

Public Participation and Ireland's Social Climate Plan

EU Member States are required to prepare, consult upon, and submit a national Social Climate Plan (SCP) to the European Commission before June 30th, 2025. This briefing explains the public participation requirements for the production of Ireland's SCP in detail. The background to the SCP more generally is explained [here](#).

What is the Social Climate Plan?

The [Social Climate Fund Regulation](#) (SCF Regulation) makes access to the circa €86bn Social Climate Fund (SCF) fund conditional on the preparation of a Social Climate Plan (SCP) which is a plan setting out measures and investment to combat climate change in a socially fair and just way in specific areas such as buildings and transport, in a manner that complies with a range of metrics.

The Social Climate Plan (SCP) was created to compensate for the social impact of the increased cost of fuel that will result from the implementation of the [ETS₂](#), a new emissions trading scheme that will include buildings and transport which were excluded from the original ETS. These changes arose out of the EU Green Deal.

Member States can seek support towards structural and temporary measures and investments which contribute to a socially fair transition towards climate neutrality by addressing the social impact of the inclusion of greenhouse gas emissions from buildings and road transport. The measures and investments are intended to benefit micro-enterprises and transport users, which are vulnerable and particularly affected by the inclusion of greenhouse gas emissions from buildings and roads, as well as those at-risk of energy poverty and transport poverty as a result of the ETS₂. These measures fall into the following categories: building renovation and energy efficiency, clean mobility and transport, direct income support, awareness campaigns and training, and local and regional investments.

These measures and investments are to be set out in the Member State's Social Climate Plan (SCP) which must be submitted on the 30th June 2025. This plan will be assessed by the EU Commission to ensure it sufficiently addresses the objectives of the SCF, including meeting the needs of vulnerable households and those in transport/energy poverty, and promoting the green transition in a socially just manner. The assessment will also include whether consultation requirements were fulfilled. The plans must comply with the "Do No Significant Harm Principle" (DNSH). A positive assessment opens up access to the funding under the SCF and a negative assessment leads to revision, resubmission and further assessment.

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What public participation requirements must be fulfilled in the production of the plan?

The Social Climate Plan (SCP) is a plan with potentially significant effects on the environment. The SCF Regulation itself mandates stakeholder consultation in the development of the plan be carried out by the responsible authority, [the Department of Environment, Climate and Communications](#) in the case of Ireland. Also, the plan is subject to a range of legal measures that require broad and deep public engagement in the making of the plan, as well as obligations to consult the transboundary public. These arise under Articles 6 and 7 of the [Aarhus Convention](#), [Espoo Convention](#) and its [SEA Protocol](#), under the SCF Regulation, Article 5, and the EU Governance Regulation Article 10 which is incorporated by express reference in Article 5 SCF. It is also required under another EU law – the [Strategic Environmental Assessment \(SEA\) Directive - a cross applicable measure which applies to all plans and programs with significant effects on the environment, and which is also incorporated into Article 10 of the Governance Regulation by express reference.](#)

Domestic implementation of the Aarhus Convention and SEA Directive public consultation requirements in respect of plans and programs can be found in the Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. No. 436 of 2004 as amended by S.I. No. 201 of 2011) for land-use plans and by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 ([S.I. No. 435 of 2004](#) as amended by [S.I. No. 200 of 2011](#)) for all other sectoral plans. For the purposes of the Social Climate Plan at issue here, the applicable domestic legislation is SI No. 435 of 2004 as [amended](#), covering sectoral plans.

These provisions largely reproduce the provisions of the SEA Directive. This means that in the preparation of the draft plan the Government must carry out an assessment of the environmental impacts of the plan as well as the reasonable alternatives to the plan. They must draft an SEA Report and engage in a broad public engagement on that report, before finalising the plan, and then consulting on the final plan.

When must the plan be submitted?

The deadline for filing the plan (and therefore completing the SEA and consultation process, collating the inputs and preparing the final plan and consulting on the final plan) is the **30th June 2025**. The Irish Government is running out of time for delivering a plan that is completed in accordance with its domestic, EU and International law obligations, and which has been fully scoped for impacts and has been produced with the input and consensus of society more broadly. Failing to consult early and effectively will have considerably negative consequences. This includes the risk of affecting public trust, reducing the effectiveness of policy measures to mitigate the costs and impacts of climate action on communities, and potentially delaying access to crucial EU funding.

Failure to ensure that Member States fulfil these public participation requirements may also lead to the EU being in breach of its public participation obligations under the Aarhus Convention and Espoo Conventions, for which it has already been censured by a UN Compliance Mechanism, the [Aarhus Convention Compliance Committee](#).

