



PROSEU

Prosumers for the Energy Union:  
mainstreaming active participation of  
citizens in the energy transition

## Participatory Governance for the roll-out of the Energy Union (Policy Brief)

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## Summary of PROSEU




PROSEU aims to enable the mainstreaming of the renewable energy Prosumer phenomenon into the European Energy Union. Prosumers are active energy users who both consume and produce energy from renewable sources (RES). The growth of RES Prosumerism all over Europe challenges current energy market structures and institutions. PROSEU's research focuses on collectives of RES Prosumers and will investigate new business models, market regulations, infrastructural integration, technology scenarios and energy policies across Europe. The team will work together with RES Prosumer Initiatives (Living Labs), policymakers and other stakeholders from nine countries, following a quasi-experimental approach to learn how RES Prosumer communities, start-ups and businesses are dealing with their own challenges, and to determine what incentive structures will enable the mainstreaming of RES Prosumerism, while safeguarding citizen participation, inclusiveness and transparency. Moving beyond a case by case and fragmented body of research on RES Prosumers, PROSEU will build an integrated knowledge framework for a socio-political, socioeconomic, business and financial, technological, socio-technical and socio-cultural understanding of RES Prosumerism and coalesce in a comprehensive identification and assessment of incentive structures to enable the process of mainstreaming RES Prosumers in the context of the energy transition.

## Summary of PROSEU's Objectives

Eight key objectives at the foundation of the project's vision and work plan:

- **Objective 1:** Document and analyse the current state of the art with respect to (150-200) RES Prosumer initiatives in Europe.
- **Objective 2:** Identify and analyse the regulatory frameworks and policy instruments relevant for RES Prosumer initiatives in nine participating Member States.
- **Objective 3:** Identify innovative financing schemes throughout the nine participating Member States and the barriers and opportunities for RES Prosumer business models.
- **Objective 4:** Develop scenarios for 2030 and 2050 based on in-depth analysis of technological solutions for RES Prosumers under different geographical, climatic and socio-political conditions.
- **Objective 5:** Discuss the research findings with 30 relevant stakeholders in a Participatory Integrated Assessment and produce a roadmap (until 2030 and 2050) for mainstreaming RE Prosumerism.
- **Objective 6:** Synthesise the lessons learned through experimentation and co-learning within and across Living Labs.
- **Objective 7:** Develop new methodological tools and draw lessons on how the PROSEU methodology, aimed at co-creation and learning, can itself serve as an experiment with institutional innovation.
- **Objective 8:** Create a RES Prosumer Community of Interest.

## PROSEU Consortium Partners

Logo	Organisation	Type	Country
	FCIENCIAS.ID	Private non-profit association	Portugal
	U.PORTO	University	Portugal
	ICLEI EURO	Small and medium-sized enterprise	Germany
	CLIENTEARTH	Non-governmental organisation	United Kingdom
	UNIVLEEDS	University	United Kingdom
	DRIFT	University	the Netherlands
	UNIZAG FSB	University	Croatia
	LEUPHANA	University	Germany
	ECO-UNION	Non-governmental organisation	Spain
	IÖW	Private non-profit limited company	Germany
	CE Delft	Small and medium-sized enterprise	the Netherlands

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## Executive summary

The purpose of this paper is to provide recommendations to policy makers, legislators and administrations on the implementation of rights allowing prosumers and energy communities to participate in the roll-out of the Energy Union.

The governance for the roll-out of the Energy Union should be based on wide involvement of stakeholders and therefore, be participatory. Prosumers and energy communities are important actors of the energy transition and should play an active role in the creation of the Energy Union policies.

In order to ensure that they play such a role, participatory governance must be exercised in respect of rights of access to information, public participation and access to justice. In addition, implementation of these rights must be reinforced by measures facilitating prosumers and energy communities to organise into interest groups. These rights are extremely important as they allow prosumers and energy communities to express their views, defend their interests and in consequence, influence legislation, plans and programs, policies and administrative decisions.

The rights of access to information, public participation and access to justice are regulated in the Aarhus Convention<sup>1</sup> and further explained in the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention (“the Maastricht Recommendations”)<sup>2</sup>. These elements have been implemented in several EU and national laws.

However, these implementing laws may not always sufficiently take prosumers and energy communities into account. Therefore, when such national laws do not apply (or do not apply fully) to prosumers and energy communities, the legislators and policy makers should take appropriate measures to correct it.

In case relevant laws exist, it is key that they are fully and appropriately implemented so that prosumers and energy communities can express their views and that these views are considered.

The implementation of the Aarhus Convention and the Maastricht Recommendations to prosumers and energy communities should also guide national legislators when transposing and implementing the relevant provisions of the Clean Energy Package.

In that respect, it is particularly important that legislators bear in mind that prosumers and energy communities must be aware of their rights and of existing opportunities to be involved in relevant debates and consultations, gain access to relevant information and defend their interests in courts.

Relevant awareness-raising and educational activities should be provided and facilitated by national, regional and local administrations. The implementation of such awareness-raising activities could be

based on the transposition and implementation of the following provisions of the Clean Energy Package: Art. 16 RED II (contact points), Art. 18.1 RED II (support measures), Art. 18.6 RED II (information, awareness-raising, guidance or training programmes) and Art. 25 Electricity Directive (single points of contact).

It would also be useful that public participation procedures take, whenever possible, the form of public debates involving a wide group of stakeholders. In this case authorities should even more actively seek opinions of different stakeholders, including prosumers and energy communities.

It is important that public authorities and other relevant institutions and bodies recognize prosumers and energy communities as key stakeholders in all decisions concerning the Energy Union and other important policy developments so that prosumers and energy communities are always consulted on decisions that may have impact on their activities.

Recent examples of public participation processes of draft National Energy and Climate Plans (NECPs) have shown certain shortcomings, which should be avoided in future in relation consultations on NECP updates, adoption of national legislation transposing the EU Clean Energy Package and any other relevant decisions.

## Introduction

The recently adopted EU Clean Energy Package (in particular, the recasts of the Renewables Directive (RED II)<sup>3</sup> and of the Electricity Directive<sup>4</sup>), provides new provisions on prosumers and energy communities. The legal recognition of these actors by the EU is now also progressively happening at national level, since the processes of transposing relevant EU provisions into national systems are ongoing.

There have been significant debates in Member States related to definitions, rights, obligations and enabling frameworks for prosumers and energy communities (both in countries that will have to introduce completely new regulations and those that already have some existing legislative and policy frameworks in place but may need to adapt them to new EU requirements).

It is important not to forget one important element in these technical debates: the mechanisms and instruments of participatory governance, i.e. mechanisms and instruments that allow prosumers and energy communities to play an active role in shaping policies and legislative solutions and defend their rights when needed.

As the Energy Union is taking a proper shape now, and new EU legislation is being implemented by Member States, it is extremely important that all actors who have a role to play in the Energy Union system, including prosumers and energy communities, have an opportunity to express their opinions, and that these opinions are taken into account. It is also essential to enable these key stakeholders to share their ideas and experiences in order to create a well-functioning and highly performing system based on previous experience and knowledge of existing challenges, potentials and solutions. Thus, the right governance structures should allow prosumers and energy communities to be informed about policy and legal developments, provide their opinions on these and defend their interests and rights as needed.

Ensuring participatory governance approach in the Energy Union guaranteed by access to information, public participation and access to justice is a key element to safeguard public acceptance of the energy transition.

As prosumers and energy communities are key actors in the energy transition<sup>5</sup>, public authorities at all levels should ensure that prosumers' and energy communities' rights to actively participate in developments of the Energy Union are included in legislation and effectively implemented so that their voices are heard, and their interests are accounted for in decisions related to the Energy Union.

