



# **Governance of the Energy Union**

## **Assessment of the Commission Proposal for a Governance Regulation**

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## Summary

On 30 November 2016 the Commission proposed a **regulation for the Governance of the Energy Union**. As its central innovation, the proposed regulation requires Member States to adopt National Energy and Climate Plans (NECPs). NECPs would replace existing separate plans for renewables and efficiency and help streamline a range of related obligations for planning and reporting. As another crucial novelty, the regulation obliges Member States to pledge contributions to achieving the EU targets for renewable energy and energy efficiency. Under the new regulation, the Commission assesses progress of Member States towards implementing NECPs. The Commission also assesses whether contributions pledged by Member States are sufficient and whether the EU makes sufficient progress towards implementing the objectives of the Energy Union. If adopted, this regulation would supplement various sectoral laws, which are currently under revision.

The proposal for the regulation for the Governance of the Energy Union **has a number of positive elements and is a good basis for the legislative process:**

- **Mandatory, comprehensive NECPs:** NECPs contain all core elements of strategic planning: objectives, reference projections with existing measures reaching to 2040, target trajectories (including technology-specific RES projections), planned policies and measures and impact assessments. It is also positive that Member States must use a binding and detailed template. This is essential for comparability.
- **Streamlining:** NECPs streamline existing planning requirements – without sacrificing the necessary level of detailed information required for fully credible plans.
- **Scrutiny for draft plans:** The Commission assesses draft NECPs and may issue recommendations that Member States must take into “utmost” account. The Commission’s involvement in the preparation of the plans can strengthen the European perspective – at an early stage.
- **Assessment of EU progress:** In a structured process, the Commission will assess EU progress and has some mandate to take measures to facilitate target achievement.
- **Modify targets only upwards:** Updated NECPs may only reflect increased ambition – compared to previous plans.
- **Fairly strong assessment of implementation of individual national plans:** If the assessment demonstrates that progress by a Member State is insufficient, the Commission shall issue recommendations to the Member State concerned (Article 27.2), i.e. it has no discretion but is obliged to act.
- **Obligatory response by Member States to recommendations:** MS have to spell out how they are implementing recommendations on insufficient progress, incl. a timetable.
- **Long-term low emission strategies (LTSSs):** Article 14 establishes an obligation by Member States to develop LTSSs with a 50 year time horizon and to deliver these by 2020.

The proposal **also contains a number of negative elements** that should be improved during the legislative process:

- **Contribution setting essential but poorly designed:** In absence of binding national targets for RE and EE, contributions pledged by Member States are one of the Regulation’s most important elements. Essentially, they are the backbone of the regulation. These contributions must add up to the overall EU targets or go beyond them. Unfortunately the Commission’s proposal contains only qualitative criteria to guide Member State contributions. This weakens the Commission’s ability to challenge pledged contributions. To address this, the regulation should include quantified reference values on what constitutes a fair national contribution to the EU targets. Non-binding reference values similar to the 2001 Directive on RES electricity are a potential role model. Although reference values might be reminiscent of binding targets, they are fundamentally different from legally binding targets because they are non-binding and non-enforceable. For this reason they would be in line with the political agreement reached by the European

Council in October 2014. To strengthen the contributions of Member States further, the regulation should require Member States to enshrine these contributions in national law.

