

Climate Litigation Network

LEGAL INTERVENTION GUIDELINES

EU National Energy and Climate Plans

November 2023

The Climate Litigation Network (**CLN**) is an international project of the Urgenda Foundation.

CLN was established in 2015 following the landmark Urgenda climate case in the Netherlands. The case was the first time globally that a government was ordered to reduce its greenhouse gas emissions – representing a watershed moment for the climate justice movement.

To harness the ground-breaking legal strategy and expertise developed in bringing this case, the Urgenda Foundation set up CLN to inspire and support other cases against governments around the world.

You can read more about CLN on its website: <https://climatelitigationnetwork.org>

If you would like to discuss the potential for legal interventions concerning National Energy and Climate Plans in your country, please contact the authors of these Guidelines:

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Part 1: Introduction

1.1 What does this document cover?

The aim of this document is to provide national organisations in the European Union (**EU**) with information about legal intervention options that could be used for challenges related to the revision of National Energy and Climate Plans (**NECPs**) and the timeframes for legal action.

This document seeks to cover broad principles of law that are common across EU Member States, which could form the basis of a legal challenge. However, this document does not provide any legal advice or national legal information, which must be obtained from a lawyer qualified in the relevant jurisdiction.

This document covers the following topics:

- **Part 1:** An introduction to the Guidelines and the context for potential legal interventions concerning NECPs.
- **Part 2:** The key themes/issues to consider about the legality of the NECP revision process and beyond, including: (i) public consultation; (ii) content of the NECP; and (iii) implementation of the NECP.
- **Part 3:** A summary of the different legal intervention options.
- **Part 4:** An overview table of the legal intervention options available to address each key theme/issue.
- **Part 5:** A timeline from 2024 – 2027 with estimated timings for: (i) filing legal interventions and (ii) receiving decisions from the relevant decision-making entity.
- **Part 6:** Suggested next steps over the coming months for organisations that are potentially interested in legal interventions in respect of their country's NECP.

There are many publicly available resources regarding the legal obligations of EU Member States in the context of the NECP revision process, which are set out in Annexes 1 and 2. It is strongly recommended that national organisations review these documents alongside these Guidelines.

1.2 Why might legal interventions be needed?

The 2020 – 2030 NECPs are the main policy documents in which EU Member States must articulate how each will contribute to achieving the EU's overall target of achieving a net 55% reduction in greenhouse gas emissions by 2030 (compared to 1990 levels). The NECPs are currently being revised, with a view to Member States updating their policies to allow for higher levels of ambition resulting from the EU's adoption of its Fit for 55 package and target to achieve net zero by 2050.

For some Member States, the NECP may be the main or only document setting out national emissions reduction targets up to 2030 and the key policies that will be used to achieve these targets. It should be noted that some Member States may have parallel national legislation containing national climate planning processes. These do not replace the need to comply with the EU NECP process.

The ongoing NECP revision process, which is occurring in a crucial decade for implementing climate action, will be the last time that EU Member States will be obliged under EU law to formally review and revise their NECPs relating to the 2020-2030 period. As such, this may

be the last and most impactful opportunity to ensure that EU Member States are complying with legal requirements.

The development of EU Member States' updated NECPs is currently underway. EU Member States were required to submit draft updated NECPs to the European Commission by 30 June 2023, and will be required to submit final updated NECPs by 30 June 2024.

To date, domestic public consultations surrounding proposals for the revision of NECPs have been variable in quality and adequacy. Several Member States have also failed to submit their draft updated NECP to the European Commission on time.¹ It remains an open question as to whether: (i) adequate public consultations will take place before the final updated NECPs are adopted; and (ii) the content of the final updated NECPs will comply with legal requirements.

On the issue of ambition, it is important to emphasise that the NECP revision process creates not only an opportunity to challenge policy insufficiency to meet the EU's 2030 target, but also an opportunity to question whether revised NECPs will contain policies and / or emissions reduction targets that are sufficient to keep the EU's / each Member State's duty to keep the long-term temperature limit of the Paris Agreement within reach.

The process of revising the NECPs is an opportunity to hold governments to account inside and outside the courtroom. Litigation to challenge the revision of NECPs should ideally be supported by co-ordinated strategic communications to ensure the public understands what is at stake in the challenge. More broadly, issues raised during the NECP revision process may also inform debates and campaigns ahead of the next cycle of law / policy making at the EU level. This will be crucial to ensure that the implementation of the EU's Green Deal remains a priority for the EU and that its net zero target is achieved with no further delay.

