



TRANSPARENT AND PARTICIPATIVE NECPS !

**Recommendations for the NECP
preparation/implementation process
Justice and Environment, December 2019**

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Introduction

The EU's 2030 climate and energy framework sets out the targets, rules and governance system in relation to greenhouse gas emission reductions, energy efficiency and renewables. **Integrated national energy and climate plans (NECPs)** are crucial elements of the 2030 climate and energy framework, bringing energy and climate targets into one strategy, as well as helping to plan and report on progress. The new governance rules 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.¹

According to the Energy Union Governance Regulation², Member States should ensure that the public is given early and effective opportunities to participate in and to be consulted on the preparation of the integrated national energy and climate plans in accordance with the provisions of the **“Aarhus convention”**.³ Member States should aim to ensure equal participation, that the public is informed by public notices or other appropriate means such as electronic media, that the public is able to access all relevant documents, and that practical arrangements related to the public's participation are put in place.⁴

Furthermore, according to the Regulation, each Member State should establish a **permanent multi-level energy dialogue**, bringing together local authorities, civil society organisations, the business community, investors and other relevant stakeholders to discuss the different options envisaged for energy and climate policies.

In 2018, Justice and Environment (J&E) was involved in the drafting processes of different NECPs, supported national level stakeholders, including NGOs, by an Energy Union Governance Guidance and collected information from 10 Member States on the current preparation phase of NECPs at the end of 2018.⁵ (The plans are to be finalized by the end of 2019, but in certain countries, the adoption of NECPs will continue well into 2020.) In 2019, J&E compiled a questionnaire concerning the planning process of the first draft NECPs focusing on transparency and public participation on national level covering 9 EU countries: **Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovakia, Slovenia and Spain**.

This paper aims to follow up on our results and give recommendations for a better implementation of the Energy Union Governance Regulation as well as the NECP preparation and implementation process for the years ahead.

¹ <https://ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/governance-energy-union/national-energy-climate-plans#content-heading-0> (accessed on 12 December 2019).

² 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.

³ Regulation (EU) 2018/1999, Preamble (28) and Article 1 (1); Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

⁴ Regulation (EU) 2018/1999, Preamble (29).

⁵ http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2019/Energy_Union_Governance.pdf.

National implementation of the Energy Union Governance Regulation regarding preparation of NECPs

The Energy Union Governance Regulation recognises that transparency, also early and effective involvement of the public is essential for integrated national energy and climate plans. Member States targeted in our research have only partly met the requirements of the Energy Union Governance Regulation.⁶

According to Reg. Articles 9 (4) and 10, each Member State shall

- make available to the public its draft integrated national energy and climate plan;
- ensure that the public is given early and effective opportunities to participate in the preparation of the draft integrated national energy and climate plan;
- ensure that the public is informed;
- set reasonable timeframes allowing sufficient time for the public to be informed, to participate and express its views;
- limit administrative complexity when implementing public involvement provisions of the Regulation.

Before the Regulation's entry into force, Member States were likewise required to ensure early and effective public participation according to the former Proposal of the Energy Union Governance Regulation and the Aarhus Convention. 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 the public consultations were assessed as very poor (Croatia) to more inclusive. The average overall score is 2 (poor) in a 1 to 5 rating scale.⁷

⁶ The Energy Union Governance Regulation entered into force on 24 December 2018. Its Proposal (COM (2016) 759 final of 30 November 2016) was published at the end of 2016. The Proposal also contained the early and effective public participation provisions.

⁷ In case of some Member States also the EC pointed out in its recommendations that the public and other stakeholders are to be engaged in the preparation of the final integrated national energy and climate plan.

Justice & Environment recommends to

- accompany the implementation of the Energy Union Governance Regulation with guidelines on NECP process and/or Q&A.
- call on the respective ministries of Member States to take an active role 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 web sites with key data on the NECP preparation, adaption (and implementation) process with timeline, including strategic environmental assessment procedures concerning NECPs.
- call on the respective ministries of Member States to make efforts to reach out to the affected stakeholders and environmental organizations in order to raise their awareness of the NECP process as well as participation opportunities.

