

TRANSPARENT AND PARTICIPATIVE NECPS! 4.



Findings of the NECP updating process

Justice and Environment, February 2024

Introduction

The responsibility for achieving environment and climate-related goals and objectives is shared by the Union and its Member States and requires action by various actors, i.e., EU institutions, governments at national, regional and local level, civil society, citizens and the private sector. According to the 8th Environmental Action Programme, **coherence and synergies between actions across all levels of governance shall be increased**. The **European Climate Law** requires reaching climate neutrality by 2050 and sets the intermediate target of reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels. This framework poses a great challenge for the EU and its Member States. The Climate Law includes measures to keep track of progress and adjust the actions accordingly, based on existing systems such as the energy union governance system for Member States' **Integrated national energy and climate plans (NECPs)**. Also, other EU instruments, such as the Recovery and Resilience Facility (RRF) are targeted to contribute to the EU climate goals.

The governance rules¹ underline the **importance of effective public participation** and regional cooperation in the development and implementation of these NECPs, ensuring that the views of citizens and businesses as well as regional and local authorities are taken into account.

It is important to emphasize that all Member States, as well as the EU as an entity, are Parties to the Aarhus Convention adopted in 1998, which establishes participatory rights of the public concerning decision-making on environmental matters.

Based on the governance rules, Member States had to **update and revise their NECPs first time in 2023 (drafts) and 2024 (final versions)**.²

In **2018**, Justice and Environment (J&E) was involved in the drafting processes of different NECPs, supported national-level stakeholders and NGOs with an Energy Union Governance Guidance and collected information from 10 Member States on the current preparation phase of NECPs.³

¹ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ 2018/328, 1.

² An EU-wide assessment of National Energy and Climate Plans Driving forward the green transition and promoting economic recovery through integrated energy and climate planning <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600339518571&uri=COM:2020:564:FIN> (accessed on 09.03.2022)

³ http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2019/Energy_Union_Governance.pdf

In 2019, J&E compiled a questionnaire covering the 9 EU countries **Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovakia, Slovenia and Spain** concerning the planning process of the first draft NECPs focusing on transparency and public participation on the national level. Findings and recommendations are available in the J&E position paper [Transparent and participative NECPs! \(December 2019\)](#)

In 2020, J&E continued its monitoring work on NECPs. The second questionnaire - a follow-up of the previous one of 2019 - was aiming to reveal potential changes, best practices regarding transparency and public participation in the finalisation processes on the national level (between June 2019 and January 2020). Our findings and recommendations are available on our website: [Transparent and participative NECPs! \(February 2021\)](#).

Despite the fact, that the first progress reports were due in 2023 J&E decided to carry on NECP monitoring in 2021.

The third position paper document [Transparent and participative NECPs! \(March 2022\)](#) aimed to follow up on our results from the previous years and **give feedback to national decision-making bodies** for a better implementation of the Energy Union Governance Regulation as well as the implementation and revision of NECPs and preparation of additional climate relevant strategies.

In this document, we are summarizing the experiences of J&E members regarding **transparency and public involvement on national level in the updating of NECPs**. The ongoing updating processes (in 2024) will provide the opportunity to build on lessons learnt from the drafting phase of NECP revision procedures.

National updating process of the NECPs in 2023

J&E focused solely on the following two main issues of the NECP updating process, transparency of drafting and public consultation measures in the review process. Based on the answers from the involved Member States it can be concluded that both transparency and the intensity of the public consultations and involvement varies from country to country, but in general they were assessed as very poor to good. The average overall score is still 2 (poor) on a 1 to 5 rating scale, but if we compare the results to the previous ones, there are some positive measures, a slight development, but also room for improvement.

Transparency of updating process

The present picture in the assessed Member States shows lack of transparency in the NECP updating process. The outcomes of our research show the following:

- Sub-sites of the competent ministries usually do not provide detailed and complete information on the updating process (e.g. scope of updating, participants, timeline, background information), furthermore they are not regularly updated.
- Only in three countries (in Austria, Estonia and Slovenia) of the 8 covered by our research there is available information on the relevant procedural steps of NECP updating process on the national level on an NECP-dedicated website.
- The complete draft of the updated NECP was published only in half of the covered countries, concretely in 4 Member States prior to submission to the European Commission.

In order to increase public involvement and transparency regarding the ongoing NECP updating, the following points must be considered.

