

**Subject: 2016 report to Aarhus Convention Compliance Committee on follow-up in case ACCC/C/2010/54**

1. The Commission services hereby submit to the Aarhus Convention Secretariat the third and final report on the progress achieved by the European Union in implementing the recommendation of the Aarhus Convention Compliance Committee (ACCC), as endorsed by the Meeting of the Parties to the Aarhus Convention (MoP) in Decision V/9g. The first and second reports were respectively submitted by the Commission on behalf of the European Union in December 2014 and October 2015.

***The MoP recommendation***

2. In Decision V/9g, the MoP recommended to the European Union to "*adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of [National Renewable Action Plans (NREAPS)]. This would entail that the Party concerned 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. In addition, such a regulatory framework and/or clear instructions must ensure that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable timeframes, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation. Moreover, the Party concerned must adapt the manner in which it evaluates NREAPs accordingly.*"

***The Commission first progress report and the ACCC first progress review***

3. In its first progress report, the Commission services informed the ACCC that, while drawing the attention of the Member States to the findings and recommendations of the ACCC in case ACCC/C/2010/54, they had also reminded them of the provisions on public participation contained in the Aarhus Convention to which they are signatory states, in the

event that they would be in the situation of having to prepare and submit an amended NREAP according to Article 4(4) of the Renewable Energy Directive 2009/28/EC<sup>1</sup>.

4. However, in its first progress review dated 13 October 2015, the ACCC found that the European Union had not yet fulfilled the requirements of decision V/9g nor had taken any significant steps in that direction. More specifically, it observed that, whilst it is for the Party concerned to decide how to implement the decision, a proper regulatory framework could include an amendment to current relevant applicable legislation; that clear instructions would amount to a direction or order that had to be followed by Member States; and that these should be completed with proper monitoring of the implementation.

***The Commission second progress report and commitments for implementation of the MoP decision***

5. The Commission services took due notice of the first progress review and stressed in their second progress report that they were committed to fully implement it. Indeed, they described the methods by which Member States would be clearly instructed to fully implement article 7 of the Convention with respect to the adoption and/or, where applicable, updates of NREAPs. These methods included not only informal reminders made at the Plenary Meetings of the Concerted Action on Renewable Energy Sources Directive (in May 2015 and August 2016), but also a formal request, by means of a letter signed by the Director-General of Energy and addressed to the Member States Permanent Representatives to the European Union, to include, in their 2015 National Renewable Energy Progress Reports, or, where applicable, in the updates of their NREAPs, a detailed description of, and reference to, the measures and procedures in force that ensure public participation in the decision-making processes, in accordance with the requirements of Article 7, and in conjunction with Article 6, paragraphs 3, 4 and 8 of the Convention.
6. It is the Commission services' belief that through this request, they have for the least taken a significant step in fulfilling the requirements of decision V/9g. Indeed, they not only formally reminded Member States, by a request addressed to their permanent representatives to the European Union, of their obligations under the Aarhus Convention –

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<sup>1</sup> OJL 140 of 5.6.2009, p. 16

which is an integral part of the EU legal order and binding on them under the terms of Article 216(2) of the Treaty of the Functioning of the European Union (TFEU) -, but they also secured the possibility to properly monitor the implementation of those obligations, through the assessment of the National Renewable Energy Progress Reports (publicly available under the link: <https://ec.europa.eu/energy/en/topics/renewable-energy/progress-reports>).