This policy brief provides recommendations for policy makers, legislators, administrations and other relevant institutions and bodies on participatory governance for the roll-out of then Energy Union in relation to prosumers and energy communities.

The brief explains what governance, good governance and participatory governance are. It focusses on participatory governance rights (access to information, public participation and access to justice) that ensure that prosumers and energy communities may take part in the roll-out of the Energy Union. It also describes advantages of organising prosumers and energy communities in interest groups.

It then provides recent examples of public participation on draft NECPs and advice for any future public participation processes.

## 1. Governance, good governance and participatory governance

This policy brief builds on a definition of **governance** developed by ClientEarth in the context of the EU climate and energy policy, presented in O'Leary A., Church J. & Roberts J. (2014). (briefing "EU Climate & Energy Governance Health Check – Looking back to 2020 and forward towards 2030")<sup>6</sup>, in which governance is described as "the arrangements for how power and responsibility for achieving outcomes is allocated". For the purpose of framing a set of policy recommendations on the importance of participatory governance for the roll-out of the Energy Union, we further build on this assertion and define governance as "collective decision-making arrangements through which power and responsibility for achieving outcomes are allocated."

Arrangements concerning the allocation of power and responsibility must be guided by the rules and principles of **good governance**, which have been developed and applied by different institutions in different contexts.

- **The UN** clarified the concept of good governance in several documents adopted by the Commission on Human Rights and the Office of the High Commissioner for Human Rights <sup>7</sup>. The key principles (attributes) of good governance identified there are transparency, responsibility, accountability, participation and responsiveness (to the needs of people)<sup>8</sup>.
- **The European Commission** identified in its "**White Paper on European Governance**" <sup>9</sup> the following good governance principles which should guide "the way in which the Union uses the powers given by its citizens": openness, participation, accountability, effectiveness, coherence and, additionally, proportionality and subsidiarity (two principles very specific to the EU)<sup>10</sup>. While placing these principles in a specific EU context, the White Paper acknowledged



that they underpin democracy and the rule of law in Member States, but they apply to all levels of government – global, European, national, regional and local.

- In its briefing ‘**EU Climate & Energy Governance Health Check – Looking back to 2020 and forward towards 2030**’, ClientEarth added to the list developed by the EU, principles of legitimacy<sup>11</sup>, flexibility<sup>12</sup>, certainty<sup>13</sup> and policy integration, judging them essential for shaping good EU climate and energy governance.<sup>14</sup>
- **The EU Governance Regulation**, also provides governance principles specific to the EU climate and energy policy. Recital 1 of the Governance Regulation states: “This Regulation sets out the necessary legislative foundation for reliable, inclusive, cost-effective, transparent and predictable governance of the Energy Union and Climate Action (governance mechanism), which ensures the achievement of the 2030 and long-term objectives and targets of the Energy Union in line with the 2015 Paris Agreement on climate change following the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (the ‘Paris Agreement’), through complementary, coherent and ambitious efforts by the Union and its Member States, while limiting administrative complexity.”

Even though principles of good governance are set in specific contexts, they have a universal character and apply equally to prosumers and energy communities in the roll out of the Energy Union.

Certain principles of good governance (participation, responsiveness, openness, accountability) ensure its **participatory character**.

In order to comply with participatory principles of good governance and ensure active participation of prosumers and energy communities in the roll-out of the Energy Union, governance should be exercised in respect of certain requirements, which are:

- access to information,
- public participation (consultation), which could also be organized in a form of public debate,
- access to justice.

An additional element, which may be necessary to guarantee and is particularly relevant for public consultation, is

- an opportunity of grouping a larger number of stakeholders into interest groups to amplify their impact.

These requirements are in fact rights that must be granted.

They must be respected in relation to prosumers and energy communities, who are relatively new actors in the processes of policies creation and for whom these rights may not be sufficiently developed and well known.

They must be respected in policy areas and legislation that specifically regulates prosumers and energy communities but also, following assessment presented in Petrick, Fosse & Klarwein,(2019)<sup>15</sup>, in other EU instruments and policy areas that have an impact on prosumerism (incl. environment, development & infrastructure, social affairs, data security, economic and fiscal policy, trade and international investment, education).

## 2. Rights - guarantees of participatory governance

### 2.1 Aarhus Convention and Maastricht Recommendations

The rights necessary to guarantee participatory governance are regulated in the Aarhus Convention<sup>16</sup> and further explained in the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention (“the Maastricht Recommendations”)<sup>17</sup>. They have also been implemented in several EU and national laws.

The Aarhus Convention regulates relations between the public authorities (at national, regional or local level) and citizens acting individually or as groups or associations. It provides to the public the rights of access to information, public participation in decision-making and access to justice in environmental matters (including energy, when it affects or is likely to affect the elements of the environment).<sup>18</sup>

The EU and all its Member States are parties to the Aarhus Convention. The Convention applies to them and creates rights for stakeholders, including prosumers and energy communities, situated within their boundaries. However, to enforce these rights by the public it is necessary to implement the Convention’s provisions into the legal systems of the parties.

The Aarhus Convention has been implemented by various EU and national laws. At EU level, the main laws implementing the Aarhus Convention are the Directive on access to documents<sup>19</sup>, the EU Aarhus Regulation<sup>20</sup>, the Environmental Information Directive<sup>21</sup>, the Public Participation Directive<sup>22</sup>, the Environmental Impact Assessment Directive (EIA Directive)<sup>23</sup>, the Strategic Environmental Impact Assessment Directive (the SEA Directive)<sup>24</sup>, the Industrial Emissions Directive<sup>25</sup>, the SEVESO III Directive<sup>26</sup> and the Water Framework Directive (the WFD)<sup>27</sup>.

These EU laws implement the Convention’s rights of access to environmental information as well, for certain policies, plans and activities, public participation and access to justice rights. The EU has not adopted Directives or Regulations that generally cover public participation and access to justice rights in all environmental decision-making procedures and acts.<sup>28</sup>

As it is explained in more detail below, the rights of access to information, public participation and access to justice as well as the ability to be organised in interest groups are important for prosumers and energy communities as they allow them to express their views, defend their interests and in consequence, influence legislation, plans and programs, policies and administrative decisions that have an impact on them. These basic guarantees of participatory governance are particularly important in the context of the Energy Union, a vision for energy transition in Europe, in which prosumers and energy communities should play an active role.

### 2.2 Right of access to information

As mentioned above, the right of access to information has its roots in the Aarhus Convention. It is discussed here as a first of the rights necessary for the participatory governance to be effective, as it constitutes the basis for the other two rights, i.e. public participation and access to justice. Without access to information, it is often not possible to exercise participation rights.

The Aarhus Convention firstly provides a right to request information from public authorities (Article 4). This obligation is rather well implemented in all Member States and on EU level.

Less well developed are the rights to active dissemination of environmental information. According to the Aarhus Convention, these rights apply to two kinds of obligations: 1. Active dissemination of information that is not related to specific decision-making procedures, which is mostly information provided on governmental websites (Art. 5 of the Aarhus Convention) and 2. Information to be provided in the context of public participation as part of a decision-making procedure, including (a) information about a possibility to participate and on what (notice) and (b) background information that facilitates the participation (underlying evidence, studies, assessments etc) (Art 6, 7 and 8 of the Aarhus Convention).

The Convention sets also basic conditions concerning relevant timeframes, possibilities and conditions of a request refusal, a partial access to documents or possibilities for public authorities to make charges for supplying information.

