

AARHUS CONVENTION COMPLIANCE COMMITTEE

United Nations Economic and Social Council
Economic Commission for Europe

A Sud Ecologia e Cooperazione Odv ETS

COMMUNICATION FROM MEMBER OF THE PUBLIC CONCERNING ITALY

Filed pursuant to chapter VI of the [Decision of the meeting of the Parties n. 1/7 of 21-23 October 2002](#)

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The present communication has been drafted by the Association A Sud Ecologia e Cooperazione Odv Ets with the support of Nicola Colacino (Professor of International Law - School of Advanced Defence Studies) and Filippo Garelli (PhD candidate in Public, Comparative and International Law - International Order and Human Rights– Sapienza University of Rome).

I. Information on the organization submitting the communication and on its representatives

1. Name of the organization: *A Sud Ecologia e Cooperazione Odv ETS*
2. Address of the organization: Via Macerata, 22/A 00176 – Roma
3. President and legal representative of the organization: Laura Greco
4. Contact of the legal representative: [REDACTED]
5. The contact persons authorized to represent the organization in connection with this communication:
 - Name: Lucie Greyl
 - Title/Position: Head of International Relations
 - Telephone: [REDACTED]
 - [Email]: [REDACTED]

- Name: Marica Di Pierri
- Title/Position: Head of Communication
- Telephone: [REDACTED]
- [Email]: [REDACTED]

II. Party concerned

6. Italy

III. Facts of the communication (1-15)

7. “*A Sud Ecologia e Cooperazione Odv ETS*” is an association engaged in environmental and climate public information. Among its objectives and activities, the association is committed to the promotion of initiatives on environmental protection, the promotion of environmental, climate and social justice, and the ecological transition of production activities and energy sector towards sustainable practices (See, “*A Sud Ecologia e Cooperazione Odv ETS*, statute, articles 4 “Scopi” and 5 “Attività” – doc. 1).
8. On 11 December 2018, the European Parliament and the Council adopted the [Regulation \(EU\) 11 December, No. 2018/1999](#) on the Governance of the Energy Union and Climate Action (doc. 2). According to art. 3, by 31 December 2019, and subsequently by 1 January 2029 and every ten years thereafter, each Member State of the European Union shall notify to the European Commission an integrated national energy and climate plan (NECP). According to the quoted EU regulations, each NECP must cover the period from 2021 to 2030 and define the national objectives, targets and contributions for the five dimensions of the Energy Union (“decarbonisation”, “energy efficiency”, “energy security”, “internal energy market” and “research, innovation and competitiveness”). According to art. 14 of the Regulation (EU) 2018/1999, Member States shall submit to the European Commission a draft of their updated and integrated national energy and climate plans (NECPs) by 30 June 2023, and the final version of NECPs by 30 June 2024. On 30 June 2021, the regulation has been amended by the European Parliament and the Council with the adoption of the [Regulation \(EU\) of 30 June, No. 2021/1119](#), which established the framework for achieving climate neutrality by 2050 (“European Climate Law” – doc. 3).
9. On 21 January 2020, following a dialogue with the concerned institutions, citizens and all stakeholders, Italy published on the MASE (Ministero dell’Ambiente e della Sicurezza Energetica – Ministry of the Environment and Energy Security) website the final text of the first NECP prepared by the Ministries of Economic Development, Environment and Infrastructure and Transport sent to the European Commission in implementation of Regulation

(EU) 2018/1999 (See. MASE, *Publicato il testo definitivo del Piano Energia e Clima (PNIEC)* - [Press release](#)- doc. 4; Italy, [Piano Nazionale Integrato per l'Energia e il Clima](#), December 2019 – doc. 5).

10. Currently, the Ministry of the Environment and Energy Security is the public authority in charge of all activities related to the NECP, including ensuring public information, consultation and participation during all phases related to the adoption of the updated draft NECP prior to its submission by 30 June 2023 to the European Commission. In fact, in defining the content of the draft of updated integrated NECP, each Member State must respect, *inter alia*, articles 9 (4), 10, 11 of the Regulation (EU) 2018/1999, which ensure the performance of a public consultation process aimed at establishing a «multilevel climate and energy dialogue». According to article 10, each Member State shall ensure that the public is given «early and effective opportunities to participate in the preparation of the draft integrated national energy and climate plan – as regards the plans for the 2021 to 2030 period, in the preparation of the final plan well before its adoption». In order to demonstrate that these conditions are met, each Member State «shall attach to the submission of such documents to the Commission a summary of the public’s views or provisional views». Likewise, Member States must ensure that the public is duly consulted, setting reasonable timeframes for the public to be informed, to participate and express its views, and limiting the administrative complexity in the implementation of these rules. Furthermore, in the context of the public consultation foreseen in article 10, article 9(4) establishes that «each Member State shall make available to the public its draft integrated national energy and climate plan». Confirming the above-mentioned purpose of ensuring effective public participation, article 11 promotes the multilevel climate and energy dialogue in order to allow the public to actively participate and discuss the various scenarios envisaged for energy and climate policies as well as to review progress during the definition of the draft integrated NECP.
11. On 29 December 2022, the European Commission adopted the “Communication on guidance to Member States for updating their national energy and climate plans for the period 2021-2030” (29 December 2022, n. C 495/24), which in paragraph 3.2 sets out the framework that Member States should follow at the national level in all steps related to the updating of the NECPs in order to comply with the Regulation (EU) 2018/1999 and articles 6 and 7 of the Aarhus Convention. In paragraph 3.2, namely footnotes 72, 73 and 74, the European Commission refer to the Aarhus Convention and articles 6 and 7 of the treaty in the context of public participation on draft updated NECPs. In fact, according to the European Commission, «article 10 of the Governance Regulation **requires Member States to give the public early and effective opportunities** to participate in the elaboration of the NECPs. **Member States are parties to the Aarhus Convention and so, they are obliged to ensure that the public is given early and effective opportunities to participate in preparing the draft updated national plans** in a transparent and fair framework [emphasis added]». Additionally, the public must have

reasonable time to participate in the different phases of the procedure and must be consulted when all options are still open. Furthermore, at the beginning of the consultation period, the public should have access to all relevant documents, reports and assumptions, included the draft integrated NECP (See. European Commission EU, *Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans*», [29 December 2022, n. C 495/24](#)), in *Official Journal of the European Union*, §3.2 – doc. 6).