Justice & Environment recommends to

- ✓ take an active role on national level in information-sharing in addition to the efforts undertaken by the European Commission. This could at a minimum level include adding designated pages to their websites with key data on the updating process with timelines, including strategic environmental assessment procedures;
- ✓ provide proper and full information on the NECP updating process;
- ✓ enter into cooperation with citizens, NGOs and other stakeholders in these matters, involve the general public;
- ✓ make efforts to reach out to the affected stakeholders and environmental organizations to raise their awareness of the NECP updating/other strategy preparation process as well as participation opportunities.

Public Consultations

The Energy Union Governance Regulation (Articles 9-11) places certain requirements regarding transparency and public participation in NECP processes. The instruments which have the potential to enhance transparency and improve public participation are not designated concretely as they fall under the competence of each Member State.

In the frame of the multilevel climate and energy dialogue⁴ local authorities, civil society organisations, business community, investors and other relevant stakeholders and the general public are able actively to engage and discuss the different scenarios envisaged for energy and climate policies, including for the long term, and review progress. In case, a Member State already has a structure, which serves the same purpose, it fulfills the governance requirements.

Insights regarding public consultations can be concluded as follows.

- In six countries there was an opportunity to participate in the drafting process, but except for Austria, Estonia and Slovenia, it was not ensured in the early phase of drafting, moreover, it was reported formal one, aiming solely to fulfil EU legislative requirements, and not substantive dialogue.
- In most countries it remained unclear how the results of the discussions were not taken into account, core issues, and content raised by NGOs in the consultation process were not integrated into the draft.
- Only in Estonia was published a complete table of the proposals and replies.
- Except for one Member State, multilevel climate and energy dialogue was not established, in seven of the assessed eight countries there are no such platforms to engage different stakeholders. Only Austria can be mentioned as a positive example, based on our results this country is committed to involving the general public in the climate policy-making.
- The draft updated NECP has not yet gone through Strategic Environmental Assessment (SEA) procedure in any countries, in Slovenia the SEA is currently ongoing.

⁴ Art. 11 of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ 2018/328, 1.

The following recommendations are particularly important for the finalization phase of the NECP revision process.

Justice & Environment recommends to

- ✓ carry out Strategic Environmental Assessment in the NECP revision process: Thorough public consultations in the frame of SEA on national/regional level should be carried out (e.g. stakeholder workshops, online/written consultations etc.) so the public can raise comments and concerns on the respective projects/issues in their early phase, when all options are still open;
- ✓ monitor compliance of the NECP revision process with the Energy Union Governance;
- ✓ establish and update multilevel climate and energy dialogue;
- ✓ promote cooperation between national, regional and local level energy and climate actors and their initiatives in finding correspondence;
- ✓ make available a summary of stakeholders' contribution, if and how it was considered and/or integrated in the NECP or climate strategy.

Annex

SUMMARY OF QUESTIONNAIRES on transparency and public participation in the review process of NECPs on national level 24th January 2024

Context

In 2019 and 2020 Justice & Environment compiled questionnaires covering in 9 EU countries⁵: **Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovakia, Slovenia and Spain** concerning the planning and finalization process of the first NECPs (2021-2030) on national level. Findings and recommendations regarding the preparation and implementation process are available in our position papers [Transparent and participative NECPs! \(December 2019\)](#) and [Transparent and participative NECPs! \(February 2021\)](#).

In 2021 we continued this work to follow up on our results from the previous years and provide feedback to national decision-making bodies for a better implementation of the Energy Union Governance Regulation as well as the implementation and revision of NECPs and preparation of additional climate relevant strategies, our findings are summarized in the position paper: [Transparent and participative NECPs! \(March 2022\)](#).

The governance rules⁶ underline the **importance of effective public participation** and regional cooperation in the development and revision of these NECPs, ensuring that the views of citizens and businesses as well as regional and local authorities are taken into account.

By June 2023, EU Member States had to submit to the European Commission the draft update of the latest notified integrated national energy and climate plan (NECP) for 2020-2030 or had to provide the Commission with reasons justifying why the plan does not require updating⁷.

⁵ the latest version of the questionnaires can be found on Google Drive (via <https://drive.google.com/drive/folders/19n-NI2k29QQCHekMRXI35Ef5-3TCueF?usp=sharing>)

⁶ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ 2018/328, 1.

⁷ Article 14 point 1 Governance Regulation

The EU is currently in the process of implementing [Decision VII/8f](#) of the Meeting of the Parties to the Aarhus Convention. This decision, building upon previous findings from the Compliance Committee and decisions of the Meeting of the Parties, found the EU in non-compliance for not having properly implemented article 7 of the Convention on public participation regarding plans and programs in relation to the **National Energy and Climate Plans (NECPs)**.⁸

This is a summary of questionnaire covering in 8 EU countries: Austria, Bulgaria, the Czech Republic, Croatia, Estonia, Hungary, Romania and Slovenia presenting transparency and public participation issues concerning the NECP updating process on the national level in 2023.

