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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

Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

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

Draft decision VI/8f concerning compliance by the European Union with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance (ECE/MP.PP/2/Add.8),

Mindful of the conclusions and recommendations set out in its decision V/9g (see ECE/MP.PP/2014/Add.1) with regard to compliance by the European Union,

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision V/9g concerning compliance by the European Union (ECE/MP.PP/2017/47) and the findings of the Committee on communication ACCC/C/2008/32 (part II) (ECE/MP.PP/C.1/2017/7) in connection with access to justice regarding European Union institutions,

Encouraged by the willingness of the European Union to discuss in a constructive manner with the Committee the compliance issues in question,

1. *Welcomes* the steps taken by the Party concerned to implement decision V/9g to date, while expressing its concern at the slow progress of the Party concerned in that direction;

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2. *Endorses* the finding of the Committee with respect to decision V/9g that the Party concerned has not yet fulfilled the requirements of paragraph 3 of that decision;

3. *Reaffirms* its decision V/9g and, in particular, reiterates paragraphs 2, 3 and 4 of that decision in their entirety;

4. *Recommends* that, with respect to the adoption of any amendments to the 2010 National Renewable Energy Action Plans (“NREAPs”) or adoption of the corresponding post-2020 plans (whether in the form of National Renewable Energy Action Plans, integrated national energy and climate plans or otherwise), the Party concerned:

(a) Adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention;

(b) Ensure that the arrangements for public participation in its member States are transparent and fair and that within those arrangements the necessary information is provided to the public;

(c) Ensure that such a regulatory framework and/or clear instructions meets the requirements of article 6, paragraphs 3, 4 and 8, of the Convention, 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;

(d) Adapt the manner in which it evaluates National Renewable Energy Action Plans accordingly;

5. *Requests* the Party concerned, in the light of its slow progress to date, to take urgent measures to fully address the above recommendations;

6. *Endorses* the finding of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) that the Party concerned fails to comply with article 9, paragraphs 3 and 4, of the Convention with regard to access to justice by members of the public because neither the Aarhus Regulation,¹ nor the jurisprudence of the Court of Justice of the European Union implements or complies with the obligations arising under those paragraphs;

7. *Recommends* to the Party concerned that:

(a) All relevant European Union institutions within their competences take the steps necessary to provide the public concerned with access to justice in environmental matters in accordance with article 9, paragraphs 3 and 4, of the Convention;

(b) If and to the extent that the Party concerned intends to rely on the Aarhus Regulation or other European Union legislation to implement article 9, paragraphs 3 and 4, of the Convention:

(i) The Aarhus Regulation be amended, or any new European Union legislation be drafted, so that it is clear to the Court of Justice of the European Union that that legislation is intended to implement article 9, paragraph 3, of the Convention;

(ii) New or amended legislation implementing the Aarhus Convention use wording that clearly and fully transposes the relevant part of the Convention; in particular it is important to correct failures in implementation caused by the use of words or terms that do not fully correspond to the terms of the Convention;

¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies, 2006 O.J. (L 264/13).

(c) If and to the extent that the Party concerned is going to rely on the jurisprudence of the Court of Justice of the European Union to ensure that the obligations arising under article 9, paragraphs 3 and 4, of the Convention are implemented, the Court of Justice of the European Union:

- (i) Assess the legality of the European Union implementing measures in the light of those obligations and act accordingly;
- (ii) Interpret European Union law in a way which, to the fullest extent possible, is consistent with the objectives of article 9, paragraphs 3 and 4, of the Convention;

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;

(b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;

(c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

9. *Undertakes* to review the situation at its seventh session.
