



# Energy Union Governance

## The Governance of the Energy Union Regulation to Reach the 2030 Energy and Climate Targets

Legal Analysis

***Justice and Environment 2019***

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##### Context of the proposal

On 30 November 2016, the European Commission presented a new package of measures in its Communication « Clean Energy for all Europeans »<sup>1</sup> with the goal **of providing a stable and streamlined legislative framework to ensure the efficient creation of the Energy Union, enabling the EU to deliver on its Paris Agreement commitments.**

This climate and energy package, composed of 8 proposals<sup>2</sup>, has three main goals: putting energy efficiency first; achieving global leadership in renewable energies; and providing a fair deal for consumers.

A step forward lies in the continuity of the 2030 energy and climate policy framework that was agreed by the European Council in October 2014, according to which the following targets should be reached by the end of the next decade:

- a 40% cut in greenhouse gas emissions compared to 1990 levels
- at least a 27% share of renewable energy consumption
- at least 27% improvement in energy efficiency compared with the business-as-usual scenario<sup>3</sup>.

The proposal to revise the current renewable energy directive<sup>4</sup> also **emphasizes the need for dynamic and ambitious change in EU energy policies**, mentioning that:

“EU energy system projections indicate that current Member States and EU policies, **if no new policies are put in place, would only lead to, approximately, 24.3% of renewable energy consumption in 2030.** This level would be well below the at least 27% EU level binding renewable energy target as agreed by the European Council and would prevent the Union from collectively delivering on the commitments made in the 2015 Paris Agreement”.

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<sup>1</sup> <https://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>

<sup>2</sup> The Clean Energy for All Europeans legislative proposals cover energy efficiency, renewable energy, the design of the electricity market, security of electricity supply and governance rules for the Energy Union.

<sup>3</sup> <https://ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/2030-energy-strategy>

<sup>4</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the promotion of the use of energy from renewable sources - COM/2016/0767 final/2 - 2016/0382 (COD)

Therefore, it appears that a strong governance system is needed to organize and lead the Energy Union to its objectives in 2030.

### **The proposal for Governance of the Energy Union<sup>5</sup>**

The proposal for the Governance of the Energy Union intends to ensure the implementation of consistent, complementary and sufficiently ambitious measures and policies at different levels to rationalize and lead the Energy Union.

The proposal is **currently being discussed by the co-legislators**: the European Parliament and the Council of the European Union.<sup>6</sup> A provisional deal was reached between them on 19 - 20 June 2018.<sup>7</sup>

The proposal has two main goals:

- To create a reliable and efficient governance **framework to ensure the achievement of the objectives of the Energy Union**. This will be done by making sure national objectives are coherent with EU goals **due to the implementation of national integrated plans reflecting cooperation**.
- In the context of the better regulation program that is working on the EU<sup>8</sup>, the proposal aims to simplify and streamline **all the existing climate and energy policies to reduce administrative burdens**. It will gather all energy and climate planning and reporting requirements of EU countries and the monitoring obligations of the Commission that are currently spread in many EU regulations by simplifying, reducing and aligning them and suppressing duplications. Moreover, they will be **synchronized with the planning and information's communication obligations stemming from the Paris Agreement**.

### **Integrated National Energy and Climate Plans (NECPs)**

According to the new regulation, **countries are required to develop plans for the period 2021-2030 that should reflect the 5 interrelated dimensions of the Energy Union** (energy security, solidarity and trust; a fully integrated European energy market; energy efficiency; decarbonizing the economy; research, innovation and competitiveness<sup>9</sup>).

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:759:REV1>

<sup>6</sup> <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1519353&l=en&t=D>

<sup>7</sup> It means that the regulation can be submitted for approval to the European Parliament, where the plenary vote is expected in November, and then back to the Council for final adoption. The regulation will enter into force 20 days following its publication in the Official Journal of the EU. See: <http://www.consilium.europa.eu/en/press/press-releases/2018/06/29/governance-of-the-energy-union-council-confirms-deal-reached-with-the-european-parliament/>

<sup>8</sup> [https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/role-structure-and-working-methods-refit-platform\\_en](https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/role-structure-and-working-methods-refit-platform_en)

<sup>9</sup> [https://ec.europa.eu/commission/priorities/energy-union-and-climate\\_en](https://ec.europa.eu/commission/priorities/energy-union-and-climate_en)

Similar to the procedure within the Paris Agreement, NECPs should identify the national contribution to EU climate and energy objectives for 2030 and serve as the **initial point of reference for monitoring and looking for progress**.