¹ For context, in October 2023, Climate Action Network Europe published a report summarising the state of play in the NECP revision process across 25 EU Member States. The report is available [here](#).

Part 2: Key themes and issues

2.1 What aspects of the NECP revision process can potentially be challenged?

When considering whether a Member State has delivered a credible and lawful revision of its NECP, several issues may be considered:

- **Public participation and consultation:**
 - Has adequate public participation and consultation taken place before the final updated NECP is adopted (legal deadline: June 2024)?
 - Was there sufficient transparency for the public to be adequately informed before submitting their views?
 - Were the parameters of the participation or consultation adequate (deadlines, public notice, consideration of submissions)?

- **Content of the NECP:**
 - **Transparency / Disclosure:**
 - Does the content of the final updated NECP include all the information required under EU and/or national law?
 - Does the NECP provide sufficient information for the public and civil society to understand if legal requirements are being met?
 - Is there adequate transparency in the NECP regarding the extent to which it relies on particular policies (for example, carbon dioxide removal (**CDR**))?
 - Does the revised NECP include all the required information to demonstrate how national authorities will address social impacts of climate policies such as energy poverty?

 - **Compliance with targets set out under law:**
 - Do the emissions reduction targets set out in the NECP align with those required under the Effort Sharing Regulation, the EU Renewables and Energy Efficiency Directives and/or any other relevant EU or national legislation?
 - Do the emissions reductions anticipated from policies and measures in the NECP achieve the overall emissions reductions required under EU and/or national law (i.e., “do the numbers add up”)?

 - **Ambition:** Are the policies and / or emissions reduction targets contained within the NECPs (i.e., the government’s overall “ambition” for 2030) sufficient to keep the long-term temperature limit of the Paris Agreement within reach?

- **Implementation of the NECP:** Once the NECP is adopted, are stated policies being implemented adequately enough to achieve targeted emissions reductions?

2.2 What are the legal foundations for challenging these issues?

As noted above, there are many publicly available resources regarding the legal obligations of EU Member States regarding the NECP revision process. For detailed information, please refer to the resources included in Annex 1 and 2.

Regarding **public participation and consultation**, the Governance Regulation contains a number of requirements, including that the public be given an “*early and effective opportunity*” to “*express their opinion*”.² Member States are also required to establish “*a multilevel climate and energy dialogue [...] in which local authorities, civil society organisations, business community, investors and other relevant stakeholders and the general public are able actively to engage and discuss the different scenarios envisaged for energy and climate policies, including for the long term, and review progress*”.³

In addition, all Member States are parties to the Aarhus Convention, which establishes rights with regard to decision-making on environmental matters. In 2019, the Aarhus Convention Compliance Committee issued an Advice to the European Union, which reiterated that public consultation processes should ensure that (amongst other things):

- arrangements are transparent and fair;
- the necessary information is provided to the public;
- there are reasonable timeframes for consultation; and
- due account is taken of the outcomes of public participation.

Further obligations relating to public participation may also be enshrined in the Strategic Environmental Assessment (**SEA**) Directive (which may be applicable in some Member States) and national legislation.

Regarding the **content of the NECP**, under the Governance Regulation, **NECPs must include information** such as (amongst other things):

- a description of national objectives, targets and contributions to the EU’s overall targets;
- a description of the planned policies and measures in relation to the corresponding objectives, targets and contributions;
- an assessment of the impacts of the planned policies and measures to meet the objectives;
- other objectives and targets, including sector targets and adaptation goals, to meet the objectives and targets of the EU and the long-term EU greenhouse gas emissions commitments consistent with the Paris Agreement;
- If applicable, a description of the policy impacts on energy poverty; and
- If applicable, a description of financing arrangements to ensure policy implementation.⁴

The content of the NECPs must also comply with any other **requirements set out under other EU laws** (e.g. the EU Effort Sharing Regulation in respect national emissions targets for 2030). In this context, it may be possible to challenge the *sufficiency* of planned measures, if they do not ensure that legally binding requirements or targets are met (i.e., “do the numbers add up”)? Further obligations relating to the content of NECPs or any national climate-related plans may also be enshrined in parallel national legislation relevant to domestic plan making on energy and climate or related issues.

Regarding the **level of “ambition” contained in the NECP**, national emissions reduction targets have been successfully challenged before domestic courts. For example, the highest

² Governance Regulation (Regulation (EU) 2018/1999), Article 10.