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Which legal provisions underpin the public participation requirements for production of the SCP?

Article 5 of the [SCF Regulation](#) requires “consultation with stakeholders” which is stated to include with local and regional authorities, representatives of economic and social partners, relevant civil society organisations, youth organisations and other stakeholders.

This is followed in Article 5 by an obligation to conduct the consultation in accordance with the requirements of Article 10 of the [Governance Regulation](#) (Directive 2018/1999EU), which mandates that the public is given early and effective opportunities to participate in the preparation of the draft on climate plans, and that the plan includes a summary of the views and how they were taken into account.

Article 10 of the Governance Regulation requires compliance with the provisions of the [SEA Directive](#) (Directive 2001/42/EC), a cross-sectoral directive requiring public consultation on plans with significant environmental impacts. This sets out a detailed and stringent approach to consultation that implements much of the international law obligations contained in the Aarhus and Espoo Conventions, requiring early and effective consultation with the public and affected groups with provision of sufficient information and resources, sufficient timeframes and mediums to enable them to properly engage with the plan when all options are open and the key decisions made in the plan can still be influenced.

What practical steps are required by the legal framework?

Practical steps include preparation of a draft plan and a draft strategic environmental assessment report (SEA-R) that sets out the environmental impacts of the plan, the impacts of reasonable alternatives, and the reason the plan was chosen over alternatives available. This must be put out to consultation to the public, and the transboundary public through the transboundary notification process. This would include at a minimum the public in Northern Ireland, given the wide-reaching implications of a national level climate plan of this nature for people and the environment. This may also include the public in the wider UK, due to the relationship between air pollution and emissions and geographical factors like prevailing winds which allow Irish emissions to have a disproportionate impact on UK health and environment.

Consultation materials should be provided that enable lay and expert engagement with the plan. This should include the detailed data underpinning the measures outlined in the plan and underpinning the alternative options, so that NGO, academic and other experts can interrogate the measures and claims made in the plan. It should also include plain language summaries and pictorial/infographic and other visualisations explaining in simple terms/ordinary language the purpose and nature of the plan. In order to enhance accessibility, multimedia resources and documents in multiple formats to facilitate those with different types of disabilities/accessibility needs should be made available. Ideally workshops and webinars aimed at different groups such as NGOs, experts and lay people from the community at large should be held to explain the plan and its measures. The authority responsible should also hold targeted consultations with those particularly affected by the measures in the plan (e.g. people and groups who are vulnerable, those in fuel poverty, those in transport poverty).

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The feedback must be collated into a report that explains how the feedback impacted the final plan and the consultation report and the plan (or the plan containing the consultation report) must be published. This should explain why the measures in the final plan were ultimately chosen.

Best practice would be to have a final consultation on the final plan, but a “rolled up” process can sometimes suffice.

The EU Commission has issued a guidance [Note to Member States on Public Consultation in the Social Climate Plans](#), pursuant to their obligation under Articles 5(4) and 6(4) of the SCF Regulation. This document provides excellent guidance and a clear structured approach to targeted stakeholder consultation, with provision of helpful best practice examples. Disappointingly however, this guidance fails to take into account the full legal framework that applies to the plan as outlined above, and speaks only about ‘stakeholder consultation’ discussed in the first part of Article 5. It also states that Member States may choose between open public consultation and targeted stakeholder consultation, when clearly the legal framework requires targeted stakeholder consultation in addition to general public consultation. This may mislead Member State authorities to believe that they only have to consult with a stakeholder group in order to comply with the requirements of the legal framework, which could be construed as a much narrower obligation than that actually applicable to consult in depth with the public at large.

The EU Commission Guidance on Article 10 of the Governance Regulation ([‘EU Commission Guidance to Member States for the update of the 2021-2030 NECPS’](#)) is relevant here because it is effectively a guide to how to comply with the public consultation obligations contained in Article 10 of the Governance Regulation. Article 5 of the Social Climate Fund Regulation incorporates the obligations of Article 10 of the Governance Regulation by explicit reference.

Article 5(1) SCF Reg:

‘Each Member State shall submit a Plan to the Commission following a public consultation with local and regional authorities, representatives of economic and social partners, relevant civil society organisations, youth organisations and other stakeholders. Each Member State shall conduct that consultation in accordance with the requirements of Article 10 of Regulation (EU) 2018/1999 and in compliance with that Member State’s national legal framework.’