Transparency

The present picture in the assessed Member States shows an inadequate and incomplete implementation of transparency requirements in the NECP preparation process. The outcomes of our research show that

- only in two countries (in Slovenia and Spain) of the involved 9 there are special separate national websites dedicated to NECP;
- in all countries but Estonia, Romania and Slovakia the first draft version was publicly available only at the same time or after it was submitted to the European Commission. However, even in Estonia the draft NECP was open to comments from December 10th to 20th 2018 which didn't leave enough time to give substantive feedback. In addition, the draft was clearly incomplete, missing whole chapters which made giving feedback even more difficult as there was nothing to comment on in some matters.
- in none of the involved countries there was any public participation plan with time schedule prepared or published so far. There is lack of available information on the relevant procedural steps of NECP preparation process on national level.

Justice & Environment recommends to

- urge Member States' to provide proper and full information on the NECP preparation and implementation process;
- foster Member States' cooperation with citizens, NGOs and other stakeholders in these matters;
- monitor compliance of NECP process with the Energy Union Governance and SEA Directive;
- provide respective guidance on their proper application to the respective competent ministries and/or authorities if deemed necessary and
- ensure compliance by periodic evaluation of the implementation.

Public participation

As we have pointed out above the Energy Union Governance Regulation (Articles 9-11) places certain requirements regarding transparency and public participation in NECP drafting process. The instruments which have the potential to enhance transparency and improve public participation are not designated concretely, they belong to the competence of each Member States. The assessed countries did not take effective measures to fulfil completely the enlisted requirements. Answers concerned **public consultations** can be concluded as follows.

- In all countries there was no organized public consultation process at early phase.⁸
- Within the limited and rather late consultation process the countries reported the consultation was open for the stakeholders, however it was not very proactive but rather formal.
- In several cases the shared draft was incomplete missing entire chapters.
- Mostly, big, national environmental NGOs submitted proposals (e.g. national umbrella organizations, or offices of WWF or FoE), but the results of the public consultations (esp. with NGOs) are poorly or even not at all reflected in the draft NECPs.⁹

Multilevel climate and energy dialogue introduced by Art. 11 of Energy Union Governance Regulation is crucial in public participation concerning NECPs establishing platform to involve local authorities, civil society organisations, the business community, investors and other relevant stakeholders and the general public in order to discuss the different scenarios envisaged for energy and climate policies.

Nevertheless, in our research the dialogue was generally assessed as relatively weak and only formal. For some countries it is reported as existing to some extent driven by e.g. a project of an NGO coalition in Estonia or by a Climate Council in Spain - a participatory body comprised by different stakeholders from the administrations, the energy sector, trade union and the five biggest environmental NGOs.

Regarding public consultation Art. 10 of Energy Union Governance Regulation allows the combination or linking of consultation under the Energy Union Governance Regulation and the SEA Directive¹⁰.

J&E is convinced that NECPs should undergo **Strategic Environmental Assessment** (hereafter: SEA) in every Member State. Based on our questionnaires, in most countries it is expected to

⁸ As one exception Austria can be mentioned, where in late spring 2018, there was a public consultation on the national climate and energy strategy underlying the NECP, however it was very general and without any clear indicators for the NECP.

⁹ In Romania and Estonia, the suggestions collected during the public consultations were integrated as a distinct chapter in annex to the NECP draft published in 2019.

¹⁰ 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 (hereafter: SEA Directive), OJ L 2001/197, 30; '... *In so far as Directive 2001/42/EC is applicable, consultations undertaken on the draft in accordance with that Directive shall be deemed to satisfy the obligations to consult the public under this Regulation.*'

be carried out but at a very late stage when not all options are open and the goals and measures are already decided without assessing the alternatives at an earlier stage.¹¹

Justice & Environment recommends to

- support Member States in elaboration and realization of early and effective public participation procedures in the NECP process in order to reach meaningful and fruitful cooperation;
- foster Member States to make available a summary of stakeholders' contribution, if and how they were considered and/or integrated in the NECP;
- urge Member States to establish and update multilevel climate and energy dialogue;
- encourage Member States to carry out Strategic Environmental Assessment in an early phase of NECP preparation/implementation process. Thorough public consultations in 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;
- promote cooperation between national, regional and local level energy and climate actors and their initiatives in finding correspondence.

