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in Environmental Matters

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Item 7 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation
of the Convention: compliance mechanism**

Report of the Compliance Committee*

Compliance by Romania with its obligations under the Convention

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

* The present document is being issued without formal editing.

I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9j on compliance by Romania with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up

2. The Party concerned provided its first progress report on the implementation of decision V/9j on 29 January 2015.

3. At the Committee's request, on 29 January 2015 the secretariat forwarded the first progress report by the Party concerned to the communicants of communication ACCC/C/2010/51, inviting them to provide comments by 19 February 2015. No comments were received from the communicants.

4. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9j to the Party concerned. In its letter, the secretariat informed the Party concerned that it should its second progress report to the Committee by 31 October 2015, and at the latest by 31 December 2015, on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9j.

5. By letter of 9 November 2015, the Party concerned indicated that it would provide the second progress report by 31 December 2015 and duly provided it on that date.

6. At the Committee's request, on 7 January 2016 the secretariat forwarded the second progress report by the Party concerned to the communicants of communication ACCC/C/2010/51, inviting them to provide comments by 28 January 2016. No comments were received from the communicants.

7. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9j in open session with the participation of the Party concerned by audio conference. Despite invitation, the communicants did not take part.

8. Following the fifty-second meeting, on 18 March and 14 April 2016, the Party concerned provided additional information regarding the steps taken to implement decision V/9j.

9. By letter of 3 January 2017, the secretariat sent the Committee's second progress review on the implementation of decision V/9j to the Party concerned. In its letter, the secretariat informed the Party concerned that, in order to be considered by the Committee in the preparation of its report to the sixth session of the Meeting of the Parties, all measures necessary to implement decision V/9j should be completed by, and reported upon, by no later than 31 January 2017.

10. On 31 January 2017, the Party concerned provided further information and, on 1 February 2017, the communicants of communication ACCC/C/2010/51 provided brief comments thereon.

11. At the fifty-sixth meeting of the Committee (Geneva, 28 February – 3 March 2017), representatives of the Party concerned participated by audio conference and in person in an open session to review the implementation of decision V/9j. A representative of the communicants also participated by audio conference.

12. On 31 March 2017, the Party concerned provided further information on the steps it had taken to implement decision V/9j. Despite being invited to provide comments, no comments were received from the communicants.

13. The Committee adopted its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9j at its fifty-seventh meeting (Geneva, 27-30 June 2017), and thereafter requested the secretariat to send it to the Party concerned and the communicants.

III. Considerations and evaluation by the Committee

14. In order to fulfil the requirements of decision V/9j, the Party concerned would need to provide the Committee with evidence that it had:

(a) Taken the necessary legislative, regulatory and administrative measures to ensure that public officials are under a legal and enforceable duty:

(i) To 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;¹

(ii) To 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;²

(iii) To 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;³

(b) Provided adequate information and training to public authorities about the above duties.⁴

15. The Committee welcomes the two progress reports received from the Party concerned while noting that the first progress report was submitted late and no third progress report has been received. The Committee also welcomes the further information provided by the Party concerned on 9 November 2015, 18 March and 14 April 2016 and 31 January and 31 March 2017 as well as the comments provided by the communicant of communication ACCC/C/2010/51 on 1 February 2017.

Paragraph 2 (a) (i) of decision V/9j: Timely responses and reasoned refusals of access to information requests

Timely responses (article 4, paragraph 1, of the Convention)

16. Regarding paragraph 2 (a) (i) of decision V/9j and the requirement in article 4, paragraph 1 of the Convention to respond to information requests within one month, in its additional information on 18 March 2016, the Party concerned drew the Committee's

¹ Decision V/9j, para. 2 (a) (i).

² Ibid., para. 2 (a) (ii).

³ Ibid., para. 2 (a) (iii).

⁴ Ibid., para. 2 (b).

attention to Governmental Decision no. 878/2005, which, it submitted, fulfilled this requirement.⁵

17. Article 4, paragraph 1, of Decision no. 878/2005 states:

Environmental information shall be made available to the applicant, in compliance with the specified deadline, as soon as possible or no later than one month from the reception by the public authority.

