UNITED NATIONS



Economic and Social Council

Distr. GENERAL

ECE/MP.PP/2008/5/Add.10 2 May 2008

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Third meeting
Riga, 11–13 June 2008
Item 6 (b) of the provisional agenda
Procedures and mechanisms facilitating the implementation of the Convention:
Compliance mechanism

REPORT BY THE COMPLIANCE COMMITTEE¹

Addendum

COMPLIANCE BY THE EUROPEAN COMMUNITY WITH ITS OBLIGATIONS UNDER THE CONVENTION

This document was prepared by the Compliance Committee in accordance with its mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties. It contains findings with regard to communication ACCC/C/2005/17 submitted by the non-governmental organization Association Kazokiskes Community (Lithuania) alleging non-compliance by the European Community with its obligations under article 6, paragraphs 2 and 4, and article 9, paragraph 2, of the Convention, as adopted by the Compliance Committee in April 2008.

¹This document was submitted on the above date to allow due time for consultations with the Party concerned and the communicant following the nineteenth meeting of the Compliance Committee (5–7 March 2008).

CONTENTS

			Paragraphs	Page
I.	Bac	Background1–13		2
II.	Summary of the facts, evidence and issues		14–33	4
	A.	Community legal framework	14–16	4
	B.	Substantive issues	17–33	4
III.	Consideration and evaluation by the Committee34–59		34–59	7
	A.	Legal basis and scope of considerations by the Committee	34–36	7
	C.	Admissibility and use of domestic remedies	37–38	7
	C.	Substantive issues	39–59	7
IV.	Con	clusions	60–61	13

I. BACKGROUND

- 1. On 12 June 2006, Association Kazokiskes Community (Lithuania), represented by Mr. Ulrich Salburg and Ms. Ramune Duleviciene (hereinafter "the communicant") submitted a communication to the Compliance Committee alleging non-compliance by the European Community with its obligations under article 6, paragraphs 2 and 4, and article 9, paragraph 2, of the Convention.
- 2. The communication concerns compliance with the requirement of article 6 of the Convention in connection with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC Directive) and the decision of the European Commission to co-finance a landfill in Kazokiskes (Lithuania). The communicant alleges that the European Community institutions failed to comply with provisions of article 6 of the Convention regarding decision-making concerning co-financing of establishment of the landfill. The communicant further alleges general failure on the part of the European Community to correctly implement provisions of the Convention into the Community law, in particular through the provisions of the IPPC Directive.
- 3. The communication was supplemented with a number of supporting documents.
- 4. The communication is related to communication ACCC/C/2006/16, submitted earlier by the same communicant and alleging non-compliance by Lithuania with the Convention in relation to decision-making on the landfill.
- 5. The Committee, at its twelfth meeting (14–16 June 2006), determined on a preliminary basis that the communication was admissible.
- 6. Pursuant to paragraph 22 of the annex to decision I/7, the Committee forwarded the communication to the Party concerned on 11 August 2006. The Committee also raised a number

of questions in relation to the communication with both the Party concerned and the communicant.

- 7. The communicant submitted the requested information on 10 October 2006, addressing in detail all the issues raised.
- 8. The Party concerned replied by a letter dated 10 January 2007 from the European Commission, acting on behalf of European Community, indicating that due to organizational and staff changes it would require more time to provide a substantive response.
- 9. The substantive response was provided by the Party concerned by letter of 2 May 2007.
- 10. The Party concerned requested that interpretation be provided for the meeting at which the communication would be discussed. This took a certain amount of time to arrange and caused the discussion on the communication to be scheduled only at the Committee's seventeenth meeting (26–28 September 2007).
- 11. At its seventeenth meeting, the Committee discussed the communication with the participation of representatives of both the Party concerned and the communicant, who answered questions, clarified issues and presented new information. The communicant's statement (also provided in writing) also included details with regard to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive). The Party concerned provided, inter alia, information about the relevant Community legislation.
- 12. The Committee confirmed that the communication was admissible. However, it considered that while many issues had been clarified during the discussions at its seventeenth meeting, there were several issues, inter alia related to the relevant provisions of Community legislation in relation to the Convention, which required further clarification. The Committee therefore requested the Party concerned to provide such clarifications following the meeting. Such additional information was provided by the Party concerned on 21 November 2007.
- 13. On 28 February 2008, the secretariat circulated draft findings and recommendations prepared by the Committee to the Party concerned and the communicant, inviting them to comment. The communicant responded by a letter dated 2 April 2008 and the Party concerned by a letter dated 7 April 2008. In its comments, the Party concerned indicated that it did not agree with the content of the draft recommendations proposed by the Committee, and against that background and based on its view that the legislation, practices and procedures of the Community in relation to the Convention were adequate, did not agree that recommendations should be formulated by the Committee. In finalizing the text, the Committee made some changes in order to take into account the comments of the Party concerned and the communicant. In the light of its finding that there was no non-compliance, coupled with the opposition of the Party concerned to the inclusion of any recommendations in that circumstance, the Committee has not made any recommendations.

