



FIRST PROGRESS REPORT DECISION VI/8j/SPAIN

At the most recent meeting of the Parties in Budva (Montenegro) in 2017, Decision VI/8j on “*Compliance by Spain with its Obligations under the Convention*” was adopted.

Point 8 of the aforementioned Decision sets forth the obligation to submit progress reports on the measures taken and the results achieved in the implementation of the Recommendations made by the Compliance Committee.¹

The present report has been prepared to meet this obligation.

1) COMMUNICATION ACCC/C/2009/36

Decision VI/8j includes the following recommendations regarding this Communication:

3. Requests the Party concerned to take measures, as a matter of urgency, to ensure that the remaining obstacles to the full implementation of article 9, paragraphs 4 and 5, of the Convention with respect to legal aid for non-governmental organizations identified by the Committee in paragraph 66 of its findings on communication ACCC/C/2009/36 are overcome;

4. Calls upon all relevant ministries of the Party concerned, including the Ministry of Justice, to work together in that regard.

In this regard, it should be noted that on 25 April 2018 a meeting was held between representatives of Spain’s Ministry of Justice and of its now defunct Ministry of Agriculture and Fisheries, Food and the Environment.

The purpose of this meeting was to analyse the possible legal discrepancies within Spain, as regards access to justice, between the provisions of *Act 27/2006 of 18 July*,

¹ 8. *Requests the Party concerned:*

(a) To submit to the Committee detailed progress reports on 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



regulating the Rights of Access to Information, of Public Participation, and of Access to Justice in Environmental Matters (incorporating Directives 2003/4/EC and 2003/35/EC) and Act 1/1996, of 10 January, on Legal Aid.

During the meeting, the participants discussed the latest judicial developments in this area, and it was agreed to continue working together in order to adequately coordinate them to ensure compliance with the provisions of the Convention.



2) COMMUNICATION ACCC/C/2014/99

Decision VI/8j includes the following recommendation in relation to this Communication:

7. *Also welcomes* the willingness of the Party concerned to accept the Committee's recommendation, namely, that the Party concerned take the necessary legislative, regulatory or other measures and practical arrangements to ensure that the public is promptly informed of decisions taken under article 6, paragraph 9, of the Convention not only through the Internet, but also through other means, including but not necessarily limited to the methods used to inform the public concerned pursuant to article 6, paragraph 2, of the Convention.

The competent Administration (the Regional Government of Catalonia), in whose territorial jurisdiction the activity to which the Communication refers was carried out, submits the following report, demonstrating that the measures taken comply, in its opinion, with the provisions of the Convention.

1. Background

On 20 June 2017, the Aarhus Convention National Focal Point submitted the final document containing conclusions and recommendations in relation to Communication ACCC/C/2014/99. The aforementioned document concluded, in this case, that—under the terms set forth in article 6 of the Convention—the public had not been adequately informed of the decision to authorize the activity through other means besides the publication of the decision on the internet. The document therefore recommended that legislative, regulatory, or other measures be taken, in addition to the necessary practical provisions, to ensure that the public is promptly informed of decisions taken under article 6, paragraph 9 of the Convention, to guarantee that these decisions are not solely disseminated on the internet, but also through other media, including, but not necessarily limited to, the methods used to inform the public concerned, pursuant to article 6.2 of the Convention.

On 15 March 2018, the Aarhus Convention Focal Point informed the Aarhus Convention Compliance Committee (hereinafter “the Committee”) of the measures that the Administration of the Regional Government of Catalonia would carry out to comply with the decision adopted. These measures consisted in issuing an instruction to ensure that announcements regarding environmental permits include the physical locations at which they can be consulted in their entirety. This instruction was communicated to the Committee after its approval by the Director-General of Environmental Quality.

With respect to the measures described, the Committee issued a response on 15 August 2018, summarized below:



On the one hand, the Committee stressed that the purpose of the above-mentioned recommendation is to ensure that the public is promptly informed of any decisions taken to authorize one of the activities subject to article 6, together with details of how to access the corresponding permit. Therefore, the key point is that the measures taken must be genuinely effective to ensure that the public is, in practice, effectively informed.

Under this consideration it asserts that, as a general rule, members of the public cannot be expected to consult the official journals regularly in case a decision that might affect them is announced in a section therein. Consequently, the Committee considers that publication in an official journal cannot in itself be considered a sufficient means to ensuring that the public is promptly informed of a decision.