³ Governance Regulation (Regulation (EU) 2018/1999), Article 11.

⁴ Governance Regulation (Regulation (EU) 2018/1999), Articles 3, 4, 7 and Annex 1.

courts in the Netherlands and Germany found that national emissions reduction targets can – and in some circumstances *must* – be more ambitious than those required under EU law in order for the government to fulfil its human rights obligations.⁵ These findings were notably based on rights enshrined under the respective national constitutions and the European Convention on Human Rights. For more detail, see [CLN's website](#).

In respect of the **implementation of the NECPs**, governments must comply with any binding requirements under EU or national law. While there is no binding EU obligation to implement the content of NECPs, Member States must comply with binding obligations under, for example, the Effort Sharing Regulation and/or national law. As an example of cases concerning the implementation of climate policy at the national level, the French Government was found by courts to be acting unlawfully twice because it failed to implement proper measures necessary to achieve France's binding national emissions reduction targets.⁶

⁵ See the decisions issued by the Dutch Supreme Court in *Urgenda Foundation v Netherlands* and the German Constitutional Court in *Neubauer et al. v Germany*.

⁶ See the decisions issued by the Administrative Court of Paris in *Notre Affaire à Tous and Others v. France* and the French Conseil d'État in *Commune de Grande-Synthe v. France*.

Part 3: Overview of the key legal intervention options available

This section provides an introduction to legal intervention options that could be used in the context of challenges to the revision of NECPs. This document is not intended to provide a comprehensive overview of all possible legal intervention options available in all EU jurisdictions. Local organisations will need to secure advice from a lawyer qualified in their jurisdiction to get a complete overview of the available options.

3.1 Legal letters

In the Guidelines, “legal letters” refers to correspondence with a government. By reminding the government what its legal obligations are, and showing that national organisations are aware of legal intervention methods to ensure compliance with these obligations, governments may become more willing to engage on issues concerning public consultation or NECP content.

This type of letter may be informal, in the sense that it does not need to represent formal pre-litigation correspondence that is required in many jurisdictions. Legal letters can be used in combination with strategic communications, advocacy and consultation participation to raise public awareness of the organisation’s concerns about the NECP revision. Legal letters can also prepare the way for litigation, which is a last resort intervention option if the government has not improved its plans and policies as a result of engagement.

Assistance from a local lawyer is recommended, to ensure that any legal obligations and potential legal intervention options have been summarised accurately.

Example

In April 2023, a coalition of civil society organisations wrote to the EU Commission in respect of the lack of public engagement in the NECP revision process.⁷ The letter requested, amongst other things, that the EU Commission provide clear instructions to Member States in respect of their public participation obligations.

3.2 National legal challenges - administrative claims / judicial review and ambition-related challenges

A national administrative claim (also known as a judicial review) could relate to: (i) failure to comply with procedural requirements governing the NECP revision process, for example in relation to public participation and / or (ii) the content of an NECP and/or (iii) the quality of its implementation after it has been finally adopted.

In respect of the legal foundations for taking an administrative claim or judicial review in the context of the NECP revision process:

- **Regarding public participation**, Article 9(2) of the Aarhus Convention requires that all State Parties (which includes all EU Member States) ensure their national legislation allows for members of the public to have access to a review procedure before a court of law and / or an independent and impartial body, to challenge the substantive and procedural legality of any decision, act or omission relating to public participation in environmental decision making. A case could therefore potentially be brought against a national government for failing to comply with the consultation requirements under (for example) the Governance Regulation and / or any national

⁷ CAN-E, “Letter to the European Commission: Public Participation in Climate Policies; NECP revision process”, available [here](#).

legislation implementing the Aarhus Convention and/or the Strategic Environmental Assessment (SEA) Directive.⁸

- **Regarding the content of an NECP**, Article 9(3) of the Aarhus Convention requires States to ensure that “members of the public have access to administrative or judicial procedures to challenge acts and omissions” by public authorities whose conduct violates laws pertaining to environmental issues.⁹
- **Regarding the level of ambition** contained in an NECP, emissions reduction targets could be subject to challenge at the national level, using EU laws, constitutional, human rights and/or civil or tort law as a legal basis for the claim. Targets could be challenged on the basis that they are not consistent with the long-term temperature limit of the Paris Agreement, in line with similar legal challenges that have been brought over the past 8 years.

