



Climate Litigation Network

National Energy and Climate Plans: The Implementation Gap

A benchmark assessment of draft NECPs
in light of EU legal obligations

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Overview

European Union ('EU') Member States are required under EU law to adopt and implement National Energy and Climate Plans ('NECPs'). NECPs are the "central strategic planning tool"¹ in which Member States must delineate how they will contribute to the implementation of the EU's long-term climate and energy objectives, including to a net 55% reduction in greenhouse gas emissions by 2030 (compared to 1990 levels).²

As required by EU law, the NECPs are currently being revised to "ensure a consistent approach between energy and climate policies and coordinated action across Member States".³ The ongoing revision process – where Member States are expected to increase their ambition, strengthen their planning, and define concrete mitigation pathways – is the last time that EU Member States are required under EU law to update their plans relating to the 2020-2030 period. As such, this is a crucial opportunity to ensure that the EU can collectively achieve its long-term targets, particularly in light of the EU's international commitments under the Paris Agreement and the need to keep the 1.5°C threshold within reach.

The Climate Litigation Network ('CLN') has undertaken a benchmarking assessment of Member States' draft updated NECPs,⁴ based on data from Member States and the European Commission. This assessment, conducted on the basis of a selected list of 'legal indicators',⁵ shows that none of the Member States' NECPs are fully consistent with legal requirements and expectations under EU law⁶ on issues including: renewable energy; energy efficiency; land use, land use change and forestry (LULUCF); and overall emission reduction targets covering sectors outside of the EU Emissions Trading System. The draft NECPs also reveal a widespread lack of transparency in respect of the phaseout of fossil fuel subsidies.

These failures risk jeopardising the implementation of Europe's long-term climate mitigation efforts and may further delay the achievement of the EU's binding 2050 climate neutrality objective. If the EU fails to achieve its climate goals, this will have grave implications for the world's collective ability to limit global temperature rise to 1.5°C, with significant repercussions on the enjoyment of human rights and fundamental freedoms in Europe and beyond.

¹ See European Commission, *Commission Notice on the Guidance to Member States for the update of the 2021-2030 national energy and climate plans* (December 2022), Introduction.

² Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), Article 4 (1).

³ European Commission, *Commission Notice*, Introduction (n1).

⁴ As of 05.06.2024, 26/27 EU Member States have submitted draft updated NECPs. Austria is the only Member State to fail to submit a draft updated NECP. As such, it could not be assessed in this benchmark.

⁵ The benchmarking assessment is based on legal indicators addressing a selected list of sectors, such as energy, emission reductions and the phasing out of fossil fuels. It does not aim at being exhaustive.

⁶ 'Legal requirements and expectations under EU law' is used to define the broad range of different obligations that can be inferred from EU legislation, such as: the duty to align the NECP with binding targets enshrined into EU Regulations; the duty to update the NECPs with the 'corrections' provided by the Commission in the context of the implementation of a Directive; the duty to take 'due account' of the Commission's 'recommendations' in the update of the NECPs.

Member States still have an opportunity to correct these deficiencies in the final version of their NECPs, due 30th June 2024.⁷ A failure to correct shortcomings in time may render Member States' final NECPs incompatible with legal obligations and expectations under EU law, giving rise to the potential for infringement proceedings by the European Commission ('Commission') or domestic legal challenges.

Based on data from Member States and the European Commission, draft National Energy and Climate Plans appear to be inconsistent with EU law.

- If Member States fail to correct their shortcomings in the final updated plans, the 'implementation gap' will widen, which has the potential to undermine global efforts to keep the 1.5°C long-term temperature limit within reach.
- A failure to submit final NECPs that are consistent with EU legal obligations could expose Member States to legal risks, such as infringement proceedings by the European Commission or legal challenges at the domestic level.