II. SUMMARY OF THE FACTS, EVIDENCE AND ISSUES

A. Community legal framework

- 14. The communication concerns the financing of a proposed landfill in the village of Kazokiskes in the municipality of Elektrenai Vilnius, with a projected total capacity of 6.8 million tons of waste over a period of 20 years.
- 15. Such a project belongs to the categories of projects listed in Annex I to the EIA Directive and to the categories of installations listed in Annex I to the IPPC Directive.
- 16. Both Directives were amended by Directive 2003/35/EC of the European Parliament and the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (Public Participation Directive) with a view to implementing the public participation and access to justice requirements of the Convention.

B. Substantive issues

Application of article 6 of the Convention in relation to financing decisions

- 17. The communicant maintains that although a decision of the European Commission to cofinance a project does not itself, in its view, represent a decision on "whether to permit" an activity to which the provisions of article 6 of the Convention would apply, the European Commission, when making such a decision, was nevertheless under an obligation to ensure that the relevant provisions of the Convention were followed during the national decision-making related to the relevant project, and should have refused to finance a project where such provisions were not strictly followed.
- 18. Furthermore, the communicant alleges that while the decision about financing was taken well before the European Community ratified the Convention, the financing continued after it had become a Party and therefore the obligations with regard to the Convention were relevant.
- 19. The Party concerned maintains that in its view the Convention's requirements are fully implemented in the respective Community legislation and according to the information available to it, the relevant provisions of this legislation are being appropriately applied in relation to the project in question.

Application of article 6 of the Convention in relation to multiple permits

20. The communicant maintains that the requirements of article 6 of the Convention should be applied in relation to all decisions on whether to permit proposed activities listed in annex I of the Convention. In its view, if a national legal framework requires a number of decisions/permits covering different topics "which are relevant in respect of environmental pollution and danger to the public concerned", public participation is required in relation to each and every such decision/permit and in each case all of the requirements of article 6 should be applied.

- 21. The communicant further maintains that in situations where there is a sequence of permitting decisions, limiting the range of options may be allowed only provided that public participation was carried out at an earlier stage of the decision-making where certain options were debated, and provided that all the relevant activities which fall within the scope of annex I of the Convention are subject to public participation at both respective stages.
- 22. In this context, the communicant indicates that although European Community law envisages public participation in relation to two different stages of decision-making, i.e. EIA and IPPC permits, not all activities listed in annex I of the Convention are subject to both procedures, since neither Annex I of the EIA Directive nor Annex I of the IPPC Directive are identical with annex I to the Convention.
- 23. The Party concerned maintains that although indeed neither Annex I of the EIA Directive nor Annex I of the IPPC Directive are identical with annex I of the Convention, in combination they cover it comprehensively. Furthermore, the Party concerned indicates that Annex II of the EIA Directive includes all remaining activities from annex I of the Convention. The Party also maintains that the Convention as an agreement concluded by the Council is binding on the Community's institutions and Member States and takes precedence over the legal acts adopted under the EC Treaty² (secondary legislation), which also means that the Community law texts should be interpreted in accordance with such an agreement. The Party concerned recognizes that the EIA Directive itself leaves it to the discretion of Member States to decide whether in case of activities listed in Annex II of the EIA Directive the assessment is needed and therefore whether public participation is also needed. However, it maintains that the Convention, as part of Community law, has direct application in such cases, putting Member States under an obligation to carry out the assessment with the requirement for public participation also in relation to such activities listed in Annex II of the EIA Directive which are covered by annex I of the Convention.
- 24. The communicant maintains that for the provisions of the IPPC Directive to fully comply with the requirements of article 6 of the Convention, they should be interpreted to cover all options. In this regard, it maintains in particular that the IPPC Directive should not allow an IPPC permit to be required only after the actual construction of an installation, since in such a case, the public participation procedure preceding the issuing of the permit does not amount to "early public participation, when all options are open and effective public participation can take place".

