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Seventh session
Geneva, 18–20 October 2021
Item 7 (b) of the provisional agenda
Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Report of the Compliance Committee on compliance by Romania*,**

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

* The present document is being issued without formal editing.
** This document was submitted late owing to additional time required for its finalization.

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I. Introduction

1. At its sixth session (Budva, Montenegro, 11–13 September 2017), 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 VI/8h on compliance by Romania with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. On 2 February 2018, the Party concerned requested advice from the Committee regarding the types of measures it should take to implement the recommendations contained in decision VI/8h.

3. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of decision VI/8h in open session with the participation of representatives of the Party concerned, both in person and by audio conference. Though invited, no communicants took part in the open session. The Committee informed the Party concerned that it would provide it with written advice on ways in which it might fulfil the recommendations of decision VI/8h after the meeting.

4. On 16 May 2018, the Party concerned submitted information concerning its implementation of decision VI/8h.

5. On 12 July 2018, the Committee provided its advice to the Party concerned concerning possible measures it might take to implement decision VI/8h.

6. On 13 September 2018, the Party concerned requested an extension of the deadline to submit its first progress report. On 19 September 2018, on the instructions of the Chair, the secretariat sent a reply to the Party concerned indicating that in order to fully meet paragraph 8 (a) of decision VI/8h, it was important that the Party concerned provide its progress report by 1 October 2018, as this was the date set by the Meeting of the Parties. The secretariat's reply also stated that the Chair had indicated that further information could be added before 10 October 2018 to supplement the first progress report.

7. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8h, on time. In its first progress report the Party concerned stated that the advice provided by the Compliance Committee on 12 July 2018 had been an important tool to help it in its understanding of how the implementation of a decision of the Meeting of the Parties on compliance must be carried out. The Party concerned stated that the Committee's advice of 12 July 2018 represented very good support and guided its future steps in accomplishing its obligations as a Party to the Convention.

8. On 5 October 2018, the secretariat forwarded the first progress report of the Party concerned to the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69, inviting their comments by 1 November 2018. No comments were received.

9. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019. On 25 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.

10. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of decision VI/8h in open session, with the participation, by audio conference and in person, of representatives of the Party concerned. Though invited, no communicants took part in the open session.

11. On 20 March 2019, the Party concerned submitted a written version of the statement it had delivered during the open session on decision VI/8h at the Committee's sixty-third meeting, and on the same day, it submitted its reply to a question raised by the Committee during the open session.

12. On 24 July 2019, the secretariat wrote to the Party concerned to remind it of the deadline of 1 October 2019 set in paragraph 8 (a) of decision VI/8h for the Party concerned to provide its second progress report.

13. On 30 September 2019, the Party concerned submitted its second progress report, on time.

14. On 1 October 2019, the secretariat forwarded the second progress report to the communicants of communication ACCC/C/2010/51 and ACCC/C/2012/69, inviting their comments thereon. No comments were received.

15. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 5 March 2020. On the same day, the secretariat forwarded the second progress review to the Party concerned and the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.

16. On 26 March 2020, the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 provided comments on the Committee's second progress review.

17. On 30 September 2020, the Party concerned submitted its final progress report on decision VI/8h, on time.

18. On 15 June 2021, the Committee requested further information from the Party concerned. On 25 June 2021, the Party concerned provided the additional information requested by the Committee.

19. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/h through its electronic decision-making procedure on 6 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on that date to the Party concerned and communicants with an invitation to provide comments by 20 July 2021.

20. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8h in open session with the participation by virtual means of the Party concerned. Though invited, the communicants did not take part in the open session.

21. On 16 July 2021, the Party concerned submitted comments on the Committee's draft report. No comments were received from the communicants.

22. After taking into account the information received, the Committee finalized its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8h in closed session. The Committee adopted the report at its virtual meeting on 26 July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicants.

III. Considerations and evaluation by the Committee

23. In order to fulfil the requirements of paragraph 2 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it had taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that public officials:

(a) 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;

(b) 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;

(c) 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.

24. In order to fulfil the requirements of paragraph 3 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it had provided adequate information and training to public authorities about the above duties.

25. In order to fulfil the requirements of paragraph 4 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it had taken urgent measures to fully address the above recommendations.