Part 1: The implementation gap and insufficient climate mitigation efforts in the EU

The EU's current 2030 and 2050 climate mitigation targets are insufficient to limit global temperature rise to below the 1.5°C threshold set out under the Paris Agreement.⁸ Moreover, the EU is not on track to achieving these insufficient targets. The inadequacy of draft NECPs has already been established by the Commission. In December 2023, the Commission flagged that emissions reductions implied by these plans would only help achieve a 51% cut by 2030, short of the 55% EU-wide 2030 mitigation goal. Moreover, the Commission found that, at the current pace, the EU's mitigation trajectory is "expected to fall short of reaching climate neutrality in 2050".⁹

The European Scientific Advisory Board on Climate Change ('ESABCC') confirmed these concerns in January 2024. It flagged the existence of a broad range of inconsistencies and shortcomings that are undermining the ambition of "making Europe the first carbon neutral continent in the world".¹⁰ These failures are contributing to a significant '**implementation gap**'¹¹ between the EU's long-term climate targets and the (currently insufficient) policies set to achieve them.¹² In order to reach the 55% emissions reduction target by the end of the decade, "average annual reductions during the 2022-2030 period should be more than twice those observed on average in 2005-2022".¹³ In particular, the ESABCC noted that Member States have, so far, failed to comply with their obligations on process and content in respect of their draft NECPs,¹⁴ urging them to update their plans to fully enable the achievement of the EU's climate objectives.¹⁵

⁷ European Commission, *Commission calls on Member States to improve their National Energy and Climate Plans to ensure collective achievement of the EU's 2030 targets* (December 2023).

⁸ Climate Action Tracker, Countries Rating, *European Union*: "EU's 2030 emissions reduction target and its policies and action are consistent with warming that would reach over 2°C and up to 3°C when compared to modelled domestic pathways. The EU is also not meeting its fair share contributions to climate action".

⁹ European Commission, *EU wide assessment of the draft updated National Energy and Climate Plans: an important step towards the more ambitious 2030 energy and climate objectives under the European Green Deal and RePowerEU* (18 December 2023), COM (1013) 796 final, pp.4-5, section [2.1.1].

¹⁰ European Commission, *Delivering the European Green Deal* (official EU Commission website).

¹¹ The implementation gap refers to the difference between (i) the emissions implied from countries' current climate mitigation policies and actions and (ii) the emissions implied from their current mitigation targets.

¹² See European Scientific Advisory Board on Climate Change, *Towards EU climate neutrality: progress, policy gaps and opportunities* (18 January 2024), doi:10.2800/216446.

¹³ *Ibid.*, Summary, p.18. section [1.1].

¹⁴ *Ibid.*, Recommendations, pp.8-9. section [1.1].

¹⁵ *Ibid.*, Summary, pp.19-20, section [1.1].

Part 2: Inadequate draft National Energy and Climate Plans: A benchmark assessment

1) Benchmarking on sectoral targets

According to CLN’s benchmark assessment, not a single draft NECP submitted to the Commission is fully compliant with legal requirements and expectations under EU law, with Member States submitting NECPs with a broad range of shortcomings associated with energy and emissions reduction targets.

Under Regulation EU 2018/1999 (‘the Governance Regulation’), Member States were required to submit updated draft NECPs by June 2023.¹⁶ This process is essential to ensure that each State is doing its part towards achieving the EU’s long-term mitigation goals, notably with respect to targets inferred from EU legislation addressing sectors such as: renewable energy; energy efficiency; LULUCF; and overall greenhouse gas reduction efforts at the national level (more details below).¹⁷

Methodology

The benchmark assessment takes into account data released by Member States, as well as the findings of the Commission in its assessment of the draft NECPs,¹⁸ to identify various substantive¹⁹ shortcomings in the draft NECPs.²⁰ The assessment seeks to highlight gaps between (i) the targets submitted by Member States in their draft NECPs and (ii) the targets they are required or expected to meet under EU law in the following four areas (referred to as ‘indicators’ below):

- 1) whether the draft NECP is aligned with the targets required under the Effort Sharing Regulation (‘ESR’);²¹
- 2) whether the draft NECP is aligned with the targets required under the Regulation on Land, Land Use Change and Forestry (‘LULUCF’);²²
- 3) whether the draft NECP is aligned with the targets expected under the Energy Efficiency Directive (‘EED’);²³ and

¹⁶ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action (“Governance Regulation”), Article 14(1).

¹⁷ Overall emission reduction targets covering sectors outside of the EU Emissions Trading System, i.e., emissions covered by the ‘Effort Sharing Regulation’ (Regulation (EU) 2023/857 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999).

¹⁸ The country-specific recommendations issued by the Commission can be accessed [here](#). Most Member States were assessed in 2023, but some Member States that submitted draft updated NECPs at the end of 2023/early 2024 were only assessed in 2024. The most recent assessments were of Bulgaria and Poland, released on 26.04.24.

