

## EEB demands for the European Commission's recommendations for the Member States' draft NECPs

**National Energy and Climate Plans (NECPs) have largely been drafted without the involvement of the public. Inadequate or ignored consultations should be redone. There is still time for meaningful public participation before the final plans are submitted in June 2024.**

By the 30th of June 2023, all Member States should have submitted a draft update of their NECP to the European Commission. To date, only 16 countries have submitted their drafts and amongst them most have largely disregarded their [public participation obligations](#) under the Governance Regulation and the Aarhus Convention.<sup>1</sup>

### European Commission's role:

The Commission has a defined impact on the content and drafting of the NECPs prepared in national ministries. The EEB acknowledges that the Commission must strike a delicate balance between its role as a facilitator of the energy union and the EU's climate action, and its role as a guardian of EU law and minimum standards for the NECPs. The drafting of the updated NECPs must respect the bare necessities of a democratic process.

The Governance Regulation as well as the binding Aarhus Convention give unequivocal instructions to Member States to consult the public (not just stakeholders) in drafting the updated NECPs. These requirements were largely ignored in the 2019 NECPs and Member States are now on track to ignore them once again in the updates.

Point 3.2 of the [NECP Guidance](#) for Member States for updated NECPs 2021-2030 makes it clear that Member States are expected to organise fair, early, inclusive and transparent public participation processes for updating their NECPs. However, this guidance leaves many details aside,<sup>2</sup> in particular, the Commission missed the chance to inform the Member States that it would assess in greater detail their compliance with requirements under Article 10 and Annex I of the Governance Regulation.<sup>3</sup> Therefore, a clear assessment and recommendations will further guide and push the Member States to conduct proper public consultation processes before finalising their NECPs.

The Commission's recommendations to the 2019 draft NECPs entirely ignored the breaches of public participation requirements under Articles 10 and 11 of the Governance Regulation. For the 2024 updates, the Commission should not skip over them so easily. Ongoing failure by national ministries to heed their public participation obligations will open the plans up to numerous avenues of litigation. **The EEB reiterates civil society's [requests](#) and demands that the Commission prepares**

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<sup>1</sup> CAN-EU & WWF. 2023. Public Participation in National Energy and Climate Plans: Evidence of Weak and Uneven Compliance in Member States. <https://1point5.caneurope.org/wp-content/uploads/2023/04/REPORT-Public-participation-in-National-Energy-and-Climate-Plans.pdf>

<sup>2</sup> Guidance on the format of participation is inconsistent and does not delineate between the requirements of article 10 vs article 11 of the Governance Regulation. It does not provide guidance in line with the OECD's [good practice recommendations](#).

<sup>3</sup> As the Commission announced in its plan of action for [Decision VII/8f](#).

thorough recommendations in December 2023 to all Member States who are in breach of their public consultation requirements.

### EEB demands for the recommendations:

As the annexed assessment shows, the public consultations described in sections 1.3 of the available draft updates are by and large insufficient, not carried out effectively, and in non-observance of minimum legal requirements. It is, therefore, crucial that in its assessment of the drafts and formulation of recommendations, the European Commission:

- Issues recommendations to all Member States which fail to meet the necessary [ten steps for public participation](#);
- Recommends that all Member States conduct a public consultation respecting minimum legal requirements under the Aarhus Convention;
- Reflects on the late submission of the draft NECPs and their impact on insufficient transparency and early availability of information to the public;<sup>4</sup>
- Clearly differentiates between stakeholder engagement, public engagement, and Multistakeholder Energy and Climate Dialogues;<sup>5</sup>
- Analyses in detail the described participatory processes to ensure that the section 1.3 does not simply constitute a box ticking exercise and avoids [citizenwashing](#);
- Reflects on how to avoid procedural illegality on grounds of missing or faulty participatory processes which could lead to litigation;
- Does not hesitate to consider enforcement tools such as infringement procedures for countries which flagrantly ignore their public participation obligations.

The Commission recommendation should include the below points:

#### **COMMISSION RECOMMENDATION**

[...]