Informing the public (notification) under article 6, paragraph 2, of the Convention

25. The communicant maintains that the provisions of the IPPC Directive that link public participation with the IPPC permit in practice render meaningless the requirement to inform the public "early in an environmental decision-making procedure" and in a "timely and effective manner". This is so, it argues, because such permits are granted only before the commencement of operation of the facility in question but not necessarily before its construction, which therefore allows for the interpretation that public participation is not required before the construction of a

² The treaty establishing the European Community.

new IPPC installation.

- 26. Furthermore, the communicant maintains that the EIA Directive also does not clearly require public participation to be carried out before construction commences, which again deprives of any sense the requirement of informing the public "early in an environmental decision-making procedure" and in "timely and effective manner".
- 27. The Party concerned maintains that all the procedural provisions of both the EIA and IPPC Directives fully reflect all the relevant provisions of the Convention, and in particular assure that the public is informed "early in an environmental decision-making procedure" and in a "timely and effective manner" within the framework and scope of the respective procedures.
- 28. Furthermore, the Party concerned maintains that although neither the EIA Directive nor the IPPC Directive expressly mentions the wording "adequate, timely and effective manner", the applicable rules fully implement this requirement. Moreover, the Convention itself forms part of Community law and should be applied directly.

Early public participation when all options are open – article 6, paragraph 4, of the Convention

- 29. The communicant maintains that any public participation that is envisaged after the construction of an installation can by no means be considered as "early public participation, when all options are open and effective public participation can take place". In its view, after the construction is completed, most options are not open anymore and therefore there is no possibility for effective participation. Thus the lack of provisions that clearly require public participation to be carried out before the commencement of construction in both the EIA and IPPC Directives is not in compliance with article 6, paragraph 4, of the Convention.
- 30. The Party concerned maintains that the relevant procedures ensure early and effective participation when all options are open, although the range of options differs according to the scope of both procedures which address slightly different aspects.

Access to justice

- 31. The communicant maintains that providing access to justice in relation to public participation procedures that take place after the construction starts is meaningless.
- 32. Furthermore, the communicant alleges that the Public Participation Directive, when amending the EIA and IPPC Directives, failed to introduce provisions that oblige the Member States to provide the public concerned with effective remedies, including injunctive relief.
- 33. The Party concerned maintains that the relevant provisions are in line with the respective provisions of article 9 of the Convention, bearing in mind the scope of competence of the European Community.

III. CONSIDERATION AND EVALUATION BY THE COMMITTEE

A. Legal basis and scope of considerations by the Committee

- 34. The European Community concluded the Convention with the Council Decision of 17 February 2005 and deposited its instrument of ratification of the Convention on the same day. The Convention entered into force for the European Community on 18 May 2005.
- 35. The Committee notes the Party's statement that the Convention as an agreement concluded by the Council is binding on the Community's institutions and Member States and takes precedence over the legal acts adopted under the EC Treaty (secondary legislation), which also means that the Community law texts should be interpreted in accordance with such an agreement.
- 36. The Committee decides to focus its attention on the substantive issues identified in section I B above (paras. 17–33). In addition to alleging non-compliance with respect to the European Commission's co-financing of the landfill, the communicant alleges a general failure on the part of the European Community to correctly implement articles 6 and 9 of the Convention. In its examination, the Committee therefore also considers some issues of a general character with respect to the implementation of the Convention into Community law. However, this general examination is limited to the type of activity here in question, i.e. landfills. This approach is in line with the Committee's understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require the Committee to address all facts and/or allegations raised in a communication. This procedural decision by the Committee to focus on these issues does not prevent it from addressing other aspects of the case.