¹⁹ The benchmark assessment undertaken by Climate Litigation Network solely addresses substantive failures. It does not cover procedural shortcomings in the draft NECPs, such as deficiencies in public consultation.

²⁰ The benchmark assessment relies on data submitted by Member States in their draft updated NECPs, as well as analysis undertaken by the Commission. This information has been used to compare the gaps between national targets and the targets required under EU law in respect of a given sector. We note that the target-setting processes for ‘GHG emissions reductions’ and ‘LULUCF’ are top-down (Member State-specific targets are set out in Regulations), whereas those for ‘Energy Efficiency’ and ‘Renewable Energy’ are bottom-up (Member States set indicative national targets in pursuit of a collective EU goal).

²¹ This reflects the GHG emissions reduction target assigned to each Member State in sectors covered by the ‘Effort Sharing Regulation’. Column 2 of Annex I of the Effort Sharing Regulation assigns a GHG emissions percentage reduction target by 2030 for each Member State, relative to 2005 levels.

²² This reflects the 2030 target for net removals of GHG emissions assigned to each Member State under Annex IIa, Column D of the LULUCF Regulation. Column D was chosen as the benchmark for whether a Member State’s draft NECP is complying with its LULUCF requirements, and it refers to the total value of GHG net removals (in kt of CO₂ equivalent) that each Member State is required meet by 2030.

²³ The EU Commission has issued ‘corrected’ targets for Member States under the ‘ambition gap reduction mechanism’ in Art 4(5) EED. Member States are obliged to update their NECPs to reflect these corrected targets.

- 4) whether the draft NECP is aligned with the targets expected under the Renewable Energy Directive ('RED').²⁴

Compliance with each indicator was ranked through a scoring system from **0** to **2**, as follows:

- **0** = the proposed target is compliant with requirements / expectations under EU law;
- **1** = the proposed target is unclear; or there are transparency gaps in the draft NECP;
- **2** = the proposed target falls below that required or expected under EU law.

The combination of the scores from each indicator gives a total out of 8, where a score of 0/8 indicates a draft NECP that is fully compliant with EU legal requirements and expectations; and a score of 8/8 indicates a draft NECP that is fully inconsistent with EU legal requirements and expectations. In sum, the higher the ranking, the higher number of shortcomings in the draft NECP submitted by the respective country.

Findings

As of May 2024, **all of the draft NECPs submitted to the Commission show shortcomings under at least one of the legal indicators above.** In particular, 14 countries have submitted draft NECPs that are severely inconsistent with EU legal requirements:

- Latvia was the worst performer, having submitted a draft that is fully inconsistent with requirements / expectations under EU law.
- Belgium, Romania, Slovakia, and Sweden had targets that were inconsistent with requirements and expectations in three indicator areas, and transparency issues in respect of their ESR or LULUCF targets.
- Croatia, Cyprus, Estonia, France, Germany, Ireland, Italy, and Poland all rank in third position, with failures under at least three indicators out of four. Malta also obtains the same score, with inconsistencies and transparency issues under all indicators.

While Bulgaria, Luxembourg and Lithuania have submitted drafts with the least substantive shortcomings, they are still not fully compliant with requirements / expectations under EU law.²⁵

²⁴ We note that the RED sets an *overall* binding target on the EU for share of energy from renewable sources in the EU's gross final consumption of energy by 2030, but it *does not* set individual targets for each Member State. However, the EU Commission has issued recommendations based on the Governance Regulation which set out indicative shares for Member States to achieve the RED's EU-wide target.

²⁵ In particular, in December 2023, the Commission put on notice Bulgaria for its failure to submit its draft NECP in due time.



