

## The European Union and Spain are pointed out by the Aarhus Compliance Committee following complaints filed by IIDMA

- The Aarhus Convention Compliance Committee agrees with IIDMA in its [resolution](#) recommending the EU to strengthen public participation obligations under the Industrial Emissions Directive
- It also agrees with IIDMA that the absence of public participation processes in the updating of more than 6,000 integrated environmental permits, granted in Spain according to integrated pollution prevention and control legislation, contravened the Aarhus Convention

*Madrid, 14 January 2021.*- The [Aarhus Convention Compliance Committee](#) (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of the United Nations Economic Commission for Europe) has upheld two communications submitted by the [International Institute for Law and Environment \(IIDMA\)](#), alleging the failure of the European Union (EU) and Spain to comply with the obligations of public participation in decision-making required by the Convention.

In December 2014, IIDMA submitted two communications:

- In one case, the NGO complained that the EU [Industrial Emissions Directive \(IED\)](#) does not meet the requirements for public participation in decision making on the review and updating of permits for industrial installations set out in Article 6(1) and 10 of the Aarhus Convention. In view of this, the Committee recommends the EU to put in place a legally binding framework to ensure compliance with public participation requirements set in Article 6 of the Aarhus Convention ([ACCC/C/2014/121 European Union](#)).

-In another case, IIDMA complained about the failure of Spain to comply with the Convention's obligations on public participation in procedures for the update of integrated environmental permits undertaken under the first transitional provision of the integrated pollution prevention and control legislation. In its resolution of 17 December 2020 the Committee found, in favour of IIDMA, that Spain had failed to comply with the Aarhus Convention ([ACCC/C/2014/122 Spain](#)).

### Case ACCC/C/2014/121 European Union

The EU has been a party to the Aarhus Convention since 17 May 2005 and, as ruled by the EU Court of Justice (Case C-416/10), it must ensure that EU law is aligned with the obligations of the Convention, including those on public participation. In its communication, IIDMA stresses the importance of the obligation under the Convention to ensure public participation in all cases where public authorities reconsider or update the operating conditions of industrial installations, without restricting such participation to any substantial or significant event. It also points out that public participation in this type of procedures must be guaranteed at an early stage, before the competent authority takes a final decision, that is, when all options are still open and the public can have a real impact on the permitting decision procedure.

However, the IED only provides for public participation in a limited number of cases where permits of industrial installations are reconsidered or updated. As warned by IIDMA before the Compliance Committee, EU Law gives absolute discretion to Member States by denying any possibility for public participation in certain cases where the permit is reconsidered or updated:

1. Due to the publication of new best available technique conclusions or where developments in the best available techniques allow for the significant reduction of emissions if pollution caused by an installation is not significant;
2. When is due to operational safety requirements;
3. When the installation is required to comply with new or revised environmental quality standard;

The European Commission, in representation of the EU, asked for the rejection of IIDMA's communication based on the grounds that the organisation could bring its action directly before the European Court of Justice. However, this is not possible due to the fact that NGOs lack standing under the Treaty on European Union. This is, in fact, contrary to the provisions on access to justice in environmental matters contained in the Aarhus Convention, as the Compliance Committee itself pointed out in its resolution in case [ACCC/C/2008/32](#). Therefore, IIDMA's communication was found admissible by the Committee.

Even where the Aarhus Convention gives Member States certain margin of discretion in cases of public participation, it does not imply absolute discretion in deciding whether or not it is appropriate to open a participatory procedure. By contrast, according to the Compliance Committee, participation requirements must be applied in line with the goals of the Convention, which recognises access to environmental information and public participation as key tools to enhance the quality and implementation of decisions, promote transparency and contribute to public knowledge and awareness of environmental issues, giving the public the opportunity to express its concerns and enabling public authorities to take due account of those concerns in decision-making.

In view of this, on 30 March 2020 the Compliance Committee decided in its Resolution [ACCC/C/2014/121](#), adopted at its 68th meeting, to agree with IIDMA by recognising that the IED is contrary to Article 6.10 of the Aarhus Convention as it fails to provide public participation in the cases of permit reconsideration and update indicated above.