12. On 6 May 2023, in the context of the aforementioned framework, the MASE announced on its general website the beginning of the public consultation and participation process towards the adoption of the draft updated NECP (MASE, [Aggiornamento Piano Nazionale Integrato energia e Clima, 8 May 2023 – Press Release](#) - doc. 7).
13. To do so, the MASE has made available for public consultation an online form of 34 multiple-choice questions to be completed within three weeks (from 6 May to 26 May 2023), without making available the updated draft NECP to consult the questions in the online form (see MASE, [Quesiti consultazione pubblica, 2023 – doc. 8](#)). According to the MASE, in describing the online form, «the set of multiple-choice questions has been developed by the Ministry of Environment and Energy Security in line with European legislation that requires member states to «provide the public with timely and effective opportunities to participate in the development of the NECP». In this way, according to the MASE, «the “proposal” for updating the Plan, scheduled for 30 June 2023, will take into account the orientations that emerged in the questionnaire, which is open to everyone: private individuals, associations, stakeholders and institutions» (MASE, [Aggiornamento Piano Nazionale Integrato energia e Clima, 8 May 2023 – press release](#)). However, the online form cannot in any way be equated with a draft NECP, since it is impossible to deduce its concrete contents.
14. Although the public has never had access to the draft updated NECP, on 30 June 2023 MASE published a press release on its website stating that it has sent it to the European Commission (See, MASE, [Clima: il MASE ha trasmesso a Bruxelles la proposta di PNIEC](#), Last updated 30 June 2023 – doc. 9). Finally, on 19 July 2023, for the first time the MASE made available to the public the draft updated NECP submitted to the European Commission on 30 June 2023. Nevertheless, the public no longer has the opportunity to concretely influence its content (see. MASE, [Clima-Energia: il MASE ha trasmesso la proposta di PNIEC alla Commissione Ue](#), 19 July 2023 – doc. 10; Italy, [Integrated National Energy and Climate Plan](#), June 2023 – doc. 11).

IV. **Provision of the Convention with which non-compliance is alleged and nature of alleged non-compliance**

V.

15. In summary, Italy has not complied with the following requirements under the Convention:

- a. **Reasonable timeframes must be in place for the different phases of public participation (art 6(3)).** This is because the public was only provided 18 days to take part in the consultation, without any prior notice.
- b. **The public must be given the opportunity to discuss and comment at an early stage of the decision-making process about the content of an environmental plan, when all options are still open (art 6(4)).** This is because the multiple choice questionnaire did not allow the public to properly discuss or comment on the draft updated plan. In addition, given the proximity of the consultation to the submission of the draft updated plan to the EU Commission, Italy likely already had a substantive draft in place internally. It is therefore unlikely that all options were open at the time that the consultation took place.
- c. **All necessary information must be provided to the public (art 7).** This is because Italy failed to make its draft updated plan publicly available for the consultation.
- d. **In the decision, due account must be taken of the outcome of the public participation (article 6(8)).** This is because the draft updated NECP was only made available to the public on 19 July 2023, after the end of the consultation process on 26 May 2023. Furthermore, neither the draft nor any other attached documents mention the input from the public, which was never consulted on the draft updated NECP's content.
- e. **Adopting measures to establish and maintain a clear, transparent and consistent framework to implement the collection and dissemination of information related to an environmental plan (articles 3(1), 5 and 7).** This is because the MASE did not adopt an adequate measure to implement the collection and dissemination of environmental information on National Energy and Climate Plan (NECP).
- f. **The way in which public authorities make environmental information available to the public must be transparent and effectively accessible through electronic databases. Information accessible in this form should include environmental plans and about their implementation (article 5 (2), lett. b (i), (3), lett. c, (5), lett. a).** This is because the MASE did not set up a specific website for the NECP, electronic database or other measures to make information on the NECP available. Consequently, the information concerning the consultations for the draft updated NECP was not easily accessible to the public on the MASE website. At the same time, the draft NECP was not made available to the public during the consultation.

A. ITALY DID NOT COMPLY WITH ARTICLE 7 TAKEN IN CONJUNCTION WITH ARTICLE 6 PARAGRAPH (2), (3), (4) AND (8) OF THE CONVENTION BECAUSE IT FAILED TO PROVIDE FOR TIMELY AND ADEQUATE PUBLIC INFORMATION AND PARTICIPATION AT AN EARLY STAGE IN THE PROCESS OF ADOPTING THE UPDATED ITALIAN NECP PROPOSAL, WHICH WAS COMMUNICATED TO THE

EUROPEAN COMMISSION WITHOUT DUE CONSIDERATION OF PUBLIC OPINION.