18. The Committee considers that article 4, paragraph 1, of Decision no. 878/2005 does indeed contain a requirement for public authorities to respond to requests for environmental information within one month. However, as the Committee pointed out at paragraph 27 of its second progress review, Decision no. 878/2005 was already in force at the time of the events examined in the Committee's findings on communication ACCC/C/2010/51.⁶ Despite this, the authorities failed to comply with the one-month time-frame in that case and the Committee found that the Party concerned had failed to comply with article 4, paragraphs 1 and 4, of the Convention in conjunction with paragraphs 2 and 7 with respect to two of the three information requests put before the Committee by the communicant.⁷

19. In its second progress review, the Committee accordingly explained to the Party concerned that, in order to fulfil paragraph 2 (a) (i) of decision V/9j with respect to timeframes for responding to information requests, it would need to provide evidence of the measures it had taken to ensure that public authorities do in fact now fully comply with the requirements of Decision no. 878/2005 in practice.⁸ The Committee also informed the Party concerned that, in order to be taken into account in the Committee's report on decision V/9j for the sixth session of the Meeting of the Parties, all measures to implement decision V/9j would need to be adopted and reported upon by 31 January 2017.⁹

20. Having reviewed the information provided by the Party concerned on 31 January 2017¹⁰ as well as its subsequent information provided on 31 March 2017,¹¹ the Committee considers that the Party concerned has provided no evidence of any measures it has taken to ensure the implementation of article 4, paragraph 1, of Decision 878/2005 in practice. Accordingly, the Committee finds that the Party concerned has not yet met the requirements of paragraph 2 (a) (i) of decision V/9j with respect to the timeframe for responding to information requests.

Providing reasons for refusals of information requests

21. With respect to paragraph 2 (a) (i) of decision V/9j and the requirement to state the reasons for a refusal, article 15, paragraph 3, of Decision no. 878/2005 provides:

The rejection of the environmental information supply application contains the motives of the rejection and also the information concerning the revision procedure provisioned at art. 16-19.¹²

⁵ Additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 1.

⁶ Committee's second progress review, 3 January 2017, para. 27.

⁷ ECE/MP.PP/C.1/2014/12, paras. 112 (a) and (b).

⁸ Committee's second progress review, 3 January 2017, para. 28.

⁹ *Ibid.*, para. 46.

¹⁰ Further information submitted by the Party concerned, 31 January 2017, p. 1.

¹¹ Letter from the Party concerned, 31 March 2017.

¹² Annex 2 to additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 6.

22. The Committee considers that article 15, paragraph 3, of Governmental Decision no. 878/2005 indeed requires public authorities, in the case of a refusal, to state the reasons for the refusal.¹³ However, as the Committee pointed out in paragraph 31 of its second progress review, Decision no. 878/2005 was in effect at the time of the information requests examined in communication ACCC/2010/51 but the public authorities in that case did not comply with article 15, paragraph 3 of the Decision in practice.¹⁴

23. In its second progress review, the Committee accordingly explained to the Party concerned that, in order to fulfil the requirements of paragraph 2 (a) (i) of decision V/9j with respect to stating the reasons for refusals, the Party concerned would need to provide the Committee with evidence of the measures it had taken to ensure that public authorities do in fact now comply with the requirements of article 15, paragraph 3 of Decision no. 878/2005 in practice.¹⁵

24. Having reviewed the information provided by the Party concerned on 31 January 2017¹⁶ as well as its subsequent information provided on 31 March 2017,¹⁷ the Committee considers that the Party concerned has provided no evidence of any measures it has taken to ensure the implementation of article 15, paragraph 3, of Decision 878/2005 in practice. In the light of this, the Committee finds that the Party concerned has not yet met the requirements of paragraph 2 (a) (i) of decision V/9j with respect to stating the reasons for information request refusals.

Paragraph 2 (a) (ii) of decision V/9j: Interpreting exceptions restrictively and considering public interest in disclosure

25. With respect to paragraph 2 (a) (ii) of decision V/9j, the Party concerned submitted that this recommendation is already addressed in article 12 of Decision no. 878/2005.¹⁸ Article 12, paragraphs 2 and 3 states:

(2) The grounds for refusal set out in paragraph (1) and in art. 11, paragraph (1) shall be interpreted in a restrictive manner, taking into account for each case, satisfying public interest by information disclosure.

(3) For each case, public interest satisfied by disclosure is analysed in comparison to the interest served by observing confidentiality.¹⁹

26. The Committee considers that article 12, paragraph 2, of Decision no. 878/2005 indeed contains a requirement for public authorities to interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure.²⁰ However, as noted above, Decision no. 878/2005 was already in force at the time of the information requests examined in communication ACCC/2010/51 but the public authorities in that case did not comply with article 12, paragraphs 2 and 3 of the Decision in practice.

¹³ Committee's second progress review, 3 January 2017, para. 31.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Further information from the Party concerned, 31 January 2017, p. 1.

¹⁷ Letter from the Party concerned, 31 March 2017.

¹⁸ Additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 1.

¹⁹ Annex 2 to additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 5.

²⁰ Committee's second progress review, 3 January 2017, para. 34.