Based on a **common template still allowing countries some flexibility**, these plans should fix national objectives for each of the five dimensions of the Energy union and define policies and measures to reach these goals.

**A very high level of cooperation** between Member States but also within the different actors at the national level is naturally expected in the development and the implementation of these “integrated” plans that should together reach the Energy Union objectives.

According to the proposal, EU countries were asked to submit their project plans to the Commission on the 1<sup>st</sup> January 2018, but not all of them have done so. Every EU Member State must submit an NECP to the EU Commission by 31<sup>st</sup> December 2018.

The climate and energy **governance will be based on those plans serving as a reference for monitoring and looking for progress**. Indeed, the proposal provides that, from 2023, EU countries are required to establish **progress reports on the implementation of these plans every two years**. These reports will **contribute to more transparency, reliability and consistency in reaching the Energy union targets as well as in the implementation of the Paris Agreement**.

As CAN Europe pointed out in its Briefing Paper<sup>10</sup>, NECPs can drive transformational change, if the focus is on five pillars: 2030 Energy and Climate Ambition; Long term Paris Check; Consistency; Credibility; and Transparency. Justice & Environment aligns with CAN Europe (and its figures<sup>11</sup>) regarding the importance of transformative NECPs.

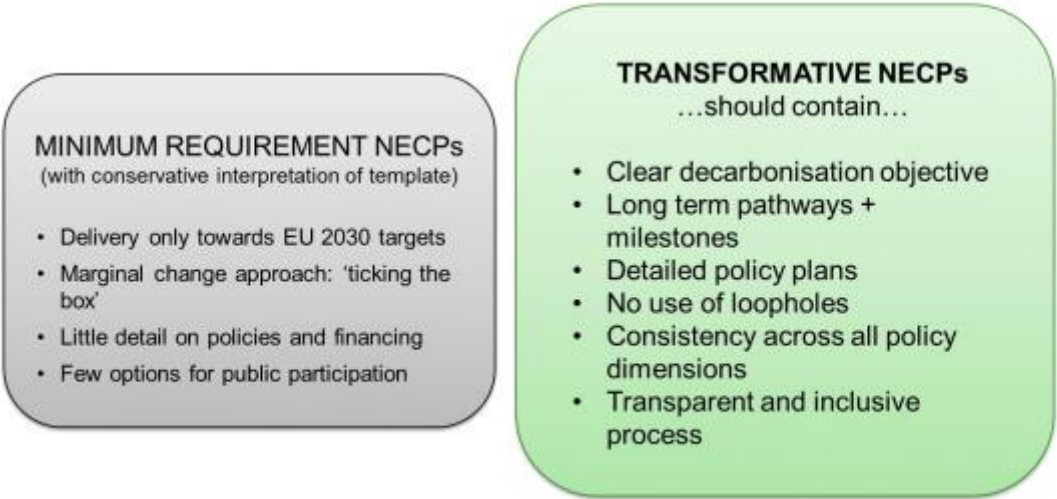


Figure 1. Transformative NECPs must go beyond minimum requirements

<sup>10</sup> <http://www.caneurope.org/docman/energy-union-governance/3354-briefing-paper-how-national-energy-and-climate-plans-can-set-paris-in-motion-in-every-country-may-2018/file>

<sup>11</sup> <http://www.caneurope.org/docman/energy-union-governance/3354-briefing-paper-how-national-energy-and-climate-plans-can-set-paris-in-motion-in-every-country-may-2018/file>

## Transparency

Justice & Environment places emphasis within these guidelines on the importance of the transparent process and aims to support active participation of civil society organisations and any other relevant stakeholders in the preparation and implementation of the NECPs.