16. According to articles 6 (3), (4), (7) and 7 of the Aarhus Convention and articles 9(4) and 10 of the Regulation 2018/1999 (EU), the duty of the public authority – in Italy, the MASE – to provide access to all relevant information already in the early phase of the consultation period is acknowledged as a crucial step by the Compliance Committee Practice expressed in paragraphs 18-19, the quoted notice of the European Commission¹ and the observations of several environmental NGOs.²
17. In the present case, according to article 7 and Annex I of the Convention, the Italian National Energy and Climate Plan (NECP) is an environmental plan, which involves activities such as energy sector and greenhouse gas (GHG) emissions regulation to tackle climate change. On the basis of article 7, Parties shall make appropriate practical arrangements to ensure public participation and necessary information during the preparation of such a plan within a transparent and fair framework. Additionally, in applying such a rule, Parties shall further respect article 6, paragraphs 3, 4 and 8 of the Convention. As such, the public must be informed at an early stage of the decision-making process concerning decisions connected to the environmental plan, when all options are open (Art. 6(4)). At the same time, the relevant public authority must allow reasonable time and provide all relevant information to permit early and effective public participation (art. 6(3) and 7). Furthermore, to comply with the above conditions, the relevant public authority shall ensure and demonstrate that they have taken due account in the decision of the outcome of the public participation (art. 6(8)). Consequently, taking all these arguments into account, Italy failed to comply with Article 7 read in light of Articles 6(2), (3) (4) and (8).
18. Specifically, the following requirements under articles 6 and 7 of the Convention have not been met:
 - a. **Reasonable timeframes must be in place for the different phases of public participation and for the public preparation to participate effectively during the environmental decision-making process (art 6(3)).** Based on article 6, paragraph 3, when designing the legal framework

¹ According to the European Commission, Member States must ensure the update of the NECPs *inter alia* in a dialogue with civil society organisations, social partners and other stakeholders. Article 10 of the Governance Regulation requires Member States «to give the public early and effective opportunities to participate in the elaboration of the NECPs. Member States are parties to the Aarhus Convention and so, they are obliged to ensure that the public is given early and effective opportunities to participate in preparing the draft updated national plans in a transparent and fair framework. In particular, the public must be given reasonable time to participate in the different phases and must be consulted when all options are still open (74). Sound consultation implies that the public should have access to all relevant documents, reports and assumptions at the start of the consultation period». See, European Commission, [Commission Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans \(2022/C 495/02\)](#), 29 December 2022, paragraph 3.2., p. C 495/39.

² An analysis by the NGO network CAN-Europe and WWF in 23 member states, including Italy, reveals widespread shortcomings in the application of these public participation rules. At the same time, the EEB report shows that this failure is a breach of Regulation (EU) 2018/1999 and Articles 6 and 7 of the Aarhus Convention. See, EEB, [European Environmental Bureau, Ten steps for public participation in National Energy and Climate Plans \(NECPs\)](#), 7 June 2023, point 4 – doc. 12; CAN, Climate Action Network – Europe, [Public participation in National Energy and Climate Plans: Evidence of weak & uneven compliance in Member States](#), 20 April 2023, pp. 1-4 – doc. 13.

for public participation, as general principles, it should be recalled that the requirement to provide “reasonable time frames” shall «include specific time limits» and «must provide enough time for **notification, preparation and effective participation by the public** [emphasis added]». ³ On the first issue, the Committee did not specify a binding minimum time-frame for public consultation in cases about environmental plans and the Party keeps a flexible approach to length determination. However, the Party must take certain factors into account since the consultation length must be longer depending on the complexity and impact of the plan. In fact, according to the ACC, the framework established in article 6, paragraph 3 «implies that the public should have sufficient time to **get acquainted with the documentation and to submit comments taking into account**, inter alia, **the nature, complexity and size of the proposed activity**». Additionally, the public must be given adequate notice before the start of the consultation procedure. At the same time, a minimum length of a consultation process «which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project». ⁴ These considerations are relevant in the present case. First of all, the NECP is an environmental plan pursuant to art. 7 of the Convention that covers the main areas of Italian national energy and climate policy. Consequently, due to its nature, complexity and size, public should have sufficient time to get acquainted with all relevant documents and to submit comments. Therefore, the short 18-day deadline for the consultation is not in line with these principles. In fact, the 18-day deadline did not allow the public to «prepare and participate effectively, taking into account the complexity of the plan». ⁵ Secondly, the MASE did not provide adequate notice of the start of the early consultation phase in May, preventing the public from being adequately informed towards an effective participation. This aspect is confirmed by the date of publication of the press release announcing the start date of the consultation (8 May 2023), which is the same date of the beginning of the consultation procedure itself (see. MASE, [Aggiornamento Piano Nazionale Integrato energia e Clima, 8 May 2013 – Press Release](#)). Thirdly, as the public did not have access to all information during the consultation process, including the draft updated NECP, public was not able to acquaint itself with all relevant documentation and submit comments at this early stage. This is confirmed by the fact that the date of publication of the draft on the MASE website was on 19 July 2023, after the date of 26 May 2023 when the early public consultation phase was closed (see. MASE, [Clima-Energia: il MASE ha](#)

³ (See. UNECE, [The Aarhus Convention. An implementation guide](#), p. 174; UNECE, [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention](#), 2015, pp. 29-31)

⁴ See the findings and recommendations of the Compliance Committee on communication [ACCC/C/2006/16](#) concerning Lithuania (ECE/MP.PP/2008/5/Add.6), 4 April 2008, para. 69.

⁵ (See the findings and recommendations of the Compliance Committee on communication [ACCC/C/2010/54](#) concerning European Union (ECE/MP.PP/C.1/2012/12), 2 October 2012, para. 83; See the findings and recommendations of the Compliance Committee on communication [ACCC/C/2006/16](#) concerning Lithuania (ECE/MP.PP/2008/5/Add.6), 4 April 2008, para. 69).

