



29. September 2023

## **Progress report on the implementation of the recommendations in paragraphs 2(a)-(b), 8(a)-(b) and 10 of decision VII/8f as adopted by the Meeting of the Parties to the Aarhus Convention (MoP)**

The European Commission has taken due note of the findings of the Aarhus Convention Compliance Committee (ACCC) and recommendations, as adopted by the Meeting of the Parties to the Aarhus Convention (MoP 2021) in Decision VII/8f concerning compliance by the European Union (EU) with its obligations under the Convention, and submits to the Aarhus Convention Compliance Committee Secretariat **the first progress report** on the measures the European Union has taken by 1 October 2023 and the results achieved, to implement the recommendations in paragraphs 2(a)-(b), 8(a)-(b) and 10 of decision VII/8f.

In decision VII/8f, paragraph the 11 (a) Meeting of the Parties to the Aarhus Convention has requested the European Union, as Party concerned, to submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations contained in decision VII/8f.

Consequently, the European Commission has prepared a draft plan of action and submitted to the ACCC on 1 July 2022, with a final version submitted on 31 July 2022. The plan is also published on the Commission website: [Plan of action for decision VII/8f \(European Union\)](#).

Having reviewed the plan of action, the ACCC has concluded that the European Union's plans of action appear to be only partially appropriate. The Compliance Committee invited the European Union to attend an open session with the Committee and to discuss the plan of action. Communicants and observers attended the session too. ACCC prepared [a brief summary](#) of their concerns, which were sent to the EU on 8 December 2022. The EU was invited to share the reflection on the comments by the ACCC at open session of the 77th meeting of the Aarhus Convention Compliance Committee on 15 December 2022 with the view of providing a first progress report by 1 October 2023.

Therewith the Commission submits to the ACCC the first progress report of the European Union on the measures it has taken by 1 October 2023, and the results achieved, to implement the recommendations in paragraphs 2(a)-(b), 8(a)-(b) and 10 of decision VII/8f.

### **National Energy and Climate Plans**

In paragraph 2 (a) (i) of decision VII/8f, the Meeting of the Parties requests the European Union, as a matter of urgency, to provide the Committee with evidence that it has adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the

Convention with respect to the adoption of **National Energy and Climate Plans**, and, in particular, to take the necessary legislative, regulatory or practical measures to ensure that the **arrangements for public participation** in its Member States are transparent and fair and that, within those arrangements, the necessary information is provided to the public.

The Commission would first like to recall that the EU has made a significant progress towards compliance with the requirements of the Aarhus Convention when it comes to public participation in the adoption of the National Energy and Climate Plans (“NECP”) by Member States, as it was already detailed in the [Plan of action for decision VII/8f \(European Union\)](#).

The Commission remains committed to continue to ensure full compliance with the Aarhus Convention and has taken the following further measures to ensure that, public participation in its Member States is transparent and fair and that, within those arrangements, the necessary information is provided to the public in the process of the preparation of the draft and final NECPs, and their updates:

- Pursuant to the Governance Regulation, Member States must conduct a transparent and fair public consultation and ensure that the necessary information is provided to the public at an early stage when all options are open. Pursuant to Annex I of the Governance Regulation, NECPs (and updated NECPs) must provide an overview of the process for establishing the plan with respective dedicated focus on “*Involvement of local and regional authorities*” and “*Consultations of stakeholders, including social partners, and engagement of civil society and the general public*” (Part I, 1. 1.3 (ii) and (iii)). Within that part of the NECPs, Member States have to provide detailed and complete information on the steps taken to comply with their public consultation obligations under Article 10 and under the Aarhus Convention, including reference to how they have taken into account the opinions of the public.
- Since July 2022, within a reasonable time before the submission by Member States of the upcoming draft updated NECP, due by 30 June 2023, the Commission has been regularly engaging with Member States, to ensure they comply with their obligations pursuant to the Aarhus Convention and, in particular, with the provisions of Article 10 of the Regulation on the governance of the energy union and climate action (EU)2018/1999 (the Governance Regulation)<sup>1</sup> regarding public consultation in the preparation of their draft updated NECPs. In particular:
- As stated in the REPowerEU plan published on 18 May 2022, the Commission published guidance for the Member States’ update of their NECPs in the form of a notice published in the Official Journal of the European Union<sup>2</sup>. This guidance includes a specific chapter 3.2 on an “Early and inclusive public participation in line with the Aarhus Convention” recalling the obligations of Member States stemming from both the Aarhus Convention and the Governance Regulation. The Guidance highlights the legal requirement for Member States to engage at the earliest stage possible to give the public early and effective opportunities to participate in the preparation of the draft updated NECPs in a transparent and fair framework. In particular, the Guidance stresses the importance to give the public reasonable time to participate when all options are still open and to access all relevant documents. Finally, the Guidance clearly indicates that

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<sup>1</sup> [EUR-Lex - 32018R1999 - EN - EUR-Lex \(europa.eu\)](#)

<sup>2</sup> [Commission Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans](#) (2022/C 495/02), OJ C495/24

the assessment of the NECPs will take “full account” of the Guidance provided in the document.