Based on the Aarhus Convention, Art. 10 of the Governance Regulation requires that Member States ensure that the public is informed and that they set reasonable timeframes for the public to be informed (as well as to participate and express its views). In addition, recital 29 of the Governance Regulation specifies that “when carrying public consultations, and in line with the Aarhus Convention, Member States should aim to ensure equal participation, that the public is informed by public notices or other appropriate means such as electronic media, that the public is able to access all relevant documents, and that practical arrangements related to the public’s participation are put in place.”

Currently, prosumers’ and energy communities’ right of access to information is particularly relevant in the context of NECPs and Long-Term Strategies (LTS) – both regulated by the EU Governance Regulation. It is also applicable to national legislative and policy processes transposing and implementing Clean Energy Package at national level. However, the right of access to information is not limited to these consultation cases and has a much wider scope.

#### **Recommendations:**

- The national policy makers should ensure that the right of access to information, compliant with all requirements of the Aarhus Convention (i.e. the relevant procedures and obligations), provided in national laws applies to prosumers and energy communities.
- The right of access to information must be effectively implemented and respected by authorities at all administration levels in relation to prosumers and energy communities.
- The right of access to information (i.e. the relevant procedures and obligations) should be advertised and explained through information and awareness-raising activities so that prosumers and energy communities are aware of it and actively take advantage of this right (through searching for available information or making access to document requests).
- Such educational and awareness raising activities targeting prosumers and energy communities should be considered and integrated into the transposition and implementation of Art. 18.6 of the RED II (information, awareness-raising, guidance, training programmes) as well as Art. 25 of the Electricity Directive (single points of contact) and Art. 16 of the RED II (contact points).

- National policy makers, legislators and other public authorities should assess a possibility of integrating the right to information requirements into implementation of Art. 22.4(h) of the RED II, which provides that Member States shall ensure that “regulatory and capacity-building support is provided to public authorities in enabling and setting up renewable energy communities, and in helping authorities to participate directly”.

## 2.3 Right to public participation

Public participation right is a very basic and fundamental requirement of participatory democracy. It is one of three pillars of the Aarhus Convention.

It can even be argued that in the context of participatory governance, the other two rights granted by the Aarhus Convention are there to ensure effective exercise of public participation: access to documents as a guarantee to have sufficient information to take a position, access to justice as a mean to defend its rights and opinions related to public participation.

The Aarhus Convention provides public participation right for decisions related to:

- specific activities - permits for activities listed in Annex I to the Convention and other activities which may have a significant effect on the environment (Art.6 of the Aarhus Convention),
- plans, programmes and policies (in limited aspects as it does not apply all of the requirements applicable to activities) (Art 7 of the Aarhus Convention) and
- preparation of generally binding rules (Art.8 of the Aarhus Convention).

Practical guidance on the implementation of the public participation provisions of the Aarhus Convention is provided by the Maastricht Recommendations.

The requirement of participatory governance is also reflected in Art. 10 and recital 28 of the EU Governance Regulation as public consultation on National Energy and Climate Plans (NECPs) and Long-Term Strategies (LTS).

The importance for prosumers and energy communities to participate in consultations is evident. In many cases, consultations are the main opportunity to have any influence on decisions. This concerns NECPs, LTS and legislation transposing and implementing the Clean Energy Package. It equally applies to other decisions, plans, programmes, policies and generally binding rules.

The questions are: Is this consultation right guaranteed by national laws? Do prosumers and energy communities have enough technical and human capacities to engage into consultation processes? Are they aware of policy and administrative developments and importance of these consultations?

These are the questions that policy makers and public authorities should ask themselves in order to make sure that the public participation rights are actively used by prosumers and energy communities.

### Recommendations:

- Policy makers should make sure that public consultation is guaranteed in all policy areas and for all decisions relevant for prosumers and energy communities. <sup>29</sup>

- Legislative acts providing for public consultation right should describe all elements and steps of the consultation procedure as provided by the Aarhus Convention and the Maastricht Recommendations (Consultations can only be meaningful if they comply with all requirements of the Aarhus Convention. For example, consultations should happen at an appropriate stage when options are still open; they should provide sufficient timeframes; and their results shall be taken into account).
- Prosumers and energy communities should be distinguished as a separate group of stakeholders and as such consulted whenever relevant.
- Public participation procedures should be implemented by public authorities in compliance with the Aarhus Convention and the Maastricht Recommendations.
- Public participation right should be advertised and explained through awareness-raising activities so that prosumers and energy communities are aware of and actively engage in public consultations.
- Such educational and awareness raising activities targeting prosumers and energy communities should be considered and included in the transposition and implementation of Art. 18.6 of the RED II (information, awareness-raising, guidance, training programmes) as well as Art. 25 of the Electricity Directive (single points of contact) and Art. 16 of the RED II (contact points).

### 2.3.1 Public debate – a good practice for public consultation

A public debate is a specific sub-category of public consultation, which can be also considered a good practice example. It is specific due to its large scale and active involvement of the whole society.

Such public debate could concern country's general policy directions, early ideas, paths towards the achievement of certain goals. It could be an ongoing process aiming to help the country define general directions of its policies or detect ideas for future action, or it could lead to an adoption of a policy document or legislation.

The "Multilevel climate and energy dialogue" defined under Art.11 of the Governance Regulation, is an example of such a public debate. Article 11 requires EU Member States to establish such dialogues to offer local authorities, civil society organisations, business community, investors and other relevant stakeholders (including the general public) a possibility to actively engage and discuss different scenarios envisaged for energy and climate policies, including for the long term, and review progress. These dialogues could also cover NECPs.

Donnerer D. & al. (2019). (LIFE PlanUp (2019) Report on Good Practices in Energy and Climate Governance) <sup>30</sup> provides examples of public debates and stakeholders discussions that are good practice examples / case studies of energy and climate governance.<sup>31</sup> In all these examples, national discussion and consultation processes relied on a range of approaches, with a views to optimise stakeholders engagement.

A good example is the National Dialogue on Climate Action organised in Ireland in 2017. <sup>32</sup> In the Donnerer D. & al. (2019). (LIFE PlanUp (2019) Report on Good Practices in Energy and Climate Governance), the Irish national dialogue has been described as having as its "main goal to build long-term societal consensus, community engagement and public support to enable the achievement of

Ireland's national transition objective", "to create awareness and motivation to act at all governance levels in relation to the climate change challenges" as well as "to reach out to citizens and stakeholders that are usually not engaged in energy and climate issues". It also aimed to consult stakeholders on Ireland's NECP.

#### Recommendations:

- When a Member State has decided to engage into a consultation – public debate, it is important that prosumers and energy communities are recognised in the process as separate and important stakeholder group(s), especially when a part of debate is held with certain selected stakeholder groups.
- Whenever possible, policy makers, legislators and national administrations should organise consultations in a form of a public debate, i.e. as a large debate that reaches to various groups (incl. prosumers and energy communities) and actively involves the whole society.

## 2.4 Right of access to justice

The right of access to justice is the third pillar of the Aarhus Convention. The Convention grants a right to review procedures to challenge public decisions that have been made without respecting the two other rights (access to information and public participation) or environmental law in general.<sup>33</sup>

In relation to access to information right, the Convention provides that when a person's request for information has been ignored, wrongfully refused (in part or in full), inadequately answered, or otherwise not dealt with, the person must have access to a review procedure before a court (preceded by a reconsideration/revision procedure) or other independent and impartial body established by law.

In relation to public participation right, the Convention provides that members of the public concerned and having a sufficient interest or, alternatively, maintaining impairment of a right, where this is a precondition required by law, must have access to a review procedure that allows challenging the legality of any decision, act or omission concerning public participation as granted by the Aarhus Convention.