- **Strengthen Member State accountability with respect to contributing fairly to EU targets:** Article 5.2 states that “Member States shall collectively ensure that the sum of their contributions add up to at least 27% from renewable energy sources in gross final energy consumption at Union level by 2030”. This provision formulates a collective duty but remains silent on individual obligations of Member States. To enhance Member State accountability, the regulation should establish an individual duty for Member States to contribute to the EU target in an adequate, proportionate and/or fair manner respecting the criteria mentioned in Article 5 and 6. The regulation should contain a similar provision for energy efficiency.
- **Low pledging incentive for national contributions:** The current provisions on setting national contributions for renewable energy and energy efficiency are not sufficiently well aligned with the provisions establishing the process of filling any gaps in delivery. The regulation must establish a process that provides a clear incentive for Member States to propose ambitious national targets in their NECPs.
- **No long-term targets and little Paris perspective:** The Paris Agreement (PA) commits Parties to holding temperature increases well below 2°C and to achieve climate neutrality in the second half of the century. As such, the PA takes a long term perspective. The GR does not although it is an essential piece of EU legislation for the implementation of the PA. The proposal, for example, does not include a long-term greenhouse gas reduction target for the EU as a whole. It contains no provision for ratcheting-up targets, which would be instrumental to implement the progression requirements under the PA.
- **NECP timetable not linked to Paris rhythm:** The updates to NECPs are scheduled to take place even before the global stocktake process under PA has been completed. In consequence updated NECPs will not respond to the requirements of a more ambitious EU Nationally Determined Contribution (NDC).
- **Long Term Strategies without specifications or process:** The regulation lacks detail on the content of LTSs and does not foresee a process for assessing draft strategies and monitoring their implementation. As it stands, the procedure will inevitably produce strategies of strongly varied quality. For consistency, 2030 NECPs and LTS should be developed in parallel and should be due at the same date, i.e. early 2019. Moreover, the proposal contains no obligation for the Commission to develop a guiding document for the long-term decarbonisation of the EU as a whole.
- **Recommendations by Commission have no sufficiently stringent follow-up process:** Articles 9.3 and 28.2 state that “Member States shall take utmost account” of recommendations from the Commission. Member States have to explain how they implemented recommendations. Unlike the process under the Macroeconomic Imbalance Procedure, however, there is no dedicated process for verification and subsequent consequences for a lack of implementation. In addition, the Commission must base its recommendations on weak criteria (see above). This will provide for many ways for Member States to evade or contest the recommendations.
- **Not only bilateral negotiations between Commission and Member State on NECPs:** While the Commission’s role as the main point of submission and assessment for draft plans is useful, the negotiations with Member States on improvements of drafts should not be left to bilateral talks only. The European Semester process, for example, explicitly engages the Council. Learning from this model, discussions on NECPs should take place in the forum of all Member States – and include also the European Parliament, which presently has no formal role in the Commission’s proposal (such as an opportunity to comment on draft plans)
- **Specifying and quantifying impact of planned measures and policies:** Member States must assess the impact of their planned policies and measures on “the development of the energy system and greenhouse gas emissions and removals”, but there is no obligation to quantify the reduction potential of individual measures. Such requirement would enhance transparency and accountability.

## 1 Introduction

On November 30<sup>th</sup>, 2016, the European Commission published a **proposal for a new regulation “on the Governance of the Energy Union” (GR)**,<sup>1</sup> alongside a package of other related pieces of legislation. The proposal integrates and replaces the existing Monitoring Mechanism Regulation (MMR).

The central innovation of the proposal is the establishment of so-called **National Energy and Climate Plans (NECPs)**. NECPs will replace existing separate plans for renewables and efficiency and help streamline related obligations for planning and reporting.<sup>2</sup> Monitoring progress will take place under a new annual cycle in the framework of the Energy Union, which is similar to the European Semester. The proposal puts forward requirements for the content of the plans, including a detailed and binding template for Member States to use. Importantly, it also contains the process for adopting and monitoring national energy objectives on renewable energy deployment and energy efficiency, as Member State contributions to EU level binding targets in these areas.

This **paper** analyses the Commission proposal and measures it against two questions: Is the proposed system adequate for supporting the implementation of the 2030 targets? Will it help Europe to get on a long-term pathway to a zero carbon economy? The paper focuses on the NECPs and compliance. It does not assess in detail the provisions on reporting and the inventory in detail. An Annex to the paper contains **concrete proposals in legal language** on how to improve the Commission’s proposal. This paper builds on related papers by the Ecologic Institute and takes inspiration from intense discussions with colleagues in the ECF Governance cluster.

