

Draft communication to the Aarhus Convention Compliance Committee re. Spain's TNP

I. Information on correspondent submitting the communication

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II. Party concerned

1. The Party concerned is the Kingdom of Spain (*Spain*).

III. Facts of the communication

Relevant Law

European Union law

2. Directive 2010/75/EU of the European Parliament and the Council on industrial emissions (integrated pollution prevention and control) (the *Industrial Emissions Directive* or *IED*) is the main EU instrument regulating pollutant emissions from industrial installations.
3. The objective of the IED is to lay down '*rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole*'.¹

¹ Industrial Emissions Directive, Article 1.

4. The IED sets out special provisions for Large Combustion Plants (**LCPs**) in Chapter III and Annex V. These requirements include emission limit values (**ELVs**) for emissions of nitrogen oxides (**NO_x**), sulphur dioxide (**SO₂**), and dust from 1 January 2016.²
5. Article 32 IED provides that Member States, during the period from 1 January 2016 to 30 June 2020, may draw up and implement a transitional national plan (**TNP**). For each of the LCPs covered by the plan, the plan shall cover the emissions of one or more of the following pollutants: NO_x, SO₂, and dust. LCPs covered by the TNP may be exempted from compliance with the ELVs referred to in Article 30(2) IED for the pollutants that are subject to the plan.
6. Article 32(5) IED provides that Member States shall communicate their TNPs to the European Commission (**EC**), subject to their further acceptance by the EC.
7. Commission Implementing Decision 2012/115/EU sets further rules concerning TNPs, including specifications for setting ELVs and compliance, monitoring and reporting requirements.³

Domestic law

8. The Aarhus Convention on Access to Information, Public Participation and Access to Justice (**the Convention**) was ratified by Spain on 15 December 2004 and entered into force on 29 March 2005.⁴ Following the ratification of the Convention, Spain adopted Law 27/2006 of 18 July (Annex 2), on the rights on Access to Information, Public Participation and Access to Justice in environmental matters in order to comply with its international obligations.⁵
9. Article 46.5 of the Royal Decree 815/2013 (Annex 3), which transposes Article 32(5) of the IED, requires that once the EC agrees to the plan, the Ministry of Agriculture, Food and the Environment jointly with the Ministry of Industry, Energy and Tourism submit the TNP to the Council of Ministers for its approval.

Relevant Facts

10. The Spanish TNP has been in effect since 1 January 2016 in spite of its lack of approval by the Council of Ministers until 25 November 2016. The current TNP allows 29 LCPs (of which 21 use coal as fuel) to be exempted from compliance with ELVs of NO_x, SO₂ and dust specified in Article 30(2) and Annex V of the IED.
11. The below table sets out a timeline detailing the process by which Spain has drawn up and implemented its TNP.

Date	Event
21 of December 2012	Spain submitted its initial TNP proposal (first TNP proposal) to the EC.
17 December 2013	The EC rejected Spain's proposal due to its non-conformity with the IED's requirements (Annex 4). ⁶

² Industrial Emissions Directive, Article 30(2).

³ Commission Implementing Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, 24 February 2012.

⁴ Spanish Official Journal (Boletín Oficial del Estado) - (BOE), N. 40, 16.02.2005).

⁵ Ley 27/2006, de 18 de julio, por la que se regulan los derechos de Acceso a la Información, de Participación Pública y de Acceso a la Justicia en materia de medioambiente (BOE N. 171, 19.07.2006).

⁶ Commission Decision of 17 December 2013 on the notification by the Kingdom of Spain of a transitional national plan referred to in Article 32 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (OJ L 352, of 24.12.2013).

October 2014	Spain submitted a renewed TNP proposal (<i>second TNP proposal</i>) to the EC.
29 May 2015	The second TNP proposal was accepted by the EC (Annex 5). ⁷
20 November 2015	The Spanish TNP was subject to modification. Spain informed the Commission of changes to its TNP, consisting in the removal of three LCPs (C.T. Foix, C.T. Anllares, and Solvay II) (<i>third TNP proposal</i>).
4 December 2015 to 21 December 2015.	A public consultation procedure was undertaken for the third TNP proposal announced via the official website of the Spanish Ministry of Agriculture, Food and Environment (Annex 6). ⁸
3 March 2016	The EC approved the third TNP proposal (Annex 7). ⁹
25 November 2016	A fourth version of the TNP (<i>fourth TNP proposal</i>) ¹⁰ was approved by the Council of Ministers (Council of Ministers approval (Annex 8) and fourth TNP proposal (Annex 9)).
16 December 2016	Spain informed the Commission of the fourth TNP proposal, changes including the removal of two LCPs (C.T. Narcea I and Central GICC Puertollano).
27 April 2017	The EC approved the fourth TNP proposal version of the TNP (Annex 10). ¹¹