This document is much more helpful as a best practice guide to Member States as to how to carry out effective consultation on a climate plan and should additionally be referred to by Member States. National consultation plans should ultimately be checked against the requirements listed in the table below.

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	Requirement	Legal/Policy basis
	Phase 1: Preparation of Plans and Consultation Materials	
1	<p>Prepare draft SCP & explanatory document setting out:</p> <ul style="list-style-type: none"> - A description of the scope of the SCP. - How a decision on the SCP will be taken and which authority/authorities will take the decision. - The envisaged procedure including (as and when this information can be provided) the commencement of the procedure; the opportunities for the public to participate; the time and venue of any envisaged public hearing(s); an indication of the public authority/authorities from which relevant information can be obtained; an indication of where the relevant information has been deposited for examination by the public; an indication of how and to whom comments or questions may be submitted and a time frame for the transmittal of comments or questions; and an indication of what relevant environmental information is available. - Information on the analytical basis of SCP. 	<p>Governance Regulation, Art 10, (as required by Article 5 of the SCF Regulation);</p> <p>SEA Directive, Art 5 (as required by Governance Regulation, Art 10);</p> <p>Aarhus Convention, Arts 6 & 7;</p> <p>EU Commission Guidance to Member States for the update of the 2021-2030 NECPS.</p> <p>EU Commission Notice Guidance on the Social Climate Plans</p>
2	<p>Prepare draft Strategic Environmental Assessment Report (SEA-R).</p> <ul style="list-style-type: none"> - Screen for requirement conduct SEA. Best practice suggests carrying out consultation on screening. - Scoping – determine the relevant information to be included in the plan. - Outline the environmental impacts of the measures in the proposed plan. - Outline reasonable alternative measures/approaches & impacts of these. - Explain why the main alternative was being proposed over other reasonable alternatives. - Offer detailed evidence as to the basis for the environmental assessment. - Environmental characteristics of the area affected by the plan. - Relevant environmental protection objectives under other legislation and instruments, and how they were taken into account in the preparation of the plan. - Contain information about the likely significant effects on the environment including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, 	<p>SCF Regulation, Art 5 & Annex I;</p> <p>EU Governance Regulation, Art 10 & 12 (expressly incorporated into Art 5, SCF Regulation by reference);</p> <p>SEA Directive, Art 5 & 6 (expressly incorporated into EU Governance Regulation, Article 10 by reference but implied also by cross-applicability provisions of the SEA Directive);</p> <p>Aarhus Convention, Art 7;</p> <p>Espoo SEA Protocol Arts 5, 6 7, 8 & Annex VI;</p> <p>SEAI Guidance to Public Sector on Climate Action Guidance;</p> <p>EU Commission Guidance to Member States for the update of the 2021-2030 NECPS;</p> <p>S.I. No. 436 of 2004 as amended, Regulations 9, 10, 11, 12.</p>

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	<p>climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors.</p> <ul style="list-style-type: none"> - The environmental effects described should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects. - Consider transboundary impacts. - Mitigation measures (envisaged to prevent, reduce and as fully as possible compensate any significant adverse effects on the environment of implementing the plan or programme). - Monitoring measures post-implementation. - Non-technical summary. 	
3	<p>Plan & prepare public consultation modes, supports and materials:</p> <ul style="list-style-type: none"> - Establish dedicated website or portal. - Plain language explanatory summary document, and chapter summaries. - Executive summary - Infographics, data visualisations of detailed calculations and data. - Multiple language versions. - Multiple media versions. - Available through multiple channels – online dedicated portal, general government consultation webpage, local authority websites. - Engage with the Public Participation Network. - Plan webinar/video recording content. - Plan public workshops. - Consider utilising AI chatbots trained on the data to enable public engagement. - Consider incentivising participation e.g. establishing a blockchain token system that accrues/increases based on level of engagement with explanatory materials and documents and is released on submission of input. - Consider whether the materials need to be adjusted for the transboundary public. 	<p>SCP Regulation, Art 5; Governance Regulation, Art 10; SEA Directive, Art 5 & 6; EU Commission Guidance to Member States for the update of the 2021-2030 NECPS; Aarhus Convention, Art 7; Espoo Convention, Arts 2-4; Espoo SEA Protocol, Arts 5-7; S.I. No. 436 of 2004 as amended, Regulations 13. EU Commission Notice Guidance on the Social Climate Plans</p>