B. Admissibility and use of domestic remedies

- 37. The Committee confirmed admissibility of the communication at its seventeenth meeting (see para. 12 above).
- 38. The Committee notes that the communicant exhausted the available domestic remedies by filing a complaint to the European Commission, and that under the Community law there are no other remedies available in such cases.

C. Substantive issues

Application of article 6 of the Convention in relation to financing decisions

39. Regarding the allegation of the communicant that article 6 of the Convention is applicable to the decision to fund the project in question, the Committee, on account of the fact that such a decision was taken well before the European Community ratified the Convention, and having regard to the fact that the general matter of decisions on funding is under consideration in connection with another communication (ACCC/C/2007/21), decides not to consider the allegation.

40. In this context, the Committee welcomes the efforts of the European Commission to monitor compliance with the provisions of Community law aiming to implement the Convention while taking decisions whether to provide funding for a project and making implementation of such provisions a condition for applying for funding.

Application of article 6 of the Convention in relation to multiple permits

- 41. The first issue to be examined with regard to article 6 of the Convention refers to multiple permitting decisions for landfills. The Committee does not consider that article 6 necessarily requires that the full range of public participation requirements set out in paragraphs 2 to 10 of the article be applied for each and every decision on whether to permit an activity of a type covered by paragraph 1. First, the very title of the Convention (ending with the words "in environmental matters") implies that even though it is not spelled out in article 6, the permitting decisions should at the very least be environment-related. Second, even within the environment-related permitting decisions that might be required before a given activity may proceed, there may be large variations in their significance and/or environmental relevance. Some such decisions might be of minor or peripheral importance, or be of limited environmental relevance, therefore not meriting a full-scale public participation procedure.
- 42. On the other hand, nor does the Committee consider that where several permitting decisions are required in order for an activity covered by article 6, paragraph 1, to proceed, it is necessarily sufficient for the purposes of meeting the requirements of article 6 to apply the public participation procedure set out it to just one of those permitting decisions. Where one permitting decision embraces all significant environmental implications of the activity in question, it might be sufficient. However, where significant environmental aspects are dispersed between different permitting decisions, it would clearly not be sufficient to provide for full-fledged public participation only in one of those decisions. Whether a system of several permitting decisions, where public participation is provided with respect to only some of those decisions, amounts to non-compliance with the Convention will have to be decided on a contextual basis, taking the legal effects of each decision into account. It is of crucial importance in this regard to examine to what extent such a decision indeed "permits" the activity in question.
- 43. The Committee is well aware that Parties to the Convention in their national legal frameworks provide a variety of approaches to regulatory control of activities listed in annex I of the Convention. Not all decisions required within national frameworks of regulatory control should necessarily be considered as "decisions on whether to permit proposed activities". On the other hand, this does not mean that there is necessarily only one such a decision "to permit proposed activities". In fact, many national frameworks require more than one such permitting decision. The Committee therefore considers that some kind of significance test, to be applied at the national level on a case-by-case basis, is the most appropriate way to understand the requirements of the Convention. The test should be: does the permitting decision, or range of permitting decisions, to which all the elements of the public participation procedure set out in article 6, paragraphs 2 to 10, apply embrace all the basic parameters and main environmental implications of the proposed activity in question? If, despite the existence of a public participation procedure or procedures with respect to one or more environment-related permitting decisions, there are other environment-related permitting decisions with regard to the activity in question for which no full-fledged public participation process is foreseen but which

are capable of significantly changing the above basic parameters or which address significant environmental aspects of the activity not already covered by the permitting decision(s) involving such a public participation process, this could not be said to meet the requirements of the Convention.