12. There was no public participation in the preparation of the first TNP proposal of December 2012 in the terms of Article 7 of the Aarhus Convention. The first TNP proposal describes that information on the TNP proposal was sent to 17 Director Generals (with environmental powers) of the Autonomous Communities to review and comment on. The first TNP proposal also states that comments were sought from the Environmental Advisory Council (*EAC*). The EAC is a participatory advisory body of the Ministry of Agriculture, Fisheries, Food and Environment (*MAPAMA*), formerly called Ministry of Agriculture, Food and Environment (*the MAGRAMA*). This Council is composed of 4 representatives of environmental NGOs,¹² 2 representatives of trade union organisations, 2 representatives of business organisations, 2 representatives of consumer and user organisations, 3 representatives of professional agricultural organisations and 1 representative of a fishing association. Thus, this participation was only for the 'public concerned' and not for the 'general public'.
13. There is currently no available information regarding what information was sent to the above groups or how their comments were taken into consideration.
14. There was a total absence of public participation during the preparation of the second TNP proposal.

⁷ Commission Decision on the notification by the Kingdom of Spain of a transitional national plan referred to in Article 32 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions 29.05.2015.

⁸ Available at http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/participacion-publica/pnt_grandes_instalaciones_combustion.aspx

⁹ Commission Decision on the notification by the Kingdom of Spain of a modified transitional national plan referred to in Article 32 (6) of Directive 2010/75/EU on industrial emissions 03.03.2016.

¹⁰ Available at <http://www.minetad.gob.es/energia/es-ES/Novedades/Documents/20161125-CM-aprueba-PNT.pdf>

¹¹ Commission on the notification by the Kingdom of Spain of a modified transitional national plan referred to in Article 32(6) of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions 27.04.2017.

¹² At the relevant time IIDMA was not one of these NGOs.

15. The general public only had information about the Spanish TNP once the EC approved it on 29 May 2015 and made it publicly available in the EU Official Journal.¹³
16. In November 2015 the Spanish TNP was subject to a modification (the third TNP proposal). A public consultation procedure was undertaken for the third TNP proposal from Friday 4 to Monday 21 of December 2015.¹⁴ This consultation was only open for a very limited period of 14 working days.¹⁵
17. The consultation for the third TNP proposal was announced on the official website of the MAGRAMA. As far as IIDMA is aware, members of the public and NGOs were not informed of this consultation and it was not advertised other than the place where one could submit comments. As a result, no members of the general public submitted comments.
18. IIDMA contacted MAGRAMA by telephone regarding the consultation. MAGRAMA informed IIDMA that the only comments they received were from the EAC and the competent authorities of the Autonomous Communities. It is unknown which specific Autonomous Communities submitted comments and the manner in which the MAGRAMA notified them for participation.
19. There is currently no available information regarding the results of the consultation.
20. The fourth and final TNP proposal was not subject to a public participation procedure. The fourth TNP proposal is not the same document that was subject to the above consultation. The fourth TNP proposal was created due to the closure of two LCPs. The document reflected this modification.
21. The fourth TNP proposal was approved by Council of Ministers in November 2016, therefore, it is the only version of the TNP that has been approved under Spanish law. The fourth TNP proposal was approved by the EC on 27 April 2017 and is Spain's most up to date TNP.
22. The facts and circumstances described above demonstrate a lack of compliance with the provisions of the Convention. This is explored in detail in Section V below.

IV. Alleged non-compliance with provisions of the Convention

23. Both notifying organisations, ClientEarth and IIDMA, consider that Spain has failed to comply with **Article 7 and Article 6(3), (4) and (8)**, (as applied through Article 7) of the Convention in relation to the preparation of the TNP. The full wording of these provisions is attached below as Annex 1, for ease of reference.

V. Nature of alleged non-compliance

Preliminary Issue – applicability of the Convention to the TNP

24. Article 7 of the Convention provides for public participation concerning plans, programmes and policies relating to the environment, whilst Article 6 concerns public participation in decisions on whether to permit certain activities. When categorising a decision under Articles

¹³Adoption of Commission Decision on the notification by the Kingdom of Spain of a transitional national plan referred to in Article 32 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (OJ C 177, of 30.05.2015).