	Rank	EU Member State	Total score	ESR	LULUCF	EED	RED	
Worst performers ↑	1	Latvia	8/8	X	X	X	X	
	= 2	Belgium	7/8	X	~	X	X	
		Romania	7/8	~	X	X	X	
		Slovakia	7/8	~	X	X	X	
		Sweden	7/8	~	X	X	X	
	= 3	Croatia	6/8	✓	X	X	X	
		Cyprus	6/8	X	X	✓	X	
		Estonia	6/8	X	X	X	✓	
		France	6/8	X	X	✓	X	
		Germany	6/8	X	X	✓	X	
Ireland		6/8	X	X	✓	X		
Italy		6/8	X	X	X	✓		
Poland		6/8	X	X	✓	X		
Malta		6/8	~	~	X	X		
= 4	Finland	5/8	~	X	✓	X		
	Hungary	5/8	✓	~	X	X		
	Slovenia	5/8	✓	~	X	X		
= 5	Czechia	4/8	✓	X	✓	X		
	Denmark	4/8	X	X	✓	✓		
	Netherlands	4/8	X	✓	✓	X		
	Spain	4/8	✓	X	X	✓		
= 6	Greece	3/8	~	✓	X	✓		
	Portugal	3/8	~	✓	✓	X		
=7 ↓ Best performers	Lithuania	2/8	X	✓	✓	✓		
	Luxembourg	2/8	✓	✓	X	✓		
	Bulgaria	2/8	~	~	✓	✓		
N/A	Austria	N/A - Draft NECP not yet submitted						

Table 1: Draft NECPs - benchmark on sectoral targets. 'X' indicates that the target was inconsistent with requirements or expectations under EU law; '~' indicates that the proposed target was unclear or there are transparency issues; '✓' indicates that the target was consistent with requirements or expectations under EU law.

2) Benchmarking on phaseout of fossil fuel subsidies

According to CLN's benchmark assessment, not a single draft NECP submitted to the Commission is fully compliant with legal requirements and expectations under EU law on the phaseout of fossil fuels subsidies, revealing a widespread lack of transparency on this issue.

In 2022, the 8th EU Environmental Action Plan - the "legally agreed common agenda for European environmental policy until 2030" - identified the priority of "setting a deadline for the phasing out of fossil fuel subsidies consistent with the ambition of limiting global warming to 1.5°C".²⁶

This objective was also highlighted in 2024 by the recommendations of the ESABCC, stating that "Member States should fully and urgently phaseout fossil fuel subsidies [...] they should set a deadline for phasing out such subsidies, and their updated NECPs should include a clear plan and timeline to achieve this".²⁷

Under the Governance Regulation, Member States have various obligations regarding fossil fuel subsidies in the context of their NECPs. In particular, they must comply with: (i) a requirement to detail existing fossil fuel subsidies; and (ii) a requirement to include, where applicable, national policies, timelines and measures planned to phaseout fossil fuel subsidies.²⁸

In 2023, the Commission found that current plans on the phaseout of fossil fuel subsidies are not sufficiently clear and exhaustive. The Commission stated that "[m]ore transparency over end-dates for fossil fuel subsidies from Member States is crucial in this respect. The absence of information on end-dates for these subsidies makes it difficult to assess whether the EU is on track to phaseout fossil fuel subsidies consistent with the ambition of limiting global warming to 1.5 °C."²⁹ The Commission also flagged the same concerns when issuing country-specific recommendations on the updated draft NECPs. Every single Member State was issued with a recommendation to explain in detail "how and by when [it] intends to phaseout the remaining fossil fuel subsidies", implying that – at this stage – all draft NECPs have not provided sufficient information and transparency on this issue.³⁰

Methodology

The following benchmark assessment reviews the content of draft NECPs and highlights gaps between the information submitted by Member States in their draft NECPs and the content they are expected to indicate, under EU legislation, on the issue of fossil fuel subsidies.

In particular, the benchmark relies on two legal indicators:

²⁶ Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 *on a General Union Environment Action Programme to 2030*. See in particular Art. 3 (ii).

²⁷ See ESABCC, 'Towards EU climate neutrality (n12) *Summary*, p.10, section [1.3]: "Member States should fully and urgently phaseout fossil fuel subsidies. In line with the 8th Environment Action Programme (8th EAP), they should set a deadline for phasing out such subsidies, and their updated NECPs should include a clear plan and timeline to achieve this".

²⁸ Art 3(1) of the Governance Regulation states that NECPs shall contain "the elements set out in [Art 3(2)] and Annex I." Explicit reference is made to fossil fuel subsidies in Annex I: first, Member States are directed to provide a "[d]escription of energy subsidies, including for fossil fuels" (Annex I, Part 1, Section B [4.6.iv]); Member States are also directed to include, "where applicable, national policies, timelines and measures planned to phaseout energy subsidies, in particular for fossil fuels" (Annex I, Part 1, Section A [3.1.3.iv]).