26. In order to fulfil the requirements of paragraph 7 of decision VI/8h, the Party concerned would need to provide the Committee with evidence that it:

(a) Had taken the necessary legislative, regulatory, or administrative measures and practical arrangements, as appropriate, to ensure the correct implementation of the Convention with respect to:

(i) Article 2 (3): the definition of "environmental information";

(ii) Article 4 (4): the grounds for refusal and the requirement to interpret those grounds in a restrictive way, taking into account the public interest served by disclosure;

(iii) Article 4 (6): the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;

(iv) Article 4 (7): the requirement to provide reasoned statements for refusing a request for access to information;

(b) Reviewed its legal framework in order to identify cases where decisions to permit activities within the scope of article 6 of the Convention are conducted without effective participation of the public (article 6 (3) and (7)), and taken the necessary legislative and regulatory measures to ensure that such situations are adequately remedied;

(c) Reviewed its legal framework and undertaken the necessary legislative, regulatory and administrative measures to ensure that the court procedures for access to environmental information are timely and provide adequate and effective remedies;

(d) Provided adequate practical arrangements or measures to ensure that the activities listed in subparagraphs (a), (b) and (c) above are carried out with broad participation of the public authorities and the public concerned.

27. The Committee welcomes the three progress reports received from the Party concerned, all of which were submitted on time. The Committee moreover appreciates the request for advice received from the Party concerned on 2 February 2018 and the further information received from the Party concerned in addition to its progress reports.

28. The Committee also welcomes the comments provided by the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69.

Scope of review

29. The communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 refer to a number of court cases regarding the disclosure of the "forest management plans" for Natura 2000 sites. They claim that certain studies relating to these plans were not released although the cases were won in court, since the Minister of Environment and a state-owned company administering most of the Natura 2000 sites were refusing to execute the court decisions.[1]

30. The Committee notes that the communicants have not specified which paragraph of decision VI/8h they consider the above allegations relate to. While not excluding that the factual situation described by the communicants may concern some of the aspects of decision

[1] Communicants' comments on Committee's second progress review, 26 March 2020, p. 1.

VI/8h, the Committee considers that based on the information provided to it, it cannot conclude so. The Committee therefore decides to not further address these allegations in its review of decision VI/8h. This does not preclude the possibility of the Committee examining any allegations falling within the scope of the Convention if put before it in the context of a future communication.

General observations

31. The Committee commends the Party concerned for its very active engagement with the Committee up to its second progress report. The Committee considers that this constructive engagement may serve as a model to other Parties.

32. The Committee regrets that the Party concerned's final progress report failed to adequately report on the measures it had by that date taken to implement decision VI/8h, nor to indicate which paragraph of decision VI/8h those measures it did report on were intended to implement. This has required the Committee to send additional questions to the Party concerned in order to be in a position to properly review the progress made.

33. The Committee acknowledges the difficulties caused to governments by the COVID-19 pandemic, as referred to by the Party concerned in its replies to the Committee's questions on 25 June 2021.[2] However, the Committee considers that the problems caused by the pandemic cannot serve as an excuse to Parties for not reporting in a timely and complete manner on their progress to implement the decision of the Meeting of the Parties concerning their compliance.

Paragraph 4 of decision VI/8h: urgent measures to address paragraphs 2 and 3 of decision VI/8h

34. Paragraph 4 of decision VI/8h requests the Party concerned to take urgent measures to fully address the recommendations in paragraphs 2 (a), (b) and (c) and 3 of decision VI/8h. Since paragraph 4 does not set out any additional recommendation of a substantive nature the Committee examines the Party concerned's fulfilment of paragraph 4 in the context of its examination of paragraphs 2 (a), (b) and (c) and 3 of decision VI/8h below. To that end, the Committee points out that the requirements of paragraph 4 can only be fully met once the requirements of paragraphs 2 (a), (b) and (c) and 3 of decision VI/8h have been fulfilled.

Paragraphs 2 (a) and 7 (a) (iv) of decision VI/8h: respond to environmental information requests as soon as possible and state reasons for refusal

35. Concerning the implementation of paragraph 2 (a), in its advice of 12 July 2018, the Committee suggested that the Party concerned may consider taking the following measures:

(a) To prepare and disseminate administrative orders, instructions or guidance applicable throughout the entire public administration;

(b) To collect and publish statistics concerning requests for environmental information, in combination with monitoring by central public authorities;

(c) To establish, strengthen and/or enforce administrative penalties for public officials.[3]

36. Regarding the implementation of paragraph 7 (a) (iv), in its advice of 12 July 2018, the Committee noted that this recommendation is already included in paragraph 2 (a) of decision VI/8h and can therefore be addressed by the measures set out, and taking into account the context described, in the Committee's advice on paragraph 2 (a) of decision VI/8h above.[4]

37. With respect to "administrative orders, instructions or guidance" (see para. 35 (a) above), in its final progress report and in its additional information sent on 25 June 2021, the Party concerned reports upon its "Guide to public authorities for public access to

[2] Party's additional information, 25 June 2021, p. 1.
[3] Committee's advice to the Party concerned, 12 July 2018, p. 2.
[4] Ibid., p. 5.

environmental information" (Guide), which it submits provides guidance to civil servants on handling environmental information requests in accordance with the provisions of article 4 of the Convention.[5] The Party concerned does not report on any other administrative orders, instructions or guidance that it has put in place to ensure that public officials meet the requirements of paragraph 2 (a) of decision VI/8h.

