

To meet its climate commitments, the EU must involve its people

To fulfil its climate commitments under the Paris Agreement, the EU has set 2030 climate and energy targets as an important step to reach net zero greenhouse gas emissions by 2050 at the latest.

To meet these targets, the EU has enacted the [Governance Regulation](#), which requires each Member State to prepare a National Energy and Climate Plan (NECP) that sets out how they will pursue the energy transition between 2021 and 2030. To set their longer 2050 ambition, each Member State must also prepare a national Long-Term Strategy (LTS), which sets out how it plans to achieve a net zero economy between 2030 and 2050.

A key aspect in developing the NECP and LTS is public participation, which enables individuals and civil society organisations to input into the preparation of both plans. Not only is this a way for citizens' voices to be heard, but it is also an effective method for governments to improve the quality of decisions by incorporating civil society's views.

Despite this, Member States have failed to consider their citizens' input while drafting their plans. Failing to organise compliant public participation not only breaches international laws, but also falls short of meeting the climate commitments made under the Paris Agreement.

However, there is still time for EU countries to carry out public participation and ramp up their climate ambition before the submission of their final plans.

Public participation - the missing link for ambitious National Energy and Climate Plans

The Governance Regulation requires Member States to submit their draft NECPs to the European Commission by 31 December 2018, with their final NECPs to be submitted exactly a year later, by 31 December 2019. In accordance with the Governance Regulation, the Commission issued recommendations to each Member State in June 2019 in response to what they had submitted so far.

The [recommendations](#) revealed that national efforts are currently coming up short. The European Commission concluded from its analysis of the 28 draft NECPs that as a whole, the envisaged policies are insufficiently ambitious to reach the bloc's 2030 targets and objectives.

A number of independent analyses from [ECF](#), [CAN-E](#) and [Sandbag](#) released in recent months have also found that the draft NECPs lack the necessary ambition and credibility required to achieve the Paris agreement objectives and fully enable the EU energy transition.

We believe that one of the reasons why NECPs currently fail to meet the 2030 targets is due to a lack of meaningful public engagement in the drafting of the plans. Frustratingly, many Member States have not consulted properly – or sometimes, not at all – with the public before adopting the draft NECPs.

This is not only a lost opportunity to get help and inspiration for national efforts towards achieving the Paris Agreement's goals – it is also a breach of the law.

In the EU, public participation and consultation in environmental matters is required under international (the Aarhus Convention), EU and national laws. These different laws all have to

be compliant with one another. In particular, EU and national laws must abide by the international rules of the Aarhus Convention.

The Aarhus Convention grants the public rights to access information, public participation and [access to justice](#), in governmental decision-making processes on matters concerning the environment.

To comply with the Aarhus Convention, the Governance Regulation includes references to the Aarhus Convention and specifically requires Member States to open the final 2021-2030 NECP to public participation “*well before its adoption*”. However, the Governance Regulation is unclear whether this public participation obligation is also applicable to the draft NECPs (which were submitted by 31 December 2018). This may be because the Governance Regulation only entered into force on 24 December 2018. However, the almost final version of the Governance Regulation had been agreed and made available for months prior to the end-of-year deadline.

In 2017, the Aarhus Convention Compliance Committee (ACCC) – which oversees compliance by each of the parties with their obligations – had already raised [concerns](#) that the Governance Regulation’s requirements for public participation when preparing the NECPs were insufficient to comply with the Aarhus Convention. In 2019, these concerns were repeated in a [progress review](#). After being made [aware by ClientEarth](#) of a lack of public participation in a number of Member States — and considering the imprecise wording of the Governance Regulation — the ACCC [advised](#) the European Commission in May 2019 to incorporate specific instructions regarding public participation in its recommendations on draft NECPs. However, the [Commission’s recommendations](#) — released in June — did not incorporate any of the specific wording recommended by the Compliance Committee.

The advice issued by the Committee is equally important to the national authorities drawing up the NECPs. For the NECPs to be truly impactful, public consultation must start early enough so that public comments can be taken into account in the final documents. There is still sufficient time to carry out public participation before the end of this year that complies with the Compliance Committee’s advice and thereby the Aarhus Convention.

If done properly, public participation could contribute to bridging the ambition gap and could help put the EU on track to meet the goals of the Paris Agreement.

Public participation – a requirement for Member States’ Long Term Strategies

The responsibility of Member States to conduct public participation extends beyond the NECPs. Under the Governance Regulation, each EU country must conduct public participation activities to develop LTSs.

Similarly to the NECPs, public participation must be carried out exclusively for the LTSs and must comply with both the Governance Regulation and the Aarhus Convention.

This means that public participation previously conducted for documents drafted for former versions of the LTSs would not satisfy the requirements of the Governance Regulation and the Aarhus Convention. Member States that [have already submitted LTSs](#) to the United Nations Framework Convention on Climate Change Secretariat, in line with the Paris

Agreement, such as Germany, France, the Czech Republic and the United Kingdom, must therefore organise a new phase of public participation.

Under the Aarhus Convention, LTSs submitted to the Commission must be distinct from any that may have been previously drafted. Therefore, repurposing any former strategies and submitting them as new LTSs without opening them to public participation would also breach the Aarhus Convention.

The way forward: how to guarantee public participation complies with the law

To avoid breaching their legal obligations under the Governance Regulation and the Aarhus Convention, we recommend that Member States organise public participation for both the NECPs and the LTSs that comply with the following:

1. Public consultations should start at the latest in September 2019.
2. Consultations should be open to all interested individuals and organisations.
3. Authorities should actively disseminate all the necessary information to the public, including the draft versions of the plans, and any other information relevant to the decision-making process. This would include the main reports and advice issued to the public authorities, any information regarding environmental consequences and cost-benefit and other economic analyses held by the responsible authorities and an outline of the main alternatives studied.

The requirement to publish draft versions of the plans is especially relevant for LTSs, as contrary to NECPs, the Governance Regulation does not explicitly require Member States to release draft LTSs. This creates a risk that certain Member States may open the LTS preparation to public participation without releasing a draft document with its accompanying data. While not required by EU law, not releasing a draft LTS would still be a breach of the Aarhus Convention.

4. Ideally, the public should have an initial 6-week period to consider the information disseminated by the authorities. This should be followed by another 6-week period to allow for public participation.
5. Authorities must take the outcome of public participation into account. Authorities must therefore prepare and issue a document that sets out concretely how the public's comments have been considered.

A more detailed description of these requirements is available in our previous legal memos on [NECPs](#) and [LTSs](#).

We call on the EU and its Member States to fully implement the Aarhus Convention and to organise public consultations that fully comply with the above. Civil society's input and expertise is not only required by law, but is key to improve Member States' draft NECPs and LTSs and ensure that both plans are as ambitious as possible. The ACCC, the European Commission and independent experts have all warned that the current plans regrettably fail to meet the Paris climate targets as well as related EU objectives. If Member States ignore this call to action, the repercussions risk affecting generations to come.