

To: Secretariat of the Aarhus Convention
From: Pat Swords
Subject: Decision VII/8f and the Party's First Progress Report
Date: 29 October 2023

1. GENERAL

Thank you for the opportunity to comment on the Party's First Progress Report. As is highlighted in the following sections, while the report is strong in rhetoric, the actual situation occurring in the EU Member States can be somewhat different. A number of examples being provided below.

2. IRELAND

The final integrated National Energy and Climate Plans (NECPs) for the period from 2021 to 2030 were submitted by EU countries by 31 December 2019. The Commission's individual assessments of each plan were published later in 2020. The Commission assessment of the final NECP of Ireland highlighting how:¹

- *Following a screening process, Ireland has concluded that a strategic environmental assessment is required under Directive 2001/42/EC, and work is currently ongoing with this.*

While Article 7 of the Convention does not necessarily require a Strategic Environmental Assessment, it is one of the ways of fulfilling such an obligation. The Party's own legislation on Strategic Environmental Assessment, Directive 2001/42/EC, requires such an assessment with associated public participation to be completed for plans and programmes for energy, which set the framework for future development consent of projects falling under the Environmental Impact Assessment Directive.² The NECP listing the renewable infrastructure such as wind energy and high voltage grid expansions, which are projects subject to Environmental Impact Assessment, while highlighting the means of delivering them. The NECP therefore setting the framework for their future development consent.

As Recital 17 of the Strategic Environmental Assessment Directive states:

- *(17) The environmental report and the opinions expressed by the relevant authorities and the public, as well as the results of any transboundary consultation, should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.*

In simple terms, the Strategic Environmental Assessment frames the subsequent decision-making and cannot be completed after the plan has already been adopted, as is being proposed by Ireland for the NECP, and accepted by the EU Commission.

¹ https://energy.ec.europa.eu/system/files/2021-01/staff_working_document_assessment_necp_ireland_en_0.pdf

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001L0042>

In particular, as regards public participation, Article 7 of the Convention engages Article 6(4), which states:³

- *Each Party shall provide for early public participation, when all options are open and effective public participation can take place.*

Since the NECP is already finalised and adopted, options are no longer open on a subsequent Strategic Environmental Assessment, for which that Directive states in Article 6 Consultations:

- *2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.*

By 30 June 2023, EU countries were expected to submit their draft updated NECPs to the Commission, in line with Article 14 of the Governance Regulation. There is no record of this draft updated plan and any public participation exercise on either the Irish government's website or the EU Commission's website. Indeed, for many Member States there is not yet a draft updated NECP published on the EU Commission's website.

3. CROATIA

Croatia has submitted a draft updated NECP as documented on the EU website.⁴ Section 1.3 is entitled "Consultation and participation of national and EU entities and the outcome of consultation". A focused consultation (workshops) with stakeholders occurred in advance of its adoption, but participation of the general public did not occur.

4. MALTA

Malta's draft updated NECP is also available on the EU website and in its Section 1.3 highlights how "*the outcome of the public consultation process for Malta's NECP will be included as part of the Final NECP submission, including the consultation process that the Government will undertake*".⁵ Therefore, the public participation exercise is yet to occur.

5. CONCLUSION

Article 6(4) of the Convention requires that options be open, which is interpreted that at some stage the 'zero option' applies, namely an evaluation that the proposal is not proceeded with at all. As the updated NECPs are a revision of the NECPs adopted in

³ <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

⁴ https://commission.europa.eu/publications/croatia-draft-updated-necp-2021-2030_en

⁵ https://commission.europa.eu/system/files/2023-10/MALTA_DRAFT%20UPDATED%20NECP%202021%202030.pdf

2019, for which proper public participation did not occur, there has been no effective opportunity to participate on the 'zero option'.

6. TEN-E REGULATION

Article 7 of the revised TEN-E Regulation, as in the original regulation before it, states:

- **Article 7 *Priority status of projects on the Union list***
- *The adoption of the Union list shall establish, for the purposes of any decisions issued in the permit granting process, the necessity of projects on the Union list from an energy policy and climate perspective, without prejudice to the exact location, routing or technology of the project.*

Therefore, once the project is adopted on the Union's list of Projects of Common Interest (PCI), options are no longer open. It is therefore necessary to ensure that effective public participation occurs on the adoption of these lists, in particular that the 'necessary information' is available in the languages of those affected by these projects. In the first consultation on PCIs, as Communication ACCC/C/2013/96 documented, the only information available was the name of the project in the English language. The Commission's first progress report is now stating how it:

- *(...) 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.*

This is a significant improvement allowing for effective public participation in the adoption of the PCI lists.