### ***Assessment of the 2015 NREAPs Progress Reports***

7. Thus, good practices can be distinguished in the 2015 Progress Reports. For instance, **Bulgaria** published its draft NREAP in 2013 on the website of the Ministry of Economy, Energy and Tourism but also on its dedicated portal for public consultations (<http://www.strategy.bg>), which provided an opportunity to submit comments under the terms of the Code of Administrative Procedure. Furthermore, the Strategic Environmental Assessment (SEA) procedure<sup>2</sup> was followed and the information provided in the NREAP Progress Report is based on the Environmental Report produced in that context. The conditions and measures for preventing, reducing and remedying as fully as possible any assumed adverse impacts arising from implementation of the plan as recommended within the consultations have been taken into account and reflected in the relevant priorities of the NREAP. In **Cyprus**, the NREAP was assessed as requiring a SEA and public consultations were carried out under that procedure. Cyprus provided a link to the Strategic Assessment Study in its 2015 NREAP Progress Report<sup>3</sup>. **Malta** conducted a SEA for the Energy Policy as a whole. The policy took into account a number of alternative scenarios for Malta to reach its 2020 renewable energy target and one of these scenarios was eventually adopted in the NREAP. **Slovakia** created a single information system<sup>4</sup> used for public consultations which allows comments to be submitted directly and carried out a SEA on its draft final measure to support renewable energy sources<sup>5</sup>. **Sweden** also has a dedicated portal on the Government's website and tasked the Energy

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<sup>2</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, *OJ L 197, 21.7.2001, p. 30*

<sup>3</sup>[http://www.mcit.gov.cy/mcit/mcit.nsf/All/IEC14C317861D19BC22577FC003524A1/\\$file/SEA%20for%20the%20renewable%20energy%20action%20plan%202010-2020.pdf](http://www.mcit.gov.cy/mcit/mcit.nsf/All/IEC14C317861D19BC22577FC003524A1/$file/SEA%20for%20the%20renewable%20energy%20action%20plan%202010-2020.pdf)

<sup>4</sup> <https://lt.justice.gov.sk>

<sup>5</sup> The final opinion on the SEA process and the documentation from the different steps of the process are available to the public on the website [www.enviroportal.sk](http://www.enviroportal.sk).

Agency to produce a basis for the NREAP on which it sought the views of the public in writing, at separate meetings, and at a special hearing.

8. The very good example of **Italy** can also be highlighted as far as the requirement to provide for early public participation when all options are open is concerned. The Ministry of Economic Development, which is the government body responsible for energy policies, launched a public consultation to share the national energy policy objectives and identify the best measures to attain them, ahead of drafting the National Renewable Energy Action Plan in 2010. More than 50 institutions, environmentalist groups, trade associations and sectorial organisations (including consumer organisations) were contacted directly by the Ministry, but the consultation was also open to individual citizens. The draft NREAP was accompanied by a summary which highlighted its key points. Many observations were received, and were all duly considered. One of the outcomes of the consultation was the revision of the sectorial targets, with reduction in the share allocated to electricity and increase of the thermal share, as this request was approved by all parties and found to be feasible. Finally, the SEA procedure was followed as concerns the design of the implementation plans (for instance the National Transmission Grid Development Plan).
9. Public consultations are carried out not only for the adoption of the NREAPs but also for their updates, where applicable. For example, before **Portugal** amended its NREAP (as well as its National Action Plan for Energy Efficiency) in 2013, it submitted the Strategic guidelines for the review of the National Renewable Energy Action Plan and National Action Plan for Energy Efficiency to public consultation.
10. Lessons were learned by Member States during and about the public participation process. For instance, **Denmark** produced in its Progress Report the summary of the comments received in the framework of the public consultation undertaken in 2010 on the basis for the Danish NREAP. Some of these comments concerned the consultation process itself, notably the duration of the timeframes under which the public could be informed and prepare and participate effectively. **Ireland**, which had conducted a public consultation within a very short time frame in 2010, namely two weeks<sup>6</sup>, described in detail in its 2015

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<sup>6</sup> See para 83 of the findings of the ACCC in case ACCC/C/2010/54

Progress Report the public consultation process it followed for the adoption of the White Paper on Energy Policy. Prior to the adoption of the White Paper in 2015, a Green Paper on Energy policy in Ireland was launched on 12 May 2014 commencing a public consultation process on the future of energy policy in Ireland for the medium to long-term. The written consultation period, during which 1200 submissions were received, lasted two and a half months and concluded on 31 July 2014. In September 2014, a further Stakeholder Engagement process was launched which included seven national seminars and four regional seminars to facilitate wider engagement of the public. In Ireland today, a detailed description of and references to measures and procedures in force that ensure public participation are included in an implementation table publicly available on the website of the Department of Housing, Planning, Community and Local Government<sup>7</sup>.