[trasmesso la proposta di PNIEC alla Commissione Ue](#), 19 July 2023). Taking into account all these reasons, Italy did not comply with Article 6(3) in conjunction with Article 7.

- b. **The public must be given the opportunity to discuss and comment at an early stage of the decision-making process about the content of an environmental plan, when all options are still open (art 6(4)).** During the initial phase of the decision making process, the public has the capacity and opportunity to influence the public authority's conduct and the outcome of public participation can be duly taken into account.⁶ Indeed, public participation at an early stage in the decision-making process can lead to a more incisive delineation of the options or scope of action that the public authority is obliged to follow, and can also influence subsequent decision-making steps.⁷ The Compliance Committee has found that «removing this phase might lead to removing the important opportunity for the public to participate».⁸ Therefore, «once a decision to permit a proposed activity has been taken without public involvement, providing for such involvement in the other subsequent decision-making stages can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”».⁹ Consequently, when there is «[a] lack of adequate opportunities for public participation, there was no real possibility for the outcome of public participation to be taken into account in the decision» and «the Party concerned failed to implement the requirements set out in paragraphs 3, 4 and 8 of article 6, and consequently was in breach of article 7».¹⁰ Applying these principles to the present case, the conduct of the MASE is totally in breach of Article 6(4), since by not allowing the public to consult the draft updated NECP, the public irremediably lost the right to discuss the content of the plan or to express any comments throughout the first phase of the consultation process and before the final draft submission to the European Commission. In fact, during the whole consultation process, the public never had access to the draft updated NECP or had expressed any observation on its content before its notification to the European Commission on 30 June 2023. The only way chosen by the MASE to involve the public in the first

⁶ See the findings of the Compliance Committee on communication ACCC/2006/16 concerning Lithuania ([ECE/MP.PP/2008/5/Add.6](#)), 4 April 2008, para. 71; the findings of the Compliance Committee on communication ACCC/C/2006/17 concerning the European Community ([ECE/MP.PP/2008/5/Add.10](#)), 2 May 2008, para. 51; the findings of the Compliance Committee on communication ACCC/C/2008/26 concerning Austria ([ECE/MP.PP/C.1/2009/6/Add.1](#)), 8 February 2011, para. 66.

⁷ See the findings of the Compliance Committee on communication ACCC/C/2009/38 concerning United Kingdom ([ECE/MP.PP/C.1/2011/2/Add.10](#)), April 2011, para. 81.

⁸ See the findings of the Compliance Committee on communication ACCC/C/2004/4 concerning Hungary ([ECE/MP.PP/C.1/2005/2/Add.4](#)), 14 March 2005, para. 11.

⁹ See the findings of the Compliance Committee on communication ACCC/C/2009/43 concerning Armenia ([ECE/MP.PP/2011/11/Add.1](#)), April 2011, para.76.

¹⁰ See the findings of the Compliance Committee on communication ACCC/C./2005/12 concerning Albania ([ECE/MP.PP/C.1/2007/4/Add.1](#)), 31 July 2007, para. 74

phase of the NECP update simply consisted in filling an online form of 34 multiple-choice questions. As confirmed by a MASE press release, the first available date for the public to consult the draft updated NECP was on 19 July 2023, when the MASE published for the first time the draft on its website. (see. MASE, [Clima-Energia: il MASE ha trasmesso la proposta di PNIEC alla Commissione Ue](#), 19 July 2023 – press release). However, at this juncture, the NECP had already been notified to the Commission by the 30 June 2023 and the public no longer had the opportunity to have an influence on the possible content of the draft. Taking these elements into account, Italy did not comply with Article 6(4) read in conjunction with Article 7 on public participation in environmental plans.

- c. **All necessary information must be provided to the public (art 7).** the first sentence of article 7 of the Convention requires to ensure a public participation within «a **transparent and fair framework**, having provided the **necessary information to the public**». At the same time, according to the second sentence of article 7, «within this framework, article 6, paragraphs 3, 4 and 8, shall be applied». In its practice, the Committee has emphasised that Articles 6(3) - (4) and 7 of the Convention bind the Parties to ensure more than formal public participation in the decision-making process. In fact, together with timely public involvement, effective public participation requires access to all the information and documents necessary to express an informed opinion. The duty to ensure access to all necessary information during the early phase of consultation before the adoption of the draft of updated NECP is confirmed by primary rule and other acts of the EU institutions. Indeed, according to the preamble of the Regulation (EU) 2018/1999 on climate and energy governance, Member States should ensure that the public is given early and effective opportunities considering the provisions of Directive 2001/42/EC of the European Parliament and of the Council and the Aarhus convention. At the same time, «when carrying out public consultations, and in line with the Aarhus Convention, Member States should aim to ensure [...] that the public is able to access all relevant documents.¹¹ Consistent with the preamble, according to article 9 (4) and 10 of the regulation, during the public consultation «each Member State shall make available to the public its draft integrated national energy and climate plan» and «shall ensure that the public is given early and effective opportunities to participate in the preparation of the draft integrated national energy and climate plan» and «that the public is informed». Finally, the EU Commission stresses the connection between articles 6 and 7 of the Convention and article 10 of the Regulation (EU) 2018/1999 in its *Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans*», [29 December 2022, n. C 495/24](#). Based on the above framework, the Commission recall that «sound consultation implies that the