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4	<p>Stakeholder Mapping for Targeted Consultations.</p> <p>This should be done in a manner designed to ensure the input of key stakeholders/expert input is sought, but should not lead to closed consultations or exclusion of the general public, who should still have the opportunity to participate.</p> <p>Transboundary stakeholders should also be mapped.</p> <p>The EU Commission Note on Public Consultation in the SCP provides good advice on stakeholder mapping for targeted consultations. NOTE: This does not fulfil the general public consultation requirement, but represents one aspect of consulting with the public.</p>	<p>SCP Regulation, Art 5;</p> <p>Governance Regulation, Art 10;</p> <p>SEA Directive, Arts 5 & 6;</p> <p>EU Com Guidance Note on Public Consultation in the SCP;</p> <p>Aarhus Convention, Art 7;</p> <p>Espoo SEA Protocol, Art 8;</p> <p>EU Commission Notice Guidance on the Social Climate Plans</p>
5	<p>Stakeholder Consultation Design</p> <p>Based on mapping, and using best practice examples, design various types of engagements for different stakeholder groups:</p> <ul style="list-style-type: none"> - e.g. academics, industry, local authority etc., will need less support and scaffolding for engagement. - Vulnerable/marginalised groups will require more consideration as to needs, locations, etc., more explanatory materials, and time spent capacity building prior to seeking input, and different methods of conducting stakeholder consultations will need to be considered for these groups. - E.g. for vulnerable groups/those in poverty or marginalised, consultations should be held in locations within their communities to minimise burden & disruption, in venues in which groups may be comfortable/familiar with (e.g. local community centres) that are not associated with authority, power or which may cause cultural exclusion (e.g., Universities, government or local authority offices, official or corporate environments). - Careful consideration should be given to the consultation mode for vulnerable stakeholders with consideration to demographics and barriers (language barriers both in terms of jargon and first languages, disabilities/accessibility needs). - Consideration should be given to covering the time and costs of vulnerable participants, or providing childcare facilities during any in person consultation events etc. - Consider whether transboundary stakeholders require different approaches. - Targeted reporting back to the stakeholder groups should be done as a courtesy showing how the input influenced the final report, in order to demonstrate that their time and contribution was valued 	<p>EU Com Guidance Note on Public Consultation in the SCP;</p> <p>EU Commission Guidance to Member States for the update of the 2021-2030 NECPS;</p> <p>EU Commission Notice Guidance on the Social Climate Plans.</p>

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	Phase 2: Publishing & Commencing Consultations	
6a	<p>Publish draft SCP & draft SEA-R.</p> <ul style="list-style-type: none"> - This should include or be accompanied by the supporting & explanatory documents described above. - Make available through a variety of media including electronic. - Carry out awareness raising and capacity building exercises. 	<p>SCP Regulation, Art 5; Governance Regulation, Art 10; SEA Directive, Art 6; Aarhus Convention, Art 7; Espoo Convention, Arts 2-4; Espoo SEA Protocol, Art 8; S.I. No. 436 of 2004 as amended, Regulation 13.</p>
6b	<p>Commence open public consultation on the draft Report and draft Plan.</p> <p>This should provide an opportunity for deep engagement with the draft plan and its impacts, and an opportunity to comment on same.</p> <p>EU Commission Guidance on Public Consultation in the NECPs provides useful advice on this that is cross applicable.</p>	<p>SCF Regulation, Art 5; Governance Regulation, Arts 10 & 11; SEA Directive, Art 6; Aarhus Convention, Art 7; Espoo SEA Protocol, Art 8; S.I. No. 436 of 2004 as amended, Regulation 13; EU Commission Notice Guidance on the Social Climate Plans.</p>
6c	<p>Commence rounds of targeted stakeholder consultations.</p> <ul style="list-style-type: none"> - These should be constructed in a manner sensitive to the needs of the groups from which input is sought, as discussed above. 	<p>SCF Regulation, Art 5; EU Commission Notice Guidance on the Social Climate Plans.</p>
6d	<p>Commence Transboundary Consultation process with NI, UK and others:</p> <ul style="list-style-type: none"> - Notification to the relevant Government department of the potentially affected State. - Receive confirmation from affected country that they are an "Affected Party" and wish to be involved. - Provide the draft SCP and draft SEA-R. - Opening the consultation procedure. - Provide opportunity for commenting by the authorities and public in the relevant country. - Consulting with the relevant environmental and health authorities in the other jurisdiction. - Reporting on the results of public consultation. 	<p>Espoo SEA Protocol, Arts 8 & 10; Aarhus Convention, Arts 3(9), 6 & 7; SEA Directive, Art 7; EU Governance Regulation, Art 10 & 12; S.I. No. 436 of 2004 as amended, Regulation 13.</p>