²⁹ European Commission, Report From the Commission to the European Parliament and the Council: *2023 Report on Energy Subsidies in the EU* (24.10.2023), para. 1.7. In this context, the Commission must also report on Member States' progress towards the phaseout of fossil fuel subsidies in its annual report 'State of the Energy Union', under Art 35(1) of the Governance Regulation. The latest report can be accessed [here](#) (October 2023).

³⁰ Between 2023 and 2024, the Commission provided specific recommendations to all countries that submitted their draft NECPs. Under Art 9(3) of the Governance Regulation, each Member State must then take "due account" of recommendations from the Commission in its NECP and must provide and make public its reasons should it not address a recommendation or a substantial part thereof.

- whether the draft NECP describes and/or address fossil fuel subsidies;³¹ and
- whether the draft NECP provides a timeline for an economy-wide and/or sectoral phaseout of fossil fuel subsidies.³²

In respect of the *description* of fossil fuel subsidies, the NECP of each Member State was scored **0** to **2**, as follows:

- **0** = the draft NECP describes and/or addresses fossil fuel subsidies;
- **1** = the draft NECP provides an unclear description or claims that it provides no fossil fuel subsidies;³³
- **2** = the draft NECP does not describe and/or address fossil fuel subsidies.

In respect of the *timeline* for the phaseout of fossil fuel subsidies, the NECP of each Member State was scored **0** to **2**, as follows:

- **0** = the draft NECP provides a detailed timeline for an economy-wide phaseout of fossil fuels subsidies;
- **1** = the draft NECP only provides some sectoral timelines for the phaseout of fossil fuels subsidies, or does not provide a timeline as it claims that it does not provide any fossil fuel subsidies;³⁴
- **2** = the draft NECP does not provide any timeline at all for a phaseout of fossil fuels subsidies.

The combination of the scores for each indicator gives a total out of 4, where a score of 0/4 indicates a draft NECP that is fully compliant with EU legal requirements on fossil fuel subsidies; and a score of 4/4 indicates a draft NECP that is fully inconsistent with EU legal requirements on fossil fuel subsidies. In sum, the higher the ranking, the higher the number of shortcomings in the draft NECP submitted by the respective country.

Findings

As of May 2024, **every draft NECP submitted to the Commission shows shortcomings under at least one of the legal indicators above. This points to a widespread lack of transparency on the phaseout of fossil fuel subsidies.** Four countries have submitted draft NECPs that are severely inconsistent with EU legal requirements and expectations related to transparency on fossil fuel subsidies: Greece, Latvia, Malta and Poland. If these failures are not addressed in the final version of the NECP, Member States' plans may be inconsistent with legal requirements and expectations under the Governance Regulation. In particular, Member States may not be complying with their duty to take due account of the specific recommendations of the Commission, which has expressly recommended more transparency on the phaseout of fossil fuel subsidies to all Member States.

³¹ As required under the Governance Regulation (Annex I, Part 1, Section B [4.6.iv]), see (n16).

³² As required under the Governance Regulation (Annex I, Part 1, Section A [3.1.3.iv]), see (n16).

³³ The benchmark assigned the score of 1/2 to Member States that claimed to have no fossil fuel subsidies, as the Commission's recommendations imply that every draft NECP was not sufficiently transparent on the issue of phasing out fossil fuel subsidies.

³⁴ As above.



	Rank	EU Member State	Total score	Fossil fuel subsidies: description	Fossil fuel subsidies: phaseout timelines
Worst performers ↑	= 1	Greece	4/4	X	X
		Latvia	4/4	X	X
		Malta	4/4	X	X
		Poland	4/4	X	X
	= 2	Sweden	3/4	~	X
	= 3	Bulgaria	2/4	~	~
		Croatia	2/4	✓	X
		Cyprus	2/4	~	~
		Czechia	2/4	✓	X
		Denmark	2/4	~	~
		Estonia	2/4	✓	X
		Finland	2/4	~	~
		France	2/4	~	~
		Hungary	2/4	~	~
		Luxembourg	2/4	~	~
		Netherlands	2/4	✓	X
		Romania	2/4	✓	X
		Slovakia	2/4	✓	X
		Spain	2/4	✓	X
Best performers ↓	= 4	Belgium	1/4	✓	~
		Germany	1/4	✓	~
		Ireland	1/4	✓	~
		Italy	1/4	✓	~
		Lithuania	1/4	✓	~
		Portugal	1/4	✓	~
		Slovenia	1/4	✓	~
N/A	Austria	N/A - Draft NECP not yet submitted			