***Monitoring of the implementation by the Member States of their obligations under Article 7 of the Convention with regards to the NREAPs up to 2020***

11. The Commission services understand that the recommendation of the MoP does not concern the NREAPs already adopted by the Member States, but rather the future NREAPs, i.e. updates of existing or adoption of new plans. Up to 2020, this situation could occur only by application of Article 4(4) of Directive 2009/28/EC, i.e. if a Member State share of energy from renewable sources fell below its indicative trajectory - at this stage, an informal dialogue in relation to target achievement already started with one Member State. The Commission services however consider that the knowledge of the procedures followed in the past as well as of the legal frameworks in place enables a proper monitoring of the implementation of the MoP decision. This is the reason why the Commission services not only intend to share the good practices and lessons learned with all Member States in the next Concerted Action Plenary Meeting in the first quarter of 2017, but will also ask specific questions to the Member States which have not provided a satisfactory summary of their implementation of Article 7 of the Convention in their 2015 NREAPs Progress Reports by the same deadline, in order to determine if the legal framework in place in those Member States for implementing the Convention requirements is insufficient, or if the lack of reporting can be attributed to a formal omission.

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<sup>7</sup><http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/Environment/Miscellaneous/FileDownload%2C30637%2Cen.pdf>

12. The Commission services will therefore pay due attention to the enforcement of the requirements of article 7 of the Convention whenever applicable to the NREAPs to be adopted or amended up to 2020, thereby implementing the MoP decision. They are also already preparing the ground for even better taking into account the Convention requirements for the post-2020 period.

### ***Regulatory framework for future planning obligations in the energy field after 2020***

13. The Commission's Communication on a Framework Strategy for the Energy Union, adopted on 25 February 2015 (COM(2015)80), foresees that the Energy Union needs an integrated governance and monitoring process which should streamline current planning and reporting requirements. The core of the governance system will consist of two components which will enable the Member States, on the one hand, and the European Union, on the other hand, to better comply with the Aarhus Convention requirements.

14. The first component is the streamlining of planning obligations, including the current NREAPs, into so-called "Integrated national energy and climate plans". It is likely that these plans will be subject to the SEA Directive – which is for the Member States to assess according to EU law depending on the content of their draft plan-, in which case the public participation requirements of Article 7 of the Convention will be covered by the application of the SEA procedure. In any event, the Commission will make sure that those requirements are met in practice through a structured dialogue with the Member States on their draft plans at an early stage which will enable the Commission services to monitor the implementation of the public participation requirements of the Convention.

15. The second component is a transparent monitoring mechanism based inter alia on streamlined reporting, which will also allow facilitate the implementation of the Convention requirements by the Member States and the European Union, notably with regards to access to environmental information which will be collected and reported as a result of EU law requirements.

16. Although it is too early to comment on the content of the legislative proposals corresponding to these policy developments for the post 2020 period, as they are not yet

adopted, the Commission services would like to bring the ACCC's attention to the now established practice of incorporating public participation requirements in the EU legislation, including in the energy field, e.g. in Article 5 of Directive 2013/30/EU on safety of offshore oil and gas operations<sup>8</sup>.

### ***Conclusion***

17. The Commission services trust that this final report on the progress achieved by the European Union in implementing the MoP Decision V/9g, will be found satisfactory by the ACCC in that it shows the importance awarded by the Commission to the due taking into account of the Aarhus Convention requirements by the Member States in the adoption and updates of their NREAPs, as well as its determination to comply with these requirements in its future legislative framework.

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<sup>8</sup> *OJ L 178*, 28.6.2013, p. 66. Text available under the following link: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013L0030>