

Aarhus Convention Task Force on Access to Justice
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Options to challenge NECPs and SEA decisions in different EU Member States

Introduction (slides 1-2)

Justice and Environment (J&E) is an environmental law network consisting of 14 green law NGOs located in several EU countries and beyond. As lawyers we mostly use legal methods and tools to convince decision-makers into spurring positive change. We analyse the implementation of EU law, illustrate on-the-ground practice via case studies, and design policy recommendations. In the past years, with the help of the LIFE+ operating grant, we were able to carry out various comparative studies and create guidance material as well as defend the rights of communities and nature in court. Our main work areas are Access to Justice, Climate, and Environmental Assessments.

This work of the past years included surveys from the Climate topic team regarding the NECP process, on the one hand, and climate aspects in strategic environmental assessments, on the other hand. Therefore, this presentation will start with collected information on the National Energy and Climate Plans (NECPs) in different J&E member states. After a short introduction of the study carried out in 2019 and 2020, an overview of different access to justice (A2J) options will be given before pointing out specific practical input recently provided from selected J&E members.

As especially in the field of energy (and also spatial planning), strategic environmental assessments (SEAs) are one of the main decision-making procedures, this presentation also touches upon a 2021 J&E survey on climate aspects in SEA and gives an overview on A2J options in this area.

NECPs (slides 3-6)

Following different surveys carried out in the years 2019 to 2021, J&E published a series of documents called "TRANSPARENT AND PARTICIPATIVE NECPs!". Part I includes [Recommendations for the NECP preparation process](#), Part II [Recommendations for the NECP implementation process](#) and Part III [Findings from the first year of NECP implementation](#).

Relevant information was gathered via questionnaires and discussions with environmental law experts from 8 different EU Member States (Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovenia, and Spain). The surveys focussed on legal frameworks at national and EU level, transparency, and public involvement.

Regarding options to challenge the NECPs, we found that legal remedies differ widely. While access to justice options exist in Bulgaria, Estonia, Romania, and Spain, there are no realistic options to challenge NECPs in Austria, Croatia, Hungary, and Slovenia. Regarding Austria, however, it should be mentioned that options 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. In Austria, Croatia, Hungary, and Romania, the NECP is lacking normative character. The only countries which carried out – and finished – an SEA regarding their NECP are Spain and Slovenia.

In preparation of the A2J Task Force, we gathered some information on the state of play from J&E members and received the following input worth mentioning from Bulgaria, Hungary, and Romania:

The **Bulgarian NECP** (Integrated Energy and Climate Plan of the Republic of Bulgaria 2021-2030 – IECPP) was adopted by the Council of Ministers in February 2020. Today, i.e. more than two years after its adoption and reporting to the European Commission (EC), the SEA is still on-going.

According to the **Hungarian NECP** submitted to the EC in January 2020, the finalisation of the SEA relating to the NECP objectives and measures was still in progress. However, the SEA report has not been published since then. J&E Hungary requested access to environmental information on the SEA procedure and the SEA report. The competent Ministry of Innovation and Technology, however, refused the request on the grounds that it concerned material in the course of completion. It argued that the SEA report would be used within the later NECP amendment procedure. A lawsuit against this refusal by J&E Hungary is still pending.

J&E Romania filed a preliminary complaint against the Government Decision for the NECP adoption (GD 1076/2021) and against the **Romanian NECP**, requesting the revocation of these documents, the reopening of the procedures for the elaboration and preparation of the NECP, as well as the adoption of a new governmental decision for its approval. Arguments relate, inter alia, to breaches of the legal provisions on the competence to draw up the NECP, of the obligation to carry out an SEA procedure, of the provisions of the EU Government Regulation, of the provisions on public consultation and participation, as well as other provisions related to the Paris Agreement. J&E Romania is currently preparing to take the complaint to court.

SEA decisions (slides 7-10)

The basis for this input is the document [Assessing the impacts on climatic factors – Recommendations for improving Strategic Environmental Assessments](#) published by J&E in 2020. Relevant information was gathered via questionnaires and discussions with environmental law experts, interviews with decision-makers and an online survey for SEA experts. The study covers 9 different EU/J&E Member States (Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Romania, Slovenia, and Spain). It includes legal frameworks on national and EU level as well as national statistics on strategic plans and programmes.

With regard to A2J, we noted that in most countries there are no legal remedies for NGOs. The SEA decision can be challenged by NGOs in Bulgaria, Slovenia, Spain and Estonia under certain circumstances – mostly based on administrative procedure or dispute acts. In some cases, the lack of A2J is due to the fact that the SEA decision has no normative character; for example, in the Czech Republic, the final decision has the form of “binding opinion”.

Our overall observations included that it was not possible to gain a clear picture whether all plans that should be subject to SEA 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 concerned. Often plans/programmes are too generic to be evaluated and rather drafted as a vision or roadmap. Statistics on SEA decisions are only available in the Czech Republic, Romania, and Slovenia. According to these statistics, final SEA decisions are mostly positive. The lack of legal remedies to challenge plans or programmes was defined as one of the key challenges regarding SEA decisions in general.

J&E recommends that 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. Transparency must be increased, e.g., through SEA databases and broader accessibility of screening decisions. The preparation needs broader consultation early in the process. Additional independent expert organisations such as ombudsmen or state auditors involved as well as funded watchdog activity by NGOs would also be well needed. And finally, legal remedies against SEA decisions must be provided in all countries.