## 2 Chapter 1 – General provisions (Articles 1 & 2)

While the focus of the Regulation is on the time horizon 2030, the Energy Union objectives and the goals inscribed in the Paris Agreement (PA) both have a **long-term perspective to the second half of the century** and beyond. To this end, the GR proposal envisages the development of national long-term strategies (LTS) in Article 14. LTSs have the explicit objective to help achieve long-term emission reductions. Specifying these reductions, the proposed regulation makes reference in Article 14 to “the Union’s objective (...) to reduce emissions by 80-95 % by 2050 compared to 1990 levels in a cost-effective manner” (Article 14.1(c)).

This reference is positive but it is too weak to effectively support the implementation of the PA. For the effective implementation of the PA, inscribing an ambitious **long term target for the EU as whole** upfront is of critical importance.<sup>3</sup> It embodies the full and true commitment of the EU to the PA and enhances investor certainty significantly. The GR, as currently proposed, does not make such a target its own objective, which is a major shortcoming. To address this shortcoming,

<sup>1</sup> Proposal for a Regulation of the European Parliament and Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013, COM(2016) 759 final 2016/0375 (COD)

<sup>2</sup> Three rather different factors have mainly contributed to the attention given to the issue of “effective governance” for the Energy Union and the 2030 targets: the change in the nature of the national renewable targets (no longer binding for 2030), the Better Regulation agenda (which demands a streamlining of administrative requirements) and actual need for better integration of energy related policy fields and activities (including markets and networks). Additional factors contributed to related elements, such as the Ukraine crisis that provoked interest in the original concept of the Energy Union, which in turn then became the integrating framework also for climate change issues. These factors have created a situation in which different actors with different interests have all accepted the proposal by the European Commission to reorganise the way in which the energy and climate targets are being implemented.

<sup>3</sup> Nils Meyer-Ohlendorf et al: EU Climate Policies after 2020: Robust Review and Ratcheting Up Targets (2017) <http://ecologic.eu/14450> ; Nils Meyer-Ohlendorf, Ralph Bodle: EU Effort Sharing after 2020: Review and Ratcheting Up EU Climate Targets (2016) <http://ecologic.eu/14112>

Article 1 should establish a long-term greenhouse gas target. This economy-wide target could be complemented by long-term targets under the ETS and ESR. For a synchronized and coherent review of EU climate policies and adjustment of targets, it is also essential that the GR takes account of the relevant processes under the ESD successor and the ETS – and vice versa.<sup>4</sup>

## 3 Chapter 2 – Integrated Energy and Climate Plans

### 3.1 Integrated Energy and Climate Plans (Article 3 and Annex 1 – plus Articles 7 and 8)

The proposed GR obliges Member States to develop comprehensive **National Energy and Climate Plans (NECPs)** covering 10-year periods starting from 2021 (and every ten years thereafter). Article 3.2 sets out the main elements contained in the plans, while Annex 1 contains a detailed and binding template.

If carried out with the necessary care and political attention, this **planning process has the potential to improve national climate and energy policy-making**. The Commission has opted for extensive streamlining of existing planning requirements. It has integrated all relevant energy and climate planning activities that exist under the *acquis* and extended the exercise to the field of internal energy market building and energy security – without sacrificing the necessary level of detailed information required for fully credible plans.<sup>5</sup> This is a very positive development. It is also positive that the Commission proposes a binding template, including a list of exact indicators to be used by Member States. Moreover, the template contains all core elements of strategic planning: objectives, reference projections with existing measures reaching to 2040 (see also Article 6), target trajectories (including technology-specific RES projections), planned policies and measures (also referenced explicitly in Article 5) and an impact assessment thereof. According to Article 3.4, the Commission can adapt the template by delegated act if required by changes in the policy framework, energy market developments and new requirements under the UNFCCC or the PA.