¹¹ European Union, [Regulation \(EU\)2018/1999](#) of the European Parliament and of the Council of 11 December 2018, paragraphs 28 and 29

public should have access to all relevant documents, reports and assumptions at the start of the consultation period». Therefore, based on EU law and the Aarhus Convention, in the context of a possible modification of an environmental plan, the public shall have access to the draft of the emended plan and other relevant documents, which should be effectively available for the public in the early phase of the participation process. Given that MASE omitted to give such an information, as the draft updated plan was not made available during the consultations, it failed to comply with its duty to inform the public. In fact, since the public did not have access to all resources, it could not have taken part in the consultation on an informed basis. The MASE's choice not to take the public's comments into account at all and not to share the draft of updated plan with the public, even at an early stage of the procedure, irreparably compromised the public's right to have its opinion duly taken into account before the adoption of the final draft updated NECP. Furthermore, in the absence of the proposed draft of updated NECP or other documents from which deducing its content, the online form used for the consultation process alone did not allow the public to be adequately informed. Taking these principles into account, the public has suffered a breach of its right to be informed correctly and promptly, in a transparent and fair manner, as well as to submit comments to be taken into account before the adoption of the draft. These violations prevented the public from participating in a timely and adequate manner. In conclusion, considering all these arguments and the preceding paragraphs, Italy did not comply with Article 7 of the Aarhus Convention.

- d. **In the decision, due account must be taken of the outcome of the public participation (article 6(8)).** The Compliance Committee stresses the importance that, even at an early stage of the whole procedure, before the adoption of a measure, the public authority concerned is «required to take due account of the comments, opinions, information and analyses expressed by the public and to demonstrate this in a transparent and traceable way».¹² At the same time, a «targeted consultation involving selected stakeholders, including NGOs, can usefully complement but not substitute for proper public participation, as required by the Convention».¹³ Clearly, the obligation to take due account of the public participation in the final decision cannot be considered as a requirement to accept all comments, reservations or opinions submitted. Nevertheless, the relevant authority must seriously consider all the comments received and has a duty «to make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based», together with the discussion

¹² See the findings and recommendations of the Compliance Committee on communication [ACCC/C/2016/144](#) concerning Bulgaria ([ECE/MP.PP/C.1/2021/29](#)), 26 July 2021.

¹³ See the findings and recommendations of the Compliance Committee on communication [ACCC/C/2010/54](#) concerning European Union ([ECE/MP.PP/C.1/2012/12](#)), 2 October 2012, para. 83

of how the public participation was duly considered.¹⁴ Based on these principles and the committee’s practice, Italy did not establish an effective consultation process to ensure that the public expressed its point of view and to take public comments into account in the final draft updated NECP. In fact, during the early phase of the consultation process, the public never had the opportunity to read the draft or to express any comment on it. Consequently, in the absence of a material opportunity to submit comments on the draft, it is unclear how the MASE could have taken public feedback into account. The fact that MASE did not take public comments into account is also confirmed in the draft published on 19 July 2023 after the conclusion of the early phase of the public consultation process. In fact, on page 52 of the draft, the MASE describes the approaches followed for the «involvement of institutions and sectoral stakeholders» in relation to the draft consultation process. The draft merely states that for its elaboration has “involved various stakeholders, including through the public consultation carried out in May 2023” (the online form) and by gathering environmental information from concerned stakeholders. However, the plan in no way explains how it would have allowed the public to comment on the plan. At the same time, the public’s observations do not appear in the draft or other documents annexed to it (see. MASE, *Clima-Energia: il MASE ha trasmesso la proposta di PNIEC alla Commissione Ue*, 19 July 2023 – press release – doc. 12; see. Italy, *Integrated National Energy and Climate Plan*, June 2023 – doc. 13, p. 52). Taking these aspects into account, given that the public was only able to fill in the online form, its consultation was only formal. Therefore, Italy did not comply with article 6(8) in conjunction with article 7, by not taking into account of the outcome of the public observations in the context of the early consultation process.

B. ITALY DID NOT COMPLY WITH ARTICLE 3 (1) TAKEN IN CONJUNCTION WITH ARTICLE 5 (2), LETT. B) (1), (3), LETT. C) AND (5), LETT. A) AND ARTICLE 7 OF THE CONVENTION BECAUSE IT DID NOT SET UP A WEBSITE OR ELECTRONIC DATABASE DEDICATED EXCLUSIVELY TO THE NATIONAL ENERGY AND CLIMATE PLAN (NECP), IN WHICH ALL THE RELEVANT DOCUMENTS WERE AVAILABLE FOR THE PUBLIC, IN ORDER TO ENSURE A CLEAR, TRANSPARENT AND COHERENT FRAMEWORK TO PROVIDE PUBLIC INFORMATION AND PARTICIPATION.

19. Specifically, the following requirements under article 3(1), 5 (2), lett. b (i), (3), lett. c (5), lett. a) and 7 of the Convention have not been met:

¹⁴ See the findings and recommendations of the Compliance Committee on communication ACCC/2008/24 concerning Spain ([ECE/MP.PP/C.1/2009/8/Add.1](#)), 30 September 2010, paras 99-100.