- 44. Article 6 of the Convention obliges the Parties to meet the minimum requirements for public participation in decision-making related to all activities listed in annex I (and other activities determined by the Parties). While this applies to the Party concerned too, the structure of the European Community and its legislation differs from those of all other Parties to the Convention in the sense that while relevant Community legislation has been adopted to ensure public participation in various cases of environmental decision-making, it is the duty of its Member States to implement Community directives. This is the case also with the EIA Directive and the IPPC Directive, both of which apply to decision-making concerning landfills. Because of this distribution of power between the European Community and its Member States, the aforementioned significance test cannot be applied, and the assessment must take a slightly different approach.
- 45. The question to be considered is whether the EIA Directive and IPPC Directive allow the Member States to make the relevant decisions for landfills without a proper notification and opportunities for participation. Neither the EIA Directive nor the IPPC Directive seems to prevent multiple permit decisions in the Member States. The communicant has alleged that not all activities covered by annex I of the Convention are subject to both the EIA and IPPC procedures in European Community law. The Committee does not rule out the possibility that with respect to activities in annex I other than landfills, the Party concerned fails to comply with the Convention.
- 46. Bearing in mind the above characteristic features of the Community law and the fact that under EIA and IPPC directives public participation is mandatory in case of the two main permitting decisions applicable to landfills covered by annex I to the Convention, the Committee is of the opinion that as far as application of article 6 of the Convention in relation to multiple permits applicable to landfills is concerned, the Community legal framework in principle properly assures achievement of the respective goals of the Convention.

Informing the public (notification) under article 6, paragraph 2, of the Convention

- 47. The provisions concerning notification in both EIA and IPPC Directives provide for early and effective notification within the envisaged scope of both procedures which play slightly different roles in the decision-making under the Community law.
- 48. While neither the EIA Directive nor the IPPC Directive expressly sets out that the public must be informed in an "adequate, timely and effective manner", they both include certain specific requirements aiming to ensure that the public is informed effectively and in a timely manner.
- 49. This may have some consequences for the implementation of the Convention, as most Member States seem to rely on Community law when drafting their national legislation aiming

to implement international obligations stemming from a treaty to which the Community is also a Party. Moreover, the provisions of the EIA Directive, including those relating to public participation, are being directly invoked in some legal acts concerning provision of Community funding, for example in Annex XXI to Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund. Thus in practice they may be applied directly by European Community institutions when monitoring compliance with the EIA Directive on the occasion of taking decisions concerning Community funding for certain activities.

50. As pointed out in paragraph 44, when examining compliance by the Party concerned, the Committee must take into account the structural difference between the European Community and other Parties, and the general division of powers between the Community and its Member States in implementing Community directives. The Committee notes that the IPPC Directive obliges the Member States to ensure early and effective public participation in permitting procedures concerning landfills. It also notes that the EIA Directive obliges the Member States to ensure that the public shall be informed early in environmental decision-making procedures concerning landfills. Thus, the relevant Community legislation does indeed provide for early information and participation. Moreover, although a similar formulation in the Directives as in the Convention could probably help to ensure adequate implementation of the Convention, bearing in mind the specificity of European Community directives, the fact that the terms "adequate, timely and effective manner" are not used in the Directives does not in itself amount to non-compliance with the Convention.

Early public participation when all options are open – article 6, paragraph 4, of the Convention

- 51. The requirement for "early public participation, when all options are open" should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, according to the particular needs of a given country and the subject matter of the decision-making, Parties have a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological specifications related to specific environmental standards. Within each and every such procedure, where public participation is required, it should be provided early in the procedure when all options are open and effective public participation can take place.
- 52. Again, in its examination the Committee must consider the structural characteristics of the Party concerned, and the general division of powers between the European Community and its Member States in implementing Community directives. The communicant maintains that the EIA Directive and IPPC Directive fail to comply with the Convention because they fail to

provide for "early public participation, when all options are open and effective public participation can take place" on account of the fact that the participation may take place after the construction has commenced. The allegations concerning the two directives have to be considered separately.

- 53. First, it appears to the Committee that for all activities involving construction, the EIA Directive requires public participation to be carried out before the actual construction starts. This requirement can be interpreted from the definitions of "project" and "development consent" in article 1, paragraph 2, of the EIA Directive taken in conjunction with the obligation set out in article 2, paragraph 1, to require development consent.
- 54. Second, the Committee notes that the IPPC Directive obliges the Member States to ensure early and effective opportunities for public participation in procedures for issuing a permit for new installations covered by the IPPC Directive. A system whereby the IPPC permitting process starts after the construction is finalised need not of itself be in conflict with the requirements of Convention, though in certain circumstances it might be. Once an installation has been constructed, political and commercial pressures may effectively foreclose certain technical options that might in theory be argued to be open but which are in fact not compatible with the installed infrastructure. A key issue is whether the public has had the opportunity to participate in the decision-making on those technological choices at one or other stage in the overall process, and before the "events on the ground" have effectively eliminated alternative options. If a legal framework of a Party to the Convention is such that the only opportunity for the public to provide input to decision-making on technological choices which is subject to the public participation requirements of article 6 of the Convention is at a stage when there is no realistic possibility for certain technological choices to be accepted, then such a legal framework would not be compatible with the Convention.
- 55. It follows from the above that the provisions on public participation in both the EIA and the IPPC Directives, at least as far as decision-making for landfills is concerned, seem to be in line with the requirement of article 6, paragraph 4, of the Convention to provide "early public participation, when all options are open and effective public participation can take place".

