

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision V/9j
on compliance by Romania with its
obligations under the Convention**

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I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9j on compliance by Romania with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9j

2. By letter of 28 November 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9j.

3. The Party concerned provided its first progress report on the implementation of decision V/9j on 29 January 2015.

4. At the Committee's request, on 29 January 2015 the secretariat forwarded the Party concerned's first progress report to the communicants of communication ACCC/C/2010/51, inviting them to provide their comments on that report by 19 February 2015. No comments were received from the communicants.

5. In its first progress report, the Party concerned reported that its report had been submitted late due to unexpected changes in the structure of the government, including the replacement of the Environment Minister.

6. With respect to the recommendation set out in paragraph 2(b)(i)(a) of decision V/9j, the Party concerned stated that it believed that its current legislation and regulatory and administrative framework covered this recommendation satisfactorily and the communicant's situation had been an exception in the practice of the Party's authorities. Nevertheless, the Ministry of Environment, Waters and Forests (Ministry of Environment) had begun a process for reassessing its existing legislation, regulatory and administrative framework in the field of access to information under the Aarhus Convention. That process would eventually involve all environmental authorities of the Party concerned. It was expected that by January 2016, the Ministry would draft preliminary conclusions and consequently, act upon those conclusions.

7. With respect to the recommendation set out in paragraph 2(b)(i)(b) of the decision, the Party concerned stated that the Ministry of Environment's departments were currently analysing whether the current regulatory and administrative framework responded to this recommendation. Based on the conclusions of that analysis, the Ministry would evaluate the opportunity of drafting instructions for public authorities on refusals of access to environmental information.

8. With respect to the recommendation set out in paragraph 2(b)(i)(c) of the decision, the Party concerned stated that the Ministry of Environment did not currently hold the information necessary to evaluate the practice of Romanian authorities in connection with this recommendation. It noted that under current strategic environmental impact assessment (SEA) legislation, the public was invited to comment on draft strategic documents during the SEA procedure, right from the beginning. Moreover, under the SEA procedure, the public had 45 days before the public debate, to comment on the final alternative of the strategic document and the environmental report once these were made publicly available on the Ministry of

Environment's website as well as the website of the authority which had initiated the strategic document. Nevertheless, the Ministry was going to re-evaluate the practice of all public authorities and decide on the required domestic measures by the end of 2015.

9. With respect to the recommendation set out in paragraph 2(b)(ii), the Party concerned stated that the Ministry of Environment together with the Ministry of Foreign Affairs had initiated a consultation process in order to determine the best mechanisms for providing information and training to public authorities on access to environmental information. It was expected that other authorities would be progressively involved in this process.

10. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9j in open session taking into account the comments received from observers present. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9j in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6-9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and the communicant of communication ACCC/C/2010/51.

III. Considerations and evaluation by the Committee

11. In order to fulfil the requirements of the decision V/9j, the Party concerned would need to provide the Committee with evidence that it had:

(a) Taken the necessary legislative, regulatory and administrative measures to ensure that public officials are under a legal and enforceable duty:

(i) To respond to requests of members of the public to access environmental information as soon as possible, and at the latest within one month after the request was submitted, and, in the case of a refusal, to state the reasons for the refusal;

(ii) To interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure, and in stating the reasons for a refusal to specify how the public interest served by disclosure was taken into account;

(iii) To provide reasonable time frames, commensurate with the nature and complexity of the document, for the public to get acquainted with draft strategic documents subject to the Convention and to submit their comments; and

(b) Provided adequate information and training to public authorities about the above duties.

12. The Committee welcomes the first progress report of the Party concerned, while expressing its concern that it was provided almost a month after the deadline.

13. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9j, but welcomes the initial steps taken by the Party concerned to date in that direction. The Committee emphasises that the Meeting of the Parties at its fifth session endorsed the findings of the Committee that the Party concerned is not in compliance with obligations arising under the Convention; failure by the Party concerned to take appropriate steps to address the issues raised by the Committee's findings may result in any resulting non-compliance being considered by the sixth session of the Meeting of the Parties. In the light of this the Committee is concerned that, notwithstanding decision V/9j, the Party concerned believes that current legislation, as well as the regulatory framework meets the

recommendation to the necessary legislative, regulatory and administrative measures.