27. Moreover, as explained by the Committee in paragraph 35 of its second progress review, while article 15, paragraph 3, of Decision no. 878/2005 require reasons for a refusal of an environmental information request to be provided, there is nothing in the Decision expressly requiring the public authorities to specify how the public interest served by disclosure was taken into account.²¹ In its second progress review, the Committee therefore invited the Party concerned to explain the measures it had taken to ensure that this aspect of paragraph 2 (a) (ii) of decision V/9j has been met.²²

28. In this regard, in its second progress report, the Party concerned stated that it would organize a national roundtable with representatives of Romanian central authorities on the grounds for refusing access to environmental information.²³ In its letter of 31 March 2017, the Party concerned reiterated that it would organize such a roundtable for public authorities managing environmental information in the “next period” of 2017.²⁴ While welcoming this initiative, the Committee expresses its disappointment that the roundtable was not organized in time to be taken into account for the purpose of this report.

29. In light of the above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 2 (a) (ii) of decision V/9j.

Paragraph 2 (a) (iii) of decision V/9j: Reasonable timeframes to get acquainted with and comment on draft strategic documents subject to the Convention

30. Regarding paragraph 2 (a) (iii) of decision V/9j and the requirement to provide reasonable time frames, commensurate with the nature and complexity of the document for the public to get acquainted with draft strategic documents and to submit their comments, in its additional information of 14 April 2016, the Party concerned submitted that this requirement was fully met through Governmental Decision no. 1076/2004.²⁵

31. The Committee notes that article 28, paragraph (1) (e) of Governmental Decision no. 1076/2004 requires competent authorities to establish a reasonable time-frame for the environmental assessment procedure that may allow public participation to the procedure stages. Article 29, paragraphs (2) and (3) of Decision no. 1076/2004 respectively provide for a minimum time-frame of 15 calendar days to comment at the screening stage of a draft plan or programme and 10 calendar days to send written proposals for a re-appraisal of the screening decision once taken. Furthermore, article 30, paragraph (2) requires the public to have 45 calendar days to submit written comments on a draft plan or programme. Pursuant to article 31, paragraph (1), the public is to be given 45 calendar days notice before the public debate on a draft plan or programme and 60 calendar days notice if the implementation of the plan may have significant transboundary effects.²⁶

32. The Committee considers that the above time-frames may, if implemented in practice, meet the requirement to ensure reasonable time-frames. However, as the Committee pointed out in paragraph 40 of its second progress review, Decision no. 1076/2004 was likewise in force at the time of the SEA procedure on the Energy Strategy examined in communication ACCC/C/2010/51, and the public was only given 11 days to comment in that case.²⁷ In its

²¹ Committee’s second progress review, 3 January 2017, para. 35.

²² Ibid.

²³ Second progress report by the Party concerned, 31 December 2015, p. 1; see also additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 3.

²⁴ Letter from the Party concerned, 31 March 2017, p. 2.

²⁵ Additional information for the second progress report (part II) from the Party concerned, 14 April 2016, p. 1.

²⁶ Committee’s second progress review, 3 January 2017, para. 36.

²⁷ Ibid., para. 37.

second progress review, the Committee therefore explained to the Party concerned that it was looking for evidence that the Party concerned has taken measures to ensure its public authorities will comply, in practice, with those provisions in the future.

33. On a related note, in both its first and second progress reviews,²⁸ the Committee invited the Party concerned to report to the Committee on the outcomes of the evaluation that the Party concerned had claimed in its first progress report would be completed before the end of 2015.²⁹ In its first and second progress reviews, the Committee also invited Party concerned to report on the legislative, regulatory and administrative measures it proposed to take in the light of that evaluation, including a timeline for the adoption of those measures.³⁰ The Committee expresses its disappointment that, despite these reminders, the Party concerned did not at any time inform the Committee of the outcome of its evaluation.

34. In its further information on 31 January 2017, the Party concerned referred to the pending adoption of legislative amendments to implement Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.³¹ However, as the communicant pointed out in its comments of 1 February 2017, these amendments only relate to the EIA procedure and do not address the timeframes applicable to public participation on strategic documents under article 7 of the Convention.³²

35. With regard to the provision in practice of reasonable timeframes for public participation on strategic documents commensurate with the nature and complexity of the document, the Committee welcomes the Party concerned statement that Decision no. 1076/2004 has been applied to all operational programmes for 2014-2020.³³ The Committee also welcomes the statement that the final alternatives for the draft operational programme and the requisite environmental report or assessment were distributed to the public concerned 45 days before the start of the public commenting period.³⁴

36. The Committee also notes the information provided on the public participation procedure concerning the Energy Strategy for 2016-2030, which procedure commenced in January 2016.³⁵ However, the Party concerned did not provide any information on the time periods given for members of the public in general to participate. Rather the Party concerned only referred to stakeholder participation, including members of NGOs, academia and industry,³⁶ and this approach was also reflected on the website referred to by the Party concerned, which noted involvement of the public in 2014 but from January 2016 onwards only refers to stakeholder participation.³⁷ Keeping in mind the statement by the Committee in its findings on ACCC/C/2010/51 that the participation of selected stakeholders does not

²⁸ Committee's first progress review, 20 October 2015, para. 16; Committee's second progress review, para. 45.