In relation to environmental law in general, the Convention provides that members of the public must be able to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to environmental law.

In all cases, countries – parties to the Convention must ensure that procedures of access to justice provide adequate and effective remedies, are fair, equitable, timely and not prohibitively expensive.

As mentioned above, the Aarhus Convention provisions relating to access to justice have not been implemented as such in the EU legislation. Due to the absence of such legislation, there are important disparities in access to justice among the Member States and considerable challenges exist in majority of them to obtain access to justice (as envisaged by the Aarhus Convention).<sup>34</sup>

On the other hand, the Electricity Directive (Art. 26) provides for final customers a right to out-of-court dispute settlement on their rights and obligations established under the Electricity Directive. It also encourages Member States and alternative dispute resolution entities to provide out-of-court dispute

settlement mechanisms for disputes arising from products and services tied to or bundled with any product or service falling under the scope of the Electricity Directive. This provision of the Electricity Directive has a limited scope and does not cover a majority of situations regulated by the Aarhus Convention.

Why is the right of access to justice important for prosumers and energy communities? Reasons may be various. For instance prosumers/energy communities may want to: obtain information where government refuses; ensure that decisions are not taken without their participation, that procedures are respected and due account is taken of their input; defend their rights or ensure compliance with applicable laws aimed at defending prosumers etc. Therefore, it is key that prosumers and energy communities have access to courts to be able to defend their rights and interests. It should be recognised that in certain cases without access to justice, it may not be possible to ensure effective participatory governance for these groups.

#### **Recommendations:**

- The Aarhus Convention rights providing access to justice for prosumers and energy communities should be included in national laws and effectively implemented.
- Prosumers and energy communities, as regulated under the Electricity Directive (called respectively, active customers and citizen energy communities), shall be taken into account in the transposition of Art. 26 of the Electricity Directive on out-of-court dispute settlement.

### **3. Interest groups representing prosumers and energy communities**

Organisation of stakeholders, incl. prosumers and energy communities, into interest groups may, in some instances and aspects, help individual actors to be better represented in participatory governance processes. Although individuals and single energy communities should always have opportunities to engage into the participatory governance processes, they may be more effective in having their voice heard when organised into interest groups. Organisation in such interest groups may allow better access to restricted expert discussions or advisory structures.

As addressed in Petrick K., Fosse J. & Klarwein S. (2019)<sup>35</sup>, prosumers are currently not sufficiently represented in decision and policy making processes in spite that their participation would be necessary in a number of EU and national policy fields as well as on the local level. The study concludes that governments should “actively seek the input and advice of prosumer representatives”.

However, prosumers and energy communities should not be obliged to organise into interest groups to be recognised as relevant players within participatory governance processes of the Energy Union. Aware of possible difficulties in getting organised into bigger structures and in respect of democratic rights, countries should ensure that all stakeholders can have their voices heard if they wish to express themselves.

#### **Recommendations:**

- Member States shall recognise prosumers and energy communities as a distinguished group and actively look for the input from this group in all consultation processes.

- Information on any consultations should be advertised in such a way that it reaches wide range of stakeholders (ideally, the whole society).
- Consultations should be organised in a way allowing participation of a wide range of society.
- Activities of information and awareness raising, assistance within the single points of contact as well as capacity-building support for public authorities should include information on an opportunity and importance for prosumers and energy communities to organize into interest groups.
- Assistance should be offered by authorities to prosumers and energy communities to allow them networking, exchanging their experiences and organizing into interest groups.

## 4. Example: Public consultations on the draft NECPs

Public consultations of draft and final National Energy and Climate Plans (“NECPs”) are a very recent example of public consultation related to the national climate and energy policies.

Information on public consultation included in draft NECPs and assessments of their content show that in many countries these consultations were insufficient.

### 4.1 NECPs – legal framework

The aim of NECPs is to set national strategies that integrate energy and climate objectives. NECPs set out national objectives for the five dimensions of the Energy Union, i.e. energy security; internal energy market; energy efficiency; decarbonization (incl. GHG emissions reductions and renewable energy); research, innovation and competitiveness; NECPs determine policies and measures to meet those objectives. In addition, they provide an overview of the current energy system and policy context.<sup>36</sup> The choices made in NECPs determine the trajectory of EU countries in terms of decreasing their GHG emissions, reducing energy demand and increasing the share of renewable energy sources in the energy system.

Each Member State prepares and submits to the European Commission a draft NECP (the 1<sup>st</sup> one by 31 December 2018), a final NECP (by 31 December 2019), a draft update of its NECP (by 30 June 2023) and a final update of its NECP (by 30 June 2024).

Art. 10 and recitals 28 and 29 of the Governance Regulation require Member States to ensure an early and effective participation of the public in the preparation of NECPs. This means, according to the Governance Regulation, that the public should be involved in preparing the final NECPs for the period 2021-2030 (and the draft NECPs for the periods after 2030). These consultations may also be carried out according to the rules of the SEA Directive <sup>37</sup>.

Member States shall set reasonable timeframes allowing sufficient time for the public to be informed, to participate and express its views.

Summaries of public’s views or provisional views shall be attached to the draft and final NECPs submitted to the Commission.



As reminded in recital 29 of the Governance Regulation, Member States must ensure that consultations of NECPs are carried out in compliance with the Aarhus Convention.

The Aarhus Compliance Committee issued, on 28 May 2019, an Advice to Member States<sup>38</sup> on the public consultation process of the final NECPs. The Compliance committee advised Member States in relation to the public consultation process of the final NECPs to make sure that:

- the arrangements are transparent and fair,
- within the arrangements, the necessary information is provided to the public,
- the requirements of Article 6(3), (4) and (8) of the Aarhus Convention are met, including reasonable timeframes and ensuring that due account is taken of the outcomes of public participation,
- Member States ensure that all options, which were open at the time of the preparation of the draft 2021-2030 NECPs, are open at the time of the public participation procedure.<sup>39</sup>

As NECPs should include information on the main elements of the enabling framework concerning renewables self-consumers and renewable energy communities<sup>40</sup>, prosumers and energy communities are directly concerned by NECPs and therefore, should participate in the NECPs consultations.

## 4.2 Public consultations on the draft NECPs

The available information on the outcome of public consultation on draft NECPs shows that in many countries the consultation process on this document has been ineffective.

- In case of NECPs covering the period 2021-2030, the Governance Regulation requires that consultations are carried out on the final plans. This creates a risk that NECPs consultations may happen too late to allow introducing amendments that result from these consultation (while the Aarhus Convention requires that the consultation should take place when options are open). For example, the German draft NECP provides that a consultation would take place after the draft's submission to the European Commission. The starting date of this consultations indicated to stakeholders was September 2019, i.e. four months before the deadline for the final NECP. Such situation is particularly concerning as there is a risk that results of the consultation may not be taken into account in the final NECP.
- Certain countries presented consultations of other documents as a consultation of their NECP. For example, in Portuguese draft NECP various consultations on the country's 2050 climate and energy vision, carried out since 2017, were presented as consultations on NECPs.<sup>41</sup> While a wide consultation of the Portuguese vision for 2050 is a very valuable good practice example of a consultation on the county's long term strategy, it should not be considered as a NECP consultation. (However, the public consultation requirement seems to be addressed in relation to the final Portuguese NECP).<sup>42</sup>

- Certain countries (e.g. Spain, Sweden) did not make timelines for the consultations publicly available, so citizens and stakeholders did not receive early and effective information on how they could contribute to the consultation process.<sup>43</sup>
- In certain countries, e.g. Italy, only very limited groups of stakeholders were involved in consultations on the draft NECP (However, there are indications that this shortcoming may be addressed in relation to the final Italian NECP).<sup>44</sup>
- In Italian, German and Swedish draft NECPs there was no indication of a multilevel dialogue or any form of a broader open dialogue with multiple stakeholders in relation to NECPs.

