Enforcement of national energy plans and targets

Biljana Grbić LL.M.
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### Legal nature of national plans and targets

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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.
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 (inspectorates and public prosecutors) vs. legal and natural persons – misdemeanors/economic or criminal offenses

2. Private persons vs. MSs/CPs – litigations
**Infringement procedures**

- Non-adoptions 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)

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**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.
Misdeamons /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
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

Get in touch:

biljana.grbic@energy-community.org