¹¹ According to current information, in Estonia and Austria there will be no SEA. In Slovenia and Spain, a SEA procedure is on-going.

Annex

Summary of the results of the QUESTIONNAIRE

on

public participation and transparency in the preparation process of NECPs on national level

11 November 2019

Context

According to the Energy Union Governance Regulation¹², EU Member States should ensure that the public is given *early and effective opportunities* to participate in and to be consulted on the preparation of the integrated national energy and climate plans in accordance with the provisions of the "Aarhus convention".¹³ Member States should aim to ensure *equal participation*, that the public is informed by public notices or other *appropriate means* such as electronic media, that the public is able to access all relevant documents, and that practical arrangements related to the public's participation are put in place.¹⁴

Furthermore, according to the Regulation, each Member State should establish a **permanent multi-level energy dialogue**, bringing together local authorities, civil society organisations, the business community, investors and other relevant stakeholders to discuss the different options envisaged for energy and climate policies.

This is a summary of questionnaire covering in 9 EU countries: **Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovakia, Slovenia and Spain** concerning the planning process of the first draft NECP on national level. The questionnaire was completed by CSOs of the relevant countries in October 2019.

¹² 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.

¹³ Preamble (28); Article 1 (1).

¹⁴ Preamble (29).

Basic information of the preparation process¹⁵

1. Date of the submission of the draft NECP of the countries

Between 21 December 2018 in Austria and 22 February 2019 in Spain where the delay was due to the change of government in June 2018 and the limited work undertaken by the previous government to prepare the draft NECP.

2. National website of the NECP in the countries

Only in two countries - in Slovenia¹⁶ and Spain there are national websites.

3. Description of public consultation and involvement of stakeholders, especially civil groups in the NECP

The intensity of the public consultations and involvement varies from country to country but in general the public consultations were assessed as **very poor** (Croatia) to more **inclusive**. In Estonia¹⁷ the stakeholders were relatively actively involved in the drafting of the NECP. In the other countries the public consultations started only after the first draft NECP was sent to the EC (Austria, Bulgaria, Hungary, Slovenia and Spain) or just before that but the period for comments was very limited (only 10 days in Romania to only 5 working days around Christmas holidays in Croatia).

4. Does the EC Recommendations and Assessment cover transparency and public participation issues? If yes, please list the recommendations in short bullet points!

For some countries there were no recommendations of the EC concerning transparency and public participation (Bulgaria, Croatia, Estonia and Romania). To the other countries specific recommendations were given. E.g. for Hungary, Slovakia and Slovenia EC pointed out that “*the public and other stakeholders are to be engaged in the preparation of the final integrated national energy and climate plan*”. For Austria, the EC noted that “*it is unclear what kind of comments were provided and how they were taken into account when finalising the draft plan. A public consultation specifically on the draft plan notified to the Commission did not take place*”. Other remarks were more technical, e.g.: “*The transparency could be further improved by providing figures on heating and cooling degree days and technology cost projections*” (Spain) or: “*The transparency of the projections could be further improved by adding (i) sources for assumptions on key parameters, and (ii) describing more explicitly which policies and measures are taken into account in the with existing measures scenario.*” (Austria).

¹⁵ See <https://ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/governance-energy-union/national-energy-climate-plans> (accessed on 11 November 2019).

¹⁶ <https://www.energetika-portal.si/dokumenti/strateski-razvojni-dokumenti/nacionalni-energetski-in-podnebni-nacr> (accessed on 11 November 2019).