In November 2019, the risk of ineffectiveness of the public consultation process on final NECPs was highlighted in a report CAN-E (2019) “The Clock is ticking!”<sup>45</sup>: “In general, the process of finalizing the plans has not been sufficiently inclusive. Either governments have not sufficiently involved stakeholders in the process after the Commission presented its recommendations, or there have been delays in presenting new drafts for consultation, many of which come late in the process. All interested individuals and organisations should be offered the time and the opportunity to participate in this process.”

In February 2020, J&E(2020)<sup>46</sup> confirmed the above findings in relation to 9 Member States<sup>47</sup>. Most importantly, the study concluded for the participating Member States that:

- “In all countries there was no organized public consultation process at early phase.
- Within the limited and rather late consultation process the countries reported the consultation was open for the stakeholders, however it was not very proactive but rather formal.
- In several cases the shared draft was incomplete missing entire chapters.
- Mostly, big, national environmental NGOs submitted proposals (e.g. national umbrella organizations, or offices of WWF or FoE), but the results of the public consultations (esp. with NGOs) are poorly or even not at all reflected in the draft NECPs.”<sup>48</sup>

The actual shortcomings in the public consultation on final NECPs can only be fully assessed once all Member States have submitted their final NECPs. At this moment (mid-March 2020) some of the Member States have not yet submitted their NECP.

## 5. Recommendations on future public participation procedures

NECPs consultations are the most recent example of a public consultation related to the implementation of the Clean Energy Package. However, public participation procedures will have to be respected also in relation to, e.g.

- transposition of the RED II and the Electricity Directive,
- preparation of draft and final NECP updates,

- adoption of other decisions that may potentially have an impact on prosumers and energy communities, e.g. eventual national resource adequacy implementation plans.

## 5.1 Aarhus Convention and Maastricht Recommendations

To ensure that future public participation procedures are transparent and inclusive, public authorities should follow detailed guidance provided by the Aarhus Convention and the Maastricht Recommendations.<sup>49</sup>

The list provided below presents selected elements from the list of recommendations included in the Aarhus Convention and the Maastricht Recommendations.

- Public participation procedures should be clearly designed in such a way that public authorities and public obtain precise knowledge on relevant elements, e.g. what decisions are to be taken, at which stage, what effects decisions would have, who is responsible for taking them, what is the range of options to be discussed and decided (N.B. the procedure should be open enough to consider and add new options identified as a result of public participation), what are the possibilities for the public to participate in decision-taking, what are timeframes for each stage of the procedure (to the extent they can reasonably be predicted in advance) etc.
- Public participation procedure on NECPs updates should be carried out in respect of certain necessary minimum requirements and conditions, incl.:

Decisions and consultation notifications should provide clear indication of the purpose of the procedure and set sufficient timeframes for all stages of the public participation procedure (including for taking due account of the outcomes of the public participation).

Due considerations should be given by authorities to the needs and abilities of the public concerned so that the public can participate effectively in the procedure.

Consultation should happen at an appropriate stage when all options are open.

If, in the course of decision-making process the public authorities become aware of significant new information or that the circumstances have changed in some significant way, the public should be given a further opportunity to participate before the action is taken.

The results of the participation should be taken into account as far as possible.

Measures should be taken to facilitate the public's access to information relevant to the decision-making.

Schemes may be established to support, financially or otherwise, the public to participate (e.g. to provide technical or legal support to assist the public to engage effectively in the participation procedure).

Etc.

## 5.2 Recommendations on steps and timeline

Adoption of national laws transposing the Electricity Directive and the RED II are good examples for presenting good practice recommendations on steps and timeframes of the public consultation process. It is recommended to Member States to apply the following timeframes when consulting public on the adoption of national laws transposing the Electricity Directive and the RED II:

- A two-stage consultation procedure is recommended as a good practice (first stage to gather stakeholders' input on a law idea; second stage to receive comments on a draft law);
- Upcoming consultation on a planned law should be announced at least 3 months before a consultation is launched

The notification should indicate approximative starting date of a consultation (in case of a two-stage consultation procedure, starting dates for both stages should be indicated). At the time of notification of the upcoming public consultation, all relevant background documentation should be made available, i.e. the Directive to be transposed and any relevant studies that the Ministry is taking into account, including a non-technical summary of what is to be proposed.

- Public consultation process should start at least 3 months before a proposal of national law is published

Notification should be disseminated widely through different channels available to the Ministry (website, social media, known stakeholders) and should be open to everyone.

- Public should be given at least 1 month for providing comments.
- The public authority should have at least 1 month to assess comments provided by the public.
- The public authority should publish in the final proposal information on how it has taken the comments of the public into account.
- In case of a two-stage procedure, the same timeframes should apply to the second stage.

## 6. Summary of recommendations on participatory governance for the roll-out of the Energy Union

The governance for the roll-out of the Energy Union should be based on wide involvement of stakeholders and therefore, be participatory. As prosumers and energy communities are important actors of the energy transition process, they should play an active role in the creation of the Energy Union.

- The rights provided by the Aarhus Convention and further explained in the Maastricht Recommendations (rights of access to information, public participation and access to justice) must be effectively transposed in relation to prosumers and energy communities.
- Legislative acts providing for public consultation right should describe all elements and steps of the consultation procedure as provided by the Aarhus Convention and the

Maastricht Recommendations, e.g., consultations should happen at an appropriate stage when options are still open; sufficient timeframes must be provided; results of consultations shall be taken into account).

- Rights of access to information, public participation and access to justice must be effectively and fully implemented, used and respected by authorities at all administration levels in relation to prosumers and energy communities.
- Policy makers should make sure that access to documents, public consultation and access to justice are guaranteed in all policy areas (also policies that do not regulate prosumers and energy communities directly) and for all decisions relevant for prosumers and energy communities <sup>50</sup>
- Rights of access to information, public participation and access to justice should be advertised and explained through information and awareness-raising activities so that prosumers and energy communities are aware of them and use them actively.
- Educational and awareness raising activities targeting prosumers and energy communities should be considered and integrated into the transposition and implementation of relevant provisions of the Clean Energy Package legislation (e.g. Art. 18.6 of the RED II (information, awareness-raising, guidance, training programmes), Art. 25 of the Electricity Directive (single points of contact) and Art. 16 of the RED II (contact points)).
- National policy makers and public authorities should assess a possibility of integrating these rights into implementation of Art. 22.4(h) of the RED II, which provides that Member States shall ensure that “regulatory and capacity-building support is provided to public authorities in enabling and setting up renewable energy communities, and in helping authorities to participate directly”.
- Member States shall recognise prosumers and energy communities as a distinguished group and actively look for the input from this group in all consultation processes.
- Information on any consultations should be advertised in such a way that it reaches wide range of stakeholders (and ideally, the whole society).
- Consultations should be organised in a way allowing participation of wide range of society.
- Assistance should be offered by authorities to prosumers and energy communities to allow them exchanging their experiences and organizing into interest groups.

Legislators, policy makers, administrations and other relevant institutions and bodies shall take into account and apply the above recommendations in relation to all cases when prosumers and energy communities could be engaged into Energy Union policy developments, incl. transposition of the RED II and the Electricity Directive, preparation of the NECPs updates, adoption of any decisions that may potentially have an impact on prosumers and energy communities, e.g. eventual national resource adequacy implementation plans.

This is necessary for prosumers and energy communities to take an active role in the Energy Union policy developments.