##### **HEREBY RECOMMENDS ... TO TAKE ACTION TO:**

***X. Review its public consultation processes carried out to date with a view to carrying out a fully-fledged public consultation ahead of the submission of the final plan in June 2024, as required by the Regulation (EU) 2018/1999, and provide more detail on, notably: the identification of the public concerned, the public notice used to inform about the options available, the publication of related background information to the public including the text of the NECP, the number of responses received, the main themes within these responses, and how they have been taken into account in subsequent drafting of the NECP.***

<sup>4</sup> Article 7, 6(4) and 6(8) of the Aarhus Convention and advice by the Aarhus Convention Compliance Committee to the European Union concerning the implementation of request ACCC/M/2017/3, available [here](#).

<sup>5</sup> For more information, please consult the EEB's report "NECP reporting: The missing voice of the public" (2023) available [here](#).

## Annex 1:

Assessment:

Country	Upside	Shortcomings	What needs to happen
Belgium	Various consultation initiatives at the regional level. Extensive presentation of the outcomes and their responses provided in the Brussels Region.	No public consultation at the federal level on the draft plan before submission.	Carry out a public consultation at federal level before submission of the final plan and ensure that due account is taken of consultation responses.
Croatia	Gives the concrete number of participants in the participatory processes albeit low.	Reports on the process ahead of the 2019 NECPs not the updates. Did not actually hold a public consultation and has no description of outcome of participatory processes.	Carry out an actual public consultation.
Cyprus	Lists main outcomes of comments to the ministry.	Only attracted 46 contributions in total upon its public notice. No consultation on the draft NECP, but on the previous NECP.	Carry out an actual public consultation inviting broad participation.
Czech Republic	Refers to a detailed evaluation of the public consultation with the frequency of responses.	No consultation on the draft itself and no timeline for the announced public consultation on the actual text.	Carry out an actual public consultation on the NECP and ensure that due account is taken of consultation responses.
Denmark	Gave details on the responses received plus ministry considerations as responses.	Only attracted 12 contributions in total on its public consultation. Extremely short timeframe of three weeks for the public consultation.	Carry out a public consultation open for at least eight weeks and with prior identification of the public concerned.
Estonia	Detailed presentation of consultation outcomes and how they have been considered.	A description of the process and timeline is missing and it is unclear whether only stakeholder or the general public were consulted. Replies are not differentiated per category of respondent.	Clarify the process through which replies were received and if appropriate carry out an actual public consultation inviting broad participation.
Finland	Clear commitment to carry out a full public consultation in 2024 before final submission.	No public consultation on the draft before submission. The 2024 consultation runs the risk of coming at a time when not all policy options are still open.	Carry out an actual public consultation on the NECP and ensure that due account is taken of consultation responses.
France	Consultations with the general public and stakeholders early on, when all the options were still open.	No public consultation on the draft before submission. Due to the delay in the foreseen timeline, there is a risk that the 2024 consultations will not be taken into account in the final NECP.	Carry out an actual public consultation on the NECP and ensure that due account is taken of consultation responses.
Germany	Commits to consultations in the course of 2023-2024	No information in the draft NECP apart from a mention of "2023-2024 consultations".	Carry out an actual public consultation on the NECP and ensure that due account is taken of