- The Commission has been engaging with Member States at the technical level for development of NECPs in particular in the framework of the joint Working Group of the Energy Union Committee and the Climate Change Committee, since July 2022. The Commission reminded that Member States are themselves Parties to the Aarhus Convention and therefore committed to comply with relevant provisions concerning transparent and fair public consultations, including providing the necessary information to the public at an early stage, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation. In July 2022, a specific session was dedicated to the requirement of transparent, fair and early public participation. In January 2023, some Member States were invited to share best practices.
- In parallel, Commission organised a stakeholder workshop on 8 September 2022 to discuss the preparation of the updates of the NECPs<sup>3</sup>. The workshop included a specific session on consultation and cooperation in the preparation of the updated plans. Participants had the chance to share best practices for an early and effective public participation in this process.
- Finally, as part of the measures to support Member States in involving the public in preparation of their draft updated NECPs in line with the requirements of the Convention, the services of the Commission offered a technical support module to Member States on public consultation, with assistance by an external contractor. Six Member States benefitted from a specific assistance on a voluntary basis on the preparation of the draft updated NECP, including on organising public participation.

As it has been done for the first draft NECPs submitted by 31 December 2018, and following the latest submission of the draft updated NECPs which were due by 30 June 2023<sup>4</sup>, pursuant to Article 14(1), the Commission will publish by the end of the year an assessment of each draft updated NECP received pursuant to Article 14(1), of the Governance Regulation. The Commission services are currently assessing the draft updated plans submitted and intend to look in greater detail on whether Member States provided enough precise information on the consultation process undertaken by each of them. Furthermore, the Commission intends to reflect in its assessment on the compliance with the requirements under Article 10 and Annex I of the Governance Regulation, to show in particular, whether the participation in its Member States is transparent and fair, and whether the necessary information is provided to the public at early stage when all options are open.

To finish, as it was already announced in the plan of action, pursuant to Article 45 of the Governance Regulation, the Commission shall report on the operation of this Regulation to the European Parliament and to the Council within six months after the first global stocktake of the Paris Agreement, which will conclude at 28<sup>th</sup> Conference of the Parties to

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<sup>3</sup> [Stakeholder workshop on updates of national energy and climate plans \(europa.eu\)](https://europa.eu)

<sup>4</sup> Draft updated NECPs submitted to the Commission are accessible here: [National energy and climate plans \(europa.eu\)](https://europa.eu)

the UN Framework Climate Change Convention in 2023. The Commission report may be accompanied by legislative proposals where appropriate.

- The Commission has already launched the work on the evaluation report of the Governance Regulation, which will be published at the beginning of 2024. The call for evidence had been published for feedback on the Commission’s portal [Have Your Say](#) on 6 July 2023. Commission services are currently processing the feedback received following the call for evidence. As part of the evaluation, the Commission will take stock of the past NECP and updated NECP processes and will assess the opportunity to review the Governance Regulation, including provisions related to public participation.

In **paragraph 2 (a) (ii) of decision VII/8f**, the Meeting of the Parties requests the European Union, as a matter of urgency to provide the Committee with evidence that it has adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of **National Energy and Climate Plans**, and, in particular, to take the necessary legislative, regulatory or practical measures to ensure that the adopted regulatory framework and/or clear instructions ensure that the requirements of article 6 (4) and (8) of the Convention are met, including **allowing for early public participation** when all options are open, and **ensuring that due account is taken of the outcome of the public participation**. As the processes in place to comply with this recommendation are identical to those described to implement 2(a) (i), we would like to refer to the details presented above.

In paragraph 2 (b) of decision VII/8f, the Meeting of the Parties requests the European Union, as a matter of urgency to **adapt the manner in which it evaluates National Energy and Climate Plans** accordingly.

As explained in detail above, with regard to other two recommendations on NECPs, the Commission will publish an assessment of each draft updated NECP submitted and in its assessment, which is currently ongoing, it intends to reflect in greater detail on whether Member States provided precise information on the consultation process undertaken by each of them, and on the compliance with the requirements under Article 10 and Annex I of the Governance Regulation, in order to show in particular, whether the participation in its Member States is transparent and fair, the necessary information was provided to the public, the public participation was enabled when all options were open, and whether due account was taken of the outcome of the public participation.