¹⁴ Available at

http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/participacion-publica/pnt_grandes_instalaciones_combustion.aspx

¹⁵ According to the 1992 Spanish Administrative Law Procedure, Sundays are considered as non-working days. The 8th of December is always a non-working day in Spain given that it is a national religious festivity.

6 or 7 of the Convention, its label in domestic law is not decisive. It is the legal function and effects of the decision that are relevant.¹⁶ Both notifying organisations consider that the TNP can be best characterised as a “*plan...relating to the environment*” under Article 7.

A ‘plan’

25. The UNECE Implementation Guide on the Convention (*the Implementation Guide*) states that a ‘plan’ for the purposes of Article 7 will typically be characterised as 1) a general act, 2) initiated by administrative authority, which 3) sets, often in a binding way, the framework for certain categories of specific activities and 4) is not sufficient for any individual activity to be undertaken without an additional individual permitting decision.¹⁷
26. The TNP is a regulatory act initiated by the MAGRAMA and the Ministry of Industry, Energy and Tourism, setting the framework for exempting particular LCPs from the ELVs in the IED. The TNP is a general act because it covers several coal-fired power plants, regulating the ceiling of total emissions from those plants. It is not sufficient on its own to authorise individual LCP activity in the absence of a separate individual permitting decision. However, the TNP contributes to permitting decisions made under the IED. It is therefore best characterised as a plan (under Article 7) rather than a decision on a specific activity (under Article 6).
27. Furthermore, Commission guidance on the IED confirms that for the purposes of the Strategic Environmental Assessment Directive (*SEAD*), TNPs are considered ‘plans/programmes’ “*as they are applicable to LCPs that fall under the ‘industry’ or ‘energy’ sectors described in SEAD Article 3(2)(a).*”¹⁸ The Commission has further stated that whether or not a TNP was subject to a Strategic Environmental Assessment “*is without prejudice to the application of...Article 7 of the Aarhus Convention.*”¹⁹ This supports an interpretation of the TNP as a ‘plan/programme’ for the purposes of Article 7 of the Convention.

‘Relating to the environment’

28. The interpretative scope of “*relating to the environment*” is very broad. It encompasses plans that have an effect on the environment, but does not impose any test or threshold requirement in terms of the significance or likelihood of that effect.²⁰ The ACCC has previously found that a plan that “*proposes measures in the energy sector that affect or are likely to affect elements of the environment*” relates to the environment.²¹ A plan may also be considered to ‘relate to’ the environment if it is simply intended to help to protect the environment.²²
29. The TNP allows LCPs to be exempted from the ELVs for NO_x, SO₂ and dust provided in Annex V, part I of the IED. LCPs within the TNP are instead required to comply with the less strict ELVs set out in their permits as of 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants and 2008/1/EC concerning integrated pollution prevention and

¹⁶ Albania ACCC/C/2005/12; ECE/MP.PP/C.1/2007/4/Add.1, 31 July 2007, at [65]; Austria ACCC/C/2008/26; ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, at [50]; United Kingdom ACCC/C/2010/53; ECE/MP.PP/C.1/2013/3, 11 January 2013, at [82].

¹⁷ United Nations Economic Commission for Europe ‘The Aarhus Convention: An Implementation Guide’ (2nd ed, 2014), at p124, citing J Jendroška, “Public participation in the preparation of plans and programs: some reflections on the scope of obligations under Article 7 of the Aarhus Convention”, *Journal for European Environmental & Planning Law*, vol. 6, No. 4 (December 2009), pp. 495-515, at p 505.

¹⁸ European Commission ‘Industrial Emissions Directive (IED) Frequently Asked Questions (FAQ)’, published online at <http://ec.europa.eu/environment/industry/stationary/ied/faq.htm> (last accessed 6 July 2017).

¹⁹ *Ibid.*

²⁰ *Ibid.*, at p 175-177.

²¹ Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014, at [50].

²² *Ibid.*, at p 177.

control.²³ Such LCPs do remain subject to the other substantive requirements in the IED, such as the obligations under Articles 11(b) and 15(2) regarding application of the best available techniques when setting permit conditions, such as the ELVs. However, those obligations are insufficient to ensure an environmental performance comparable to that of LCPs that are not included within the TNP.