38. Regarding the collection and publication of statistics on environmental information requests with accompanying monitoring (see para. 35 (b) above), in the final version of its "Strategy for the implementation of the Decision VI/8h regarding the compliance of Romania with the requirements of the Aarhus Convention" (Strategy) provided to the Committee on 25 June 2021, the Party concerned sets itself the objective to periodically publish statistics on environmental information requests received by public authorities, including information on whether these requests were addressed "as soon as possible and at the latest within one month of submitting the request", and in case of refusal, information on the reasons for the refusal.[6]

39. As to administrative penalties for officials (see para. 35 (c) above), the Strategy describes the Party concerned's existing legal framework regarding penalties for civil servants who violate their duties, as well as the legal framework on access to justice relating to access to information more generally and relating to environmental information specifically.[7]

40. The Committee understands the fact that the Party concerned refers to the Guide in the context of paragraph 2 (a) of decision VI/8h to mean that the Party concerned considers the Guide a measure to address the Committee's advice summarized in paragraph 35 (a) above, namely that the Party concerned "prepare and disseminate administrative orders, instructions or guidance applicable throughout the entire public administration".[8]

41. Having reviewed the Guide in its entirety, the Committee considers that it has the character of an educational document to inform public officials, and others, about the general obligations of article 4 of the Convention, with helpful references to national and European law provisions and court decisions.

42. The Committee points out, however, that the chapeau of paragraph 2 of decision VI/8h requires the Party concerned to take the necessary legislative, regulatory, administrative or practical measures to *ensure* that public official meet the requirements of paragraph 2 (a). Accordingly, any "administrative orders, instructions or guidance" that the Party concerned puts it place for the purposes of paragraph 2 (a) of decision VI/8k should instruct officials on how to address requests for environmental information in accordance with national law and the requirements of the Convention. As the Committee explained in its advice, the orders, instructions or guidance should have effect throughout the entire public administration.[9] It should also outline the consequences under national law for the public authority or official that non-compliance with article 4 of the Convention will entail.

43. Therefore, the Committee concludes that the Guide, while a very important tool for education and awareness-raising, does not amount to an administrative order, instructions or guidance that will *ensure* that public officials meet the requirements of paragraph 2 (a) of decision VI/8h. Rather, the Committee will examine the Guide further in the context of its review of paragraph 3 of decision VI/8h below.

44. The Committee welcomes the plans of the Party concerned as set out in its Strategy (see para. 38 above) to monitor officials' responses to environmental information requests and to publish statistics on their responses.[10] The Committee understands that this measure is intended inter alia to implement its advice on paragraph 2 (a) of decision VI/8h as set out in paragraph 35 (b) above. The Committee however regrets that it has not been provided with a time schedule for when the Party concerned intends to implement this measure, nor with any

[5] Party's additional information, 25 June 2021, p. 1–2.
[6] Ibid., annex 1, p. 18.
[7] Ibid., pp. 18–20.
[8] Committee's advice to the Party concerned, 12 July 2018, p. 2.
[9] Ibid.
[10] Party's additional information, 25 June 2021, annex 1, p. 18.

more detailed information on the exact steps the Party concerned is planning to take in this regard.

45. Concerning the information provided by the Party concerned on its legal framework regarding penalties for civil servants who violate their duties, as well as the legal framework on access to justice relating to access to information (see para. 39 above), the Committee takes note of the requirements in the Party concerned's legal system in this regard. However, large parts of the described legal framework appear to have already been in place at the time of the Committee's findings on communications ACCC/C/2010/51 and ACCC/C/2012/69 and did not prevent the Party's non-compliance in those cases. As the Committee explained in its advice to the Party concerned (see para. 35 (c) above), one way for the Party concerned to move closer to fully meeting the requirements of paragraphs 2 (a) and 7 (a) (iv) of decision VI/8h would be to show to the Committee that it closely monitors any cases of breach of article 4 of the Convention by public officials. Another possible means, also set out in the advice, would be for the Party concerned to strengthen and/or enforce administrative penalties for public officials in cases of non-compliance.[11] The Committee clarifies that if this approach is chosen, when reporting on its implementation to the Committee, any such information should be collated and provided in an anonymized form, without revealing any personal information that would identify the individual officials concerned. It is for the Party concerned to decide on effective ways to implement paragraphs 2 (a) and 7 (a) (iv).

