

## AARHUS CONVENTION COMPLIANCE COMMITTEE

United Nations Economic and Social Council  
Economic Commission for Europe

Geneva, Switzerland

COMMUNICATION FROM A MEMBER OF THE PUBLIC NO.  
PRE/ACCC/C/2023/205

TRANSCRIPT OF ORAL STATEMENTS BY THE  
COMMUNICANT REGARDING THE ADMISSIBILITY OF THE  
COMMUNICATION

EIGHTEENTH MEETING OF THE COMMITTEE - OPEN  
SESSION HELD ON 19 SEPTEMBER 2023

Madam chair,

Distinguished members of the Committee,

I would like to thank the Committee for the opportunity to participate today during this open session.

The Communicant submits that this Communication should be declared preliminarily admissible, taking into account the practice of the Committee, and since there is no criterion set forth in the Annex to Decision 1/7 to deem the Communication inadmissible.

This communication raises several profiles of non-compliance with the first and second pillars of the Aarhus Convention.

First, Italy has failed to comply with Articles 6 and 7 of the Convention because the public was not informed in an adequate, timely, and effective manner, within a fair and transparent framework, of all the necessary information at the early stage of the consultation process for updating the Integrated National Energy and Climate Plan (INECP).

This information includes the draft of the proposed updated plan that was submitted on 30 June 2023 to the European Commission without taking into account comments by the public, who therefore were not able to be informed and take proper part in the consultation process. In fact, the public and the public concerned only filled in a questionnaire of 34 generic energy and climate-related questions, without having access to the draft of updated NECP. However, the draft sent to the European Commission was only published on the MASE website on 19 July 2023, when the consultation process was already closed, and the public no longer had time and opportunity to comment on or influence the content of the draft. Thus, in doing so, the proposal submitted to the European Commission failed to take into account effective public information and participation, as confirmed by a broad legal framework in line with Articles 6 and 7 of the Aarhus Convention. On the one hand, Italy did not comply with several relevant rules of EU law, considering that the Italian NECP shall respect, *inter alia*, the provisions of the regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, including its articles 9,10 and 14. According to article 14, the regulation distinguishes the NECP upgrading process in two different steps: 1) the initial phase, according to which **«by 30 June 2023, [...] each Member State shall submit to the Commission a draft update of the latest notified integrated national energy and climate plan»** (art. 14(1)); 2) the subsequent phase, according to which **« by 30 June 2024, [...] each Member State shall submit to the Commission an update of its latest notified integrated national energy and climate plan»**. Furthermore, article 10 states that 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»**. Finally, the article 9(4) of the quoted regulation states that, **«in the context of the public consultation as referred to in Article 10, each Member State shall make available to the public its draft integrated national energy and climate plan»**. Consequently, according to the Regulation 2018/1999, the public should have had access to the updated NECP proposal by 30 June 2023, during the initial phase of the consultation process, in order to take their comments into account before the proposal was submitted to the European Commission. Those duties are confirmed in §3.2 of the notice n. C 495/24 on the Guidance to Member States for the update of the

2021- 2030 national energy and climate plans, which has been adopted by the European Commission EU on 29 December 2022. The notice expressly refers to articles 6 and 7 of the Aarhus Convention. Namely, the notice states «**early and effective opportunities to participate in preparing the draft updated national plans in a transparent and fair framework** [*footnote 72: article 6 of the Aarhus Convention*]. 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** [*footnote 73: article 7 of the Aarhus Convention*]. Sound consultation implies that **the public should have access to all relevant documents**, reports and assumptions **at the start of the consultation period**».

Accordingly, the duty to ensure public information and participation in the early stage of the consultation process about environmental plans is also supported by the practice of the Aarhus Convention Compliance Committee. First, together with timely public involvement, effective public participation requires access to all the necessary information, including to the draft of the updated NECP, in the early phase of the consultation process, as a precondition to express an informed opinion. Secondly, by removing the effective public information and participation in the early phase of the consultation process, when all options are open, the public and public concerned have lost the opportunity to influence the content of the draft or the subsequent decision-making stages, before the draft submission on 30 June 2023 to the European Commission. Third, since the draft updated plan was only published on 19 July 2023, when the first phase of the consultation process was already closed, the proposal sent to the Commission could not take into account the public's informed comments.

Second, the Communicant maintains that Italy has failed to comply with Articles 3, 5, and 7 of the Convention because Italy has not provided a website or similar measures exclusively dedicated to the plan for public information and participation in a clear, transparent, and consistent framework.

The MASE has a general website where it publishes all the information related to matters that fall under its authority. Nevertheless, some national plans have a dedicated web site page, where all the relevant information are published, as in the case of the Italian National Recovery and Resilience Plan (PNRR). In contrast, the MASE webpage

that includes some information about NECP – generically referred to as “*Energia e Clima 2030*” - is hardly accessible, since it is not directly accessible from the homepage menu (neither from the first nor from the 2nd level of menu from the general website) and is poorly updated. For example, no update was published between the final publication of the 2020’s NECP on 21 January 2020 and the proposed update of the NECP on 19 July 2023. Additionally, there is no information about the beginning of the consultation process open to the public from 8 to 26 May 2023. No update on the consultation process was published on this webpage, demonstrating how key information is often published in a disorganized manner. Therefore, taking into account those elements, 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. Conversely, public authorities, such as MASE, should establish and maintain practical arrangements to ensure public information and participation about an environmental plan in a clean, transparent and consistent framework.

In general, the importance of these provisions has also been emphasized by European institutions.

Moreover, with particular reference to the issue concerning domestic remedies and litigation costs, I recall that the same issue has already been examined by the Committee in a previous case concerning Italy (ACCC/C/2015/130).

In the light of all these arguments, we maintain that all the conditions have been met for the committee to investigate the issues at stake, to uphold the admissibility of the communication and to examine the substance of the case.

I thank the Chair and members of the Committee for their attention.