However, the **following elements should be improved**:

- **Stronger link between 2030 plans and long-term strategies:** If the NECPs are not sufficiently informed by a long-term perspective, they risk creating lock-in effects and stranded assets – making further emission reductions harder and more costly. While there are longer term elements in the NECP process (such as 2040 projections – and the request for “consistency” with LTS in Article 14.3), they are not sufficient. The NECPs and the LTSs should be developed in parallel – with the 2030 planning based on a perspective of achieving the long-term target to be inscribed in Article 1 (see above).<sup>6</sup>
- **Specifying and quantifying impact of planned measures and policies:** The template<sup>7</sup> obliges Member States to assess the impact of their planned policies and measures on “the development of the energy system and greenhouse gas emissions and removals”. For full transparency and credibility, it is essential that stakeholders can understand what quantified impact is expected from each measure (or from a group of measures targeting the same sector or technology). For the reporting on GHG policies and measures included in Article 16, Annex IV of the Regulation lists this type of information. Therefore it would not create additional administrative burden to refer to these information demands in Section B.5 of the planning template.

<sup>4</sup> Nils Meyer-Ohlendorf et al: EU Climate Policies after 2020: Robust Review and Ratcheting Up Targets (2017) <http://ecologic.eu/14450>

<sup>5</sup> See Umpfenbach ((2015) Streamlining Planning and Reporting Requirements in the EU Energy Union Framework <http://ecologic.eu/12445> ) for an inventory of the existing planning and reporting requirements in the five dimensions covered by the Energy Union strategy.

<sup>6</sup> See also Sartor, Duwe, Donat (forthcoming) for an assessment of national 2050 plans and the respective experience gained.

<sup>7</sup> Annex 1 of the GR, Section B.5

- **Strengthen Member States planning capacities:** If carried out in a diligent fashion, the comprehensive planning process stipulated in the GR will require substantial resources at national level. There will be a need for technical expertise (in particular for scenario building and impact assessments), managerial and leadership capacities<sup>8</sup>, experience with meaningful stakeholder participation and civil society capacity to engage. In a footnote to section B of the template, the Commission points to the EU Reference Scenario 2016 as a useful source of assumptions and information. However, to provide meaningful support to Member States to deliver the quality of planning required, and thereby increase Member States willingness to support the legislative proposal, the Regulation should provide for funding to support Member States and national civil society actors with technical and organisational capacity. Member States should have a right to this support – up to the point that funding allows. Such a provision could be added to Article 34.2, which states that “the Commission may provide technical support to the Member States [...] upon request from a Member State”.

### 3.2 National contributions and objectives (Articles 4, 5 and 6)

Article 4 obliges **Member States to define national contributions** and objectives with a view of achieving the EU-wide targets for energy efficiency improvements, renewable energy expansion and increased interconnection. For the dimension ‘decarbonisation’ the national plans will reiterate the national binding GHG reduction target to be set under the forthcoming Effort Sharing Regulation (COM(2016)482). Article 4 defines the metrics to be used for expressing the contributions as well as additional information to be supplied. Articles 5 and 6 list a number of factors that MS have to take into account when defining their contribution in the areas of renewable energy and energy efficiency respectively, including inter alia economic capacity, equitable distribution of deployment and geographical constraints for renewable and remaining cost-effective energy-saving potential, evolution and forecast of gross domestic product and early action for energy efficiency.

Given that there will be no ex-ante EU-level decision on national targets for renewables and energy efficiency, the contribution setting mechanism and its compliance system are the Regulation’s most critical elements. Essentially, they are **the backbone of the regulation**. The mechanism’s design will decide if investors trust the EU’s political willingness to continue the decarbonisation of the energy sector or not. It is positive that by listing the above mentioned criteria, the proposal contains some framing guard rails to establish limits to Member States’ discretion in deciding how to set fair and proportionate contributions. However, given what is at stake the proposed approach is insufficient and needs to be strengthened.