Table 2: Draft NECPs - benchmark on phaseout of fossil fuel subsidies. 'X' indicates that: the draft NECP does not describe and/or address fossil fuel subsidies (first column); the draft NECP does not provide any timeline at all for a phaseout of fossil fuels subsidies (second column); "~" indicates that: the draft NECP provides an unclear description or claims that it provides no fossil fuel subsidies (first column); the draft NECP only provides some sectoral timelines for the phaseout of fossil fuels subsidies, or does not provide a timeline as it claims that it does not provide any fossil fuel subsidies (second column); "✓" indicates that: the draft NECP describes and/or addresses fossil fuel subsidies (first column); the draft NECP provides a detailed timeline for an economy-wide phaseout of fossil fuels subsidies (second column).

Part 3: Member States may be held accountable for failing to comply with EU law

A failure on the part of Member States to adopt updated NECPs that enable the EU to fulfil its climate targets will have significant consequences for collective climate action.

Globally, inadequate NECPs threaten the feasibility of keeping the 1.5°C long-term temperature limit within reach. Failure to limit global temperature rise to 1.5°C will have further significant impacts on human rights and fundamental freedoms in Europe and beyond.³⁵

The emissions associated with the EU implementation gap will also aggravate climate change impacts already felt across Europe. The European Environment Agency recently noted the “wide-ranging impacts” of extreme climate events in Europe on people, ecosystems, and the economy.³⁶ For example, extreme heatwaves experienced in 2022 alone have been linked to 60,000-70,000 excess deaths across Europe;³⁷ and from 1980-2022, EU Member States suffered economic losses of assets estimated at EUR 650 billion due to climate-related extremes.³⁸

A failure to achieve the 2030 EU-wide mitigation target will also jeopardise the implementation of the proposed 2040 EU mitigation target, which requires a 90% GHG reduction by 2040, which will likely delay the achievement of the EU’s climate neutrality by 2050.³⁹ The Intergovernmental Panel on Climate Change (‘IPCC’) flagged this concern in its 6th Assessment Report, noting that “the later climate policies are implemented, the higher the expected stranded assets and the societal, economic and political strain of strengthening action.”⁴⁰

By the end of June 2024, Member States must submit their final revised NECPs to the European Commission. If the existing shortcomings identified in the benchmark assessment are not addressed, these NECPs will be inconsistent with existing legal requirements and expectations, and may be in breach of EU law. If this is the case, Member States could be held accountable:

- The Commission – fulfilling its role of “guardian of the treaties”⁴¹ – may tackle these legal shortcomings by putting Member States on notice and ultimately pursuing infringement proceedings against them before the European Court of Justice.⁴² For example, in December 2023, the Commission put Austria, Poland and Bulgaria on notice for their failure to submit their draft NECPs on time.⁴³
- Domestic legal actions across Europe are also scrutinising the legal shortcomings of the first iterations of Member States’ NECPs. As of May 2024, several pending or national cases filed against national governments and public authorities refer – directly or indirectly – to

³⁵ In Europe, national courts in the Netherlands, Germany, and Belgium have recognised a link between insufficient climate mitigation efforts and human rights violations. See Supreme Court of the Netherlands, Civil Division, *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* [2019] (official translation) (*Urgenda*); German Federal Constitutional Court, *Neubauer and Others v Germany* [2021] (official translation) (*Neubauer*); Court of Appeal of Brussels, *VZW Klimaatzaak v Kingdom of Belgium & Others* [2023] (*Klimaatzaak*) (unofficial translation).

³⁶ European Environment Agency, *European Climate Risk Assessment* (11 March 2024), EEA Report 01/2024, p.13, [section 1.2.1].