Whether such claims can be brought will be highly dependent on the national legal framework in the relevant country. Independent legal advice from a locally qualified lawyer is necessary to understand what types of legal claim are available / strategic. Advice from a local lawyer would also be needed to confirm issues such as (i) the time limits for taking action (ii) the costs and (iii) the prospects of success for bringing a claim in the relevant country.

The time limit to bringing a case is a key strategic question, as these can be very short in respect of challenging administrative decisions (ranging from a few weeks to a few months from the date that a government makes the administrative decision). **Time limits will inform what case development will be needed in advance of final NECPs being adopted on or before 30 June 2024.**

Claims challenging a country’s overall emissions mitigation ambition are complex and time-intensive. As such, CLN would encourage organisations with an interest in ambition-related claims to get in touch with our team before proceeding to case development to share knowledge and expertise in the construction of argumentation.

Examples of national litigation

Greenpeace v Spain I and Greenpeace v Spain II (challenge concerning public participation and NECP content)

In 2020 and 2021 Greenpeace Spain and other NGOs filed two lawsuits against the Spanish Government in relation to the Spanish NECP, flagging shortcomings on both the consultation process and the content of the plan.¹⁰ In particular, they alleged that the Government unlawfully delayed the adoption of its NECP and engaged in procedural failures (including deficits in the required public participation process); and that, once adopted, the final NECP did not align with the scientific recommendations of the Intergovernmental Panel on Climate Change and was not ambitious enough to meet the Paris Agreement’s long-term temperature limit. While the Supreme Court of Spain found for the Government and dismissed the case, it established the claimants’ overall standing to challenge the State’s conduct in the

⁸ In some EU Member States, a Strategic Environmental Assessment is required under national law for National Energy and Climate Plans. If applicable, there may be additional requirements in respect of preparing the document and related public participation.

⁹ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (‘Aarhus Convention’), Art. 9 (3). Regulation (EU) 2018/1999 (‘Governance of the Energy Union and Climate Action’) recalls the Aarhus Convention at (28) - (29).

¹⁰ See the decisions issued by the Supreme Court of Spain in *Greenpeace v. Spain I*, *Greenpeace v. Spain II*.

NECP process¹¹ and found that the Government did not comply with its public participation requirements in the approval of the NECP.¹²

Urgenda Foundation v State of the Netherlands (challenge concerning ambition)

This claim was brought against the Dutch Government on the basis that its failure to adequately reduce GHG emissions by 2020 was incompatible with best available science and international consensus, and therefore unlawful under the Dutch Civil Code. In 2019, the Supreme Court of the Netherlands ruled in favour of Urgenda, affirming the two lower court decisions. It determined that the Government had to do ‘its part’ to prevent dangerous climate change in order to fulfil its positive obligation to protect the right to life and the right to private and family life under Articles 2 and 8 of the European Convention on Human Rights. Therefore, it ordered the Dutch Government to reduce its GHG emissions by a minimum of 25% before 2020, compared to 1990 levels.

Neubauer et al v Germany (challenge concerning ambition)

This case was filed by nine young people, challenging the constitutionality of sections of the Federal Climate Change Act that (i) enshrined the Government’s target to reduce national emissions by 55% by 2030 (compared to 1990 levels) and (ii) set out the Government’s annual emissions budgets for various sectors. Notably, Germany’s national 2030 target was higher than required under the EU Effort Sharing Regulation. Based on information presented to the Court, it found that – under the existing 2030 target – almost the entirety of Germany’s ‘fair share’ of the remaining global carbon budget would be exhausted by the end of 2030. This would necessitate a drastic reduction of emissions after 2030, which would require significant sacrifices and restrictions on personal freedoms, as protected in the Constitution. Therefore, the Court found that the relevant sections of the Federal Climate Change Act were unconstitutional, “*insofar as they give rise to a risk of serious impairments of fundamental rights in the future*”.¹³

Friends of the Earth Ireland v Ireland (challenge to ambition and implementation of existing policies)

This case was filed by Friends of the Earth Ireland, a non-profit organisation who alleged that the Irish Government’s approval of its National Mitigation Plan violated Ireland’s Climate Action and Low Carbon Development Act 2015, the Constitution of Ireland, and obligations under the European Convention on Human Rights. The Supreme Court of Ireland found that the National Mitigation Plan fell short of the level of specificity required under Ireland’s climate change legislation, because a “*reasonable and interested person*” reading the plan would not understand how Ireland would achieve its 2050 goals.