Pursuant to the above, the Committee considers that, in practice, more effective measures should be implemented, such as putting up posters announcing the authorization of the project in the area in which it is to be carried out, and placing notices in the local press, and, in this regard, restates paragraph 103 of its conclusions in relation to recommendation ACCC/C/2012/99:

“The Committee considers that, as a good practice, the methods used to notify the public concerned under article 6, paragraph 2, should be utilized as a minimum for informing the public under article 6, paragraph 9, of the decision once taken, recalling that the latter requires the public generally to be informed, and not just the public concerned.”

Lastly, the Committee considers that the instruction issued by the Directorate-General for Environmental Quality and Climate Change does not follow the recommendation of paragraph 7 of Decision VI/8j.

2. Legal considerations

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the Aarhus Convention, was signed in June 1998, and ratified by the Kingdom of Spain in 2004.

The specific aspect subject to controversy is article 6.9 of the Convention, which stipulates that:

“9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.”



As regards the granting of permits for specific activities, Spanish law and the administrative practice followed by the Catalan authorities to comply with article 6.9 of the Convention follow the guidelines set forth in EU law, specifically Directive 2010/75/EU, of the European Parliament and of the Council, of 24 November, on industrial emissions.

Moreover, recital 27 of Directive 2010/75/EU asserts that the Directive is in accordance with the Aarhus Convention as regards access to information, public participation in decision-making, and access to justice in environmental matters. Specifically it stipulates that:

(27)“In accordance with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters, effective public participation in decision-making is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.”

Article 24 of Directive 2010/75/EU regulates access to information and public participation in the permit procedure. On the one hand, section 1 of this article refers to the access to information and the participation of the public concerned at an early stage of the procedure, and provides that the procedure set forth in Annex IV of the Directive shall apply to this specific stage, thereby ensuring compliance with the obligations set forth in article 6.2 of the Aarhus Convention. On the other hand, section 2 of article 24 regulates these guarantees of access and participation when a decision regarding a permit has been taken.

This distinction made in the Directive—in accordance with the Convention—is important, as on this basis it can be argued that the instruments for participation and access to be utilized before and after a decision regarding a permit has been taken need not necessarily be identical.

Thus, and regarding the participation of the public while a permit is being processed, section I of Annex IV of the Directive stipulates that:

“The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided”:



Section 5 of the Annex states that *“The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States”*

As already stated by this Party to the Committee, under Spain’s national legislation, the public is accorded a 30-day public information period at this early stage in which decisions are published both in the official journal and on the website of the administration concerned. Simultaneously, during this same stage, the corresponding documentation is displayed publicly in the municipal council of the area in which the activity is to be carried out, and the persons living in the immediate vicinity thereof are notified personally. Any interested parties are also notified personally.

However, once the permit has been granted, article 24.2 of the Directive stipulates that:

“2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the Internet in relation to points (a), (b) and (f), the following information.....”

As the Committee has already been informed, the legislation of Spain and of Catalonia both stipulate that, once granted, permits shall be published in their entirety on the relevant Department's website and in the Official Journal of the Regional Government of Catalonia. Directive 2010/75/EU in no case requires that, once a permit has been granted, the public be informed through posters or through announcements in the local press.

For these reasons, we consider as appropriate the measure adopted by the Regional Government of Catalonia of issuing an instruction which orders that permits be made available for access not only on the internet and in the Official Journal, but also for physical consultation at the offices of the Department’s territorial services.

We consider that the Committee should take into account the progress that has been made in the use of technology, insofar as all of the Official State Gazettes of the Member States, and even the Official Journal of the European Union, are only published online, among other reasons to avoid wasting paper. Additionally, cost-free internet access is guaranteed to all users through public libraries and other means of access. Moreover, if Spanish and Catalan regulations are considered not to be in line with the Convention, this indirectly calls into question the legality of Directive 2010/75/EU and the extent of its alignment with the Aarhus Convention.

For all of the above reasons, we request that the Committee analyse the situation, as we consider that the measures reported provide a satisfactory response to the



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recommendations of Communication ACC/C/2014/99. However, as a gesture of good will, from this day forward, municipal councils shall be required to publicize any permits granted for activities in their areas on their public notice boards.

28 September 2018, Madrid