Transparency of the updating process

1. **Is there an informative and regularly updated NECP website in your country? Is relevant information regarding NECP and its review process (scope of updating, participants, timeline of the planned procedure, background documents) available?**

In most countries, NECP and other climate-relevant strategies have been published on the website or sub-site of the competent ministry, and these websites usually do not provide detailed and exhaustive information on the updating process, furthermore, they are not regularly updated. In Austria, Estonia and Slovenia more or less all relevant information is available on one website dedicated to the NECP. (In Estonia the updating of the dedicated website stopped in May 2023 supposedly since in summer 2023, the Ministry of Economic Affairs and the Ministry of the Environment were merged and became the Ministry of Climate. The NECP website still bears the name of the Ministry of Economic Affairs, which might hint that the ministry has forgotten to update this website.)

2. **Did the national government or its body responsible for updating the plan publish the draft versions on its website? If yes, when did it happen?**

⁸ In paragraph 2 (a) (i) of decision VII/8f, the Meeting of the Parties requests the European Union, as a matter of urgency, to provide the Committee with evidence that it has adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of National Energy and Climate Plans, and, in particular, **to take the necessary legislative, regulatory or practical measures to 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 most countries the draft version of the updated plan was published prior to submission to the EC. The timeframe given for commenting varies country by country (e.g. in Slovenia it was only one week, in Hungary only two weeks, but in Estonia and Austria the draft plan was available over more than a month). In *Czechia* the publication was insufficient as it took the existing NECP and presented it as a starting point for consultation. In *Romania* the draft revised NECP was submitted directly to the EU Commission without prior consultation with national stakeholders. The draft is only in English, and it is not available on the national websites. *Bulgaria* is behind with the updating the NECP and the first draft was published at the very end of the year, on 22.12.2023.

Public consultation and involvement

3. Did the public have the opportunity to consult the published draft? Did national environmental NGOs participate in any way in the updating process?

In most countries (*Austria, Bulgaria, Hungary, Croatia, Czechia, Estonia and Slovenia*) there was given some kind of opportunity for the public (a workshop or a questionnaire or an email address for commenting the draft plan or an online public participation seminar) to participate in the drafting process, at the same time many of the NGOs draw attention that process was insufficient and formal aiming to meet the minimum requirements of Energy Union Governance Regulation.

In *Austria* the public had the opportunity to consult the published drafts within eight weeks. Additionally, there was a kick-off meeting by the Ministry of Climate for environmental NGOs and other stakeholders on 5 July 2023 to present and discuss goals and measures regarding the NECP.

Also, in *Czechia* there's been one public consultation organized by the Ministry of Industry and Trade in May/June 2023, but as stated above, they gave the public the existing NECP to comment on. The questions in the consultation weren't "user-friendly", as it assumed the person who fills the questionnaire has detailed knowledge of the NECP Document.

In *Hungary* only a brief version of the draft was published for commenting.

In *Estonia* the consultation process involved different ways of consultations, online seminar was held, written comments were assessed and also a written feedback was published on the website of [the Ministry of Economic Affairs](#). After that, another online seminar was organised where the feedback was presented by the Ministry and discussed.

Also, in *Slovenia* the public and NGOs had enough opportunities to consult and propose amendments to the new NECP (at least 3 public events, online surveys regarding NECP goals, SEA factors etc.), but were not able to effectively engage in the finished draft, because it was sent to the EC without further consultation with the public. The draft also largely ignored the comments of NGOs, especially regarding raising climate goals or effectively pursuing the Paris Agreement goals.

In *Romania* there was no public consultation.

4. Has there been any results of public consultations (especially with civil organisations) integrated in the draft updated NECP?

The answers show a mixed picture in this issue, but it can be concluded that more substantial proposals weren't integrated into the drafts based on the results of public consultations.

In *Austria* the public consultations were published on the website by the Ministry of Climate. In a follow-up meeting for stakeholders including civil organisations in September 2023, the Ministry of Climate discussed the results of the public consultations and explained the next steps. However, it is unclear to the general public how the consultations were integrated in the draft updated NECP.

In *Czechia* and *Estonia* some of the proposals were partly integrated (or a few, more technical ones, fully accepted) in the draft. The complete table of the Estonian proposals and replies can be found [here](#). However, the more substantial proposals were not taken into account and no significant changes were made to the draft NECP.