NECPs must enhance transparency to increase the opportunities for civil society to become more involved in the energy system. Therefore, in conformity with the Aarhus Convention<sup>12</sup>, the actual governance system encourages:

- The **access to the information contained in the NECPs and the progress reports**.
  - This implies that the draft plans, the final plans and the progress reports must be **available to the public**.
  - NECPs are required to be **stable and to clarify the foreseeable national measures and policies** needed to enforce the plan.
- The **participation of civil society both in the preparation and implementation of the NECPs**.

### 1) To ensure public participation in the preparation of the NECPs:

- Member States must **organize public consultations** in the drafting phase of their plans, strictly respecting the application of article 10 of the proposal. They have to guaranty that the **public can efficiently participate early in the preparation** of the NECPs. In so far as the SEA Directive is applicable, consultations based on that Directive are sufficient.
- Member States have to **take into account the outcome of the public participation**. To do so, it is important that the NECPs contain a description of the way in which consultations took place and how civil society was involved, what the results of it were and how they were finally considered in the drafting of the plan.

### 2) To enable public participation in the implementation of the NECPs:

- Member States are required to **create a multilevel climate and energy dialogue platform**. According to the members of the EU Parliament it should be a permanent platform to support an **active engagement of local authorities, civil society organisations, business community, investors, any other relevant stakeholders and the general public in managing the energy transition**. In this way, they strongly recommend that Member States “submit to their national climate and energy dialogue platform different options and scenarios envisaged for their short, medium and long-term energy and climate policies, together with a cost benefit analysis for each option”<sup>13</sup>.

The NECPs should be seen as an incentive to raise Members States' level of ambition in achieving the Energy Union targets for 2030, and more broadly, the EU perspective of zero GHG emissions by 2050.

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<sup>12</sup> [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) was adopted on 25 June 1998 in the Danish city of Aarhus (Århus)

<sup>13</sup> <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1519353&l=en&t=D>

## **The current preparation phase of the NECP in the following Member States<sup>14</sup>**

- **Austria**

On May 28th, 2018, the Austrian Government decided on a climate and energy strategy.<sup>15</sup> Through this so-called “#mission2030”, CO2 emissions shall be reduced by 36 % (for emission sources apart from emissions trading) compared to 2005 levels. One of the steps to achieve this is 100 % energy from renewable sources by 2030. Concerning thermal energy the 100 % goal shall be reached by 2050 and also traffic shall be CO2 emission-neutral by that time.

The climate and energy strategy includes ten measures, such as the “e-mobility offensive” or “100.000 roofs photovoltaics” as well as the expansion of the rail network, – the so-called “lighthouses”. Other “lighthouses” relate to awareness-building and the acceleration of a “bio-economy”, for which a concrete action plan shall be drafted.

The present climate and energy strategy has been subject to various criticisms. These refer to, inter alia, a lack of computability with the Paris climate goals, insufficient budget for the implementation of the measures such as a tax reform or the abolition of subventions with negative effects on climate.

How fast the listed measure will be implemented in practise is yet to be seen.

- **Bulgaria**

At the moment there is little information on the process of drafting of the NECP in Bulgaria. There are no public consultations in the drafting phase as suggested above in this guidance. According to representatives of NGOs working the field of climate and energy, an inter-sectoral governmental working group has been established under the Ministry of Energy. It is expected that the draft NECP will be submitted to the Commission by the end of the year. Feedback is expected by March 2019 and by June 2019 the draft is to be submitted for public consultations.

- **Croatia**

Croatia is among those Member States that did not report its plans to the Commission by 1 January 2018. In light of this an increase in legislative activity in this field was expected during 2018.

However, in the first three quarters of 2018 Croatia did not conduct public consultations of the draft Integrated National Energy and Climate Plan nor has it communicated its intent to do so. Moreover, the Legislative Activities Plan for 2018 does not mention the NECP at all.

In July 2018 public consultations were held for the draft Law amending the Law on Energy Efficiency. Neither the Commission's Communication "Clean Energy for all Europeans" nor the Regulation for Energy Union draft were mentioned as reasons for the proposed legislative changes. On the contrary,

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<sup>14</sup> Reports were done by J&E member organizations from October to December 2018.

