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Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

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

Compliance by the European Union with its obligations under the Convention

Report by the Compliance Committee

Summary

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1) and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8).

The document reviews the progress made by the European Union (EU) in the intersessional period in implementing the recommendations set out in the Committee's findings on communication ACCC/C/2010/54, adopted on 29 June 2012 (ECE/MP.PP/C.1/2012/12 and Corr.1), in particular with regard to the implementation of the Convention's public participation provisions in the adoption of National Renewable Energy Action Plans by EU member States.

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1. Communication ACCC/C/2010/54¹ was submitted by Mr. Pat Swords, a member of the public, in October 2010 alleging a failure by the European Union (EU) (the Party concerned) to comply with its obligations under articles 5 and 7 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), in relation to Ireland's renewable, especially wind, energy policy.

2. The communication alleged that public authorities in Ireland and the Party concerned failed to disseminate information concerning the Renewable Energy Feed-In Tariff I (REFIT I) programme in Ireland — a programme supported by the Party concerned both by means of direct funding and by approving State aid — in a timely, accurate and sufficient manner. This information related both to the programme in general and to the carrying out of strategic environmental assessment (SEA). Therefore, according to the communication, the Party concerned failed to comply with article 5 of the Convention. The communication also alleged that Ireland, in adopting its REFIT I programme, did not comply with EU SEA legislation (i.e., the SEA Directive),² and that the Party concerned approved State aid for REFIT I without ensuring that Ireland, as an EU member State, had complied with EU law. Therefore, the Party concerned failed to comply with article 7 of the Convention. In addition, the communication alleged that the Party concerned, by providing financial assistance to Ireland for the interconnector project, one of the elements for the implementation of REFIT I, failed to comply with the Convention because the project was not subject to environmental impact assessment (EIA), as required under EU law, and did not comply with the public participation provisions of the Convention.

3. The communication also alleged that the Party concerned did not comply with the Convention by failing to properly monitor implementation of EU law related to the Convention (specifically on access to information, dissemination of information and public participation) by Ireland (not a Party to the Convention) with respect to Ireland's National Renewable Energy Action Plan (NREAP).

4. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7, at its thirty-seventh meeting (Geneva, 26–29 June 2012), the Committee found that the Party concerned:

(a) By not having in place a proper regulatory framework and/or clear instructions to implement article 7 of the Convention with respect to the adoption of NREAPs by its member States on the basis of Directive 2009/28/EC,³ had failed to comply with article 7 of the Convention;

(b) By not having properly monitored the implementation by Ireland of article 7 of the Convention in the adoption of Ireland's NREAP, had also failed to comply with article 7 of the Convention;

(c) By not having in place a proper regulatory framework and/or clear instructions to implement and proper measures to enforce article 7 of the Convention with respect to the adoption of NREAPs by its member States on the basis of Directive 2009/28/EC, had failed to comply also with article 3, paragraph 1, of the Convention.

¹ The communication and other documents relating to it are available on the Committee's website from <http://www.unece.org/env/pp/pubcom.html>.

² Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

³ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

5. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the same, recommended that the Party concerned adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs. This would entail that the Party concerned ensure that the arrangements for public participation in one of its member States are transparent and fair and that within those arrangements the necessary information is provided to the public. In addition, such a regulatory framework and/or clear instructions must ensure that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation. Moreover, the Party concerned must adapt the manner in which it evaluates NREAPs accordingly.
6. The Committee confirmed the adoption of the edited version of its findings and recommendations in English, as well as their translation into French and Russian at its thirty-ninth meeting (Geneva, 11–14 December 2012), as set out in document ECE/MP.PP/C.1/2012/12 and Corr.1.
7. The Committee invited the Party concerned to provide information, by no later than 16 September 2013, on its progress in implementing the recommendations of the Committee. It informed the Party concerned that, on the basis of this information, at its forty-second meeting (Geneva, 24–27 September 2013), the Committee would prepare its draft report, including draft recommendations, to be considered by the Meeting of the Parties at its fifth session.
8. The Party concerned provided an update on its progress on 1 August 2013, and the communicant provided comments on 22 August 2013.
9. At its forty-second meeting, the Committee reviewed the update submitted by the Party concerned and the communicant's comments.
10. In its update, the Party concerned stated that “the Commission has taken due note of the findings and recommendations of the [Aarhus Convention Compliance Committee] concerning compliance by the European Union with provisions of the Convention in connection with the Irish National Renewable Energy Action Plan” and “the Commission is preparing letters addressed to all EU Member States, informing them of the findings and reminding them to respect the provisions of the Aarhus Convention on public participation should the need to submit an amended National Energy Action Plan arise.”
11. In its comments on the Party concerned's update, the communicant expressed doubts as to whether the Party concerned was implementing the recommendations of the Committee.
12. By e-mail of 17 October 2013, the Party concerned forwarded copies of the letters it had sent to Croatia dated 26 July 2013 (following its accession to the EU on 1 July 2013), as well as its letters dated 12 September 2013 to Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Sweden and the United Kingdom of Great Britain and Northern Ireland.
13. The relevant part of the EU letter to Ireland stated:

Given the findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) in case ACCC/C/2010/54 where both Ireland and the European Union were held responsible for not properly implementing the Convention's provisions on public consultation (particularly Articles 3(1) and 7), I would like to remind you to ensure that, should the preparation of an amended NREAP become

necessary for Ireland, the said rules on public participation will be thoroughly observed.⁴

14. The relevant part of the letter sent to the other EU member States listed above stated:

I would like to remind you of the provisions on public participation contained in the Aarhus Convention, to which [name of Member State] is a signatory state as of [date of signature]. I particularly refer to Articles 7 and 3(1). In this context, I would like to draw your attention to the findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) concerning compliance by the European Union with provisions of the Convention in connection with the Irish Renewable Energy Action Plan — case ACCC/C/2010/54.

15. At its forty-second meeting in September 2013, the Committee concluded the draft of the present report and recommendations. The draft was then sent to the Party concerned and the communicant for their comments on 18 November 2013. The communicant provided comments on 6 December 2013. By e-mail of 16 December 2013, the Party concerned stated:

We have no comments to the reporting requirements on progress in implementing the [Compliance Committee's] recommendations, as stipulated in point 14 (d) of the draft. We will be happy to provide the Committee with more details at the given dates, as requested.

However, we would be grateful if point 14 (c) of the draft report might be reconsidered. We feel that the letters that the Commission sent to the Member States do fulfil the requirement of clear instructions for implementing Article 7 of the Convention with respect to the adoption of NREAPs. In these letters, Member States are explicitly referred to Article 7 of the Convention and, equally, to the findings and recommendations of the [Compliance Committee] in the present case. As to the manner in which the Commission evaluates NREAPs, we feel that the additional reporting will provide further clarification on this issue.⁵

16. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee considered the comments submitted. The Committee welcomed the preparation of letters to the EU member States by the Party concerned. However, the Committee was concerned as to whether such letters would provide “a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs”. The Committee noted that, while referring to article 7, the letters contained no clear guidance for implementing that article. Moreover, the Committee was concerned that it remained unclear how the Party concerned would “adapt the manner in which it evaluates NREAPs” in accordance with the recommendations of the Committee.

17. The Committee, after considering the comments submitted, adopted the report and recommendations at its forty-third meeting and agreed to submit it to the Meeting of the Parties.

18. The Committee recommends to the Meeting of the Parties, pursuant to paragraph 35 of the annex to decision I/7, and taking into account the cause and degree of non-compliance and measures taken by the Party concerned in the intersessional period, to:

⁴ The Committee notes that the Republic of Ireland was not a party to the communication, it not being a party to the Convention at that time. Thus, its compliance was not reviewed by Committee nor could it be held responsible.

⁵ Paragraphs 14 (c) and (d) of the draft report correspond to paragraph 18 (b) and (c) of the present report.

- (a) Endorse the findings and recommendations of the Committee as adopted at its thirty-seventh meeting;
 - (b) Express its concern to the Party concerned as to whether such letters will provide “a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs” and that it remains unclear how the Party concerned will “adapt the manner in which it evaluates NREAPs” in accordance with the recommendations of the Committee;
 - (c) Invite the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendations set out above;
 - (d) Undertake to review the situation at its sixth session.
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