3.3 Aarhus Compliance Committee complaint

As noted above, all Member States are parties to the Aarhus Convention, which establishes rights with regard to decision-making on environmental matters.

¹¹ Spanish Supreme Court, *Greenpeace v Spain II*, p. 20-23 (ENG translation).

¹² Spanish Supreme Court, *Greenpeace v Spain I*, p.42-45 (ENG translation). The Supreme Court found that procedural failures around public participation could not, however, entail the nullity of the whole NECP.

¹³ *Ibid*, paragraph 195.

Members of the public can submit a communication to the Aarhus Compliance Committee, requesting a review of compliance of a Member State with the requirements under the Aarhus Convention. Communications must be made in writing in the required format, and should include information as to how/whether domestic remedies have been exhausted (as explained below). There is no time limit within which communications must be filed, but communications should be submitted no later than six weeks before the meeting at which they may be forwarded to the Committee for a determination.

National organisations should have attempted to obtain domestic redress, even if the costs of domestic proceedings are high, in order for a complaint to have reasonable prospects of being declared admissible. As such, we anticipate that any communication would need to follow a domestic legal challenge. Additionally, we understand that the processing time for an infringement proceeding may be as long as 5 years, due to a backlog of complaints. While decisions are non-binding, they can create important norms going forward, in terms of how the Convention is applied by Member States. In the event that the Committee finds a Party in breach of the Convention, those findings, if endorsed by a Meeting of the Parties to the Convention, become legally binding.

We understand that communications will typically only be considered for admissibility if the relevant Member State has concluded the relevant administrative act (which, in this case, is likely to be the adoption of the final updated NECP). In the context of NECPs, this means that public participation complaints are unlikely to be accepted for review until the final updated NECPs have been adopted on or before 30 June 2024.

A lawyer is not required to prepare and file a complaint. However, we would recommend that national organisations seek advice and assistance from a lawyer with experience with the Aarhus Convention, to give the complaint the best possible chances of being accepted by the Aarhus Compliance Committee.

National organisations should also be aware that the Aarhus Compliance Committee currently has an open proceeding concerning the European Commission in relation to non-compliance with the Convention in the context of the NECPs.¹⁴ In particular, the Aarhus Compliance Committee has requested evidence that the EU has adopted a proper regulatory framework and clear instructions to comply with its obligations in respect of public participation. The European Commission submitted a progress report on the Aarhus Compliance Committee's recommendations in September 2023. It is possible for non-governmental organisations (**NGO**) to take part as an observer in these proceedings by contacting the Aarhus Convention secretariat.

Example

A Sud Ecologia e Cooperazione Odv ETS – Communication from Member of the Public Concerning Italy

In August 2023, A Sud (an Italian environmental NGO) filed a communication to the Aarhus Compliance Committee regarding the allegedly inadequate public participation process undertaken in preparation of Italy's draft updated NECP in 2023. The communication asked the Committee to declare that Italy failed to comply with Articles 7 and 3(1) of the Aarhus Convention and to recommend that Italy undertakes the necessary measures to correct these failures. Specifically, that Italy ensures (i) the collection and access to all useful information related to the NECP to

¹⁴ See Decision VII/8f, adopted by the Parties to the Aarhus Convention at its seventh session dated 18-20 October 2021.

inform the public and facilitate its participation in the relevant decision making process; (ii) timely and effective public information and participation in the early phase of the consultation process, both in the NECP update process as well as in other environmental plan procedures, ensuring that the public's opinion is duly taken into account; and (iii) the establishment of a website or database dedicated exclusively to the NECP. During its 80th session in September 2023, the Aarhus Compliance Committee determined that this complaint was not admissible, as Italy still had the opportunity to undertake further consultations before the final updated NECP is adopted in June 2024.

3.4 EU Commission complaint

Complaints can be made to the EU Commission by members of the public if they believe that a measure (law, regulation or administrative action), absence of a measure, or practice by an EU Member State is against EU law. For example, in respect of NECP consultations, individuals or organisations would need to show that their government had not properly implemented the Governance Regulation and / or the SEA Directive (if applicable). As a consequence, the Commission may decide to start infringement proceedings against that particular Member State, which may ultimately result in a judgment from the Court of Justice of the European Union.¹⁵ It should be noted that the EU Commission alone has competence to start such infringement proceedings.