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7	<p>Ensure:</p> <ul style="list-style-type: none"> - Fair and transparent framework for participation, without excessive administrative complexity. - Adequate timelines for participation in a complex policy (we recommend in excess of 3 months with holidays excluded). - Adequate awareness raising and publications. - Access to adequate information to enable participation. - That the draft Plan is sufficiently detailed to allow meaningful consultation. 	<p>EU Governance Regulation Art 10; SEA Directive Art 6; Aarhus Convention Art 7; Espoo Protocol Art 8; S.I. No. 436 of 2004 as amended, Regulation 13; EU Commission Notice Guidance on the Social Climate Plans.</p>
8	<p>Engage in Stakeholder Dialogues using best practice examples from other countries.</p> <p>Facilitate engagement with:</p> <ul style="list-style-type: none"> - local authorities, - civil society organisations, - business community, - investors, - other relevant stakeholders, - the general public. 	<p>SCF Regulation, Article 5; EU Commission Guidance Note on Public Consultation in the SCP; EU Commission Notice Guidance on the Social Climate Plans</p>
Phase 3: Synthesise Consultation Responses		
9	<p>Prepare a report on the results of Public Consultations, and transboundary consultations, showing how they were taken into account.</p>	<p>SCF Regulation, Art 5; Governance Regulation Art 10; SEA Directive Arts 2(b) & Art 8; Aarhus Convention Art 7; Espoo SEA Protocol Art 11; S.I. No. 436 of 2004 as amended, Regulation 13; EU Commission Notice Guidance on the Social Climate Plans</p>
Phase 4: Final Consultations		
10	<p>Publish the Strategic Environmental Assessment Report and draft Plan, and a document showing how the public consultation and SEA-R was taken into account in the preparation of the draft plan.</p>	<p>SCF Regulation, Art 5; Governance Regulation Art 10; SEA Directive Arts 2(b), 8 & 9;</p>

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		Aarhus Convention, Art 7; Espoo SEA Protocol, Arts 8,11; S.I. No. 436 of 2004 as amended , Regulations 16.
11	Communicate the finalised draft Plan to the public including all stakeholders in a national and transboundary context.	SCF Regulation, Art 5; Governance Regulation Art 10; SEA Directive, Art 9; Espoo SEA Protocol, Art 11; Aarhus Convention, Art 7; Espoo Convention, Art 6; S.I. No. 436 of 2004 as amended , Regulation 16; EU Commission Notice Guidance on the Social Climate Plans .
12	Hold stakeholder and public consultations to finalise the plan.	
	Phase 5: Completion & Publication of Final Plan	
13	Submit the Plan to the EU Commission together with a report on the views of the public obtained from public consultation.	SCF Regulation Arts 4, 5,16,17; EU Commission Notice Guidance on the Social Climate Plans .
14	Post Plan Monitoring & Evaluation Monitor the significant environmental effects of implementation of the plan or programme, or modification to a plan or programme in order to identify at an early stage unforeseen adverse effects and to be able to undertake appropriate remedial action	SCF Regulation, Art 5; Governance Regulation Art 10; SCF Regulation, Chapter IV; SEA Directive, Article 12; Espoo SEA Protocol, Art; Aarhus Convention, Art 7; Espoo Convention, Art 7; S.I. No. 436 of 2004 as amended , Regulation 17; EU Commission Notice Guidance on the Social Climate Plans .

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Appendix

1. Is the SEA Directive engaged here?

During the [first round of plan making](#) under the Governance Regulation, such as the National Energy and Climate Plans and the Long Term Strategies, there was a lot of argument about whether these plans fell within the ambit of the Strategic Environmental Assessment Directive and whether therefore consultation on the draft environmental report assessing the impacts of the plan and any reasonable alternatives was in fact necessary.

This led to inconsistent practices across the Member States in relation to carrying out SEA of the NECPs. In Ireland this manifested as a [screening determination](#) in the plan, submitted finally in 2019, that the plan did fall within the SEA Directive, but failure to carry out any such assessment or consultation on draft assessment reports. As a result, the public was never fully apprised of the environmental consequences of the original 2019 NECP or the existence of reasonable alternatives to the pathways set out in the plan. This represents a fundamental failure to honour the public's fundamental human rights in relation to climate change, which requires that the public have a say in such large-scale social decision making that has important consequences for their human rights.