- a. **Adopting measures to establish and maintain a clear, transparent and consistent framework to implement the collection and dissemination of information related an environmental plan (articles 3(1), 5 and 7).** According to article 3(1) of the Convention, each Party «shall take the necessary legislative, regulatory and other measures [...] to establish and maintain a clean, transparent and consistent framework to implement the provisions of the Convention. [including articles 5 and article 7 of the treaty]». ¹⁵ In fact, article 5 refers to the collection and dissemination of environmental information, while article 7 concerns public participation in environmental plans. The Convention recognizes the importance of the respective roles that individual citizens and non-governmental organizations can play in environmental protection. ¹⁶ In this respect, Article 5 defines some essential modalities to ensure transparency and effectiveness in access to environmental information, as a precondition, for example, to allow public participation in environmental decision-making process in the case of environmental plans (article 7). In the case of processes relating to public information and participation in connection with the updating of environmental plans, the establishment and the promotion of informatic tools, such as an exclusive website or a database, can contribute to better include the public «in an adequate, timely and effective manner» in line with articles 5 and 7 of the Convention. ¹⁷ In the present case, the MASE did not set up a website or other measures to implement the collection and dissemination of information on the NECP and to improve public participation. Therefore, Italy has not complied with Article 3(1), read in conjunction with Articles 5 and 7 of the Convention.
- b. **The way in which public authorities make environmental information available to the public must be transparent and effectively accessible through electronic databases. Information accessible in this form should include environmental plans and document related their implementation** (article 5 (2), lett. b (i), (3), lett. c, (5), lett. a). According to article 5 of the Convention, each Party shall ensure that public authorities make environmental information available to the public in a transparent way and that environmental information is effectively accessible for the public. To reach such a target, Parties must establish and maintain practical arrangements, such publicly accessible lists, registers or files, which include

¹⁵ See Compliance Committee, finding and recommendations with regard to communication (ACCC/2005/11) concerning compliance by Belgium, adopted by the Compliance Committee on 28 July 2006, [ECE/MP.PP/C.1/2006/4/Add.2](#), para 43.

¹⁶ The Preamble recognises, *inter alia*, the right of citizens to have access to information and to participate in the environmental decision-making process, which imposes a duty on the Parties to ensure this right. At the same time, the preamble emphasises how public participation in the decision-making process improves the quality and delivery of decisions by public authorities, which are able to take due account of public concerns. See, UNECE, *Aarhus Convention, preamble*.

¹⁷ See the findings of the Compliance Committee on communication ACCC/C/2006/16 concerning Lithuania ([ECE/MP.PP/2008/5/Add.6](#)), para. 91.

website or electronic database (article 5 (2) lett. b) (i) of the Convention).¹⁸ In addition, a Party should ensure that environmental information related to an environmental plan is progressively made available in electronic databases that are easily accessible to the public, through approaches that can facilitate public participation and the application of national legislation implementing the Convention (article 5 (3), lett. c-d and 7 of the Convention). To enable effective public participation, each Party shall take positive internal measures for the dissemination of environmental information about the plan and shall take all reasonable and necessary steps to that end (article 5(5), lett. a) of the Convention).¹⁹ According to the Compliance Committee, taking into account articles 3, 5 and 7 of the Convention, the choice to publish news or press releases about an environmental plan on the public authority concerned general website with other daily information would not be a sufficient way to ensure effective information and participation of the public. In fact, it is not reasonable to expect members of the public to proactively check the Ministry's website on a regular basis among others published news.²⁰ On the contrary, such an approach constitutes an obstacle to information and proactive public participation in environmental procedures, including in case of environmental plans. In the context of the process to update the Italian NECP, the establishment of a dedicated website or electronic database could have been the best tool to ensure the gradual information and the collection about all news and other related activities, including the publication of the draft of the updated NECP. Such tool should have been the best way to ensure the public environmental information and participation in a clean, transparent and coherent framework according to articles 3, 5 and 7 of the Aarhus Convention. At the same time, such approach is consistent with article 10 of the Regulation (EU) n. 2018/1999, which imposes to ensure public early and effective information and opportunities of participation, limiting administrative obstacles to public involvement. In addition, the opportunity to establish a dedicated website or an informatic database is confirmed by several sources as a best practice to ensure the respect both of the provisions of the Aarhus Convention and articles 10 and 11 of the Regulation (EU) 2018/1999 of the European Commission and of the Council.²¹ For instance, on the one hand, according to the EU Commission Notice on the Guidance to Member States

¹⁸ See. UNECE, [The Aarhus Convention. An implementation guide](#), 2014, pp. 102-103.

¹⁹ Making a draft of an environmental plan available in electronic databases or on ministry websites may be a useful tool for implementing Article 7 on public participation in decisions on plans, programmes and policies. Furthermore, according to paragraph 3(d), the category "other information" could include the proposal of a plan to be adopted, including its amendments or updates, as well as related graphics, photographic materials and sound recordings. At the same time, a website can be an effective tool for ensuring the dissemination of such information in accordance with Article 5 (5). See. IBID, pp. 106-109.

²⁰ See the findings of the Compliance Committee on communication ACCC/C/2012/71 concerning Czechia ([ECE/MP.PP/C.1/2017/3](#)), para. 76.

²¹ See, European Environmental Bureau (EEB), [Ten steps for public participation in National Energy and Climate Plans \(NECPs\)](#), 7 June 2023 – (doc. 10); Climate Action Network (CAN) – Europe, [Public participation in National Energy and Climate Plans: Evidence of weak & uneven compliance in Member States](#), 20 April 2023, p. 2 – (doc. 11).

