

# Options to challenge NECPs and SEA decisions in different EU Member States

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# What is J&E ?

- Environmental law network
- 14 member organisations (EU and beyond)
- Using mostly legal methods/tools

## Activities:

- analysing the implementation of EU law
- Case studies, policy recommendations and guidance material
- defending the rights of communities and nature in court

## Main work areas:

- Access to Justice
- Climate
- Environmental Assessments



# Overview

## I. National Energy and Climate Plans (NECPs)

1. Baseline information: Comparative study on NECP process (2019-20)
2. Access to justice options (2021)
3. Practical input from selected countries (2022)

## II. SEA decisions

1. J&E study on climate aspects in SEA (2020)
2. Access to Justice regarding SEA decisions
3. Observations and recommendations (2021)



# I.1. NECPs – collected information

J&E publication series “**TRANSPARENT AND PARTICIPATIVE NECPs!**”

- I. [Recommendations for the NECP preparation process](#) (2019)
- II. [Recommendations for the NECP implementation process](#) (2021)
- III. [Findings from the first year of the NECP implementation process](#) (2022)

- Information gathered via questionnaires and discussions with environmental law experts
- 8 different EU Member States: Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovenia & Spain
- Focus on legal frameworks (national and EU level), transparency, and public involvement

## I.2. NECPs – A2J options

- legal remedies regarding NECPs differ widely
- Access to justice options exist in Bulgaria, Estonia, Romania, and Spain
- no realistic options to challenge NECPs in Austria\*, Croatia, Hungary, and Slovenia
- The NECP is lacking a normative character in Austria, Croatia, Hungary and Romania
- Only in Spain and Slovenia, the NECP was subject to an SEA

*\*) An option to challenge the Austrian NECP could possibly be deducted by direct application of the Aarhus Convention in conjunction with EU law, but this has not been tested so far.*



## I.3. NECPs – situation in selected countries

### Bulgaria:

- The Bulgarian NECP (integrated energy and climate plan of Republic of Bulgaria 2021-2030 – IECP) was adopted by the Council of Ministers in February 2020
- two years after its adoption and reporting to the EC, the SEA is still on-going

### Hungary:

- According to the Hungarian NECP submitted to the EC in January 2020, the finalisation of the SEA relating to the NECP objectives/measures was in progress, but the SEA report has not been published since then
- J&E Hungary requested information on the SEA procedure
- the competent ministry refused the request on the grounds that it concerned material in the course of completion (the SEA report would be used in the course of later NECP amendment procedure)
- A lawsuit by J&E Hungary against the refusal is still pending

## I.3. NECPs – situation in selected countries

### Romania:

- J&E Romania filed a preliminary complaint against the Government Decision for the NECP adoption (GD 1076/2021) and against the NECP
- Requested the revocation of these documents, the reopening of the procedures for the elaboration and preparation of the NECP, and the adoption of a new GD
- 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 an SEA procedure, breach of the provisions of the EU Government Regulation, breach of the provisions on public consultation and participation, and other provisions related to the Paris Agreement
- J&E Romania is currently preparing to take the case to court

## II.1. SEA – comparative study

Assessing the impacts on climatic factors, J&E Recommendations for Improving Strategic Environmental Assessments (2020)

- Information gathered via questionnaires and discussions with environmental law experts, interviews with decision-makers and through an online survey
- 9 different member states: Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Romania, Slovenia & Spain
- legal frameworks (national and EU level)
- national statistics on strategic plans and programmes

[Comparative study](#) and [Guidance](#) with practical considerations.



## II.2. SEA – A2J regarding SEAs

- In most countries, there are no legal remedies for NGOs
- the SEA decision can be challenged in Bulgaria, Slovenia, Spain and Estonia under certain circumstances – mostly based on administrative procedure or dispute acts
- In some cases, the lack A2J is due to a lack of normative character (e.g., in the Czech Republic, the final decision is in the form of “binding opinion”)



## II.3. SEA – Overall observations

- We cannot have a clear picture whether all plans that should go through SEA procedures are notified (especially in case of “other plans”)
- Since only plans determined by law undergo SEA, many high-level strategic plans or policies are not covered
- Often plans/programmes are too generic (vision/roadmap);
- Statistics on SEA decisions are only available in CZ, Romania and Slovenia; final SEA decisions are mostly positive
- Lack of legal remedies to challenge plans as key challenge



## II.3. SEA – J&E Recommendations

- SEA should be done at highest level of strategic plans: all strategies and framework programmes must undergo an SEA screening
- Strategic plans and programmes should contribute to achieving climate goals
- Increased transparency: SEA database and process of preparation; broader accessibility of screening decisions
- Broader consultation: consultation early in the process, additional independent expert organisations such as ombudsmen or state auditors involved, funded watchdog activity by NGOs
- Legal remedies against SEA decisions must be provided in all countries

# Thank you !



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