

REQUEST OF A RECONSIDERATION OF THE COMMITTEE'S DETERMINATION OF ADMISSIBILITY
REGARDING COMMUNICATION ACCC/C/2023/205.

Distinguished Members of the Committee,

reaffirming all the arguments already expressed in the communication ACCC/C/2023/205, the association A Sud Ecologia e Cooperazione Odv ETS consider that the Committee should deem the communication admissible in accordance with decision I/7, in the light of the following reasons:

1. **The legal framework for public consultation in the process of updating NECPs and the Aarhus Convention. The distinction between the early stage of the consultation process for the adoption of the draft updated NECP and the later stage for the adoption of the final updated NECP** – According to Article 7 of the Convention, each Party shall make appropriate arrangements «for the public to participate during the preparation of plans [...] within a transparent and fair framework, having provided the necessary information» and considering, globally, Article 6§§2, 3, 4 and 8. Based on article 6 of the Aarhus Convention, the public concerned shall be informed and shall participate since the early phases of an environmental decision-making procedure, when all options are open and effective public participation can take place, so that the Party shall ensure that «due account is taken of the outcome of the public participation» (Article 6§§2, 3, 4 and 8). Additionally, the regulation (EU) 2018/1999, which is binding **and directly applicable in EU Member States**, outlines the relevant rules of NECPs. According to Article 10 of the regulation on “public consultation” 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» and «in the preparation of the final plan well before its adoption». During the consultation process for the adoption of the draft, each Member state «shall make available to the public its draft integrated national energy and climate plan» (Article 9§4 of the regulation). Consequently, **it is clear that the updating process of NECPs is divided in two different stages, with binding rules on public information and participation for each of them**. On the one hand, «by 30 June 2023, [...] each Member State shall submit to the Commission a draft update of the latest notified NECP» (Article 14§1). On the other hand, «by 30 June 2024, [...] each Member State shall submit to the Commission an update of its latest notified NECP» (Article 14§2). The EU Commission clarified the link between the Aarhus Convention and the regulation in §3.2 of its **notice** n. C 495/24, according to which Member States «are obliged to ensure that the public is given **early and effective opportunities to participate in preparing the draft**», with «reasonable time to participate in the different phases». Additionally, the public «**must be consulted when all options are still open**», having access «**to all relevant documents, [...] at the start of the consultation period**». In its statement **Italy did not contest the relevance of the above legal framework, which has not been duly considered by the Committee**. According to Article 14§1 of Regulation (EU) 2018/1999, **the early phase of the NECP's updating consultation process precedes the submission of the draft updated NECP to the European Commission on 30 June 2023**, and the subsequent step refers to the adoption of the final updated NECP, scheduled for 30 June 2024. Therefore, in order to contribute to the definition of the draft updated NECP, **the public should have been properly informed and should have participated in the consultation process before 30 June 2023**. After this date, the draft updated NECP must be considered already adopted and the early phase of the consultation process concluded, with no further possibility for the public to contribute to the draft determination.
2. **The inconsistency of the Committee's approach with its previous case law** - The requirement for “early public participation, when all options are open” should be considered

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in light of the concept of “**tiered decision-making**”, as it is in the case of NECPs, whereby «**at each stage of decision-making certain options are discussed and selected with the participation of the public**» (ACCC, [ECE/MP.PP/2008/5/Add.10](#), §51), which «**should be provided early in the procedure** so as to ensure that indeed all options are open and effective participation can take place» ([ACCC/ECE/MP.PP/2008/5/Add.6](#), §57 and 71); [ECE/MP.PP/2011/11/Add.3](#), §62). As previously mentioned, in the case of the NECP’s upgrading consultation process, the preliminary stage of the decision-making process is concluded on 30 June 2023. Consequently, **not considering this phase might lead to removing the important opportunity for the public to participate in identifying the content of the draft updated NECP** ([ACCC/ECE/MP.PP/C.1/2005/2/Add.4](#), §11). In fact, the public involvement is not a simple «formal participation», but it «**include[s] public debate and the opportunity for the public to participate in such debate at an early stage of the decision-making process, when all options are open and when due account can be taken**» ([ACCC/ECE/MP.PP/C.1/2009/6/Add.1](#), §66). Consequently, **public participation in the subsequent decision-making stages, due to the Party's inability to ensure it at the initial stage, can in no case be considered as complying with the requirement of Article 6(4) to provide “early public participation when all options are open”** ([ACCC/ECE/MP.PP/C.1/2005/2/Add.4](#), §11). Italy’s conduct must be assessed taking into account the broad legal framework expressed in points 1 and 2, including the Committee’s practice related to Articles 6 and 7 of the Convention, as well as the interpretative relationship between these provisions and the European Union Regulation 2018/1999 governing NECPs.

- 3. The irremediable failure to ensure public information and participation in the early stage of the consultation process** - The Ministry of the Environment and Energy Security (MASE) has opened the **consultation process from 8 May 2023 to 26 May 2023**, with the publication of an online form on the general website of the MASE. **This information has not been published on the “Energy and Climate 2030” website**, which, according to a previous statement of the MASE, would have been the section entirely dedicated to the Italian NECP. Furthermore, as confirmed in the communication and by Italy in its statement, **the draft updated NECP «was made public on 19 of July»**. As a result, **before 30 June 2023, the public was not adequately informed of all relevant information and could not properly participate in the early stage of the consultation process**. Considering the legal framework highlighted in points 1 and 2 above, the submitted draft could not take into account the views of the public at all. These considerations are in line with the serious concerns expressed in paragraph 2.2., p. 9 of the Commission Staff Working Document: [Assessment of the draft updated National Energy and Climate Plan of Italy of 8 December 2023](#), which integrates the recommendations expressed by the European Commission on the draft. Specifically, **the failure of the MASE to ensure public information and participation at an early stage of the consultation process for the adoption of the draft updated NECP denied the public its right to influence the draft submitted to the Commission, breaching Articles 6 and 7 of the Convention. Informing and involving the public at later stages of the consultation process in no way eliminates the manifest violation of the provisions of Regulation 2018/1999 and the Aarhus Convention.**

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