30. Consequently, by inclusion in the TNP, LCPs can emit polluting substances into the atmosphere at a higher concentration (often significantly so) than would otherwise be permitted under the IED. Emission of pollutants at higher concentrations is likely to have negative effects on the environment and on human health compared to the situation under the ‘counterfactual’ (namely, the situation where the LCPs are subject to the ELVs specified by Article 30(2) IED). There is a clear effect on the environment arising from the TNP, and it must therefore be considered to relate to the environment.

Conclusion

31. The notifying organizations sustain that, in light of the above, the Spanish TNP qualifies as a plan relating to the environment for the purposes of the Convention and is subject to the public participation requirements under Article 7.

Substantive Issue – details of alleged non-compliance

32. During the preparation of the first and second TNP proposals, the general public was not informed of the preparation and proposed contents of each plan, nor was there a public participation procedure carried out at those stages. This contravenes Article 7 of the Aarhus Convention’s obligations on public participation.
33. The MAGRAMA opened a consultation procedure for 14 working days for the general public to comment on the third TNP proposal. However, such participatory procedure was not undertaken in compliance with the requirements provided in Article 7 of the Aarhus Convention, read in conjunction with Article 6(3), (4) and (8).
34. Finally, the fourth TNP proposal, which was approved by Council of Ministers in November 2016 and later by the Commission in April 2017, was not subject to any public participation either. Consequently, the TNP is currently in force without having been subject to adequate, timely and effective public participation.
35. It should be noted that Article 7 is applicable both to the preparation of plans, and also to their modification. Although Article 7 does not expressly address ‘modifications’, the Convention’s Implementation Guide explains that, “*any modification to a plan or programme in itself amounts to a plan or programme and therefore is subject to Article 7.*”²⁴ This interpretation is reflected in Spain through Law 27/2006, Article 3 “*(...) all may exercise the following right in their relations with the public authorities (...) (2) In relation to public participation, a) to participate in a real and effective manner in the elaboration, modification and review of plans, programmes (...) related to the environment included in the scope of application of this Law*”. Therefore, Spain was subject to public participation obligations under Article 7 when preparing the TNP, and also when modifying the TNP.
36. **Article 7** requires Spain to:

²³ In addition, Article 32(2) IED requires LCPS with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, to comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

²⁴ Aarhus Convention-An Implementation Guide (2ndEdn, 2014), p.176.

- a. make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment;
- b. within a transparent and fair framework (applying Article 6(3), (4) and (8));
- c. having provided the necessary information to the public.

37. These components are addressed below.

Appropriate practical provision for the public to participate

38. Appropriate practical provision was not made available for the public to participate during the preparation of the first TNP proposal. Before the first TNP proposal was published, the MAGRAMA sent information to 17 Autonomous communities and the proposal was also submitted for review by the EAC. As mentioned, the EAC consists of representatives of various organisations, listed in paragraph 12. Consulting only with these parties does not ensure compliance with Article 7.
39. Article 7 applies to the ‘public’, rather than the narrower ‘public concerned’ to which other parts of the Convention apply. The definition of ‘public’ in the Convention encompasses any natural or legal person and their associations, organisations or groups. Therefore, the right to participate in decision-making concerning plans relating to the environment must be guaranteed to the general public as a whole.
40. The second sentence of Article 7 requires the relevant public authority to identify the public which may participate, while taking the Convention’s objectives into account. According to the Implementation Guide (and as affirmed in the 2014 ACCC Decision relating to the Czech Republic), the obligation to identify the public that may participate, “*should not be seen as a tool to limit participation, but rather as a way to streamline the participation in order to make it more effective.*”²⁵ The objective provided in the fourteenth paragraph of the Convention’s preamble should be taken into account - requiring Parties, “*to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development*”.
41. In the case of the first TNP proposal, the public authorities failed to comply with the Article 7 requirement to identify the public that may participate. Participation should have been open to the general public as a whole in light of the broad definition of ‘public’ in the Convention and the fact that the TNP concerns Spain’s industrial emissions and air quality at a national level, and relates to matters of public interest such as pollution, air quality, and public health.
42. Appropriate practical provision was not made available for the public to participate during the preparation of the second and fourth TNP proposals, as there was no public participation process at all.
43. Provision was made for the public to participate in the third TNP proposal (a modification of the first two proposals), however, it was impractical and not appropriate. This is demonstrated through Spain’s clear non-compliance with Articles 6(3), (4) and (8) explained below.