## 7. Annexes

### 7.1 Annex I: Good governance principles – sources examples

#### 7.1.1 The White Paper on European Governance<sup>51</sup>

The 2001 White Paper on European Governance sets five principles, which underpin good governance: openness, participation, accountability, effectiveness and coherence.

- Openness

*“The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex institutions.”*

- Participation

*“The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies.”*

- Accountability

*“Roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level.”*

- Effectiveness

*“Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level.”*

- Coherence

*“Policies and action must be coherent and easily understood. The need for coherence in the Union is increasing: the range of tasks has grown; enlargement will increase diversity; challenges such as climate and demographic change cross the boundaries of the sectoral policies on which the Union has been built; regional and local authorities are increasingly involved in EU policies. Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system.”*

- Proportionality and sustainability

*“From the conception of policy to its implementation, the choice of the level at which action is taken (from EU to local) and the selection of the instruments used must be in proportion to the objectives pursued. This means that before launching an initiative, it is essential to check systematically (a) if public action is really necessary, (b) if the European level is the most appropriate one, and (c) if the measures chosen are proportionate to those objectives.”*

### 7.1.2 Good governance principles developed by ClientEarth <sup>52</sup>

**Governance principles universally accepted as fundamental to good governance in all contexts:**

- Transparency

*“Compliance with the principle of transparency requires as a minimum that the technical and expert evidence used by policy makers to frame the scope of the policy challenge, and the range of potential solutions, is made public. It also requires that evidence gathered by policy makers concerning progress (or the lack thereof) towards delivery of policy solutions or objectives is disseminated, including the data concerning the possible options for course correction.”*

*“Given the seismic economic and social risks posed by climate change, energy insecurity and escalating energy prices, the profound social change required to deliver the low carbon transition and the scale of the public and private investment needed to achieve this objective, transparency is fundamental to guaranteeing the legitimacy and credibility of decision making concerning the available policy options.”*

*“In short, the economic and social implications of the climate and energy challenge are so great, decision making cannot legitimately occur behind closed doors.”*

- Effectiveness

*“To be effective, climate and energy governance must be embedded in the rule of law. Legally binding processes are essential in the climate context given that the timely and predictable delivery of emission abatement is absolutely critical to effective action on climate change.”*

- Accountability

*“At its core, accountability is associated with the process of being called by some authority to account for ones’ actions - primarily in this case the EU and Member States. The role of accountability in governance is to guarantee that effective measures will be taken and also that they will be taken in the manner that is agreed or expected. However, effective accountability cannot exist without appropriate accounting processes. Broadly speaking, the components of the process of being called to account can be described by a number of features.*

*Namely, the process should involve:*

1. *Reporting to an entity that is external to the entity which is held to account;*
2. *Interaction and the exchange of information between the reporting entity and the addressed entity;*

3. *Rights of authority embedded in those to whom the report is given, including the right to further clarify the report, for example by means of requesting further information or imposing sanctions. And enforcement (+ not to game the system + for 3rd parties to enforce)*

*In considering the quality of accountability for EU climate and energy governance, it is important to emphasise that the process should be evaluated at both EU and MS level. Both tiers of governance play a key role in delivering climate and energy outcomes.”*

- Legitimacy

*“There are two broad strands to the concept of legitimacy in governance. First, when decisions are made with the participation of those affected, they are not only better decisions but are fundamentally more legitimate and thereby more likely to attract the support of those living with the consequences. Secondly, there is a consensus that decisions based on independent expert advice are viewed as more credible and thereby more legitimate decisions.”*

*“An independent science body would have the potential to frame the ensuing political debate in terms of what is in the EU’s best interests, and could serve to strike a balance between this interest and mobilised sectoral interests. Such a body would also allow independent monitoring and public reporting to act as the main compliance levers.”*

#### **A governance principle specific to governance in the EU context**

- Flexibility

*“Flexibility has emerged as a key principle of climate and energy governance in the EU context, despite the core focus on achieving European harmonisation. In part flexibility has emerged as a result of enlargement and thus the difficulties of forging single solutions for highly divergent national conditions. However, it has also emerged as a strong reaction to growing national resistance to the concentration of greater powers within the EU. The fundamental importance of flexibility to EU governance in all sectors is clearly reflected in the principles of subsidiarity and proportionality which provide the constitutional parameters through which MS and the EU institutions now negotiate the balance between EU led centralisation and the scope for national flexibility.”*

#### **Governance principles necessary to achieve the aims of climate and energy policy:**

- Certainty

*“Embedding the principle of certainty into an effective pathway for decarbonisation requires that the arrangements for decision making are defined by 4 central characteristics. Namely they reflect a credible commitment to effective action; take a long term perspective; facilitate forward planning; and create a framework for ensuring effective action in the face of uncertainty.”*

- Policy integration

*“Effective policy integration and consistency are critical to achieving the EU’s climate and energy objectives and targets. Achieving the European low carbon transition will require policy development across a wide range of sectors (as a minimum spanning energy, competition, finance, agriculture and transport) to effectively embed a coherent focus on climate impacts.”*



*“Despite the strong legal instruction to ensure policy integration and consistency, the experience of implementing the existing EU climate and energy acquis makes clear that the Union has thus far failed to create institutional and policy processes that effectively deliver these governance outcomes.”*

*“A lack of policy integration and policy inconsistency, compounded by a fragmented Commission are regrettably hallmarks of the EU's 2020 climate and energy package which are clearly having detrimental impacts on achieving the desired low carbon objectives.”*

## **7.2 Annex II – Provisions of the Governance Regulation on public participation**

### **“Article 10 - Public consultation**

*Without prejudice to any other Union law requirements, each Member State shall ensure that the public is given early and effective opportunities to participate in the preparation of the draft integrated national energy and climate plan — as regards the plans for the 2021 to 2030 period, in the preparation of the final plan well before its adoption — as well as of the long-term strategies referred to in Article 15.*

*Each Member State shall attach to the submission of such documents to the Commission a summary of the public's views or provisional views. In so far as Directive 2001/42/EC is applicable, consultations undertaken on the draft in accordance with that Directive shall be deemed to satisfy the obligations to consult the public under this Regulation. Each Member State shall ensure that the public is informed.*

*Each Member State shall set reasonable timeframes allowing sufficient time for the public to be informed, to participate and express its views. Each Member State shall limit administrative complexity when implementing this Article. “*

### **“Article 11 - Multilevel climate and energy dialogue**

*Each Member State shall establish a multilevel climate and energy dialogue pursuant to national rules, 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, unless it already has a structure which serves the same purpose. Integrated national energy and climate plans may be discussed within the framework of such a dialogue.”*

### **“Recital (28)**

*The implementation of policies and measures in the areas of energy and climate has an impact on the environment. Member States should therefore ensure that the public is given early and effective opportunities to participate in and to be consulted on the preparation of the integrated national energy and climate plans in accordance, where applicable, with the provisions of Directive 2001/42/EC of the European Parliament and of the Council (1) and the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the ‘Aarhus convention’). Member States should*

*also ensure involvement of social partners in the preparation of the integrated national energy and climate plans, and aim to limit administrative complexity when fulfilling their obligations with regard to public consultation.”*

**“Recital (29)**

*When carrying out public consultations, and in line with the Aarhus Convention, Member States should aim to ensure equal participation, that the public is informed by public notices or other appropriate means such as electronic media, that the public is able to access all relevant documents, and that practical arrangements related to the public's participation are put in place.“*

**“Recital (30)**

*Each Member State should establish a permanent multi-level energy dialogue, bringing together local authorities, civil society organisations, the business community, investors and other relevant stakeholders to discuss the different options envisaged for energy and climate policies. It should be possible for the Member State's integrated national energy and climate plan as well as its long-term strategy to be discussed within the framework of that dialogue. The dialogue may take place by means of any national structure, such as a website, public consultation platform or another interactive communication tool.”*

## 8. References

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<sup>1</sup> The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the 'Aarhus Convention').