### **Projects of Common Interest (PCI):**

In paragraph 8 (a) of decision VII/8f, the Meeting of the Parties recommends that the European Union takes the necessary legislative, regulatory or other measures and practical arrangements to ensure that in public participation procedures within the scope of article 7 of the Convention carried out under the **Trans-European Networks for Energy Regulation**, or any superseding legislation the main consultation documents, including the notification to the public, are provided to the public **in all the official languages of the Party concerned**.

Regarding the case at the basis of this decision, [ACC/C/2013/96](#), the Commission would like to recall that this case dates from 2013 and rests on the first PCI List selection process which was a special case as it was conducted during the enactment of the Trans-European

Networks for Energy Regulation (EU) No 347/2013 (“TEN-E Regulation”)<sup>5</sup> without having the formal procedure yet in place. The situation and legal framework have significantly changed and improved since then in all aspects relevant to this case, as outlined in the [Plan of action for decision VII/8f \(European Union\)](#).

In particular, five other Union PCI lists<sup>6</sup> have been elaborated through increasingly transparent and open processes where open consultations were conducted in a manner that was increasingly accessible to be public. In addition to this, the TEN-E Regulation has been recently revised and entered into force in June 2022<sup>7</sup>, increasing public participation and transparency in the elaboration of the Union PCI lists throughout the process. This revision followed upon a complete impact assessment consultation and multilingual consultation that gave the public a chance to voice their position regarding the Regulation. It is recalled that under Article 288 of the Treaty on the Functioning of the European Union, regulations are binding in their entirety and directly applicable in all Member States.

In summary, the access to the information provided for each candidate project during the PCI process has been strengthened in the process of revising the TEN-E Regulation. The EU follows a carefully considered and comprehensive strategy on public consultations. To ensure a wide and proportionate access to information, the Commission provides, in the public consultation, links to project-specific websites, which must be updated regularly by the project promoters and include translations of their documents in all languages of the Member States concerned, including also Member States on whom the project has significant cross border impact. This allows the public to read information on each of the PCI candidates consulted in all languages of the Member States concerned by the project.

Impact on the transparency of the implementation phase:

For each PCI, a project promoter must carry out a project-specific permit granting process. This process will be carried out in the local language(s), so that all information disclosed to stakeholders and members of the public will also be available in the local language(s). Consequently, before any binding decision is taken by national authorities regarding any PCI, local communities and individuals living in close vicinity of the project will receive information about that project and will be able to communicate their views on that project in their own languages.

In the elaboration of the first union list of PCIs and Projects of Mutual Interest (PMI)<sup>8</sup> (currently ongoing), the provisions of Annex III of the revised TEN-E Regulation have provided for enhanced transparency and public participation in the process. A public consultation was organised for all candidate projects submitted. This public consultation referred to the project websites that project promoters must ensure where all information is available in all languages of the Member States concerned by the project, allowing the public to consult information in all such languages as part of the public consultation.

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0347>

<sup>6</sup> The sixth list, 1<sup>st</sup> PCI PMI list under the 2022 TEN-E Regulation, is in elaboration and is expected to be adopted by the Commission in November 2023.

<sup>7</sup> [EUR-Lex - 32022R0564 - EN - EUR-Lex \(europa.eu\)](#)

<sup>8</sup> Project connected sovereign States outside of the EU which contribute to achieving those States energy and climate objectives and the EU’s trans-European energy policy objectives as described in article 4(2) of the TEN-E Regulation.

Between 21 December 2022 and 16 March 2023, five public consultations addressing the necessity of the proposed projects in the different project categories<sup>9</sup> were conducted via the EU Survey consultation platform, welcoming answers in all EU languages. Over 900 replies were received from a wide range of citizens and stakeholders<sup>10</sup>, in different languages. For the first time the individual replies were uploaded to the Commission's publicly available repository for PCI/PMI meetings<sup>11</sup> ahead of the decision-making stages of the procedure.

Additionally, during that period, the Commission received several position papers in the dedicated functional mailbox and organised bilateral meetings with representatives of consumer and environmental organisations for more in-depth discussions on the methodology for assessment of PCIs and PMIs. Lastly, stakeholders were regularly invited to, and participated in, meetings of the regional groups discussing the needs of each corridor, assessing the PCI/PMIs candidates and drawing up the regional lists of PCIs/PMIs.

The Commission and the regional groups therefore considered the socioeconomic benefits and costs highlighted by the public in their replies, and statement during meetings, and took them into account in the selection process<sup>12</sup>.

Therefore, the Commission considers that the implementation of the recommendation the Meeting of the Parties contained in paragraph 8 (a) of decision VII/8f was completed by the coming into force of the TEN-E Regulation, in June 2022, as explained above.