Transparent and Fair Framework (applying Article 6(3), (4) and (8))

44. Spain did not develop the TNP within a transparent and fair framework. The general public was unaware that the TNP was being developed and were not provided with effective opportunities to participate during the preparation of the TNP.
45. The relevant requirements of **Article 6** were not applied:

²⁵ UNECE ‘The Aarhus Convention: An Implementation Guide’, above, at p179; Czech Republic ACCC/C/2012/70; ECE/MP.PP/C.1/2014/9, 4 June 2014 at [59].

- a) **Article 6(3)** requires that public participation procedures include **reasonable time-frames**, allowing sufficient time to inform the public in accordance with the criteria for notice provided in Article 6(2) and to allow the public to prepare and participate effectively during the environmental decision-making. The consultation on the third TNP proposal was open for a very limited period of 14 working days (04/12/2015 to 21/12/15). Notwithstanding the fact that the general public were not notified of the procedure in accordance with Article 6(2), this limited timeframe undermined the ability of the general public to prepare and participate effectively during the environmental decision-making. This represents a failure to comply with Article 6(3).²⁶
- b) **Article 6(4)** requires Spain to provide for **early public participation** when all options are open and the participation can be effective. However, the first public consultation procedure only took place for the third TNP proposal. Therefore, it is unlikely that all options were open at that stage, especially considering the Commission had already approved a TNP at this stage. The consultation on the third TNP proposal, was not 'early', and therefore did not meet the requirements of Article 6(4).
- c) **Finally, Article 6(8)** requires Spain to ensure that **due account is taken of the outcome** of public participation in the decision to adopt the TNP. The provision of reasons and considerations on which the final decision is based should provide evidence of how due account was taken of public participation.²⁷

The Implementation Guide provides that, "*while taking due account of the results of public participation might require the final plan or programme to be explained with reasons... this is more a matter of logic or of good practice than an obligation under the Convention*".²⁸ The Compliance Committee has stated that the obligation to take due account of the outcome of the public participation should be interpreted as an obligation to include in the written reasoned decision a discussion of how public participation was taken into account within the decision-making process.^{29, 30}

Because of the lack of adequate opportunities for participation by the general public, the public did not have a real and effective opportunity to make contributions to decision-making. However, in spite of members of the EAC and Autonomous Communities submitting comments, there is no information available regarding the results of the procedure. Thus, it is unclear whether the Spanish Authorities took due account of the outcome of the public participation.

Having provided the necessary information to the public

46. Spain failed to provide the necessary information about the TNP to the public as required by Article 7 of the Convention. The Implementation Guide explains that the criteria in 6(2) can be used as guidance when determining what is 'necessary information' under Article 7, explaining that "[w]hile not all the information under article 6, paragraph 2, may be

²⁶In its findings in Communication ACCC/C/2010/54 (Ireland), the Compliance Committee was critical on the two week consultation period regarding the Irish Renewable Energy Feed-in Tariff programme when finding that "...A two week period is not a reasonable time frame for "the public to prepare and participate effectively", taking into account the complexity of the plan or programme...The manner in which the public was informed of the fact that public consultation was going to take place remains unclear; neither the Party concerned nor the communicant provided clarity on the matter."para. 83.

²⁷In its findings in Communication ACCC/C/2008/24 (Spain), the ACCC found that "the obligation to take due account of the outcome of the public participation should be interpreted as the obligation that the written reasoned decision includes a discussion of how the public participation was taken into account", Aarhus Convention-An Implementation Guide, p 158.

²⁸Aarhus Convention-An Implementation Guide, p. 179.

²⁹Aarhus Convention-An Implementation Guide, p 158.

³⁰Communication ACCC/C/2008/24, Spain.

“necessary” for the purposes of article 7, bearing in mind the similarities in the environmental decision-making involved, most of the obligations concerning provision of information which were deemed necessary in the case of specific decisions subject to article 6 would seem to be also necessary in case of plans and programmes, and might be applied, mutatis mutandis. This would of course include the obligation to inform the public about commencement of the proceedings and possibilities to participate.”³¹

47. Using Article 6(2) as a guide to the requirements of Article 7 in this regard, it is apparent that the public should be informed of the proposed plan on which a decision will be taken, the nature of possible decisions or the draft decision, the responsible public authority, and the envisaged procedure.³² Article 6(2)(d) also specifies that the public should be given information (as and when it can be provided) regarding the commencement of the procedure, opportunities to participate, and the manner by which the public can access the information relevant for the preparation of the plan, also indicating the place where this information is located.
48. The process of preparation of the third version of the Spanish TNP did not fulfil these requirements. The only information given by the Spanish authorities on the commencement of the procedure was on the MAGRAMA website. This announcement cannot be considered ‘effective’ or ‘adequate’ in terms of Article 6(2) of the Convention. The only possibility for the public to be informed about the consultation procedure was by visiting a specific section of the MAGRAMA website, where they could read the TNP proposal and submit comments. Because the consultation was not made widely available to the public, no comments were submitted to the MAGRAMA by the public.