In particular the **following elements need to be improved:**

- **Lack of quantified criteria for contribution setting:** The proposal does not include any quantified guidance on what constitutes a fair national contribution to the EU targets. This weakens the Commission’s ability to challenge proposed pledges and thus weakens the individual accountability of a Member State considerably. This is a major problem because Member States are likely to pledge low contributions at the beginning – since updated NECPs can only include higher pledges. Non-binding reference values similar to the 2001 Directive on RES electricity<sup>9</sup> would help address this major shortcoming of the proposed system. Although reference values may seem reminiscent of binding targets, they are fundamentally different from legally binding targets because they are non-binding and non-enforceable. Because of this inherent difference, they do not introduce targets through the backdoor. For this reason, they would be in line with the political agreement

<sup>8</sup> See Duwe et al. 2016 (Integrating National Reality into the 2030 Governance System <http://ecologic.eu/14326> ) for an account of practical national experiences with existing planning and reporting processes.

<sup>9</sup> Art. 2.2 and Annex of Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market.



of October 2014 that neither renewable energy nor energy efficiency should be underpinned by legally binding targets for Member States.<sup>10</sup>

- **The role of the Article 5 and 6 criteria in Commission evaluation of pledging is unclear:** In the absence of quantified benchmarks, the qualitative criteria listed in Art. 5 and 6 serve as a proxy. Although not expressed quantitatively, the criteria for RES contributions recall the metrics used for breaking down the EU RES target for 2020 (economic capacity, starting point, and equitable distribution). A translation into quantitative benchmarks would be fairly straightforward. However, to fulfil this role, the regulation would have to stipulate in Article 9 and 12 that the criteria will serve as yardstick for the Commission's appraisal of the proposed contributions.
- **Support locking in of national pledges:** To maintain investor security, the national contributions to the EU target should be treated as strong commitments once articulated in the plan. To strengthen the contribution further, the regulation should require Member States to enshrine their contribution in national law.<sup>11</sup>
- **Contributions to EU energy efficiency target should not be "indicative":** With the energy efficiency first-principle, the EU has introduced a clear priority for energy efficiency measures over other options to achieve Energy Union goals. It is incompatible with this principle to characterise national contributions to the binding EU energy efficiency target as "indicative". It is also contradictory to agree on a binding EU energy efficiency target on the one hand and to require only indicative contributions to this binding target on the other hand. For these reasons, the term "indicative" should be deleted.
- **Strengthen Member State accountability - adequate contribution to EU targets:** Article 5.2 states that "Member States shall collectively ensure that the sum of their contributions add up to at least 27% from renewable energy sources in gross final energy consumption at Union level by 2030". This provision formulates a collective duty but remains silent on individual duties of Member States. Article 6.1 (b) stipulates a similar collective obligation for Member States on energy efficiency. The provision states that Member States shall ensure that the EU target is met when setting their energy efficiency contribution. Given that all Member States will discuss national targets simultaneously, it appears unrealistic that all Member States can successfully co-ordinate between themselves and guarantee parallel target achievement. For this reason Articles 5.2 and 6.1 (b) should complement the collective responsibility by establishing an individual duty for Member States to contribute to the EU target in an adequate and fair manner respecting all of the criteria mentioned in Article 5 and 6. If adopted, reference values would make this amendment obsolete (see above).

### 3.3 Preparation and assessment process for NECPs (Articles 9 and 12)

The Commission proposal establishes that **Member States must prepare draft NECPs**. They must submit draft plans to the Commission for assessment by 1 January 2018 (and every 10 years thereafter, Article 9). The Commission assesses these plans and may issue recommendations to Member States pursuant to the general requirements of Article 28. In principle this iterative process between Member States and Commission is useful. The Commission's involvement in the preparation of the plans has the potential to strengthen the European perspective, i.e. to help ensure that Member States take full account of the overall EU targets and obligations and to improve the plans' overall coherence. This can help avoid narrow national views on climate and energy policies. Similarly the provisions on regional consultation contribute to enlarging Member State's horizons in plan making.