³⁷ *Ibid.*, p.13, [section 1.2.1], referencing Ballester, J., et al., 2023a, ‘Heat-related mortality in Europe during the summer of 2022’, *Nature Medicine* 29, pp. 1857-1866 (DOI: 10.1038/s41591-023-02419-z.); Ballester, J., et al., 2023e, ‘The effect of temporal data aggregation to assess the impact of changing temperatures in Europe: an epidemiological modelling study’, *The Lancet Regional Health - Europe*, p. 100779 (DOI: 10.1016/j.lanepe.2023.100779).

³⁸ European Environment Agency, *Economic losses from weather- and climate-related extremes in Europe* (06 October 2023), European Environment Agency.

³⁹ As can be inferred from European Scientific Advisory Board on Climate Change, *Scientific advice for the determination of an EU-wide 2040 climate target and a greenhouse gas budget for 2030-2050* (15 June 2023), DOI: 10.2800/609405, *Recommendations*, p.10.

⁴⁰ IPCC, AR6 WGIII (2022), Chapter 3, p. 356.

⁴¹ European Commission, *Implementing EU Law* (official EU Commission website).

⁴² The Commission may open an infringement procedure after conducting its own investigations or in light of complaints filed by third parties, such as NGOs. See: Climate Litigation Network, *Legal Intervention Guidelines: EU National Energy and Climate Plans* (November 2023), p. 10.

⁴³ European Commission, ‘Governance Regulation: Commission calls on Bulgaria, Austria and Poland to submit draft updated National Energy and Climate Plans for the period 2021-2030’, *December infringement package – key decisions on energy* (December 2023).

substantive or procedural failures pertaining to a country's NECP. This includes litigation proceedings in Belgium, the Czech Republic, Estonia, Italy, Portugal, Romania and Spain.⁴⁴ In some cases, legal scrutiny of NECPs proved to be critical to ensure governments' climate accountability. For example, in *Klimaatzaak v Belgium et al* (2023), Belgian courts took into account compliance with NECP-related legal requirements as key evidence to assess the unlawfulness of the public authorities' conduct in the context of climate mitigation efforts.⁴⁵ The Court of Appeal of Brussels highlighted three principal shortcomings of Belgium's draft updated NECP: procedural failures; substantive failures; and lack of coordination between the policies in the NECP.⁴⁶ Substantively, the Court noted that the existing NECP was not expected to meet Belgium's existing mitigation targets for 2030,⁴⁷ and that Belgium had failed to follow its commitment to update the NECP to reflect the EU's 2030 emissions reduction objective of 55% by 2030 (relative to 1990 levels).⁴⁸

Recent legal developments have highlighted the need for proper implementation of climate targets and policies. In April 2024, the European Court of Human Rights ('ECtHR') found that a State's failure to properly assess and implement climate mitigation efforts in line with best available evidence was a human rights violation under the European Convention on Human Rights.⁴⁹ The decision comes at a time when nine EU Member States are already facing domestic litigation for their failure to adequately reduce GHG emissions, and the ruling is likely to have a strong influence over cases in Europe and beyond.⁵⁰ The findings of the ECtHR underline the urgency around the adequacy of governmental action on climate change - in order to support global efforts to limit temperature rise to 1.5°C and ensure that fundamental rights are protected - and are highly relevant to Member States' actions in support of the EU's climate commitments.

An overview of the data used for the benchmarking assessments on sectoral targets and phaseout of fossil fuel subsidies (as summarised in Table 1 and Table 2) is available [online](#).

⁴⁴ See Climate Action Network Europe, *Taking Flawed National Energy and Climate Plans to Court, lessons learned from previous cases* (March 2024).

⁴⁵ Court of Appeal of Brussels, *Klimaatzaak* (2023) (n35).

⁴⁶ *Ibid.*, pp.108-109 at [206] (for procedural and substantive failures); and pp.130-131 at [248] (for lack of coordination).

⁴⁷ *Ibid.*, [206].

⁴⁸ *Ibid.*

⁴⁹ Grand Chamber of the European Court of Human Rights, *Verein Klimasenioren Schweiz and Others v Switzerland*, Application no.53600/20, 09 April 2024. See especially [550] (d).

⁵⁰ As of May 2024: Belgium, the Czech Republic, Italy, the Netherlands, Poland, Portugal, Romania, Spain, and Sweden.



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‘National Energy and Climate Plans: the Implementation Gap -
A benchmark assessment of draft NECPs in light of EU legal obligations’

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