

# Enforcement of national energy plans and targets

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A photograph of a street signpost with two signs. The top sign is tilted and reads 'STRATEGY ST'. The bottom sign is horizontal and reads 'IMPLEMENTATION AVE'. The signs are dark green with white text and a white border. The signpost is a silver metal pole with a decorative cap.

**STRATEGY** ST

**IMPLEMENTATION** AVE

# Content

1. Legal nature and types of targets and national plans
2. Definition of enforcement
3. Types of enforcement mechanisms

# Legal nature of national plans and targets

Commitments

Targets

National Contributions

Ceilings

	RED 2009	RED 2018 + Governance Regulation	EED 2012	EED 2018 + Governance Regulation	Effort Sharing Regulation + Governance Regulation	LCPD, IED
	RE 2020 – NREAP	RE 2030 – NECP	EE 2020 – NEEAP	EE 2030 – NECP	GHG – NECP	SO <sub>2</sub> , NO <sub>x</sub> , dust – NERP
Binding	+	+			+	+
Indicative			+			
EU-wide		+		+		
National	+		+		+	+

# Definition of Enforcement

**Non-coercive and coercive mechanisms**  
at the disposal of  
**public authorities and private persons,**  
at the **EU/EnC and national level,**  
for ensuring compliance with the law

Soft and **Hard Enforcement**

**Public** and Private

**EU/EnC and national level**



# Types of hard enforcement

## At the EnC/EU level - Ministerial Council/European Court of Justice

1. Public authorities (EnC Secretariat/EU Commission) vs. CPs/MSs – **infringement procedures**
2. Private persons vs. EU institutions

## At the national level - national courts

1. Public authorities (inspectors and public prosecutors) vs. legal and natural persons – **misdemeanors/economic or criminal offenses**
2. Private persons vs. MSs/CPs – **litigations**

# Infringement procedures

- ✓ Non-adoption of a plan ([ECS 1/20](#))
- ✓ Non-compliance with emission limit values/ceilings([ECS 10/21](#); [C-644/18](#))
- ✓ Non-achievement of targets, only if targets are binding at the national level (RE 2020)

Can infringement procedure be initiated if a measure set in the plan is not implemented?

## The principle of sincere cooperation?

Article 4(3) TEU / Article 6 EnCT

The MSs/CPs shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

## Misdemeanours /economic or criminal offences

- ✓ Important for the environment and climate field

*"MSs **shall determine** the penalties for breaches of the national provisions adopted pursuant to this Directive. The penalties shall be **effective, proportionate and dissuasive**" LCP Directive*

- ✓ Penalties for non-implementation need to **exist** in the primary or secondary national legislation (temporary or permanent ban of business operation, withdrawal of the licence, monetary penalties, imprisonment..)



# Private persons at the EnC/EU level

At the EnC level – only complaint to the EnC Secretariat

At the EU level

Locus standi!

❖ European Court of Justice – Article 263 TFEU - "direct and individual concern " criterion

[People's Climate Case](#)

❖ European Court of Human Rights

[https://www.echr.coe.int/Documents/FS\\_Environment\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf)

# Litigations

Landmark case –  
The Urgenda Climate Case vs. the Dutch Government



<http://climatecasechart.com/climate-change-litigation/>

## Concluding notes

- ✓ Infringement procedures only if provisions of the EU primary or secondary legislation are breached
- ✓ Adoption of national energy plans need to be complemented with national legislation that elaborates in detail all measures envisaged in the plan
- ✓ National legislation need to envisage penalties for non-implementation of measures and non-fulfilment of obligations

To achieve results, strong enforcement mechanisms are needed

# Thank you for your attention

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