for the update of the 2021-2030 national energy and climate plans (2022/C 495/02), Member States must develop the update of the NECPs in a dialogue with civil society and other stakeholders giving the public early and effective opportunities to participate in the elaboration of the NECPs. To do so, a «sound consultation implies that the public should have access to all relevant documents, reports and assumptions at the start of the consultation period» and a best practice to ensure such a result is «setting up the consultation through a dedicated NECP website, which contains all the information». ²² On the other hand, several Aarhus Convention Parties, such as Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Serbia, Tajikistan and Turkmenistan have contributed to the implementation of article 5 and 7 through their involvement in the establishment of either Public Environmental Information Centres or “Aarhus Centres”, which use electronic tools such as websites, databases and electronic list servers to make environmental information easily accessible to the public. ²³ According to the UNECE and civil society, the creation and maintenance of user-friendly websites where the public can find information on the proposed activity, access relevant documents online and submit electronic comments on the proposed activity is a practical measure to facilitate effective access to information relevant to the decision-making process. Such websites may also include, *inter alia*, a list of persons or bodies to whom administrative tasks related to the public participation procedure are delegated. ²⁴ Considering the above, Italy failed to comply with article 5 in conjunction with article 7. In fact, Italy did not set up a website or informatic database exclusively dedicated to the NECP activities and it is not involved in the Aarhus Centres activities. On the contrary, the MASE preferred to inform the public about the adoption of the NECP and all the related issues through press releases chronologically published on its general website, without distinguishing them from all the other information concerning the matters falling within its competence. **Nevertheless, such a lack of clarity or quality in the context of public information by not providing a dedicated NECP’s website or electronic database affected and still affects the public participation in environmental decision-making process conducted by the MASE.** ²⁵ This method was followed, for example, for the publication of

²² See, European Commission, [Commission Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans \(2022/C 495/02\)](#), 29 December 2022, paragraph 3.2., p. C 495/39.

²³ See, UNECE, [The Aarhus Convention. An implementation guide](#), 2014, p. 105; on the Aarhus Centres, see, [Aarhus Centres. A platform for co-operation, participation and partnerships in addressing environment and security issues](#).

²⁴ See, UNECE, [Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention](#), 2022, paragraph 97, p. 36; See, CAN, [Public participation in National Energy and Climate Plans: Evidence of weak & uneven compliance in Member States](#), 20 April 2023.

²⁵ See Compliance Committee, Finding and recommendations with regard to communication (ACCC/C/2005/12) concerning compliance by Albania, adopted by the Compliance Committee on 31 July 2007, [ECE/MP.PP/C.1/2007/4/Add](#), para. 87; Compliance Committee, Finding and recommendations with regard to communication (ACCC/C/2004/3) concerning

the notice of the launch and ending of the public “consultation procedure” aimed at defining the updated draft of the NECP,²⁶ as well as the notice of the sending of the draft to the European Commission²⁷ or the publication of the draft of updated NECP, without the public having had the opportunity to consult it or to submit comments. Accordingly, the absence of an internet website or information database dedicated to the NECP, as well as the impossibility of consulting the draft updated NECP during the consultation procedure or the information strategy adopted by the MASE prevent the public from being informed and participating effectively in a clear, transparent and consistent way. Consequently, Italy did not comply with article 5(2)(b) - (i), (3)(c), (5)(a) in conjunction with article 7 of the Convention.

20. Use of domestic remedies

21. In Italy, public participation in environmental decision-making processes, pursuant to the obligations deriving from Article 6 of the Aarhus Convention and Directive 2003/35/EC, is regulated by Part Two of Legislative Decree No. 152/2006, which provides that anyone may participate in environmental assessment procedures by expressing observations and requests in the manner established by law. At the end of the assessment procedure, an independent Technical Commission issues an opinion based also on the comments sent by the public. On the basis of this opinion, MASE issues the decree of environmental compatibility. A similar procedure is established under the Decree regarding the Integrated Pollution Protection and Control System (“*Protezione e Controllo Integrati dell’Inquinamento*” - IPPC). In the case of the NECP, however, these procedures are not relevant at this preliminary phase, in which, as explained in the previous paragraphs, **MASE did not ensure adequate information and effective consultation of the public**. Such failure could not therefore be contested at the domestic judicial level, since there is no specific remedy for that purpose, but only the possibility of bringing an action before the administrative court alleging a breach of the general law on administrative procedure, namely of Article 9, which provides that «any party having either public or private interests, as well as parties having diffuse interests and legally established as associations or committees, who may be adversely affected by a measure, shall have the right to intervene during the related procedure».²⁸ However, in the present circumstance, such a general action, basically aimed at ascertaining whether the applicant has an interest in intervening in the

compliance by Ukraine, adopted by the Compliance Committee on 14 March 2005, [ECE/MP.PP/C.1/2005/2/Add.3](#), para. 40.

²⁶ See, MASE – Press release. [Aggiornamento Piano Nazionale Integrato Energia e Clima](#), 8 May 2023.

²⁷ See, MASE – Press release. [Clima: il MASE ha trasmesso a Bruxelles la proposta di PNIEC](#), 30 June 2023.

²⁸ See, Italy, [Law No. 241 dated 7 August 1990, New Rules Regarding Administrative Procedure and the Right of Access to Administrative Documents](#), article 9(1).

proceedings, could be inappropriate and misleading, as well as excessively expensive. This is because the interest claimed by “*A Sud Ecologia e Cooperazione Odr ETS*”, consisting in ensuring the widest dissemination of information on environmental matters among the public, in order to increase their level of awareness, does not result, as a consequence of the alleged violations committed by MASE, in a concrete and immediate prejudice, as the general remedy requires, also in the light of the interpretation of Article 9 by the relevant case law. Moreover, the exhaustion of such a remedy, which is not specifically designed for the complaints raised in the present communication, for the mere purpose of fulfilling the obligation of exhausting domestic remedies, would lead to an unreasonable time increase for the assessment, and would be unreasonably expensive.