Complaints to the EU Commission must be made through the online [complaint form](#). The complainant must provide details about how the national authorities have infringed EU law, as well as any steps taken to obtain redress. An attempt to bring an administrative challenge at the national level is typically required, but the EU Commission may make exceptions to this requirement in certain circumstances.¹⁶ There is no deadline by which a complaint must be filed. The EU Commission seeks to decide whether, on the basis of the complaint, to start infringement proceedings with 12 months (this may be longer if the issue raised is complex or more details are required).

A lawyer is not required to prepare and file a complaint. However, we would recommend that national organisations seek advice and assistance from lawyer experienced with EU law, to make the case as strong as possible by reference to relevant EU legislation.

Examples

Friends of the Earth Austria/GLOBAL 2000 – European Commission complaint against Austria

In 2020, Friends of the Earth Austria/GLOBAL 2000 filed a complaint with the European Commission against the Austrian Government, alleging that existing policies on energy efficiency and building renovations (the ‘Long-Term Renovation Strategy’) were inadequate and incompatible with the mitigation targets enshrined in Austria’s National Energy and Climate Plan. They also alleged that these policies were adopted in violation of procedural requirements on public consultation.¹⁷

¹⁵ Articles 258-260 of the Treaty on the Function of the European Union (TFEU).

¹⁶ For example, the EU Commission complaint form lists the following reasons that may have precluded an organisation from taking a national legal challenge: another case on the same issue is pending before a national or EU court; no remedy is available for the problem; a remedy exists, but it too costly; the time limit for action has expired; or the organisation does not have legal standing.

¹⁷ Friends of the Earth Europe, *Austria faces EU complaint for inadequate building renovation plan*, 2020. Available [here](#).

EU Infringement Proceedings related to the Governance Regulation

The EU Commission recently opened infringement proceedings against Romania, Ireland, Poland and Bulgaria for failing to notify their long-term strategies in relation to climate action.¹⁸

¹⁸ Long-term strategies, like NECPs, are required under the Governance Regulation. Further information about these infringement proceedings can be found on the EU Commission's ["Infringement decisions" webpage](#).

Part 4: Overview of key issues and potential legal intervention options

The following tables provide a brief overview of the legal intervention options that may be available to challenge the (i) consultation process (ii) the content of updated NECPs and / or (iii) the implementation of the NECPs. Depending on national legal advice, it may be possible to bring a claim relating to multiple issues.

4.1 Public consultation on NECP (see Annex 1 for more details)

| Factual basis of claim | Relevant legal obligation | Legal intervention options | Time limit to file claim |
|---|---|---|--|
| Failure to comply with procedural requirements set out under the Governance Regulation. | Member States must comply with the public participation requirements set out in Article 10 of the Governance Regulation. This includes (e.g.) that the public be given an “early and effective opportunity” to “express their opinion”. | National administrative/judicial challenge. | Dependent on domestic law. |
| | | EU Commission Complaint. | No deadline. |
| | | Legal letters. | No deadline – legal letters can be sent at any time. |
| Failure to comply with requirements under the Aarhus Convention. | Member States must comply with public participation requirements set out in the Aarhus Convention. Failure to comply with public participation requirements under the Governance Regulation could also mean a failure to comply with the Aarhus Convention. | National administrative/judicial challenge. | Dependent on domestic law. |
| | | Aarhus Convention Compliance Committee Communication. | No deadline. |
| | | Legal letters. | No deadline – legal letters can be sent at any time. |
| Lack of / inadequate Strategic Environmental Assessment (if national laws implementing the SEA Directive are applicable). | If the SEA Directive applies, the relevant government must prepare an environmental report, undertake consultation, and ensure that decision making takes into account the environmental report and the consultation responses. | National administrative/judicial challenge. | Dependent on domestic law. |
| | | EU Commission complaint. | No deadline. |
| | | Legal letters. | No deadline – legal letters can be sent at any time. |