46. Based on the foregoing, the Committee, while welcoming the steps taken so far, finds that the Party concerned has not yet met the requirements of paragraphs 2 (a) and 7 (a) (iv) of decision VI/8h.

Paragraphs 2 (b) and 7 (a) (ii) of decision VI/8h: restrictive interpretation of grounds for refusal, taking into account the public interest and specifying how public interest was taken into account

47. In its advice of 12 July 2018, the Committee noted that the recommendation in paragraph 7 (a) (ii) effectively reiterates the recommendation in paragraph 2 (b) of decision VI/8h and can therefore be addressed through the measures set out in the Committee's advice on paragraph 2 (b) of decision VI/8h above.

48. As noted in paragraph 38 above, in its Strategy provided on 25 June 2021, the Party concerned sets itself the objective to periodically publish statistics on environmental information requests received by public authorities, including in case of refusal, information on the reasons for the refusal.[12]

49. In its additional information of 25 June 2021, the Party concerned also provides the text of the proposed legislative amendments to articles 12 and 15 of Government Decision 878/2005 on public access to environmental information (Decision 878/2005). Among these are amendments specifying the requirement to give precedence to the public interest when deciding on grounds of refusal regarding requests for environmental information, as well as the requirement that a refusal contain the manner in which the public interest has been taken into account.[13] The Party concerned states that it intends to amend the regulations issued by the Ministry of Culture and the National Agency for Mineral Resources at the same time. It submits that, since the amendments will require the cooperation of other governmental institutions and will probably need to be confirmed by the Parliament, a realistic deadline for the amendments would not be earlier than 2023.[14]

50. The Party concerned furthermore provides the text of article 29 of Law No. 292/2018 on environmental impact assessment for public and private projects (the EIA Law), adopted in 2018, which states in its first two paragraphs:

[11] Committee's advice to the Party concerned, 12 July 2018, pp. 2–3.
[12] Party's additional information, 25 June 2021, annex 1, p. 18.
[13] Party's additional information, 25 June 2021, pp. 3–4.
[14] Party's comments on Committee's draft report, p. 4.

> (1) In the application of this Law, the competent authorities shall respect the restrictions imposed by legislation on commercial and industrial secrecy, including intellectual property, taking into account the need to protect the public interest;
>
> (2) In dealing with a request for environmental information subject to the restrictions laid down in paragraph 1, the competent authorities shall be obliged to interpret the grounds for refusal restrictively, giving priority to the public interest in disclosing and providing information that can be separated from that which is restricted.[15]

51. In its additional information submitted on 25 June 2021, the Party concerned also points to a section of the Guide that mentions a 2015 decision of the High Court of Cassation and Justice, which provides that "refusal of access to information of public interest, where information on personal data is anonymized, is unjustified".[16]

52. The communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 contend that the legislation concerning access to environmental information has not been improved and that they have still encountered many situations where environmental information was denied to the public and requests for environmental information were rejected. By way of example, the communicants refer to an information request on the emissions of certain coal power plants. They claim that the requested information was not released despite a court deciding that it was public information.[17]

53. The Committee welcomes the Party concerned's plans, as set out in its Strategy provided on 25 June 2021, to monitor officials' responses to environmental information requests and to publish statistics on the officials' responses thereto as a means to contribute towards the fulfilment of paragraphs 2 (b) and 7 (a) (ii) of decision VI/8h.[18]

54. The Committee also welcomes the proposed legislative amendments to articles 12 and 15 of Decision 878/2005, as well as the relevant provisions of article 29 of the EIA Law, provided by the Party concerned. The Committee considers that the proposed legislative amendments appear to be in line with the requirements of the Convention. Yet, the Committee regrets that the Party concerned has re-scheduled the deadline for its planned legislative amendments to 2023. Recalling paragraph 4 of decision VI/8h, the Committee urges the Party concerned to take the necessary steps to fulfil the requirements of decision VI/8h as soon as possible.

55. In the light of the above, the Committee, while welcoming the steps taken so far, finds that the Party concerned has not yet fully met the requirements of paragraphs 2 (b) and 7 (a) (ii) of decision VI/8h.