As emphasized by the Committee, in these cases it is not the actual outcome of the reconsideration or the update that determines whether public participation should take place or not. The crucial point is whether the review or update is "capable of" changing the basic parameters of the activity or whether it will "address" significant environmental aspects of the activity (paragraph 104 of the resolution). If this is the case, national authorities shall ensure public participation whenever they reconsider or update a permit in accordance with Article 6 of the Aarhus Convention, taking into account the goals of the Convention.

In its findings, the Aarhus Compliance Committee strengthens, once again, the importance of guaranteeing the right to public participation in environmental decision-making, and recommends the EU to put in place a legally binding framework to ensure compliance with the the Convention requirements in the three cases of permit reconsideration and update in industrial installations above-mentioned.

"The decision of the Aarhus Compliance Committee undoubtedly has very relevant implications for the second pillar of the Aarhus Convention and Europe's environmental democracy. It is therefore essential that the EU reflects in an effective manner the Convention's requirements on public participation in the future text of the Industrial Emissions Directive that will result from the legislative review process whose proposal will be drafted in 2021, as part of the European Green Deal strategy. A public consultation procedure has been launched for the IED review procedure that will be open until 23 March this year", said the **Director and senior lawyer of the International Institute for Law and the Environment (IIDMA), Ana Barreira**.

### **Case ACCC/C/2014/122 Spain**

Spain ratified the Aarhus Convention on 15 December 2004 and, since then, it is therefore a Party to it. In 2013 Spain approved Law 5/2013, which amended the prior legislation on integrated pollution prevention and control, in order to incorporate the IED into the Spanish legal system. The first transitional provision of Law 5/2013 provided for an express procedure for updating integrated environmental permits at existing installations without undertaking a public participation procedure as required by Article 6(10) of the Aarhus Convention.

According to the response submitted by Spain at the hearing held in Geneva in December 2017, more than 6,000 integrated environmental permits were updated, therefore, not respecting the obligations of the Aarhus Convention. Spain argued that no public participation process was envisaged in order to simplify the administrative burden on the competent regional authorities as well as to harmonise legislation in view of the existing different levels of protection developed by the Spanish autonomous communities at that time.

The Compliance Committee agreed with IIDMA when it stated that this update constituted itself a reconsideration of the integrated environmental permits and, therefore, was subject to Article 6. 10 of the Aarhus Convention (paragraph 73 of the resolution). The Committee also recalls, as stated in the EU case ACCC/C/2014/121, that "if the reconsideration or update of an activity's operating conditions is capable of significantly changing the basic parameters of the activity or will address significant environmental aspects of the activity not already covered by the permitting decision, and no public participation process meeting the requirements of the Convention is foreseen, this would not meet the requirements of the Convention".

After analysing the different examples of cases processed without public participation provided by IIDMA, the Committee concluded that "by putting in place a legal framework that did not envisage any possibility for public participation in relation to reconsiderations and updates under the first transitional provision of Law 16/2002, the Part concerned [Spain] failed to comply with Article 6(10) of the Convention".

"While at IIDMA we are satisfied with the findings of the Aarhus Compliance Committee, it is important to note that in the past we brought the claim to Spanish courts denouncing this breach of the Convention and our claim was dismissed, despite the fact that international treaties prevail over domestic laws that are contrary to them, as established in the Spanish Law on International Treaties " states **Ana Barreira, Director and senior lawyer of IIDMA**. "It is a pity that institutions such as this Committee do not have the necessary resources to carry out their work, being this the reason why it has taken six years for it to reach a decision, while the Spanish courts did not rule in favour of the Aarhus Convention", she adds.

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*IDMA is a non-profit organization founded in 1996 in Spain with the purpose of contributing to the protection of the environment. Our goal is to achieve sustainable development through research, application and enforcement of Law from an international and multidisciplinary perspective. Since 1998, the IIDMA has been an accredited organization before the United Nations Environment Assembly of UNEP. In 2001 it was declared of public utility. It belongs to the [Europe Beyond Coal](#) campaign.*