<sup>10</sup> Meyer-Ohlendorf, N., Roberts, E., Wyns, T. (2016): Compliance with EU 2030 energy targets: How to fill a gap. <http://ecologic.eu/14052>

<sup>11</sup> Ibid.

However the system has a **number of important shortcomings**:

- **No hard assessment criteria:** Neither Article 9 nor 12 contain substantive and reliable criteria for the assessment and – *ergo* – detailed recommendations. The proposal does not enable the Commission to base its assessment and recommendations on Member State specific criteria (see discussion on Articles 5 and 6 above). According to Article 9.2, the recommendations are only made with regard to “the level of ambition of objectives, targets and contributions in view of collectively achieving the Energy Union objectives and notably the Union's 2030 targets for renewable energy and energy efficiency”. The only hard criteria are largely procedural: Member States final NECPs have to meet the requirements of Articles 3 to 11 and Article 28 (Article 12 (b)). The proposal could therefore be significantly improved, particularly if Article 12 referred to quantitative reference values for national contributions. The other, slightly less ambitious option would be to include a statement in Article 12 that the factors listed in Articles 5.1 (d) and 6.1 will serve as a yardstick to the Commission when assessing if Member States’ planned contributions are adequate and fair.
- **Weak follow up when ambition is low:** According to Article 9.3, “Member States shall take utmost account of any recommendations from the Commission when finalising their integrated national energy and climate plan”. The term “utmost account” seems to signal that the recommendations will have significant influence but there are significant limits to their traction. First, the use of this phrase “utmost account” does not remedy the underlying reality that recommendations are by definition non-binding. Second, with the exception of action taken at EU level (Article 27.1 see below), the proposal does not state what happens if a specific Member State does not follow the Commission’s recommendations. To give Member States an incentive to formulate adequate contributions, Article 12 should explicitly set out the Commission’s next steps if – after a first round of recommendations – a Member State’s final plan is still insufficient. The Article could state that in such a case the Commission is empowered to trigger discussions of non-compliance with recommendations in the Council (see below).
- **Assessment of adopted plans is too narrow:** According to Article 12, the Commission is tasked to assess the notified plans. Assessment focuses in particular on whether objectives and targets as set out in plans are sufficient for the collective achievement of the Energy Union objectives. The Commission also assesses whether plans are in line with the mostly procedural requirements set out in Articles 3-11 and 28. Although the Article uses the term “in particular”, the assessment of notified plans is narrower than the assessment of draft plans. It would be useful if the assessment of notified plans would explicitly cover policies and measures (as does the assessment of draft plans, Article 9).
- **Not only bilateral negotiations between Commission and Member State on NECPs:** While the Commission’s role as the main point of submission and assessment for draft plans is useful, the negotiations with Member States on improvements of drafts should not be left to bilateral talks only. The European Semester process, for example, explicitly engages the Council. Learning from this model, discussions on NECPs should take place in the forum of all Member States – and include also the European Parliament (see below).<sup>12</sup>
- **No role for the European Parliament:** The European Parliament has no role in the process of drafting, evaluating and adopting the plans or in evaluating pledge making. Given its democratic legitimacy, the potential significance of these plans and the energy pledge making process and its generally ambitious stance taken on EU energy and climate policies, the European Parliament should also have the formal opportunity to comment on draft plans and to contribute to assessing adopted and notified plans. It should also take part in the dedicated follow-up process and should possibly be entitled to veto insufficient NECPs.

<sup>12</sup> See also Duwe & Velten (2016) Lessons from the European Semester for Effective 2030 Governance for Energy and Climate. <http://ecologic.eu/14238>

### 3.4 Stakeholder engagement (Article 10)

According to Article 10, Member States are obliged to give the public “**early and effective opportunities to participate**”. Member States are required to summarise public views in their draft plans. The article stipulates that consultations according to the Strategic Environmental Assessment (SEA) Directive<sup>13</sup> – as far as applicable – are considered sufficient to fulfil the participation requirement. Other EU rules on public participation remain applicable.