By the time of the 2023 - 2024 round of mid-term updates to the NECPs, there was widespread acknowledgement that the plans fell within the SEA Directive. There was also acknowledgement that the updating of the plans constituted an activity falling within the SEA Directive (see the [EU Commission Guidance](#) to MS on the updated NECPs 2021 – 2030, and [Ireland's final NECP 2024](#)). Unfortunately, the draft updated NECP 2023 was published without any draft SEA Report, and consultation again took place on same without the benefit of vital information about the environmental impacts and reasonable alternatives. The draft was then filed with the EU Commission. This draft was then consulted on again after filing, this time with an Environmental Assessment Report which purported to set out environmental impacts of the pathways and reasonable alternatives. However, in-depth analysis of the SEA Report showed it to be inadequate, filled with incomplete information or lacking sufficient data to enable experts or the public to assess the claims made regarding alternatives. Reasonable alternatives were not genuinely engaged with and when alternatives were considered, no reasoning was given for ultimately arriving at the pathway that had already been chosen in the first draft. From this one can conclude no genuine assessment of environmental impacts has taken place, and no meaningful consideration has been given to reasonable alternatives to the pathways originally chosen by the State in 2018. Therefore, the public have had their fundamental rights breached by the manner in which the process was conducted. There was also no transboundary consultation on the plan with Northern Ireland or elsewhere. This failure by Ireland to effectively consult, and the poor quality of the plan resulting from the process, have been the subject of a [complaint by EJNI](#) to the EU Commission for infringement of the Governance Regulation, and has been documented in EJNI briefings on the [NECP](#) and the [LTS](#).

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In order to prevent a similar debacle with the Social Climate Plan, it was considered necessary to set out the basis for the application of the SEA Directive to the plans made under the Social Climate Fund Regulation.

The SEA Directive Checklist:

- The plan is likely to have significant environmental effects (Articles 1, 3(3) SEA Directive);

This plan is a large-scale societal level national plan which maps out how Ireland will achieve its climate targets in a socially fair and just manner. In this sense the plan has serious environmental consequences. Member States have to come up with a scheme of measures and investments that will meet the plans objectives of a socially fair transition to climate neutrality while supporting vulnerable households, micro-enterprises, and vulnerable transport users through temporary direct income support, measures and investments that will increase energy efficiency of buildings, decarbonisation of heating and cooling of buildings including through the integration of renewable energy generation and storage into buildings, and to grant improved access to zero and low emissions mobility and transport (Article 3(1) & (2)).

The regulation creates a legal obligation for each Member States to submit a plan 'a coherent set of existing or new national measures and investments to address the impact of carbon pricing on vulnerable households, vulnerable micro-enterprises and vulnerable transport users in order to ensure affordable heating, cooling and mobility, while accompanying and accelerating necessary measures to meet the climate targets of the Union.' (Article 4(1)).

Article 4(4) states: 'The Plan shall include national and, where relevant, local and regional measures and investments, in accordance with Article 8, to: (a) carry out building renovation, and decarbonise heating and cooling of buildings, including the integration of renewable energy generation and storage; (b) increase the uptake of zero- and low-emission mobility and transport.' Clearly this is a plan that will have significant impact on Ireland's climate emissions as well as sub-impacts on the environment through the creation of schemes for development of a wide range of infrastructure and buildings renovations.
- The plan is 'required by legislative, regulatory or administrative provision' (Article 2(a));

The plan is required pursuant to the State's obligations under the Social Climate Fund Regulation which is a directly effective piece of EU legislation. This criterion is met. Note also that according to the CJEU, this criterion must be interpreted broadly in line with the 'interpretative obligation' as discussed below, and seen in para 83 of [C-24/19, A and Others](#) for example.
- The plan is which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government (Article 2(a));

The plan is subject to adoption by Government, meeting this criterion.

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4. The plan covers one or more of the sectors: Agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use. The plan will cover the energy sector as well as impact town and country planning/land use in terms of the requirement to create measures that will ensure decarbonisation of buildings (which will by necessity affect permissible development of new or existing buildings), transport as it focusses transitioning our transport systems to zero or low emissions which specifies measures to support development of low emissions transport infrastructure and fiscal support for same. Therefore, this criterion is met.
5. The plan sets the framework for or future development consent of projects listed in Annexes I and II to Directive 85/337/EEC; OR the plan is likely to have a significant effect on a European Site. This is plan will set out measures and investments directed at: energy efficiency of buildings, access to affordable energy efficient housing, decarbonisation of buildings in heating, cooling, cooking, energy communities, grid integration, alternative transport options, provide access to zero- and low-emission vehicles and bicycles, including financial support or fiscal incentives for their purchase as well as for appropriate public and private infrastructure, purchase of zero- and low-emission vehicles, infrastructure for recharging and refuelling and development of a second-hand zero-emission vehicles market, incentivise the use of affordable and accessible public transport and support private and public entities, including cooperatives, in developing and providing sustainable mobility on demand, shared mobility services and active mobility options. Therefore, it seems clear that it will set frameworks influencing future development, particularly in the areas of buildings, energy and transport, and as such requires environmental assessment and associated public participation criteria.
6. The plan is not purely budgetary/financial and does not address civil defence. This plan involves budgetary/financial incentives but clearly will also contain a range of programmes to promote the policy objectives of the regulation and as such will go beyond a mere budgetary instrument. The plan does not address civil defence.