Conclusion

49. Spain failed to undertake any public participation procedure during the preparation of the first, second and fourth versions of the TNP and failed to provide for adequate, timely and effective public participation during the preparation of the third TNP proposal. Therefore, Spain has failed to comply with Article 7 (including the relevant provisions of Article 6 applied to plans, programmes and policies by Article 7) of the Convention. This is a specific violation of the public participation rights of members of the public in Spain.
50. ClientEarth and IIDMA consider that Spain could have provided for effective public participation to the general public at various stages in the process of preparing its TNP, but particularly:
- a. During the preparation of the first TNP proposal, submitted by Spain to the EC on 12 December 2012;
 - b. During the preparation of the second TNP proposal, submitted to the EC on October 2014;
 - a. During the preparation of the third TNP proposal of November 2015 which, despite having been subject to public consultation, that consultation was not in line with the Convention as demonstrated above; and
 - b. During the preparation of the fourth TNP proposal that was approved by the Council of Ministers on 25 November 2016 and by the EC on 27 April 2017.

VI. Use of domestic remedies

51. Under Spanish Law, the TNP must be approved by the Spanish Council of Ministers. This approval is essential for the TNP to come into force and have full legal effect. Therefore, until such approval is secured, no legal action would be ripe for adjudication. The TNP was finally approved by the Council of Ministers on 25 November 2016.

³¹ UNECE Implementation Guide, above, at p178-179.

³² Aarhus Convention, Article 6(2)(a)-(d).

52. In January 2017, IIDMA filed a case before the Spanish Supreme Court against the TNP in general. The process is an administrative judicial review procedure. IIDMA has not filed yet the lawsuit due to dilatory maneuvers by the MAPAMA. Nevertheless, IIDMA's arguments in the lawsuit will not concentrate on the lack of public participation but on many other contraventions of EU law and the national legal order.

VII. Use of other international procedures

53. In October 2014, a new version of the Spanish TNP was submitted to the EC and accepted on 29 May 2015 by Decision C (2015) 3525 final (the Decision). IIDMA, together with Greenpeace Spain, filed a request for internal review of the Decision under the Aarhus Regulation before DG Environment. This request was held to be not admissible as the Decision was not considered as a measure of individual scope and, therefore, did not constitute an administrative act in the sense of Article 2(1)(g) of Regulation (EC) 1367/2006.

VIII. Confidentiality


54. This communication may be published and made publicly available.

IX. Supporting documentation (copies, not originals)

55. The following documents are attached in support of this communication:
- a) Annex 1: Aarhus Convention Articles 6 and 7.
 - b) Annex 2: Law 27/2006 of 18 July.
 - c) Annex 3: Article 46.5 of the Royal Decree 815/2013.
 - d) Annex 4: Commission Decision on the notification by the Kingdom of Spain of a TNP of 17.12. 2013.
 - e) Annex 5: Commission Decision on the notification by the Kingdom of Spain of a TNP 29.05.2015.
 - f) Annex 6: Announcement of the public consultation procedure that was undertaken for the third TNP proposal via the official website of the Spanish Ministry of Agriculture, Food and Environment.
 - g) Annex 7: Commission Decision on the notification by the Kingdom of Spain of a modified TNP 03.03.2016.
 - h) Annex 8: Approval of Spain's fourth TNP proposal by the Council of Ministers.
 - i) Annex 9: Spain's fourth TNP proposal.
 - j) Annex 10: Commission on the notification by the Kingdom of Spain of a modified TNP 27.04.2017.

X. Signature

I confirm that I am authorised to sign this communication on behalf of ClientEarth.



Dominique Doyle
Lawyer (Australian Qualified)
Dated: 2 August 2017

I confirm that I am authorised to sign this communication on behalf of IIDMA.



Carlota Ruiz-Bautista
Lawyer
Dated: 2 August 2017

XI. Address

This communication has been sent by **e-mail and by registered post** to the following address:

Secretary to the Aarhus Convention Compliance Committee
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Clearly indicate:

“Communication to the Aarhus Convention Compliance Committee”