Paragraph 2 (c) of decision VI/8h: reasonable time-frames for the public to get acquainted with draft strategic documents and to submit their comments

56. The Committee recalls that, in its first progress review, it considered that the Party concerned had provided sufficient evidence demonstrating that it provides 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 thereon. The Committee decided that, in the absence of any evidence to the contrary in the meantime, it would, in its report to the seventh session of the Meeting of the Parties, report that the Party concerned has fulfilled the recommendation in paragraph 2 (c) of decision VI/8h.[19]

57. In its second progress review, the Committee reiterated the above conclusion and noted that it had not received any evidence that would demonstrate that the Party concerned not in fact fulfilled the recommendations in paragraph 2 (c). The Committee notes that, since the adoption of its second progress review, it has received no information that would

[15] Party's additional information, 25 June 2021, p. 5.
[16] Ibid., p. 2.
[17] Communicants' comments on Committee's second progress review, 26 March 2020, p. 1.
[18] Party's additional information, 25 June 2021, annex 1, p. 18.
[19] Committee's first progress review, 25 February 2019, para. 27.

contradict its earlier conclusions regarding the Party concerned's fulfilment of paragraph 2 (c) of decision VI/8h.

58. In the light of the foregoing, the Committee finds that the Party concerned has fully met the requirements of paragraph 2 (c) of decision VI/8h 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.

Paragraph 3 of decision VI/8h: adequate information and training for public authorities

Adequate information to public authorities

59. In its final progress report, the Party concerned reports that the Guide has been published on the website of the Ministry of Environment, Waters and Forests (MEWF) and that the Ministry has also sent letters to other public authorities at national and local level asking them to disseminate the Guide. These have included a large number of ministries, the prefectures of each county, various national authorities responsible for issues relating to the environment and public health, and national research and development institutes. The Party concerned reports that the MEWF also advised the ministries to request the authorities under their supervision to publish the Guide on their respective websites.[20] The Party concerned provides abundant proof of different ministries, prefectures and further institutions having published the Guide on their websites.[21] It submits that 1000 copies of the Guide have been prepared in print form, most of which are displayed at the entrances of the MEWF.[22]

60. In addition to the Guide, the Party concerned, in its additional information submitted on 25 June 2021, reports upon the brochure it has prepared on public access to environmental information. The brochure is addressed towards the general public.[23]

61. The Committee welcomes the information provided by the Party concerned. As stated in its second progress review, the Committee considers the Guide to be well-structured and to provide a useful overview of the obligations in article 4 of the Convention.[24]

62. The Committee recalls that, in its second progress review, it explained that, in order to fulfil paragraph 3 of decision VI/8h, the Party concerned would also need "to actively take steps to disseminate the Guide amongst all its public authorities that receive requests from the public for environmental information."[25] The Committee accordingly welcomes the efforts by the Party concerned in this regard described in paragraph 59 above, which demonstrate that the Party concerned has taken active steps to disseminate the Guide amongst its public authorities that receive environmental information requests.

63. Based on the above, the Committee finds that the Party concerned has fulfilled the requirement in paragraph 3 of decision VI/8h to provide adequate information to public authorities about the duties in paragraph 2 (a) of decision VI/8h.

Trainings

64. In its second progress report, the Party concerned reported on the trainings it planned to carry out for magistrates and public authorities.

65. Regarding the proposed training sessions for magistrates and public authorities outlined its Strategy provided on 25 June 2021, the Party concerned reports that all information contained therein "is valid and must be implemented as soon as the COVID-19 restrictions are relaxed and human and funding resources are found".[26] It submits that the

[20] Party's final progress report, pp. 1–2 and annexes 1–4.
[21] Ibid., annex 5.
[22] Party's final progress report, pp. 1–2 and annex 6.
[23] Party's additional information, 25 June 2021, p. 2.
[24] Committee's second progress review, para. 38.
[25] Ibid., para. 39.
[26] Party's additional information, 25 June 2021, p. 3.

training sessions described in the Strategy have been rescheduled for 2022 and 2023 for public authorities and for 2022, 2023 and 2024 for magistrates.[27]

66. With respect to the trainings to be provided by the Party concerned, the communicants of communications ACCC/C/2010/51 and ACCC/C/2012/69 claim that environmental law, including access to information, is not included in the curricula of any "Law University" in the Party concerned. They report that there are no Master's or doctoral studies in this area, with environmental law being an optional course that is usually not followed by students. The communicants also state that "from the attitude of the public administration towards access to information it is very clear that even if there were studies the level and the quality were not aligned with the Aarhus Convention standards".[28]

67. The Party concerned disputes the communicant's claims regarding the curricula of Romanian universities. It states that the Romanian Agency for Quality Assurance in Higher Education requires all law schools to teach environmental law. It provides a number of examples of university-level environmental law courses, including both optional and compulsory courses, including one course at the Faculty of Law of the University of Bucharest that addresses access to environmental information, public participation in environmental decision-making and access to justice in environmental matters.[29]