4.2 Content of the NECP (see Annex 2 for more details)

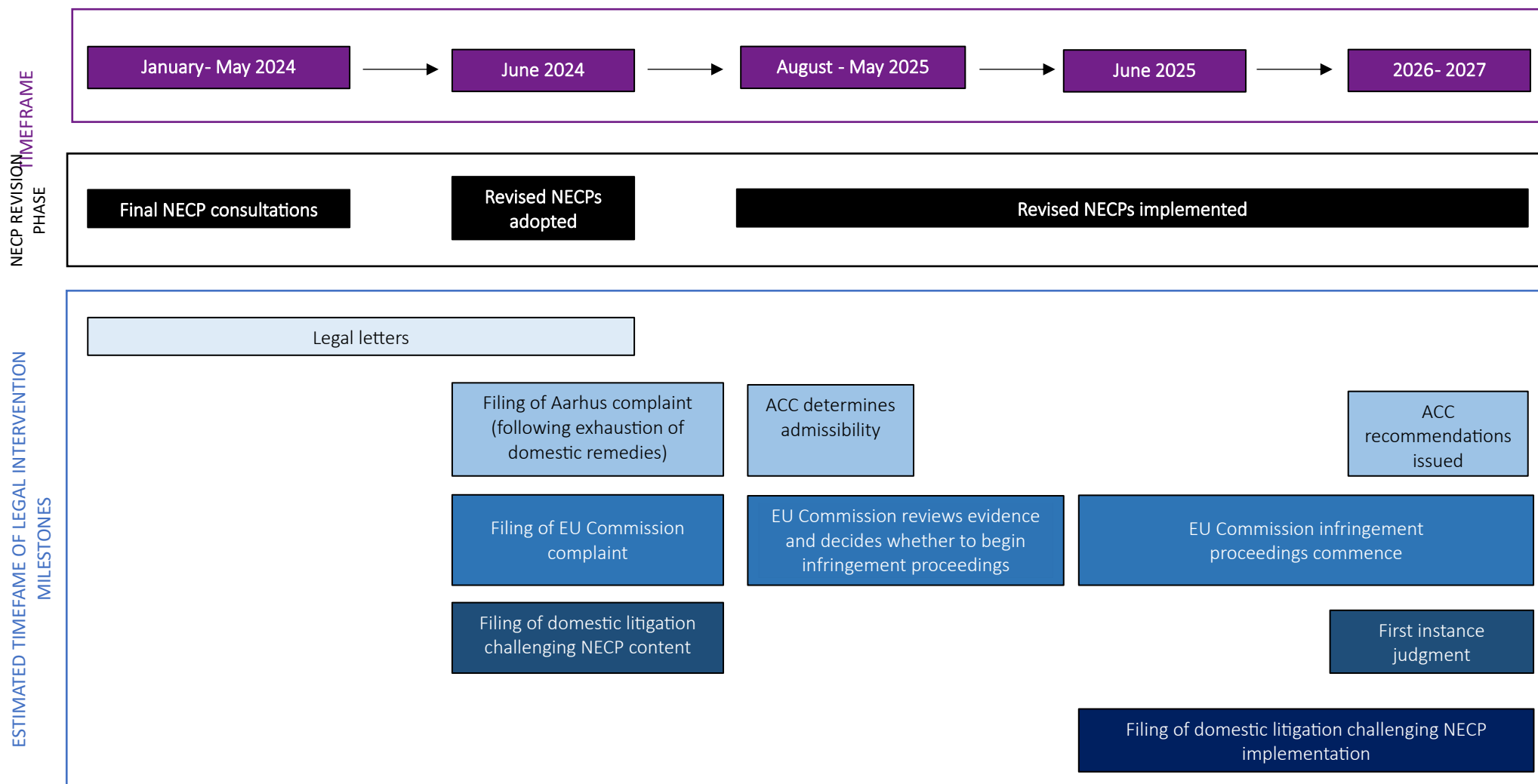
| Factual basis of claim | Relevant legal obligation | Legal intervention options | Time limit to file claim |
|--|---|--|--|
| <p>Emissions reduction target does not comply with EU and/or national law requirements. For example, with regard to:</p> <p>(i) the adequacy of disclosure / transparency (e.g., in respect of reliance on carbon dioxide removals);</p> <p>(ii) whether the target aligns with minimum emissions reductions required under the Effort Sharing Regulation, other EU laws and/or national law; or</p> <p>(iii) the adequacy of existing and planned policies set out in the NECP to meet minimum emissions reductions required under the Effort Sharing Regulation, other EU laws and/or national law (i.e., “do the numbers add up?”).</p> | <p>NECPs need to be consistent with EU law, which may include requirements set out under: the Governance Regulation; the Effort Sharing Regulation; the European Climate Law; the Land Use, Land Use Change and Forestry Regulation; the Energy Efficiency Directive; and the revised Renewable Energy Directive.</p> <p>Further requirements regarding the content of NECPs / national climate plans may also be set out under national law.</p> | National administrative/judicial challenge. | Dependent on domestic law. |
| | | EU Commission complaint. | No deadline. |
| | | Legal letters. | No deadline – legal letters can be sent at any time. |
| <p>NECP emissions reduction targets are not ambitious enough to keep the long-term temperature limit of the Paris Agreement within reach and/or rely on unreasonable levels of carbon dioxide removals.</p> | <p>What constitutes insufficient ambition, from a legal perspective, depends on domestic law, as informed by other sources of law (e.g. regional and/or international). Cases to date have rested, for example, on constitutional / human rights and/or civil / tort law, based on obligations on the state to protect people from / prevent foreseeable harm.</p> | Human rights-based / tort-based challenge at the national level. | Dependent on domestic law. |