<sup>2</sup> "UNECE Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention", United Nations Economic Commission for Europe (UNECE), December 2015 ([https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364\\_E\\_web.pdf](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf))

<sup>3</sup> Directive 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328, 21.12.2018, p.82-209.

<sup>4</sup> Directive 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast), OJ L 158, 14.06.2019, p. 125-199.

<sup>5</sup> E.g. Roberts, J. (2016). Prosumer Rights: Options for an EU legal framework post-2020. ClientEarth commissioned by Greenpeace (<https://www.documents.clientearth.org/wp-content/uploads/library/2016-06-03-prosumer-rights-options-for-an-eu-legal-framework-post-2020-coll-en.pdf>)

<sup>6</sup> O'Leary A., Church J. & Roberts J. (2014). EU Climate & Energy Governance Health Check – Looking back to 2020 and forward towards 2030; ClientEarth.

<sup>7</sup> UN Commission on Human Rights, *Commission on Human Rights resolution 2000/64 The role of good governance in the promotion of human rights*, 27 April 2000, E/CN.4/RES/2000/64; OHCHR, 2007, 'Good Governance Practices for the Protection of Human Rights', Office of the High Commissioner for Human Rights, New York and Geneva; United Nations Millennium Declaration, General Assembly resolution 55/2 of 8 September 2000.

<sup>8</sup> <https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

<sup>9</sup> COM (2001)428final, Brussels 25.7.2001

<sup>10</sup> **Principle of subsidiarity:** "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol." (Art.5.3 the Treaty on European Union). **Principle of proportionality:** "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality." (Art.5.4 the Treaty on European Union)

<sup>11</sup> This principle includes also 'participation'

<sup>12</sup> Flexibility incorporates principles of 'proportionality and subsidiarity.

<sup>13</sup> 'Certainty' was not included in the Commission White Paper as this principle is specific to climate and energy governance context.

<sup>14</sup> The good governance principles of the "White Paper on European Governance" and these developed by ClientEarth are presented in more detail in the annex to this policy brief.

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<sup>15</sup> Petrick, K., Fosse, J., Klarwein, S. (2019). Strategies for Policy Coherence and Sustainability – Relevance of EU policies and frameworks for prosumers. PROSEU - Prosumers for the Energy Union: Mainstreaming active participation of citizens in the energy transition (D3.2).

[https://proseu.eu/sites/default/files/Resources/PROSEU\\_D3.2\\_Part1\\_Policy%20Frameworks\\_Final.pdf](https://proseu.eu/sites/default/files/Resources/PROSEU_D3.2_Part1_Policy%20Frameworks_Final.pdf)

<sup>16</sup> The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the ‘Aarhus Convention’).

<sup>17</sup> “UNECE Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention”, United Nations Economic Commission for Europe (UNECE), December 2015 ([https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364\\_E\\_web.pdf](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf))

<sup>18</sup> See also: Berthier A. & professor Krämer L. (2014). The Aarhus Convention: Implementation and compliance in EU law, the European Aarhus Centre, ClientEarth (<https://www.documents.clientearth.org/wp-content/uploads/library/2014-10-28-the-aarhus-convention-implementation-and-compliance-in-eu-law-ce-en.pdf>)

<sup>19</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26–32.

<sup>20</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, p. 13–19.

<sup>21</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26–32.

<sup>22</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, OJ L 156, 25.6.2003, p. 17–25.

<sup>23</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (Text with EEA relevance), OJ L 26, 28.1.2012, p. 1–21.

<sup>24</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p. 30–37.

<sup>25</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast), OJ L 334, 17.12.2010, p. 17-119.

<sup>26</sup> Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Text with EEA relevance), OJ L 197, 24.7.2012, p. 1–37.

<sup>27</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73.

<sup>28</sup> However, the Court of Justice of the EU has upheld the right in several cases (e.g. *Slovak Bears I*, *Slovak Bears II*, *Protect, Burgenland*)

<sup>29</sup> As already mentioned above in this document, a list of such areas has been proposed in Petrick, K., Fosse, J., Klarwein, S. (2019). Strategies for Policy Coherence and Sustainability – Relevance of EU policies and frameworks for prosumers. PROSEU - Prosumers for the Energy Union: Mainstreaming active participation of citizens in the energy transition (D3.2).

<sup>30</sup> Donnerer D. (contributors: Gonçalves F., Martellucci E., Ruggiero A.) (2019). LIFE PlanUp (2019) Report on Good Practices in Energy and Climate Governance (<https://cdn.webdoos.io/planup/29d6f130bdc7e36b0f04ea58fc8267a1.pdf>)

<sup>31</sup> The full list of criteria and indicators (criteria underlined; indicators in brackets) applied in the study: Political commitment (Level of ownership within public authority, Level of support across political boundaries, Ability to survive political change); Institutional collaboration (Multi-level governance, Cooperation within public authority); Governance structure (Existence of governance structure, Status of governance structure, Legal bindingness); Stakeholder engagement & involvement (Method, Frequency, Depth, Input reflected in the process); Action (Resources available, Clear definition of the actions, Clear division of responsibilities); Transparency (Documentation available, Information on process available); Adaptability (Strategic revision, Capacity to adjust to changes & challenges); Replicability (Feasibility, Governance level); Effectiveness (Ambition Level of policy detail, Monitoring & evaluation).

<sup>32</sup> Other good practice examples / case studies described in Donnerer D. (contributors: Gonçalves F., Martellucci E., Ruggiero A.) (2019). LIFE PlanUp (2019) Report on Good Practices in Energy and Climate Governance : National Debate for 2015 Law on the Energy Transition for Green Growth (France), Stakeholder roundtables for national climate agreement (Netherlands), Parliamentary Committee with stakeholders for Long-Term Climate Policy Framework 2017 (Sweden), Climate Pact between State and municipalities (Luxembourg), National Dialogue for 2050 Climate Action Plan (Germany), Stakeholder working groups for 2050 Principles of Climate Policy (Estonia), Stakeholder inclusion in Global Warming Solutions Act (California), Pan-Canadian Framework on Clean Growth and Climate Change (Canada).

<sup>33</sup> See also: Berthier, A., Friel, A., Bechtel, S. (2019). Access to Justice in European Union Law - A Legal guide on Access to Justice in environmental matters, ClientEarth. (<https://www.documents.clientearth.org/wp-content/uploads/library/2019-02-26-access-to-justice-in-european-union-law-a-legal-guide-on-access-to-justice-in-environmental-matters-ce-en.pdf>); Berthier, A. (2019). Case law on Access to justice rights, ClientEarth. (<https://www.documents.clientearth.org/wp-content/uploads/library/2019-02-18-case-law-on-access-to-justice-rights-ce-en.pdf>); Berthier, A. (2018). Answer to the public consultation on Access to justice, ClientEarth. (<https://www.documents.clientearth.org/wp-content/uploads/library/2019-02-13-clientearth-answer-to-the-public-consultation-on-access-to-justice-ce-en.pdf>); Commission Staff Working Document - Report on European Union implementation of the Aarhus Convention in the area of access to justice in environmental matters; Brussels, 10.10.2019; SWD(2019) 378 final ([https://ec.europa.eu/environment/aarhus/pdf/Commission\\_report\\_2019.pdf](https://ec.europa.eu/environment/aarhus/pdf/Commission_report_2019.pdf)); "Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters - Final report - September 2019"; 07.0203/2018/786407/SER/ENV.E.4; Milieu Consulting Sprl ([https://ec.europa.eu/environment/aarhus/pdf/Final\\_study\\_EU\\_implementation\\_environmental\\_matters\\_2019.pdf](https://ec.europa.eu/environment/aarhus/pdf/Final_study_EU_implementation_environmental_matters_2019.pdf));

