

## **Comments on the progress report on the implementation of the recommendations in paragraph 2(a) and(b) of decision VII/8f(EU)**

1. The undersigned organisations appreciate this opportunity to comment on the progress report regarding the implementation of the recommendation in decision VII/8f concerning the compliance of the EU.
2. The below comments only pertain to progress related to the implementation of paragraphs 2 (a) and (b) of decision VII/8f in relation to the National Energy and Climate Plans (NECPs).
3. The undersigned observers to decision VII/8f welcome the European Commission's timely progress report and recall the 27<sup>th</sup> Working Group of the Parties, which urged the Parties to implement that decision in a timely and effective manner, especially where the implementation requires legislative measures [...]. The observers note, that the report indicates that no modification to the regulatory framework has been undertaken. Accordingly, the concerns laid out by the Committee in its final report to the Meeting of the Parties relating to the implementation of what are now paragraph 2(a) and 2(b) of decision VII/8f remain unaddressed<sup>1</sup>.

### Paragraph 2(a) of decision VII/8f

4. Firstly, the undersigned organisations would like to point out that the European Commission's report appears to suggest that the Governance Regulation suffices as a regulatory framework to implement decision VII/8f. However, the text of the Governance Regulation does not require Member States to ensure a fair, transparent and early public consultation when all the options are still open (Article 10 Governance Regulation is silent on these obligations). It also lacks clear guidelines on how to report on the public consultation, apart from providing a summary of the public's views (Article 10 (1) Governance Regulation). Furthermore, it does not require Member States to take account of the public's views nor to demonstrate how these views have been integrated into the plan or not. While the European Commission suggests a willingness to explore a legislative revision of the Governance Regulation, under the auspice of the report it has to deliver to the European Parliament and Council of Ministers, it falls short of delivering proof of an ongoing legislative procedure or a clear commitment at political level.
5. Secondly, the European Commission points out its Guidance to Member States published in December 2022. To recall, in its Final Report, the Committee reiterated that, in order for any measure to qualify as "clear instructions", it would have to amount to "a direction or order that has to be followed by the member States."<sup>2</sup> In this regard, the observers stress that the guidance document referred to on pages 2-3 of the Commission's progress report cannot be considered "a direction or order that has to be followed by the member States" and thus does not qualify as a "clear instruction." It must be noted that, the European Commission itself does not appear to claim that this guidance document qualifies as such, and thus the Committee's request that the European Commission identify any "clear instruction"<sup>3</sup> also remains

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<sup>1</sup> ECE/MP.PP/2021/51.

<sup>2</sup> Ibid. para. 72.

<sup>3</sup> Email to Party concerned providing brief summary of Committee's concerns on plan of action, 8 December 2022.

unaddressed.<sup>4</sup> In that regard, the undersigned organisations consider that the European Union has not implemented paragraphs 2(a) of decision VII/8f.

6. Thirdly, the European Commission's described activities of engaging Member State ministries at technical level, providing technical support on voluntary basis, and engaging with Civil Society and others during a Stakeholder workshop are hugely important and appreciated. However, this level of engagement cannot be seen to constitute a regulatory framework nor clear instructions for implementing article 7 of the Convention.

Paragraph 2(b) of decision VII/8f

7. Firstly, it is not apparent from the progress report whether or not the European Commission has, as the Committee requested, informed Member States as soon as possible, and well before the completion of the Member States' public participation procedures on their draft updated NECP, that the Commission will be assessing the extent to which the public participation procedures carried out by the Member State on its draft updated NECP met the requirements of paragraph 2(a)(i) and (ii)<sup>5</sup>.
8. Secondly, the European Commission's upcoming assessment of draft NECP updates which may be accompanied by country specific recommendations at the end of the year are an excellent opportunity to provide clear and tailored instructions for compliance with article 7 of the Convention and to provide evidence of an adapted manner in which the European Commission evaluates NECPs. However, these recommendations are at the time of submission of the European Commission's progress report and at the time of submission of the observers' comments still purely hypothetical.

To conclude:

9. The observers maintain that the European Commission's failure to adequately address the Meeting of the Parties' recommendations have resulted in significant deficiencies in the public participation processes and an overall unsatisfactory level of public involvement and participation in the drafting process of the updated NECPs. Civil society organisations had raised these concerns before the submission of the draft updates<sup>6</sup>. Assessments of the draft updated NECPs show clearly that Member States did not conduct satisfactory public participation processes which would comply with the requirements under the Aarhus Convention.
10. The undersigned organisations welcome the commitment made by the European Commission to reflect in greater detail on the compliance of the updating process of the NECP with the requirements under the Governance Regulation and the Aarhus Convention. This is especially relevant, as the Guidance document did mention that the assessment of submitted NECP update draft will take "full account" of the guidance provided but did not refer specifically to the additional requirements mentioned in chapter 3.2 on "Early and inclusive public participation in line with the Aarhus Convention" unlike how it did specifically refer to the objectives of the Energy Union (Chapter 4(4) of the Guidance). Moreover, we are concerned

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<sup>4</sup> [Ibid.](#)

<sup>5</sup> [Ibid.](#)

<sup>6</sup> [Public Participation in National Energy and Climate Plans, Evidence of weak and uneven compliance, WWF, CAN-E](#)

that the assessment will have some of the same deficits identified by the Committee with respect to the Commission's previous evaluation of the Member States' individual NECPs and call on the Commission to undertake its evaluations bearing the Committee's considerations with respect to NECPs in the last intersessional period.<sup>7</sup>

11. The effects of the lack of a proper regulatory framework and/or clear instructions to implement article 7 with respect to NECPs are significant and troubling. We have evidence that in a number of Member States public participation with respect to the draft amended NECPs was far from adequate, with CSOs finding only Lithuania and Belgium (with the exception of Flanders) provided adequate public participation.<sup>8</sup> Indeed, several countries did not organise any form of public consultation around the NECP update, which includes most of the 12 Member States that did not submit their draft NECP updates (Bulgaria, Ireland and Germany).<sup>9</sup>
12. In light of the above, the undersigned observers demand the European Commission to take concrete normative measures which go beyond non-binding guidance documents and fully address the Committee's recommendations. The undersigned organisations welcome the initiative to evaluate the functioning of the Governance Regulation and assess the opportunity to review of the Governance Regulation, including provisions related to public participation. Given the shortcomings of the regulatory framework established by the Governance Regulation and the evidence of bad practices gathered by civil society, it is essential that the Regulation be reviewed to ensure compliance with all the requirements related to public participation enshrined in Article 7 of the Aarhus Convention.
13. The undersigned organisations would like to thank the Compliance Committee members for their engagement on this case and would be grateful if the Compliance Committee could take these comments into consideration when preparing the progress review.

**Signatories:**

European Environmental Bureau (EEB)  
Justice and Environment (J&E)  
Environmental Justice Network Ireland (EJNI)  
Climate Action Network (CAN) Europe  
ClientEarth  
WWF European Policy Office  
Youth and Environment Europe (YEE)  
Center for the Study of Democracy  
ZERO - Association for the Sustainability of the Earth System

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<sup>7</sup> ECE/MP.PP/2021/51, paras. 83-102.

<sup>8</sup> [Public Participation in National Energy and Climate Plans, Evidence of weak and uneven compliance, WWF, CAN-E](#), p. 14. See also country-specific reports in the following pages.

<sup>9</sup> Id. at p. 15.