4.3 Implementation of the NECP

| Factual basis of claim | Relevant legal obligation | Legal intervention options | Time limit to file claim |
|---|--|---|-----------------------------------|
| <p>Once the NECP is adopted, policies are not being implemented well enough to achieve anticipated emissions reductions under the NECP.</p> | <p>EU Member States are required to meet the 2030 emissions reduction targets set out in the Effort Sharing Regulation. The Governance Regulation also contains requirements as to the quantification of how policies and actions will contribute to achieving national and EU-wide goals. National governments may also have legally binding targets set out in domestic legislation.</p> | <p>National administrative/judicial challenge.</p> | <p>Dependent on domestic law.</p> |
| | | <p>Human rights-based / tort-based challenge at the national level.</p> | <p>Dependent on domestic law.</p> |
| | | <p>EU Commission complaint.</p> | <p>No deadline.</p> |

Part 5: Estimated timelines for legal interventions



Part 6: Potential next steps for engagement with the NECP revision process and how to prepare for a national legal intervention

The following table sets out some potential next steps for organisations to consider, depending on their national context.

| TIMEFRAME | ACTION |
|----------------------------------|--|
| November 2023 – January 2024 | <p>Initial scoping: National organisations assess key issues at stake in the NECP revision process. Climate Action Network Europe (CAN-E), the European Environmental Bureau (EEB) and CLN are available to discuss specific issues relating to NECP consultation and/or content in your country.</p> |
| November 2023 – February 2024 | <p>Engage a local lawyer: Engage with a lawyer qualified in your jurisdiction to discuss the legal interventions that are available / strategic in your country. CLN may be able to assist with introducing national organisations to national lawyers over this timeframe (in some countries, pro bono assistance may be available).</p> |
| February 2024 – May 2024 | <p>National consultations: National organisations raise any issues with the substantive content of the NECPs in national consultations.</p> <p>Advocacy and strategic communications: National organisations consider developing and launching national campaigns concerning the NECP revision process, which tie into EU-wide campaigns. Legal letters may be developed with local lawyers and sent to national governments over this timeframe.</p> <p>Case development: National lawyers assess domestic legal frameworks and available intervention options. If national organisations wish to proceed with a legal intervention option, documents are prepared in advance, so that they can be filed before applicable legal deadlines expire.</p> |
| June 2024 – August 2024 | <p>Filing of legal complaint / case: If previous engagement has not led to Member States adopting legally compliant / adequate NECPs, national organisations may consider filing legal complaints / cases after the final updated NECP has been adopted by their government in June 2024.</p> |

Annex 1 - Existing materials on the legal requirements for public participation in the NECP process

- *EU Governance Regulation – Article 10*
- *The European Environmental Bureau’s Legal Briefing: Legal obligation for public participation during the updating of the NECPs*
- *The European Environmental Bureau’s Ten steps for public participation in National Energy and Climate Plans*
- *The European Environmental Bureau’s assessment of draft NECPs public participation*
- *Environmental Justice Network Ireland’s Legal obligations for public participation during the 2023 updating of National Energy and Climate Plans*
- *The EU Commission’s guidelines on the process for updating NECPs*

Annex 2 - Existing materials on the legal requirements for the content of NECPs and red flag issues

- *EU Governance Regulation – Articles 3, 4, 7 and Annex 1*
- *The EU Commission’s guidelines on the process for updating NECPs*
- *Time to step up national climate action: An assessment of the draft National Energy and Climate Plans updates*
- *Taking Stock and Planning Ahead: National Energy and Climate Plans as a tool to achieve climate safety and energy security*
- *How to make NECPs fit for the climate emergency?*
- *EU Commission’s country-specific recommendations on NECPs from 2019*
- *Planning for Net Zero: Assessing the draft National Energy and Climate Plans*

Climate Litigation Network

‘Legal Intervention Guidelines: EU National Climate and Energy Plans’

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