68. While taking note of the information about environmental law in the curricula of legal studies in the Party concerned, the Committee recalls that paragraph 3 is not about that, but about providing adequate information and training to public authorities. In this respect, in its second progress review the Committee considered the proposed trainings described in the then-draft Strategy and made clear that:

> As the Committee explained in its advice to the Party concerned of 12 July 2018, in order to meet the requirement of paragraph 3 of decision VI/8h, it will be necessary for the Party concerned to demonstrate to the Committee that as many as possible of its public officials that handle matters within the scope of paragraph 2 of decision VI/8h have received the trainings. The Committee will need to examine the content of the trainings and a list of participants, including the name, position and organization of each participant. Both the content of the trainings and the list of participants will need to be provided to the Committee in English.[30]

69. The Committee invites the Party concerned to bear the above advice in mind when reporting to the Committee on the trainings once they have been carried out.

70. In this regard, the Committee expresses its concern about the significant delay in the planned trainings as scheduled by the Party concerned. The Committee acknowledges that the COVID-19 pandemic has caused diverse challenges for governments, including the tightening of ministerial budgets, which may require the readjustment of schedules and plans that were set prior to the pandemic. Even so, the Committee regrets that the trainings are now set to take place three years later than originally planned. The Committee encourages the Party concerned to bring forward the proposed training dates if possible. The Committee points out that, throughout the COVID-19 pandemic, trainings are being carried out by many entities electronically on a daily basis, and moreover, the electronic format of the trainings has often resulted in a higher level of participation than might have been possible in person.

71. The Committee also notes that the first sets of trainings were initially scheduled to take place in 2019,[31] that is, before the start of the pandemic. The Committee has to date received no information on whether these trainings took place, and if they did not, the reasons for that.

72. Based on the above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 3 of decision VI/8h with respect to the training of public authorities.

[27] Ibid., pp. 3 and 6.
[28] Communicants' comments, 26 March 2020, p. 1.
[29] Party's comments on the Committee's draft report, 16 July 2021, pp. 2–4.
[30] Committee's second progress review, para. 47.
[31] See Party's second progress report, annex 1, p. 14.

Concluding remarks regarding paragraph 3 of decision VI/8h

73. In light of the foregoing, the Committee finds that, while the Party concerned has fulfilled the requirement in paragraph 3 of decision VI/8h to provide adequate information to public authorities about the duties in paragraph 2 (a) of decision VI/8h, it has not yet met the requirement to provide training to public authorities about these duties.

Paragraph 7 (a) (i) of decision VI/8h: definition of "environmental information"

74. The Committee recalls that in its advice to the Party concerned, it held that

> The Party concerned should ensure that the correct definition of environmental information in article 2, paragraph 3, of the Convention, is expressly highlighted in all measures taken to fulfil paragraph 2 (a) and (b) of decision VI/8h, as well as in the trainings under paragraph 3 for public authorities dealing with information requests.[32]

75. None of the three progress reports submitted by the Party concerned reports upon measures intended to implement paragraph 7 (a) (i) of decision VI/8h specifically. However, the Party concerned lists the "identification of types of environmental information based on art. 2, paragraph (3) of the Convention, from documents/databases by public and local authorities"[33] as well as the "definition of the environmental information"[34] as part of the trainings for public authorities and magistrates announced in its Strategy. Moreover, the Guide addresses the issue of the correct definition of environmental information.[35]

76. The Committee welcomes the fact that the Party addresses the correct definition of environmental information in its Guide and is also planning to address it in the trainings to be carried out under paragraph 3 of decision VI/8h. The Committee however considers that the Party cannot be considered to have fulfilled the requirements of paragraph 7 (a) (i) so long as it has not yet implemented its trainings under paragraph 3 of decision VI/8h.

77. Based on the above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 7 (a) (i) of decision VI/8h.

Paragraph 7 (a) (iii) of decision VI/8h: requirement to separate confidential from non-confidential information

78. The Committee recalls that, in its advice, it explained that the requirements of paragraph 7 (a) (iii) "should be included in the measures taken for paragraph 2 (a) and (b) of decision VI/8h as well as in the trainings under paragraph 3 for public authorities dealing with information requests."[36]

79. The Party concerned reports on a proposed amendment to article 15 of Decision 878/2005, which would impose a duty on public authorities to redact confidential information within the scope of article 11 (d) and (e) of Decision 878/2005, and to anonymize information within the scope of article 12 (1) (f) and (g), prior to disclosing the rest of the environmental information.[37]

80. The Committee takes note of the Party's proposed legislative amendment to article 15 of Decision 878/2005 and encourages the Party concerned to implement any legislative amendments intended to address the requirements of decision VI/8h as a matter of urgency.