			rather late consultation responses and report in sufficient detail in the final NECP.
Greece	Reports on early availability of the draft NECP and issued multiple drafts to reflect the views of stakeholders expressed in preliminary discussions.	No public consultation on the draft before submission, only stakeholders' consultations with few responses.	Carry out an actual public consultation on the NECP and ensure that due account is taken of consultation responses.
Hungary	Some form of draft, in an abbreviated version, was available before the public consultation.	No description of number of responses, outcomes, or how they were taken into account. Consultation only for two weeks.	Carry out an actual public consultation with a suitable deadline for replies and ensure that due account is taken of consultation responses.
Italy	Dedicated online portal. Views described in aggregate manner. Clear commitment to take into account the views expressed in the context of the future SEA.	No draft plan available before public consultation. No description of how the comments were taken into account and incorporated. .	Explain how the received public replies were taken into account in the drafting of the NECP.
Lithuania	Clear commitment to carry out a consultation in Summer 2023 (concluded, at the time of writing).	No public consultation on the draft NECP before the submission. The public consultation carried out in Summer came too late to be considered in the submitted draft.	Explain how the public replies received were taken into account in the drafting of the NECP.
Luxembourg	Public consultation carried out in accordance with the national Climate law. Preliminary draft available to public. Mention, albeit in passing, of taking account the comments in the implementation of the NECP.	Only four weeks timeframe for consultation. Attracted only 42 contributions. No explanation on how concretely the outcomes have been taken into account.	Present a summary of the public's views and explain concretely how the replies were taken into account in the drafting of the NECP.
Malta	Clear commitment to carry out a public consultation before the submission of the final plan, which will include the outcomes of the consultation process.	No public consultation on the draft NECP before the submission of the draft.	Carry out an actual public consultation on the NECP complying with all the relevant requirements (publication of the NECP text, sufficient timeframes, summary of public's views and how they were taken into account, etc.).
The Netherlands	Use of varied forms of participation. Commitment to react properly to results obtained.	No public consultation on draft NECP. No clear differentiation between stakeholder, public consultation and engagement with national authorities.	Carry out an actual public consultation on the NECP. Clarify which process was a stakeholder and which a public consultation. Deliver on the promise to explain how the results were incorporated, mentioning who participated.
Portugal	Carried out a prior consultation and commits clearly to a second in 2024. Commitment to provide comprehensive	No public consultation on draft NECP. Only four weeks timeframe for consultation. Attracted only 59 contributions.	Ensure that the second consultation attracts wider contributions, has an adequate timeframe of eight weeks and that the NECP text as

	overview of replies in a consultation report.		reviewed after the Commission's assessment is available to the public.
Romania	No information given.	Reports nothing in the dedicated section on involvement of stakeholders and the general public and mentions a "possible involvement of stakeholders" in the revision process.	Carry out an actual public consultation complying with all the relevant requirements (publication of the NECP text, sufficient timeframes, summary of public's views and how they were taken into account, etc.).
Slovakia	Availability of a draft in advance. Reference to environmental impact assessment procedures.	No description of any actual consultation carried out, its responses, or how they have in fact been taken into account. No mention of engagement with the general public and only vague mention of stakeholder's input.	Carry out an actual public consultation complying with all the relevant requirements (publication of the NECP text, sufficient timeframes, summary of public's views and how they were taken into account, etc.)
Slovenia	Two consultations already carried out with a mention of a clear timeline, including one on a draft NECP. Commitment to carry out a third consultation in 2024.	No description of the actual consultations carried out, their responses, or how those have in fact been taken into account.	Ensure to provide enough detail on the third consultation in 2024, preparing a summary of the public's views and how they were taken into account.
Spain	Extensive description of a prior public consultation in the annex.es outcomes. Commitment to carry out a public consultation on the updated NECP along the SEA report.	No draft updated NECP was available to the public before replying to the consultation. Presentation of only the topics of the responses not their content and no commentary on incorporation of these outcomes.	Carry out another public consultation on the now available relevant information contained in the draft updated NECP.
Sweden	Consultation on the basis for a climate plan with the answers available online.	No consultation on the draft updated NECP. No description of number of responses, outcomes, or how they were taken into account. Reiteration of the processes reported on in the 2019 NECP.	Carry out an actual public consultation complying with all the relevant requirements (publication of the NECP text, sufficient timeframes, summary of public's views and how they were taken into account, etc.).

### Horizontal findings:

1. Draft updated NECPs are often hundreds of pages long but the section on public participation features on average fewer than two pages.
2. Most Member States did not carry out public consultations on the draft NECP prior to the submission.
3. Many updated NECPs do not describe any process which could rightly be called a public consultation.
4. Many updated NECPs conflate stakeholder with public consultations.
5. Most updated NECPs which describe a public consultation process do not adequately describe the aggregated responses obtained or how those have been incorporated in the decision-making process of the draft update.
6. A few updated NECPs display commendable public consultations alongside other useful public participation processes.