<sup>34</sup> Berthier, A., Friel, A., Bechtel, S. (2019). Access to Justice in European Union Law - A Legal guide on Access to Justice in environmental matters, ClientEarth. (<https://www.documents.clientearth.org/wp-content/uploads/library/2019-02-26-access-to-justice-in-european-union-law-a-legal-guide-on-access-to-justice-in-environmental-matters-ce-en.pdf>)

<sup>35</sup> Petrick, K., Fosse, J., Klarwein, S. (2019). Principles for Prosumer Policy Options. PROSEU - Prosumers for the Energy Union: Mainstreaming active participation of citizens in the energy transition (D3.3). [https://proseu.eu/sites/default/files/Resources/PROSEU\\_Task%203.3\\_Principles%20for%20Prosumer%20Policy%20Options\\_2019-09-30.pdf](https://proseu.eu/sites/default/files/Resources/PROSEU_Task%203.3_Principles%20for%20Prosumer%20Policy%20Options_2019-09-30.pdf)

<sup>36</sup> Recital 25 of the EU Governance Regulation.

<sup>37</sup> 'In so far as Directive 2001/42/EC is applicable, consultations undertaken on the draft in accordance with that Directive shall be deemed to satisfy the obligations to consult the public under this Regulation.'

<sup>38</sup> Advice by the Aarhus Convention Compliance Committee to the European Union concerning the implementation of request ACCC/M/2017/3 ([https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests\\_from\\_the\\_MOP/ACCC-M-2017-3\\_European\\_Union/Advice\\_to\\_Party\\_concerned/M3\\_EU\\_advice\\_to\\_the\\_Party\\_concerned\\_28.05.2019\\_final.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests_from_the_MOP/ACCC-M-2017-3_European_Union/Advice_to_Party_concerned/M3_EU_advice_to_the_Party_concerned_28.05.2019_final.pdf))

<sup>39</sup> Source : An official website of the European Union ([https://ec.europa.eu/energy/topics/energy-strategy/national-energy-climate-plans\\_en?redir=1](https://ec.europa.eu/energy/topics/energy-strategy/national-energy-climate-plans_en?redir=1))

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<sup>40</sup> Art. 21.6 last subparagraph of the RED II & Annex I of the Governance Regulation (3.1.2.v)

<sup>41</sup> See also : “Memo: Not (yet) a missed opportunity. Influencing the 2021-2030 NECPs through early Public Participation”, ClientEarth, 7 December 2018 (<https://www.documents.clientearth.org/library/download-info/influencing-2021-2030-necps-through-public-participation/>); the PlanUp project: <https://www.planup.eu/en/resources>; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - United in delivering the Energy Union and Climate Action -Setting the foundations for a successful clean energy transition, Brussels, 18.6.2019 COM(2019) 285 final (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0285&from=EN>); PROSEU Preliminary check of NECPs on prosumerism for 9 EU Member States (spread sheet) ([https://proseu.eu/sites/default/files/Resources/PROSEU\\_NECps\\_check%20on%20prosumerism%20for%209%20countries%20\\_2019-06-11.pdf](https://proseu.eu/sites/default/files/Resources/PROSEU_NECps_check%20on%20prosumerism%20for%209%20countries%20_2019-06-11.pdf))

<sup>42</sup> Ruggiero A., Martellucci E., Mestre C., Joebstl R., Dupeux B. & Donnerer D. (2019). LIFE PlanUp (2019) Fit to lead? An assessment of selected draft EU energy and climate plans. Analysis by Carbon Market Watch, with input from Transport and Environment, European Environmental Bureau, Energy Cities, with input from Réseau Action Climat (RAC) France, Swedish Society for Nature Conservation (SSNC) and Associação Sistema Terrestre Sustentável (ZERO)

<sup>43</sup> Ruggiero, A., Martellucci, E., Mestre, C., Joebstl, R., Dupeux, B. & Donnerer, D. (2019). LIFE PlanUp (2019) Fit to lead? An assessment of selected draft EU energy and climate plans. Analysis by Carbon Market Watch, with input from Transport and Environment, European Environmental Bureau, Energy Cities, with input from Réseau Action Climat (RAC) France, Swedish Society for Nature Conservation (SSNC) and Associação Sistema Terrestre Sustentável (ZERO)

<sup>44</sup> Ruggiero, A., Eroo, K., Mestre, C., Joebstl, R., Piskol, S., Dupeux, B. and Donnerer, D. (2019 A). LIFE PlanUp (2019) Fit to succeed? An assessment of the Italian draft energy and climate plan. Analysis by Carbon Market Watch and Legambiente, with input from Transport and Environment, European Environmental Bureau and Energy Cities.

<sup>45</sup> CAN-E (2019) “THE CLOCK IS TICKING! Insights into progress made by Member States so far in improving their draft National Energy and Climate Plans (NECPs), KEY ELEMENTS & RECOMMENDATIONS”, November 2019, Climate Action Network (CAN) Europe, Brussels, Belgium: <http://www.caneurope.org/docman/energy-union-governance/3570-necps-progress-report-nov19/file>

<sup>46</sup> J&E (2020), “Transparent and Participative NECPs!”, dated December 2019, Justice and Environment, Brno, Czech Republic ([http://www.justiceandenvironment.org/fileadmin/user\\_upload/Publications/2019/BR\\_4\\_5\\_1\\_J\\_E\\_recommdations\\_NECp\\_process\\_December\\_2019\\_web.pdf](http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2019/BR_4_5_1_J_E_recommdations_NECp_process_December_2019_web.pdf))

<sup>47</sup> The participating EU Member States were Austria, Bulgaria, Croatia, Estonia, Hungary, Romania, Slovakia, Slovenia and Spain.

<sup>48</sup> J&E (2020), “Transparent and Participative NECPs!”, dated December 2019, Justice and Environment, Brno, Czech Republic ([http://www.justiceandenvironment.org/fileadmin/user\\_upload/Publications/2019/BR\\_4\\_5\\_1\\_J\\_E\\_recommdations\\_NECp\\_process\\_December\\_2019\\_web.pdf](http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2019/BR_4_5_1_J_E_recommdations_NECp_process_December_2019_web.pdf))

<sup>49</sup> “UNECE Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention”, United Nations Economic Commission for Europe (UNECE), December 2015 ([https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364\\_E\\_web.pdf](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf))

<sup>50</sup> As already mentioned above in this document, a list of such areas has been proposed in Petrick, K., Fosse, J., Klarwein, S. (2019). Strategies for Policy Coherence and Sustainability – Relevance of EU policies and frameworks for prosumers. PROSEU - Prosumers for the Energy Union: Mainstreaming active participation of citizens in the energy transition (D3.2).

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<sup>51</sup> ‘European Governance – White Paper’, COM(2001) 428, OJ 2001, C287, p. 1 ([https://ec.europa.eu/europeaid/sites/devco/files/communication-white-paper-governance-com2001428-20010725\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/communication-white-paper-governance-com2001428-20010725_en.pdf))

<sup>52</sup> O’Leary, A., Church, J., Roberts, J. (2014). EU Climate & Energy Governance Health Check – Looking back to 2020 and forward towards 2030, ClientEarth.