81. The Committee furthermore notes that the Guide instructs officials, when handling requests for environmental information, to separate confidential from non-confidential information[38] and that, according to its Strategy, the Party concerned is also planning to

[32] Committee's advice to the Party concerned, 12 July 2018, p. 5.
[33] Party's additional information, 25 June 2021, annex 1, p. 14.
[34] Ibid., p. 16.
[35] See Party's second progress report, annex 3, pp. 4–5.
[36] Committee's advice to the Party concerned, 12 July 2018, p. 5.
[37] Party's additional information, 25 June 2021, p. 4.
[38] Party's second progress report, annex 3, p. 15.

include the issue of separation of confidential from non-confidential information in its trainings for public authorities and magistrates.[39]

82. While welcoming the above steps, the Committee explains that, as for paragraph 7 (a) (i) of decision VI/8h, the Party cannot be considered to have fulfilled paragraph 7 (a) (iii) so long as it has not implemented the trainings in accordance with paragraph 3 of decision VI/8h.

83. In the light of the foregoing, the Committee finds that the Party has not yet met the requirements of paragraph 7 (a) (iii) of paragraph VI/8h.

Paragraph 7 (b) of decision VI/8h: effective participation of the public in decisions to permit activities within the scope of article 6 of the Convention

84. In its advice to the Party concerned, the Committee stated that:

> In order to fulfil the recommendation in paragraph 7 (b) of decision VI/8h, the Party concerned should take the following steps:
>
> (a) For each of the activities set out in annex I of the Convention (as well as any activities covered by article 6, paragraph 1 (b) of the Convention), list each of the permits/approvals required to be granted prior to it being finally permitted.
>
> (b) For each of the permits/approvals identified above, indicate which ones are required under national law to be the subject of public participation meeting the requirements of article 6 of the Convention, and which ones are not.
>
> (c) For each of the permits/approvals not required by national law to be the subject of public participation meeting the requirements of article 6 of the Convention, provide an explanation of why not.[40]

85. The Committee also stressed that "it would be important that the above information be provided to the Committee as soon as possible during the intersessional period".[41]

86. In its Strategy, the Party concerned states that it intends to prepare a list of authorizations to be issued for the activities listed in annex I of the Convention. The list would indicate which of these authorizations require public participation under national law in accordance with article 6 of the Convention, and if no such public participation is provided for, the Party concerned would explain why this is the case.[42]

87. In its comments on the Committee's draft report, the Party concerned provides a description of its permitting procedures for activities subject to the EIA Directive[43] and the Industrial Emissions Directive[44] and stresses that public participation is required both "at project level and at the operating level" and that "all necessary studies are subject to public information and participation during the EIA procedure" and prior to the issuance of the final EIA decision ("environmental agreement").

88. More generally, with respect to the steps outlined in paragraph 84 above, the Party concerned states that the Ministry of Environment currently does not have the resources to undertake such a complex assessment project across all its legislation concerning the activities in annex I of the Convention. It notes that this task would require the screening of the legislation in force in all fields covered by the activities in annex I in order to determine which permits or approvals are issued prior to the final permit, and whether they are each subject to public participation or not. It also understands that this would only be the first stage, since the Committee would then indicate which of the prior approvals would in fact require public participation in accordance with article 6 of the Convention, and the Party concerned may thereafter need to amend legislation under the competence of other Ministries

[39] Party's additional information, 25 June 2021, annex 1, pp. 14 and 17.
[40] Committee's advice to the Party concerned, 12 July 2018, p. 6.
[41] Ibid.
[42] Party's additional information, 25 June 2021, annex 1, p. 12.
[43] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.
[44] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

and institutions in order to provide for public participation in those procedures. It submits that this is clearly a long-term task and would require significant human and financial resources.[45]

89. The Committee notes the Party concerned's intentions as set out in the Strategy. It also notes that the Strategy states that "public participation is necessary in the procedure for issuing archaeological discharge certificates issued by structures subordinated to the Ministry of Culture and in the procedure for issuing mining licenses by the National Agency for Mineral Resources". Since it was the failure to provide for public participation in the procedure to issue the archaeological discharge certificate that led to the relevant finding of non-compliance in the Committee's findings on communication ACCC/C/2012/69 and the related recommendation now contained in paragraph 7 (b) of decision VI/8h, the Committee invites the Party concerned, at an early stage in the next intersessional period, to provide the text of the legislative measures that will ensure that archaeological discharge certificates issued in the context of decision-making on activities subject to article 6 of the Convention are subject to public participation.