Access to justice

56. The communicant makes the point that it is meaningless to provide access to justice in relation to a public participation procedure that takes place after the construction starts. While the Committee does not accept that access to justice at this stage is necessarily meaningless, if there were no opportunity for access to justice in relation to any permit procedures until after the construction has started, this would definitely be incompatible with article 9, paragraph 2, of the Convention. Access to justice must indeed be provided when it is effectively possible to challenge the decision permitting the activity in question. However, the Committee is not convinced that the EIA Directive as amended by the Public Participation Directive allows a Member State to maintain a system where access to justice in relation to the EIA permit is only provided after the construction has started; nor is it convinced that a Member State having fully implemented the EIA, Public Participation and IPPC Directives would be able to have a system that only provides an opportunity for the public to challenge decisions concerning technological choices at a stage when there is no realistic possibility for considering alternative technologies.

57. The Committee notes that indeed both the EIA and the IPPC Directives lack provisions clearly requiring the public concerned to be provided with effective remedies, including injunctive relief. While such remedies are essential for effective access to justice, when considering the structural characteristics of the Party concerned, and the general division of powers between the European Community and its Member States, it is not clear to the Committee whether procedural issues relating to remedies are part of the European Community's competence. In the absence of further information on this issue, the Committee cannot conclude that the European Community fails to comply with article 9, paragraph 4, of the Convention. The Committee nevertheless stresses the importance of such remedies and the need for the European Community and the EU Member States to determine whether such remedies should be provided only by the laws of the Member States or in addition by Community legislation.

General issues of transposition

- 58. The Committee notes the point made by the Party concerned (para. 23) that under European Community law, an international agreement concluded by the Community is binding on the Community institutions and the Member States, and takes precedence over legal acts adopted by the Community. According to the Party concerned, this means that Community law texts should be interpreted in accordance with such an agreement. In this context, the Committee wishes to stress that the fact that an international agreement may be given a superior rank to directives and other secondary legislation in European Community law should not be taken as an excuse for not transposing the Convention through a clear, transparent and consistent framework into European Community law (cf. article 3, paragraph 1, of the Convention).
- 59. Notwithstanding the distinctive structure of the European Community, and the nature of the relationship between the Convention and the EC secondary legislation, as outlined in paragraph 35, the Committee notes with concern the following general features of the Community legal framework:
- (a) Lack of express wording requiring the public to be informed in an "adequate, timely and effective manner" in the provisions regarding public participation in the EIA and IPPC Directives;
- (b) Lack of a clear obligation to provide the public concerned with effective remedies, including injunctive relief, in the provisions regarding access to justice in the EIA and IPPC Directives.

While the Committee is not convinced that these features amount to a failure to comply with article 3, paragraph 1, it considers that they may adversely affect the implementation of article 6 of the Convention. Moreover, having essentially limited its examination to decision-making relating to landfills, the Committee does not make any conclusions with regard to other activities listed in annex I of the Convention. Nor does it make any conclusions concerning the precise correlation between the list of activities contained in annex I of the Convention and those contained in the respective annexes to the EIA and IPPC Directives.

IV. CONCLUSIONS

- 60. Having considered the above, the Compliance Committee adopts the finding set out in the following paragraph.
- 61. The Committee is not convinced that the matters examined by it in response to the communication establish any failure by the European Community to comply with the provisions of the Convention when transposing them through the EIA and IPPC Directives. The finding is based on the assumption that the IPPC Directive is interpreted in a way that allows an IPPC permit in relation to newly established installations to be granted after the construction is completed only if the public had an opportunity to participate at an earlier stage of the procedure when all options where open, in particular the options regarding those features that cannot realistically be altered after the construction is finalized.