2. The Broader Legal Requirements to Conduct Environmental Assessment and Public Participation:

As mentioned above, the obligation to consult the public on large scale decision making that has serious consequences for climate adaptation and mitigation, engages fundamental human rights and triggers legal obligations to consult the public that are broader than the specific technicalities of the SEA Directive. States are obliged to interpret the SEA Directive obligations in light of these broader fundamental human rights and international law provisions, and therefore cannot adopt an overly technical or legalistic approach to implementation of the SEA Directive and screening of plans under it, if to do so would result in exclusion of the

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public from important environmental plans and decision making, or result in departure from key binding principles of Community law. The framework supporting this broader set of obligations is complex and has been developed in part through decades of CJEU decision making, and is summarised below. However, the obligations on Member States resulting from this framework are relatively clear and straightforward.

The Aarhus Convention in Article 7 mandates environmental assessment and public participation regarding plans relating to the environment. At the time of signing the Aarhus Convention, the EU already had partially implemented the principles in it in relation to public participation in plans and programs by way of the SEA Directive, in a rather complicated manner. This was an implementation of obligations contained in the Espoo Convention on Transboundary Environmental Impact Assessment and its later Protocol on Strategic Environmental Assessment.

The SEA Directive constitutes a very narrow and technical application of the principles of public participation in plans and programs. It applies to plans that have a significant effect on the environment, that cover in the area of agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use where these plans which “set the framework for future development” for the categories of projects listed in the EIA Directive Annex I & II, or which would affect a protected site under the Habitats Directive. In Ireland, the SEA Directive is transposed by the Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. No. 436 of 2004 as amended by S.I. No. 201 of 2011) for land-use plans and by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435 of 2004 as amended by S.I. No. 200 of 2011) for all other sectoral plans. These provisions largely reproduce the provisions of the SEA Directive.

The much broader provisions of Article 7 of the Aarhus Convention, and the Espoo Convention with its SEA Protocol generate a binding “interpretative obligation” on State bodies to ensure that they interpret the provisions of domestic law consistent with the provisions of such international law Conventions. This approach originated in the CJEU judgments in relation to interpreting the technical requirements of the EIA Directive broadly to ensure consistency with the provisions of Article 9 the Aarhus Convention. This interpretative obligation arose from the fact that the Aarhus Convention is ratified by both the EU and its Member States, and also because the area dealt with by the EIA Directive is covered in large part by Community law, and because the Directive sought to uphold the objective of a high level of environmental protection.

This triggered the principles of high level of environmental protection under Article 37 of the Charter of Fundamental Rights (CFR), the right to good administration in Article 41 CFR, and the right to effective judicial protection under Article 47 CFR. These were supported by the guarantee of a high level of judicial protection under Article 19(1) TEU and Article 191 TFEU (see CJEU statements to this effect in para 52, [C-240/09](#), ECLI:EU:C:2011:125 (‘Slovak Brown Bears No. 1’) para 72, [C-243/15](#), ECLI:EU:C:2016:491 (‘Slovak Brown Bears No. 2’)). This ‘interpretive obligation’ is not, as is commonly mistaken, subject to any ‘contra legem’ limit in respect of domestic law where that law contravenes EU law, but rather is subject to the Article 4 TEU duty of sincere cooperation which requires setting aside the offending domestic measure. (e.g. see in the context of the SEA Directive para 83 of [C-24/19, A and Others](#), and originally para 42 of *Inter-Environment Wallonie* ([C-41/11, EU:C:2012:103](#))). The only exception to this is where, in exceptional circumstances, to annul the offending measure would create a vacuum that would cause a lower level of protection of the environment than would have pertained if the offending measure was kept in force. For more on that see the judgment in 28 February 2012 in *Inter-Environnement Wallonie and Terre wallonne* ([C-41/11, EU:C:2012:103](#)) at para 63 which set out the conditions for the operation of the exception, and

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judgment of 28 July 2016, Association France Nature Environnement, [C-379/15](#), [EU:C:2016:603](#), para 51 which sets out the circumstances in which a domestic court can decide this of its own motion, and when it must make a reference to the CJEU for determination as to whether the exception can apply.

