www.dccae.gov.ie/en-ie/energy/consultations/Documents/42/consultations/Draft%20NECP%20Ireland.pdf>

<sup>15</sup> See page 46 of the above entitled: “*Consultations of stakeholders, including the social partners, and engagement of civil society and the general public*”

<sup>16</sup> For example: <https://www.dccae.gov.ie/en-ie/energy/consultations/Documents/37/submissions/Liz%20Collins.pdf> and <https://www.dccae.gov.ie/en-ie/energy/consultations/Documents/37/submissions/SVP.pdf>

<sup>17</sup> [https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests\\_from\\_the\\_MOP/ACCC-M-2017-3\\_European\\_Union/Advice\\_to\\_Party\\_concerned/M3\\_EU\\_advice\\_to\\_the\\_Party\\_concerned\\_28.05.2019\\_final.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests_from_the_MOP/ACCC-M-2017-3_European_Union/Advice_to_Party_concerned/M3_EU_advice_to_the_Party_concerned_28.05.2019_final.pdf)

It was further clarified:

- *31. In this regard, the Committee emphasizes that it will be particularly important for the Party concerned to take measures that make clear to each Member State that did not carry out public participation fully meeting the requirements of article 7 prior to submitting its draft 2021-2030 NECP to the Commission, that in order for that Member State to meet the requirements of article 7, in conjunction with article 6(4) and (8), of the Convention, all the options that were open at the time of the preparation of the draft 2021-2030 NECP submitted to the Commission on 31 December 2018 must still be genuinely open at the time of the public participation procedure to be carried out prior to the adoption of the Member State's final 2021-2030 NECP.*

Despite this clear advice given by the ACCC to the EU Commission, when one reads the evaluation by the EU Commission of the draft NECP for Ireland, SWD(2019) 230 final,<sup>18</sup> no such evaluation of public participation measures occurred. Neither does the Commission 'Recommendation of 18 June 2019 on the draft integrated National Energy and Climate Plan of Ireland covering the period 2021-2030', C/2019/4407,<sup>19</sup> in any of the nine recommendations raised. Indeed, it is interesting to consider the Recital (12) of this Recommendation:

- *All elements of Annex I of the Regulation (EU) 2018/1999 are to be included in the final integrated national energy and climate plan. In this context, the macroeconomic and, to the extent feasible, the health, environmental, employment and education, skills and social impacts of the planned policies and measures should be assessed. The public and other stakeholders are to be engaged in the preparation of the final integrated national energy and climate plan. These and other elements are described in detail in the staff working document published alongside this Recommendation.*

However, when one goes back into this same staff working document, SWD(2019)230 final, not only can one find no details with respect to assessment of the impacts of these enormous developments proposed and instead it is simply concluded:

- *The final plan should complete the assessment of macroeconomic and, to the extent feasible, the health, environmental, employment and education, skills and social impacts, including just transition aspects.*

Furthermore, the EU Commission has a Communication assessing the 28 draft NECPs, COM(2019) 285 final,<sup>20</sup> which was included in their Second Progress Report to UNECE. In its Section 3 'Next Steps – Towards the Final National Plans' it is solely stated:

- *Member States need to ensure that the public has early and effective opportunities to participate in preparing the final plans, which should then include a summary of the public's views.*

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<sup>18</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/ie\\_swd\\_en.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/ie_swd_en.pdf)

<sup>19</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576058251741&uri=CELEX:32019H0903\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576058251741&uri=CELEX:32019H0903(07))

<sup>20</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1565713062913&uri=CELEX:52019DC0285>

Again a situation of paying lip service, given that as the same document attest to, particularly in its Section 2, all the main issues have already been agreed. Simply put, effective public participation when all options were open has never occurred and neither is it possible to do so going forward without repealing and stopping the implementation of this Regulation on the Governance of the Energy Union and Climate Action. In this regard, as I have several times in the past with correspondence with UNECE, I refer to the documentation on status of the Aarhus Convention in Community Law; “Provided in response to the Committee’s request made at CC-17”:<sup>21</sup>

- **Such agreements take precedence over legal acts adopted under the EC Treaty (secondary Community law).** *So if there was a conflict between a Directive and a Convention, such as the Aarhus Convention, all Community or Member State administrative or judicial bodies would have to apply the provision of the Convention and derogate from the secondary law provision.<sup>22</sup> This precedence also has the effect of requiring Community law texts to be interpreted in accordance with such agreements.*