<sup>15</sup> <https://mission2030.info/wp-content/uploads/2018/10/Klima-Energiestrategie.pdf>

the reasons for the proposed legislative changes clearly show that Croatia is late in passing measures which would ensure meeting of energy efficiency goals and that the proposal aims to be a damage control measure in light of the initiated PILOT procedure against Republic of Croatia for potential non-compliance with EU law (EU PILOT ref. No. EUP(2017)9273-CROATIA).

In July and August 2018 public consultations were also held for the draft Law amending the Law on Renewable Energy Sources and Highly-Efficient Co-Generation. Although this initiative invokes the Winter Package it is based on it only in so far as it further liberalizes the energy market. However, measures which ought to bring a clear and ambitious decarbonization plan, with set time-lines and milestones, different options analysis, as well as including a wide stakeholder base in the drafting of document, are not a part of this legislative initiative.

The drafting of the Low Carbon Development Strategy which started in 2017 is still unfinished, and by the looks of it, it is not a priority of the current government. Croatian Energy Strategy is in the pipeline, however, its drafting is all but transparent and inclusive. Integrated National Energy and Climate Plans (NECPs), as a separate document and a policy instrument, do not even exist as a concept in Croatian public space.

- **Czech Republic**

The Ministry of Industry and Trade of the Czech Republic has begun preparations of the NECP, according to the proposal for Governance of the Energy Union. It is meant to replace the current system of individual climate and energy action plans.

The Czech Republic's NECP is supposed to be based on the State Energy Policy<sup>16</sup> that was adopted in May 2015. With the time horizon of 2040, this policy addresses four of the five dimensions of the Energy Union: decarbonization, energy efficiency, internal market and security of supply. Its targets include a 40% reduction of CO<sub>2</sub> emissions by 2030 in comparison to the 1990 levels and energy savings in 2020 by 20% against a business-as-usual scenario. In October 2017, the Czech Republic also adopted the Climate Protection Policy<sup>17</sup> that sets greenhouse gas emission reduction targets for 2030 and 2040.

In this moment, neither the draft NECP nor any other information about its content are available to public. However, the Ministry of Industry and Trade is planning to present the draft for the inter-ministerial comment procedure and public consultation in November 2018. However unofficial information from the Ministry officials suggest no strategic environmental assessment nor any other form of public consultation is going to be carried out.

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<sup>16</sup> <https://www.mpo.cz/assets/cz/energetika/statni-energeticka-politika/2016/12/Statni-energeticka-koncepcie-2015.pdf>

<sup>17</sup> [https://www.mzp.cz/C1257458002F0DC7/cz/politika\\_ochrany\\_klimatu\\_2017/\\$FILE/OEOK-POK-20170329.pdf](https://www.mzp.cz/C1257458002F0DC7/cz/politika_ochrany_klimatu_2017/$FILE/OEOK-POK-20170329.pdf)

- **Estonia**

Estonia's NECP until 2030 will be put together from two strategic documents about Estonian climate and energy policy. These documents are the General Principles of Climate Policy until 2050 and Estonian Energy Development Plan until 2030. The documents were already approved in 2017.

The first version of Estonia's NECP was published in September 2018. In October there was also a conference where the document was introduced to different stakeholders.

The Ministry of Economic Affairs and Communications in cooperation with the Ministry of the Environment is responsible for drawing up the NECP. There is also a possibility for the stakeholders to join a mailing list in order to have more information about the process and NECP's developments.

- **Hungary**

The Hungarian Government missed the deadline for submission of the draft NECP (31 December 2018). Based on the information of the Ministry for Innovation and Technology (3.12.2018.) the Hungarian draft is under finalization and will be published soon.

In summer 2018 the Ministry organized industry consultations, invitations were sent ministries, industry representatives, NGOs, research institutes, higher education institutions, consultation companies and private experts as well. The results of the consultations have been integrated into the draft NECP. Following the disclosure of the draft NECP in 2019 the Ministry is considering a public consultation.

A Government Resolution adopted on 21st December 2018 lays down that in the NECP, Hungary shall be engaged as follows

- 40% reduction of greenhouse gas emissions by 2030 in comparison to 1990 levels,
- 20% share of RES in final energy consumption by 2030,
- regarding energy efficiency, the final level of energy consumption should not exceed the level of 2005,
- 8-10% reduction in energy consumption by 2030 without reference to the energy efficiency improvement measures.