¹⁷ In Estonia, the first draft was published on 24 September 2018 following a presentation of the draft on 9 October 2018. An edited version of the draft was published on 10 December, stakeholders and local authorities were allowed to give general comments until 20 December 2018 and detailed comments until 6 February 2019.

Transparency of the preparation process

5. Did the national government or its body responsible for elaboration of the plan publish the draft on its website in early phase of the preparation process?

In all countries but Estonia and Romania the first draft version was available online only at the same time or after it was submitted to the European Commission. However, even in Estonia the draft NECP was open to comments from December 10th to 20th 2018 which didn't leave enough time to give substantive feedback. In addition, the draft was clearly incomplete, missing whole chapters which made giving feedback even more difficult as there was nothing to comment on in some matters. Situation in Romania was similar.

6. Is the NECP website informative and regularly updated? Are there all relevant information regarding NECP preparation process available?

There are not specially designated NECP websites except in Slovakia, Slovenia and Spain. In Spain the NECP website is part of the website called Strategic Framework for Energy and Climate that in addition to the NECP includes the future Law on Climate Change and Energy Transition together with the Strategy on Just Transition. It has not been updated since it was launched in February 2019.

7. Has there been any public participation plan published?

In all countries there was no public participation plan prepared or published so far. Only in Hungary, the Ministry is planning to prepare a consultation plan and make it available.

Public consultation and involvement

8. Did the national government or its body organise public consultation in early phase of the preparation process enabling all interested stakeholders to contribute to the NECP?

In all countries there was no organized public consultation process at early phase, except for Austria, where in late spring 2018, there was a public consultation on the national climate and energy strategy underlying the NECP, however it was very general and without any clear indicators for the NECP.

9. Who were involved in the public consultations? Were there any stakeholder groups directly contacted and invited or was it open for all citizens?

Within the limited and rather late consultation process the countries reported the consultation was open for different stakeholders, however it was not very proactive but rather formal. E.g. in Bulgaria the public discussions happened either by the submission of opinion to the ministry's e-mail address or when the stakeholders (e.g. from the energy sector or environmental NGOs) organized discussion forums and seminars and invited other stakeholders and the Ministry of Energy. In four countries (Austria, Bulgaria, Estonia and Hungary) there was no consultation of the general public on the draft NECP at the time the questionnaire was filled in.

10. Did national environmental NGOs participate and submit proposals in the drafting process? Did the national government or its body give any feedback on the civil organisations' proposals?

Mostly, big, national environmental NGOs submitted proposals (e.g. national umbrella organizations, or offices of WWF or FoE). However, it is not clear whether and how these statements will be taken into account since the process was not transparent and the table with comments by the NGOs and other stakeholders is not publicly accessible. Only in Estonia, in an annex of the NECP draft there was a table with the proposals and whether these were considered or not along with the reasoning for doing so. In Croatia, there was no organised process to submit concrete comments on the document.

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

Overall, for the moment, the results of the public consultations (esp. with NGOs) are poorly reflected in the draft NECPs. In Romania and Estonia, the suggestions collected during the public consultations were integrated as distinct chapter (Romania) or annex (Estonia) in the NECP draft versions published in 2019.

12. Does the permanent climate and energy dialogue work in your country? (website, public consultation platform or another interactive communication tool)

The dialogue is assessed as relatively weak and formal in general. For some countries it is reported as existing to some extent driven by e.g. a project of an NGO coalition in Estonia or by a Climate Council in Spain - a participatory body comprised by different stakeholders from the administrations, the energy sector, trade union and the five biggest environmental NGOs.

Planning process following the EC assessment

13. Will the NECP go through Strategic Environmental Assessment in your country?

In most countries it is expected to be carried out but at a very late stage when not all options are open, and the goals and measures are already decided without assessing the alternatives at an earlier stage. According to current information, there will be now SEA in Estonia and Austria. In Slovenia and Spain, a SEA procedure is on-going.

14. How do you score transparency and public participation in the NECP preparation process in your country in a 1 to 5 rating scale? (1 very poor, 2 poor, 3 average, 4 good, 5 very good)

The average score is 2.

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