22. In this specific respect, it must be taken into account that, within the Italian legal system, environmental cases tend to be classified as having an “indeterminable” or “indeterminable of particular importance” value. These two circumstances are reflected in the impossibility for the plaintiffs to estimate with sufficient certainty and clarity the costs they are expected to meet.²⁹ In addition, the fee with further litigation costs shall be paid by the losing party to each winning party.³⁰ Nevertheless, bearing in mind different parameters and starting from a minimum to a maximum value, the administrative judges are granted wide discretion when applying the “loser pays” principle according to article 91 (1) of the Code of Civil Procedure. Consequently, in the present case, the communicant would not have been able to predict the possible costs of internal remedies. Clearly, one would not expect the communicant to predict its costs with exact precision. However, the wide discretion given to courts in deciding litigation costs leads to a lack of certainty and clarity as to the expected burden of costs for plaintiffs.
23. At the same time, given the expected submission of the final NECP to the European Commission under Regulation (EU) 2018/1999 on 30 June 2024, A Sud’s objective is to obtain recommendations from the Compliance Committee that will constructively guide the Public Authorities (the MASE) towards better

²⁹ On the one hand, one speaks of “indeterminable” taking into account that the fees applicable to monetary values can range from € 26,000 to € 260,000. On the other hand, taking into account the importance of the case, the value may increase up to € 520,000. In the case of an unsuccessful party, the fee will be due to each defendant (e.g., the public authorities adopting the decision but, depending on the case, also other public authorities involved in the procedure). See, Ministry of Justice, [Ministry Decree No. 55 of 10 March 2014, Regulation on the determination of parameters for the payment of fees for the legal profession, pursuant to Article 13\(6\) of Law No. 247 of 31 December 2012](#), in *Gazzetta Ufficiale*, No. 77 of 2 April 2014.

³⁰In any case, when ruling on costs, the Italian domestic courts may impose lower fees (between € 2,000 and € 5,000 per defendant) than those set by Ministerial Decree No. 55/2014. In fact, as established in a previous case already decided by the Committee, «when ruling on costs, courts should apply the tariff tables set out in Ministerial Decree No. 55/2014». These tables quantify the remuneration of legal assistance in all domestic jurisdictions, including the Regional Administrative Courts (*Tribunali Amministrativi Regionali* or *TAR*) and the Council of State [generally speaking, the administrative courts]. The final amount varies depending on the activities carried out during the relevant proceedings (for example, in the case of a preliminary investigation before the TAR or in the case of a request for a precautionary measure before the TAR and the Council of State), and on the overall monetary value of the case», See Compliance Committee, Finding and recommendations with regard to communication (ACCC/C/2015/130) concerning compliance by Italy, adopted by the Compliance Committee on 3 September 2021, [ECE/MP.PP/C.1/2021/22](#), paras 27-28.

public information practices and participatory pathways than those challenged in this communication and in breach of the Convention.

24. Use of other international procedures

25. No international proceedings before other international bodies or courts have been instituted.

26. Confidentially

27. Confidentially is not required.

28. Supporting documentation

- Doc. 1 - Statute of “A Sud Ecologia e Cooperazione Odv ETS”.
- Doc. 2 - [Regulation \(EU\) 11 December, No. 2018/1999](#) on the Governance of the Energy Union and Climate Action.
- Doc. 3 – Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’).
- Doc. 4 - MASE, [Pubblicato il testo definitivo del Piano Energia e Clima \(PNIEC\) - Press release.](#)
- Doc. 5 – Italy, [Piano Nazionale Integrato per l’Energia e il Clima](#), December 2019.
- Doc. 6 - European Commission EU, [Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans», 29 December 2022, n. C 495/24.](#)
- Doc. 7 - MASE, [Aggiornamento Piano Nazionale Integrato energia e Clima, 8 May 2023 – press release.](#)
- Doc. 8 - MASE, [Quesiti consultazione pubblica](#), 2023.
- Doc. 9 - MASE, [Clima: il MASE ha trasmesso a Bruxelles la proposta di PNIEC](#), Last updated, 30 June 2023 – press release.
- Doc. 10 – MASE, [Clima-Energia: il MASE ha trasmesso la proposta di PNIEC alla Commissione Ue](#), 19 July 2023 – press release.
- Doc. 11 - Italy, [Integrated National Energy and Climate Plan](#), June 2023.
- Doc. 12 - European Environmental Bureau, [Ten steps for public participation in National Energy and Climate Plans \(NECPs\)](#), 7 June 2023.
- Doc. 13 - CAN. Climate Action Network – Europe, [Public participation in National Energy and Climate Plans: Evidence of weak & uneven compliance in Member States](#), 20 April 2023.

29. Conclusions:

In light of the above, we respectfully ask the Committee:

1. To declare the communication admissible with regard to the complaints under:
 - i. article 7, taken in conjunction with article 6 (3), (4) and (8) of the Convention; and
 - ii. article 3(1) taken in conjunction with articles 5(2), lett. b) (1), (3), lett. c) and (5) and 7 of the Convention.
2. To find that Italy failed to comply with:
 - i. article 7 taken in conjunction with article 6 (3), (4) and (8) of the Convention; and
 - ii. article 3 (1) taken in conjunction with articles 5(2), lett. b) (1), (3), lett. c) and (5) and 7 of the Convention.
3. To recommend that Italy undertakes the necessary measures to ensure:
 - i. the collection and access to all useful information related to the NECP to inform the public and facilitate its participation in the relevant decision-making processes;
 - ii. timely and effective public information and participation in the early phase of consultation process, both in the NECP update process as well as in other environmental plan procedures, ensuring that the public's opinion is duly taken into account; and
 - iii. the establishment of a website or database dedicated exclusively to the NECP.