## 1.5 Absence of any Progress on Communication C/32

As far back as April 2011 in their findings on Communication C/32 Part 1, the ACCC concluded:

- *94. With regard to access to justice by members of the public, the Committee is convinced that if the jurisprudence of the EU Courts, as evidenced by the cases examined, were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would fail to comply with article 9, paragraphs 3 and 4, of the Convention.*

Over eight and a half years later no effective measures have been taken by the EU to improve this situation and work towards compliance. As regards this Milieu report submitted by the EU Commission as part of their second progress report, what exactly did this tell us that we didn’t know already, in that legislative changes were required to give proper effects to Articles 9(3) and 9(4) of the Convention? Indeed, the Recommendations of the ACCC on C/32 Part 2 were already clear in that:

- *If and to the extent that the Party concerned intends to rely on the Aarhus Regulation or other European Union legislation to implement article 9, paragraphs 3 and 4, of the Convention:*
  - *(i) The Aarhus Regulation be amended, or any new European Union legislation be drafted, so that it is clear to the CJEU that that legislation is intended to implement article 9, paragraph 3, of the Convention;*
  - *(ii) New or amended legislation implementing the Aarhus Convention use wording that clearly and fully transposes the relevant part of the Convention; in particular it is important to correct failures in*

<sup>21</sup> <https://www.unece.org/env/pp/compliance/Compliancecommittee/17TableEC.html>

<sup>22</sup> Judgment of 10.9.1996 in Case C-61/94, Commission v Germany, paragraph 52; judgment of 1.4.2004 in Case C-286/02, Bellio F.lli, paragraph 33; judgment of 10.1.2006 in Case C-344/04, IATA e.a., paragraph 35, and judgment of 12.1.2006 in Case C-311/04, Algemene Scheeps Agentuur Dordrecht, paragraph 25.

*implementation caused by the use of words or terms that do not fully correspond to the terms of the Convention.*

As regards the Commission's Staff Working Document, SWD(2019) 378 final, also submitted as part of this second progress report,<sup>23</sup> one can also question is there anything new in this? Indeed with regard to the following:

- *The primacy of the Treaties over the Aarhus Convention equally implies that the fundamentals and the logic of the Union system of judicial redress have to be preserved. The ACCC findings focus on administrative review under the Aarhus Regulation and on direct access to the CJEU, dismissing the role of redress via the courts of the Member States<sup>14</sup>. The national courts are, however, an integral part of the Union system of judicial redress: they are ordinary courts of Union law, and linked to the CJEU within the system of references established under Article 267 TFEU. They are accessible by both individuals and environmental NGOs. In that framework, the national courts can ask the CJEU to rule on the validity of acts of EU institutions, bodies, offices or agencies. This system is a cornerstone of Union law and part of the 'legal context' to which the Declarations refer. Therefore, this report needs to look at the Union system of judicial redress as a whole, taking account of the national courts as well as the CJEU.*

First of all as the Vienna Convention on the Law of Treaties and its Article 27: Internal Law and Observance of Treaties states: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Secondly, the ACCC already rejected that the national Courts provide an effective and timely access to justice through this option of referral, which is a highly discretionary option. Indeed, as I have documented in C/112 as one how spent three and a half years in the Irish High Court in relation to the adoption of the NREAP, this so called judicial system proved itself to be a complete farce and refused to recognise my rights under Articles 9(3) and 9(4) of the Convention.

So in conclusion more than two years after the acrimonious Meeting of the Parties in September 2017 there is nothing in the EU's second progress review to demonstrate that any effective measures have actually been taken to improve the complete absence of the rights related to Article 9(3) of the Convention. Neither is there the slightest indication that in the near future this will change by means of imminent active measures.

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<sup>23</sup> [https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests\\_from\\_the\\_MOP/ACCC-M-2017-3\\_European\\_Union/Correspondence\\_with\\_the\\_Party\\_concerned/frPartyM3\\_28.10.2019/frPartyM3\\_28.10.2019\\_C32\\_att5.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests_from_the_MOP/ACCC-M-2017-3_European_Union/Correspondence_with_the_Party_concerned/frPartyM3_28.10.2019/frPartyM3_28.10.2019_C32_att5.pdf)