The strategic environmental assessment of plans engages both the provisions of the Aarhus Convention, the Espoo Convention on Environmental Impact Assessment in a Transboundary Context. These are both 'mixed agreements', meaning they are ratified by the EU and all its Member States, making them part of the corpus of EU law, according to the doctrine articulated in [C-181/73](#), ECLI:EU:C:1974:41, ('[Haegeman II](#)'). This makes them binding on Member States where the conditions for direct effect are met, for example if the provisions are sufficiently clear and precise (e.g. [C-243/15](#) 'Slovak Brown Bears').

In decisions related to the SEA Directive, the CJEU has adopted a similar broad purposive approach in order to ensure consistency with the provisions of the Espoo Convention, Article 3(2) TEU, Article 19(1) TEU and the Article 37 CFR.

A good example of this is in the case of [C-24/19, A and Others](#), ECLI:EU:C:2020:503, 25 June 2020, paras 44 - 48.

In this case a group of residents challenged a decision of the East Flanders Planning Department to grant consent for a wind farm in the local area. During the Belgian proceedings a reference was made on the question as to whether a Government Circular prescribing the conditions under which wind farms could be constructed and permitted was required to be subject to SEA under the SEA Directive. The guidelines were not required to be made under any statutory obligation and did not have statutory effect. The Belgian authorities argued the criteria in Article 2(a) of the SEA Directive, that the plan was one which was 'required by legislative, regulatory or administrative provisions' was not met.

The Court found that the appropriate approach was to ensure that plans with a significant effect on the environment were subject to SEA and that this required interpretation of Article 2(a) in a manner consistent with this objective, so the Member State court could not take a strict reading of Article 2(a) in a manner that excluded a plan with a significant effect on the environment. This case drew on the 'interpretative obligation' approach first developed in the case law relating to Article 9 of the Aarhus Convention in cases like [C-240/09](#) (Slovak Brown Bears). The CJEU adopted a purposive approach in para 35 'In that regard, it must be recalled that the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part'. The CJEU built this argument on Article 37 of the Charter of Fundamental Rights (CFR). These were supported by the guarantee of a high level of judicial protection under Article 19(1) TEU and Article 191 TFEU, and Article 2(7) of the Espoo Convention (paras 44, 47 and 50).

Finally, public participation in climate plans is also a fundamental human right, which finds support in the Irish Constitution, and customary international law. It is really well established by ECHR and Irish case law that climate mitigation and adaptation engage peoples' fundamental human rights, and that this triggers certain procedural obligations such as their right to have a say in decisions that affect their human rights. This right to have a say or participate is a standalone human right, consistently recognised in case law of the ECHR, beginning with [Lopez Ostra, Application No. 16798/90](#). In '[Klimasenniorinnen](#)' Application no. 53600/20, 09 April 2024, the court makes a clear statement of States duties in relation to access to information and participation in decision making procedures through which the State will address its climate change obligations, which trigger Article 2 & 8 of the ECHR (in paras 538 – 540, and 554).

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Therefore, it is clear that an overly technical approach to screening a climate plan of such broad and granular social scope will result in a breach of the State's Convention obligations, and as such the plan must be subject to a SEA type process (including the consultation element) as a result of the ECHR.

Further Resources:

EU Commission Guidance (2022) Commission Notice: Guidance to Member States for the update of the 2021-2030 NECPS (C/2022/9264 final) https://energy.ec.europa.eu/publications/guidance-ms-updated-necps-2021-2030_en

EU Commission (2024) [Note to Member States on Public Consultation in the Social Climate Plans](#) LifePlanUp (2019) Report on Good Practices in Energy and Climate Governance https://energy-cities.eu/wp-content/uploads/2019/09/C7.4_Report-on-good-practices-in-energy-and-climate-governance_ENC.pdf

SEAI (2024) Public Sector Bodies Climate Action Roadmaps Guidance 2024
https://www.seai.ie/sites/default/files/publications/Public_Sector_Bodies_Climate_Action_Roadmaps_Guidance.pdf

Department of Public Expenditure, NDP Delivery and Reform (Ireland) (2019) Public Sector Consultation Guidance <https://www.gov.ie/en/publication/e9b052-consultation-principles-and-guidance/>

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