In **paragraph 8 (b) of decision VII/8f**, the Meeting of the Parties recommends that the European Union take the necessary legislative, regulatory or other measures and practical arrangements to ensure that in public participation procedures within the scope of article 7 of the Convention carried out under the **Trans-European Networks for Energy Regulation**,<sup>13</sup> or any superseding legislation **due account of the outcomes of the public participation is taken**, in a transparent and traceable way, in the decision-making.

In line with Article 3 of the TEN-E Regulation, decision-making power in the PCI process belongs to the Commission and the Member States, however public participation feeds directly into it. Results of the public consultation conducted are presented, considered and discussed by the Regional groups in all PCI processes. Public participation is ensured through the open public consultation conducted for PCI candidates and the participation of stakeholders in the meetings/deliberations of the Regional groups, where a dialogue is held

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<sup>9</sup> Electricity (including offshore), hydrogen and electrolysers, smart electricity grids, smart gas grids and cross-border carbon dioxide networks.

<sup>10</sup> Amongst others, environmental organisations, trade associations, and small and medium enterprises.

<sup>11</sup> CIRCABC, TEN-E Regional Group Meetings, PCI Consultation results: <<https://circabc.europa.eu/ui/group/3ba59f7e-2e01-46d0-9683-a72b39b6decf/library/ab35a802-2e79-485a-802c-e1fa6bffdc09>>.

<sup>12</sup> The Commission has therefore fostered public participation in the decision-making process of the PCI and PMI list beyond the public consultation taking place at the implementation stage.

<sup>13</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 Text with EEA relevance.

in a suitable manner to inform decisions from an early stage as described in more detail in the [Plan of action for decision VII/8f \(European Union\)](#).

For more detailed information, please consult the progress reported following up recommendation in paragraph 8 (a) of decision VII/8f.

The Commission considers that the implementation of the recommendation the Meeting of the Parties contained in paragraph 8 (b) of decision VII/8f was completed by the coming into force of the TEN-E Regulation, in June 2022, as explained in detail above under point 8(a).

### **Industrial Emissions Directive**

In **paragraph 10 of decision VII/8f**, the Meeting of the Parties recommends that the European Union put in a place a legally binding framework to ensure that, when a public authority in a Member State of the Party concerned reconsiders or updates permit conditions pursuant to national laws implementing article 21 (3), (4) and (5) (b) and (c) of the **Industrial Emissions Directive**, or the corresponding provisions of any legislation that supersedes that Directive, the provisions of article 6 (2)–(9) will be applied, mutatis mutandis and where appropriate, bearing in mind the objectives of the Convention.

The EU addressed these recommendations through legislative amendments to Directive 2010/75/EU on industrial emissions<sup>14</sup> (the IED). As explained in the [Plan of action for decision VII/8f \(European Union\)](#) submitted by the EU, work is already ongoing and a proposal for the revision of the IED was adopted by the Commission on 5 April 2022<sup>15</sup>. Under the proposal, Article 24(1) of the IED would be amended as follows:

- point (d) would be replaced by the following: ‘(d) the updating of a permit or permit conditions for an installation in accordance with Article 21(5), points (a), (b) and (c)’;
- the following point (e) would be added: ‘(e) the updating of a permit in accordance with Article 21(3) or Article 21(4)’.

The effect of these proposed amendments is to broaden the situations where the public should be consulted, following the recommendations of the ACCC. Once enacted, these legislative changes would ensure full compliance with the Committee’s findings.

The Environment Council adopted its General approach on the Industrial Emissions Directive revision at its meeting of 16 March 2023<sup>16</sup>. The European Parliament adopted its position on this legislative proposal on 11 July 2023<sup>17</sup>.

At this stage in the legislative process, it appears that the elements of the Commission proposal addressing the findings of the ACCC are likely to remain in the text and thus,

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<sup>14</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), Official Journal of the European Union, L 334 (2010), pp. 17–119.

<sup>15</sup> [Proposal revision industrial emissions directive \(europa.eu\)](#)

<sup>16</sup> [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST\\_7537\\_2023\\_INIT](#)

<sup>17</sup> [Texts adopted - Industrial Emissions Directive - Tuesday, 11 July 2023 \(europa.eu\)](#)

there is a good chance and clear intention, also on the part of the co-legislators, that the final legislative measure, once adopted, will ensure compliance with the ACCC findings.

The Commission proposal is currently being negotiated with co-legislators (the European Parliament and the Council) through the ordinary legislative procedure, provided for in Article 294 of the Treaty on the Functioning of the European Union (TFEU). It is hoped that the negotiations will be concluded during the Spanish Presidency of the Council of the EU, i. e. by the end of December 2023.

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