



EEB and CAN-Europe comments on the final progress report on relating to paragraph 2 of Decision VII/8f on public participation in NECPs (European Union)

The European Environmental Bureau (EEB) and Climate Action Network Europe (CAN-Europe) thank the Compliance Committee for this opportunity to react to the European Union's final progress report regarding its compliance with Paragraph 2 of the Meeting of the Parties Decision VII/8f regarding public participation in the National Energy and Climate Plans (NECPs).

We take note that the EU Commission has taken initiatives, such as the Commission report on the operation of the Governance Regulation, published in September 2024, which includes several relevant recommendations. However, considering the legislative process of the EU, it is virtually impossible to implement these recommendations in time for the MoP in 2025.

We also appreciate that the Party has given further instructions and guidance to EU Member States on how to conduct public participation within the development of their National Energy and Climate Plans in accordance with the Governance Regulation (Article 10). However, we note that similar measures had been taken and reported on in previous progress reports and that these had already been rejected by the Compliance Committee as adequate measures because of their non-binding nature.

The 2023 Compliance Committee progress review report on decision VII/8f, para. 29, states that the EU would need to introduce a *“proper regulatory framework and/or clear instructions”* to implement the requirements of paragraph 2 (a) of decision VII/8f so that the Party concerned is finally no longer in non-compliance in this regard.” Any measure is meaningless to ensure compliance with the Aarhus Convention if failure to follow it does not result in some sort of consequence for the Member States. We therefore are of the opinion that the EU Commission should do more to issue at least “clear instructions” to ensure that the Member States follow the best public participation practices in accordance with the Convention. If the Commission is not intending to amend its regulatory framework, which would give the clearest legal certainty to the Member States, here are a number of other tools which it can make use of to issue “clear instructions”, and which, so far, it has chosen not to.

Therefore, we urge the Party concerned to consider the following:

- Firstly, the EU Commission could ensure that in concluding its assessment of the NECPs, it issues a Decision on whether the Member State in question should make any course corrections to guarantee full compliance with the public participation requirements of the Governance Regulation. The non-binding nature of Staff Working Documents are insufficiently consequential for Member States to follow, whereas a Decision by the Commission has legally binding effects;
- Secondly, and concurrently, the EU Commission could actively exercise its role as *Guardian of the Treaties* and initiate infringement proceedings with the EU Member States who have not fulfilled their requirements under the Governance Regulation.

Both of these options are non-legislative measures which would send a much stronger instruction to the Member States that they must comply with the public participation requirements as set out under Article 7 of the Aarhus Convention and for the EU to demonstrate that it seriously implements and complies with Decision VII/8f.