In *Slovenia* some comments regarding sustainable mobility, energy poverty etc. were addressed, but none of the core comments were integrated, especially regarding climate goals and reaching the Paris Agreement goals. The NGOs were summed up in one interest group and the multitude of NGOs participating (over 30) was counted as one voice in relation to other interest groups.

In *Croatia* and *Hungary*, we can't estimate or measure what was adopted in terms of comments or changes, the competent ministries didn't publish either the summary of proposals to the draft NECP or the replies to the comments.

In case of *Romania* and *Bulgaria*, due to lack of public consultation, the answer is no.

**5. Has there been a multilevel climate and energy dialogue established in your country?⁹
Are the civil organizations and the general public able to actively participate in climate policy discussions and review progress?**

In *Austria* a multilevel climate and energy dialogue called “The National Climate Protection Committee” has been established. It includes various interest groups (industry and energy) as well as environmental organisations, members of the scientific community, members of parliament as well as the federal states and the association of towns and municipalities. The civil organisations are able to actively participate in climate policy discussions and review progress: there has been a kick-off meeting by the Ministry of Climate for environmental NGOs and other stakeholders in July 2023 to present and discuss goals and measures regarding the NECP. Additionally, there has been a follow-up meeting with all relevant stakeholders in September 2023 regarding the results of the public consultations and next steps.

In *Bulgaria, Croatia, Estonia, Hungary, Romania, Slovenia* there was no real climate and energy dialogue established, the general feeling is, that in most countries the states are reluctant to confront opinions and that it is easier for the administration to separate potentially conflicting opinions into different events. In *Czechia* there was an attempt to create a multilevel climate and energy dialogue, but unfortunately it didn't turn into a transparent and comprehensive process.

SEA of NECP

6. Has the draft updated NECP gone through SEA? Is it planned in your country before finalization of the updated NECP?

The draft has not yet gone through SEA in any countries.

In *Slovenia* the SEA is being done for the Slovenian NECP (the process is ongoing - currently we are in the stage of scoping) and will be published for public comments along with the final draft of NECP - The NECP will be finalised after the public gets to see and comment the SEA report and the final NECP draft.

In *Austria, Croatia* there is no information that it is planned before the finalization of the updated NECP. In *Bulgaria, Czechia, Hungary, and Romania* SEA will be conducted later.

⁹ Article 11 Governance Regulation

In *Estonia* SEA is not planned, supposedly because the NECP does not set any new targets or measures but merely summarises targets, measures etc. that are included in existing development documents that have already undergone SEAs.

7. How do you score transparency of the NECP updating process in your country in a 1 to 5 rating scale? (1 very poor, 2 poor, 3 average, 4 good, 5 very good)

In *Romania* the transparency was rated very poor (1), in *Croatia, Czechia, Estonia, Hungary* the score is poor (2), *Austria* reached average (3), and *Slovenia* got the highest score, good (4). (Bulgaria N/A)

Challenging NECP

8. Are there any ongoing legal procedures to challenge, review an insufficient NECP in your country? Has any environmental NGO made legal steps towards enforcement NECP targets?

Except for Romania there are not any pending legal procedures to review NECP.

In 2021 *J&E Romania* filed a preliminary complaint against the Government Decision for the NECP adoption (GD 1076/2021) and against the NECP requesting the revocation of these documents, the reopening of the procedures for the elaboration and preparation of the NECP, plus the adoption of a new GD for its approval. The arguments relate, inter alia, to breaches of the legal provisions on the competence to draw up the NECP, breach of the obligation to carry out the environmental impact assessment procedure, breach of the provisions of the Energy Union Government Regulation, breach of the provisions on public consultation and participation, as well as other provisions related to the Paris Agreement. The preliminary complaint was dismissed during the first hearings, but J&E Romania submitted an appeal, and the decision is still pending.

In *Austria* the NECP targets are translated in national goals in the Federal Climate Protection Act. Provisions of the Climate Protection Act have been challenged by individuals as well as environmental NGOs but have all been turned down by the Constitutional Court of Austria. For more information on the cases: [AUSTRIAN CLIMATE CASES - MICHAELA KRÖMER \(michaelakroemer.com\)](https://michaelakroemer.com) Currently, there is a „climate case” pending before the European Court of Human Rights, regarding the inaction of Austria to provide sufficient climate protection. For more information on the case: [Müllner v. Austria - Climate Change Litigation \(climatecasechart.com\)](https://climatecasechart.com)

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