According to the Ministry the final NECP must undergo a strategic environmental impact assessment based on the Hungarian SEA provisions.

- **Romania**

The draft National Integrated Plan for Energy and Climate Change 2021-2030 (Plan) developed by the Ministry of Energy was published on November 29, 2018 and submitted for public consultation by December 10, 2018. Therefore, there were only 7 days available for collecting suggestions and recommendations.



According to official data, the Romanian Government has established a taskforce led by the representatives of the Ministry of Energy and Ministry of Environment to coordinate at national level the elaboration of the Plan. The taskforce also included representatives from the Ministry of Economy, Ministry of Foreign Affairs, Ministry of Regional Development and Public Administration, Ministry of European Funds, Ministry of Research and Innovation, Ministry of Waters and Forests, Ministry of Public Finance, Ministry of Agriculture and Rural Development, Ministry of Transport, National Institute of Statistics, National Commission for Strategy and Prognosis, National Energy Regulatory Authority, Transelectrica – the Romanian Transmission and System Operator, Transgaz – the National Gas Transmission Company, and OPCOM – National Gas and Electricity Market Operator.

According to the Plan's projections, total GHG emissions (EU-ETS, non-ETS and LULUCF) will be 118.35 Mt CO<sub>2</sub> eq. in 2030. Regarding the share of renewable energy in gross final energy consumption, Romania has already exceeded the 2020 target of 24%, with a 2016 level of 25% according to Eurostat data. At the 2030 level, the Plan indicates a RES share of 27.9%, below the EU target of 32% for 2030.

Analysed by sector, the share of RES in gross final energy consumption in heating/cooling sector, transport sector and gross final electricity consumption is as follows:

a. The share of RES in the gross final consumption of electricity: 41.8% in 2020, intermediate target of 43.6% in 2025 and 39.6% in 2030;

b. The share of RES in the gross final energy consumption in the heating / cooling sector: 26.5% in 2020, an intermediate target of 29% in 2025 and 31.3% in 2030;

c. The share of RES in the gross final consumption of energy in the transport sector: 10% in 2020, intermediate target of 12.5% in 2025 and 17.6% in 2030; (at European level, the target is 14% at 2030 per Member State).

For these targets to be achieved, the Plan foresees an increase in wind capacity by up to 4300 MW and in photovoltaic by up to 3100 MW.

The gross final energy consumption will grow by 18% between 2021-2030 and broken down across the three sectors, the projections foresee the following gross final energy consumption trajectories:

a. Heating / cooling: 54.6% in 2020, 54.9% in 2025 and 50.9% in 2030;

b. Transport: 23.4% in 2020, 23.9% in 2025 and 23.7% in 2030;

c. Electricity: 22% in 2020, 21.2% in 2025 and 25.4% in 2030;

Regarding energy efficiency, the European target for 2030 was set at 32.5% and according to projections that took into account the increase in industrial production and living standards, primary energy consumption is planned to reach 36.7 Mtoe in 2030, compared to a level of 30.3 Mtoe in 2020.

Continuing the administrative procedure, Romania will submit the Plan to the European Commission by the end of 2018 when recommendations will be made. Subsequently, the Plan will be reviewed and by the end of 2019 the final version will be submitted.

- **Slovakia**

Slovakia, like other EU Member States, has begun work on the preparation of the NECP proposal already during the negotiations on the draft regulation on the management of the Energy Union. In November 2018, the data obtained from involved ministries, from available statistical sources, was finalized and the necessary analyses were carried out.

The Ministry of the Economy of the Slovak Republic (hereinafter ME SR) participated not only with the affected ministries - the Ministry of the Environment of the Slovak Republic (MoE SR), the Ministry of Agriculture and Rural Development of the Slovak Republic (MoARD SR) The Ministry of Transport and Construction of the Slovak Republic (MoTC SR), the Ministry of Education, Science, Research and Sport of the SR (MoESRS SR), Ministry of Labor, Social Affairs and Family of the Slovak Republic (MoLSAF SR) but also involved relevant businesses and organizations and their professional associations. However expert public have not been involved yet.