14. Regarding the recommendations set out in paragraph 2(a)(i) and (ii) of decision V/9j, the Committee welcomes the Party's concerned reported current assessment of the existing legislative, regulatory and administrative framework in the field of access to information under the Convention. However, it expresses its concern at the lengthy period for this review, which is expected to take until January 2016. The Committee considers that such a timeframe will leave very little time for the Party concerned to prepare and adopt any legislative, regulatory and administrative measures needed to address any deficiencies found in the current framework in a transparent and participatory manner and bearing in mind the Party's obligations under article 8 of the Convention with respect to public participation during the preparation of executive regulations and/or generally applicable legally binding normative instrument. The Committee reminds the Party concerned that all measures necessary to implement decision V/9j must be completed by, and reported upon in, the Party's final progress report due on 31 October 2016. The Committee thus invites the Party concerned already in its second progress report due on 31 October 2015, or otherwise by 30 December 2015, to report to the Committee on the outcomes of its assessment and the legislative, regulatory and administrative measures that it proposes to take in the light of that assessment, including a timeline for the adoption of those measures.

15. In relation to the recommendation set out in paragraph 2(a)(iii) of decision V/9j, the Committee reminds the Party concerned that article 7 of the Convention applies to all plans, programmes and policies relating to the environment, and not just to those subject to a strategic environmental assessment (SEA) under national law. Thus, in order to comply with the recommendations set out in paragraph 2(a)(iii) of decision V/9j, the Party concerned would need to provide for reasonable timeframes, commensurate with the nature and complexity of the document, for all draft strategic documents relating to the environment and not just for those strategic documents subject to SEA under national law.

16. Also with respect to paragraph 2(a)(iii) of decision V/9j, the Committee welcomes the Party's evaluation of the current practice of its public authorities but expresses its concern that the timeframe proposed by the Party concerned to complete the evaluation is too lengthy and will leave little time for the Party concerned to prepare and adopt any legislative, regulatory or administrative measures necessary to implement the recommendation set out in paragraph 2(a)(iii) of decision V/9j in a transparent and participatory manner. The Committee therefore invites the Party concerned to already in its second progress report due on 31 October 2015, or otherwise by 30 December 2015, report to the Committee on the outcomes of its evaluation and the legislative, regulatory and administrative measures it proposes to take in the light of that evaluation, including a timeline for the adoption of those measures.

17. With respect to the recommendation set out in paragraph 2(b) of decision V/9j, the Committee welcomes the Party concerned's consultation process to determine the best mechanism for providing training to public authorities on access to environmental information. However, it reminds the Party concerned that the training should cover not only access to environmental information, but also ensuring reasonable timeframes for public participation on strategic documents. The Committee recommends that in its second progress report due on 31 October 2015, or otherwise by 30 December 2015, the Party concerned detail all the activities that it has by then undertaken to train its public authorities in accordance with the recommendation set out in paragraph 2(b) of decision V/9j, and also those activities which it plans to complete prior to the submission of its final progress report due on 31 October 2016.

IV. Conclusions

18. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9j, but welcomes the initial steps taken by the Party concerned to date in that direction.

19. The Committee invites the Party concerned in its second progress report or otherwise by 30 December 2015:

(a) With respect to the recommendations set out in paragraph 2(a)(i) and (ii) of decision V/9j, to report to the Committee on the outcomes of its assessment and the legislative, regulatory and administrative measures it proposes to take in the light of that assessment, including a timeline for the adoption of those measures;

(b) In relation to the recommendation set out in paragraph 2(a)(iii) of decision V/9j, to report to the Committee on the outcomes of its evaluation and the legislative, regulatory and administrative measures it proposes to take in the light of that evaluation, including a timeline for the adoption of those measures;

(c) With respect to the recommendation set out in paragraph 2(b) of decision V/9j, to detail all the activities that it has by then undertaken to train its public authorities in accordance with the recommendation set out in paragraph 2(b), and also those it intends to complete prior to the submission of its final progress report due on 31 October 2016.

20. The Committee reminds the Party concerned that the Meeting of the Parties have undertaken to review decision V/9j at its sixth session.

21. The Meeting of the Parties at its sixth session may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention in accordance with paragraph 37 of the annex to decision I/7. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to the Party concerned regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;
- (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.