90. The Committee takes note of the Party concerned's concerns about the significant human and financial resources that would be required in order for it to screen its legislation in all fields covered by annex I of the Convention in order to determine which permits or approvals are issued prior to the final permit, and whether each is subject to public participation or not. The Committee therefore invites the Party concerned, early in the next intersessional period, to seek its advice on how it may fulfil the requirements of paragraph 7 (b) of decision VI/8h in a timely and resource-effective way.

91. In the light of the foregoing, the Committee finds that the Party has not yet met the requirements of paragraph 7 (b) of paragraph VI/8h.

Paragraph 7 (c) of decision VI/8h: ensure that court procedures for access to environmental information are timely and provide adequate and effective remedies

92. Regarding paragraph 7 (c), the Committee held in its advice that the Party concerned "may decide to introduce a requirement to ensure that its courts give priority to access to environmental information cases or a requirement that they deal with them within a specified time-frame".[46]

93. In its Strategy, the Party concerned states that it will "seek to identify solutions for streamlining case files in national courts with regard to access to environmental information, with a focus on giving priority to cases involving the refusal of access to environmental information and setting a fixed term within to which the courts will deal with the cases".[47]

94. The Committee takes note of the Party concerned's willingness to implement the Committee's advice. However, the Committee also notes that the Party concerned has to date not provided the Committee with information on any actual steps it has taken to implement paragraph 7 (c) of decision VI/8h, nor has it provided a time schedule in this regard.

95. In the light of the foregoing, the Committee finds that the Party has not yet met the requirements of paragraph 7 (c) of paragraph VI/8h.

Paragraph 7 (d) of decision VI/8h: ensure that the activities listed in subparagraphs (a), (b) and (c) above are carried out with broad participation

96. With regards to the Party concerned's then-draft Strategy, the Committee in its second progress review stated that it:

> welcomes the extensive consultation that the Party concerned has carried out thereon, which demonstrates its efforts to ensure that the Strategy has been prepared with the

[45] Party's comments on the Committee's draft report, 16 July 2021, p. 5.
[46] Committee's advice to the Party concerned, 12 July 2018, p. 7.
[47] Party's additional information, 25 June 2021, annex 1, p. 12.

broad participation of the public authorities and the public concerned in line with paragraph 7 (d) of decision VI/8h.[48]

97. The Committee encourages the Party concerned to maintain its commitment to broad participation in the implementation of the measures it takes to implement paragraph 7 (a)–(c) above.

98. While welcoming the significant efforts by the Party concerned with respect to paragraph 7 (d) to date, since the Party concerned has not yet fully implemented paragraph 7 (a)–(c), the Committee finds that the Party concerned has not yet met the requirements of paragraph 7 (d) of decision VI/8h either.

IV. Conclusions

99. The Committee welcomes the constructive engagement demonstrated by the Party concerned during the intersessional period.

100. The Committee finds that the Party concerned has fully met the requirements of paragraph 2 (c) of decision VI/8h 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.

101. While welcoming the progress made, the Committee finds that the Party concerned has not yet fully met the requirements of paragraphs 2 (a) and (b), 3, 4 and 7(a)–(d) of decision VI/8h.

102. The Committee recommends to the Meeting of the Parties that it reaffirm decision VI/8h and recommend the Party concerned to:

(a) Provide the Committee with evidence that it has, as a matter of urgency, taken the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that public officials:

(i) 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, state the reasons for the refusal;

(ii) Correctly implement the Convention with respect to:

a. Article 2 (3) – the definition of “environmental information”;

b. Article 4 (6) – the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;

(iii) 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, specify how the public interest served by disclosure was taken into account;

(b) Provide the Committee with evidence that it has provided training to public authorities about the above duties;

(c) Review its legal framework in order to identify cases where decisions to permit activities within the scope of article 6 of the Convention are conducted without effective participation of the public (article 6 (3) and (7)), and to take the necessary legislative and regulatory measures to ensure that such situations are adequately remedied;

(d) Review its legal framework and undertake the necessary legislative, regulatory and administrative measures to ensure that the court procedures for access to environmental information are timely and provide adequate and effective remedies;

[48] Committee’s second progress review, para. 31.

(e) Provide adequate practical arrangements or measures to ensure that the activities listed in subparagraphs (a)–(d) above are carried out with broad participation of the public authorities and the public concerned;

103. The Committee also recommends that the Meeting of the Parties request the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the above recommendations;

(c) Provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the above recommendations;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.