²⁹ First progress report by the Party concerned, p. 3.

³⁰ Committee's first progress review, 20 October 2015, para. 16; Committee's second progress review, para. 45.

³¹ Further information from the Party concerned, 31 January 2017.

³² Comments from the communicant, 1 February 2017.

³³ Second progress report by the Party concerned, 31 December 2015, p. 2; additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 2 and additional information for the second progress report (part II) from the Party concerned, 14 April 2016, p. 3.

³⁴ Ibid.

³⁵ Additional information for the second progress report (part II) from the Party concerned, 14 April 2016, pp. 3-4.

³⁶ Ibid., p. 3.

³⁷ Ibid., p. 4.

constitute public participation in the sense of the Convention,³⁸ the Committee has not been provided with sufficient information which would substantiate that adequate time periods for the involvement of the public have been provided for in the preparation of the new Energy Strategy for 2016-2030, or other draft strategic documents subject to the Convention.

37. In light of the above, the Committee does not consider that the Party concerned has fulfilled the requirements of paragraph 2 (a) (iii).

Paragraph 2 (b) of decision V/9j: Information and training for public officials

38. With respect to paragraph 2 (b) of decision V/9j, in its second progress report, the Party concerned referred to a training organized with 500 public servants entitled “Training of staff of competent environmental authorities on environmental impact assessment and environmental assessment for the programming period 2014-2020”. The training would be carried out in 2016 with the involvement of the Joint Assistance to Support Projects in European Regions (JASPERS) in 2016³⁹ and, according to the Party concerned, would include a session on access to information.⁴⁰ However, having reviewed the agenda of the training, the Committee cannot see that any of the content discussed at the training directly related to the provision of environmental information on request at all. Rather, the focus appears to have been on EIA and SEA procedures. Accordingly, in its second progress review, the Committee requested the Party concerned to provide further information on the training, including a course outline and evidence that the training included content addressing the non-compliance referred to in decision V/9j.⁴¹

39. In its further information provided on 31 January 2017, the Party concerned did not provide the information requested by the Committee but indicated that the second stage of the EIA training, which was originally scheduled to take place from April to December 2016,⁴² would commence shortly and that it would update the Committee on the presentations given during the training.⁴³ Following this, on 30 March 2017, the Party concerned provided a powerpoint presentation from an initial training session held on 29-30 March 2017.⁴⁴ The Committee notes, however, that the presentation provided by the Party concerned relates to EU law requirements regarding the EIA procedure and public participation requirements under article 6, of the Aarhus Convention.⁴⁵ The Committee therefore finds that this training cannot be considered to fulfil the purpose of providing adequate information and training to public authorities about the duties reflected in paragraph 2 (a), of decision V/9j, as required in paragraph 2 (b) of decision V/9j.

40. In this regard, the Committee reiterates its disappointment (see para. 28 above), that the proposed national roundtable with representatives of Romanian central authorities on the grounds for refusing access to environmental information was not carried out in time to be considered in this report.

41. In light of the foregoing, the Committee finds that the Party concerned has not yet satisfied the requirements of paragraph 2 (b) of decision V/9j.

³⁸ ECE/MP.PP/C.1/2014/12, para. 109.

³⁹ Second progress report by the Party concerned, 31 December 2015, p. 3.

⁴⁰ Additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 3.

⁴¹ Committee’s second progress review, 3 January 2017, para. 42.

⁴² Additional information for the second progress report (part I) from the Party concerned, 18 March 2016, p. 2.

⁴³ Further information received from the Party concerned, 31 January 2017, p. 1.

⁴⁴ Letter from the Party concerned, 30 March 2017, p. 1.

⁴⁵ Enclosure to the letter from the Party concerned, 30 March 2017.

IV. Conclusions

42. Based on the above considerations, while welcoming the initial steps taken in that direction, the Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9j.

43. The Committee recommends to the Meeting of the Parties that it reaffirms its decision V/9j and request that the Party concerned:

(a) Take the necessary legislative, regulatory, administrative or practical measures to ensure that public officials:

(i) 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;

(ii) 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;

(iii) 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; and

(b) Provide adequate information and training to public authorities about the above duties;

(c) In the light of its slow progress to date, take urgent measures to fully address the above recommendations;

(d) Provide detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(e) Provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(f) Participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.