In connection with the drafting of the regulation on the management of the Energy Union, there is also a working group of experts from the ME SR, MoE SR, MoTC SR, MoESRS SR, MoLSAF SR and the Regulatory Office for Network Industries. This group is also involved in designing the NECP proposal.

In the process of the preparation of the NECP, the public had the opportunity to comment on NECP's structure within the inter-ministerial consultation procedure that took place in spring 2017.

As part of the preparation process, the NECP proposal has been continuously consulted by professional bodies. The text of the NECP proposal will be published in 2019 on the website of the Ministry of the Interior, where the general public can also view it.

The final NECP will be submitted to the Government of the Slovak Republic in 2019 and within the framework of the standard legislative process where the public can submit its comments. The NECP will also undergo the assessment according to the Act No. 24/2006 Coll. (Act on Environmental Impact Assessment and on Amendments to Certain Acts).

In the course of the preparation of the Regulation on the Management of the Energy Union, the MoE SR has consulted with the neighbouring Member States regarding the scope of the NECP and possible forms of cooperation. On November 20, 2018, a meeting of experts from the V4 and Austria took place in Bratislava, where the essential parts of the NECP proposals of the participating countries were discussed in terms of regional cooperation.

In Slovakia, the NECP proposal is based on already approved strategic documents, or on the strategic documents that are in the process of adoption, which were subject to public debates and had public comments integrated into them.

In the field of energy, the basic energy legislative sources are the approved Energy Policy of the Slovak Republic which defines the main goals and priorities of the energy sector until 2035 and the Strategy of the Economic Policy of the Slovak Republic until 2030.

In the climatic field it is based on the existing National Strategy of Sustainable Development of the Slovak Republic and on other materials, of which the Strategic Environmental Policy of the Slovak Republic for 2030 is the most important. In the preparation of NECP, the Ministry also uses models which are part of the Low-Carbon Study where the Ministry of the Environment cooperated with the World Bank.

- **Slovenia**

Slovenian Government set up a working group for the preparation of NECP, which includes representatives of several Ministries and Government's offices: Ministry of Infrastructure (leading the preparation process), Ministry of Environment, Ministry of Finance, Ministry of Education, Ministry of Economic Development, Ministry of Agriculture, Government Office for Development and European Cohesion Policy and the Institute of Macroeconomic Analysis and Development.

The development of draft NECP in Slovenia has started, but not much has been done so far. Slovenia was 'in between the Governments' from April to September and work was on hold for this period. It is already clear (confirmed by Ministry of Infrastructure) that the deadline for submission of draft NECP (31 December 2018) will be missed.

It is also not clear when the Government plans to hold the public consultation – either on the draft (before or after submission to EC) or on the final NECP or both.

Slovenia has also started preparing The Long Term Climate Strategy. This process is being led by the Ministry of Environment. It is not clear yet how the consistency between these processes will be assured.

In relation to NECPs Slovenian NGOs are also following the debates on the Multi-Annual Financial Framework for the period 2021 – 2027. Linking NECPs with the EU budget creates an opportunity to increase the climate ambition of the EU and its Member States. The link between the two processes is also inscribed in the Governance Regulation.

- **Spain**

On June 2018 through a confidence motion by the Spanish Parliament, the Socialist Party took control of the Government. The previous administration had done nothing to draft an NECP. In addition, they committed in December 2015 to draft a Climate Change and Energy Transition Law (CCETL) but they never published it.

The Socialist Government established a new Ministry for Ecological Transition. This Ministry has merged together parts of the old Ministry for Agriculture, Fisheries, Food and Environment and the Ministry for Energy, Tourism and Digital Agenda. The new Ministry for Ecological Transition holds the environmental and energy competences. The Minister committed to drafting a CCETL together with an NECP by 10 October 2018 to undertake a public consultation. However, at the end of October 2018 both documents were not yet published. It is expected that before the end of the year both documents will be subject to a public consultation.

### **Note**

Seven EU Member States (Bulgaria, the Czech Republic, Cyprus, Greece, Hungary, Luxembourg and Spain) missed the end-of-2018 deadline to submit draft energy and climate plans to the European Commission.<sup>18</sup>

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<sup>18</sup> <https://www.euractiv.com/section/climate-strategy-2050/news/seven-eu-nations-miss-climate-and-energy-plan-deadline/>

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