While it is positive that the proposed Regulation foresees mandatory participation, **the rights of stakeholders need to be strengthened**. The Regulation should extend the full suite of Aarhus rights to the public in their engagement with the NECP process – thus extending the public not only the right to be consulted, but also rights of access to information and rights of access to environmental justice to challenge decision-making concerning Member State compliance with the NECP process. The Aarhus Convention does not fulfil the conditions to be considered as directly applicable, because its provisions are subject to the adoption of subsequent measures.<sup>14</sup>

The rights enshrined in the **Aarhus Convention** have been implemented into EU law in the context of the Environmental Information Directive<sup>15</sup>, the SEA Directive and the Public Participation Directive<sup>16</sup> which is also regulating access to justice. Whilst it can be concluded, that the Environmental Information Directive applies to NECPs (see Art. 2 of the Directive: plans relating to specific factors, such as energy and plans designed to protect elements of the environment, e.g. air) this is not the case for the SEA and Public Participation Directive. For the latter, NECPs are excluded due to its Art. 2.<sup>17</sup> As for the SEA Directive, it only covers ‘plans or programmes that set the framework for future development consent of projects’. The European ombudsman stated that the SEA Directive does not apply to National Renewable Energy Action Plans (NREAPs) under the 2009 Renewable Energy Directive due to their generality.<sup>18</sup> As proposed by ClientEarth, the Regulation should therefore directly translate the procedural safeguards enshrined in Art 7 and 9 of the Aarhus convention or explicitly refer to the Public Participation Directive, to clarify its application to the NECP development process.

To ensure uniformly high procedural standards in all Member States, the regulation draft regulation could, however, be **improved through the following specifications**:

- **List of stakeholders:** For reasons of clarity, the regulation should explicitly state – in a non-exhaustive list – which stakeholders should be consulted, including representatives of cities and regions, businesses, science, consumer protection associations, trades unions, civil society as well as the general public.
- **Early participation:** “Early participation” should be specified by requiring participation in the 2050 visioning process (see sections 4.1 and 5), on the planned national contributions to the 2030 targets and objectives, as well as on the full draft plan. Moreover, stakeholders should also be consulted during revisions of the plan (see section 4.4).

<sup>13</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.

<sup>14</sup> “A provision in an agreement concluded by the European Union with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, Case C-240/09 *Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* [2011] ECR I-1255, paragraph 44).

<sup>15</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.

<sup>16</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.

<sup>17</sup> ClientEarth (2016): How to ensure stakeholder participation in the drafting of NECPs and the operation of the Energy Union governance system?, London: ClientEarth.

<sup>18</sup> Given that, NECPs shall (only) set out the direction of national energy and climate objectives and policies, they cannot be regarded as requiring more specifics than NREAPs.

- **Sufficient time for comments:** Interested parties should have sufficient time to comment. They should be accorded at least two months to review and comment on the final draft plan.
- **Member State accountability:** In addition to summarising the public's views, Member States should have to justify how responses were taking into account – and not simply record views taken.
- **Access to information:** The quality of stakeholder participation as well as the planned regional consultations will depend on timely and convenient access to all relevant documents and data underpinning the planning process. To facilitate access to these documents, the regulation should oblige the Commission to establish an online transparency platform. A similar obligation in Article 24 of the 2009 Renewable Energy Directive is a blueprint. The article should explicitly list the types of documents to be published in a timely fashion, including: draft NECPs, final NECPs, progress reports, underlying scenarios and modelling (including transparent display of assumptions), the Commission's assessment of aggregated ambition of Member State pledged contributions, the Commission's assessment of EU progress towards the target, the State of the Energy Union reports, reasoned opinion issued and information on ongoing infringement procedures..
- **Access to justice:** As the third pillar of the Aarhus Convention, the GR should also explicitly extend the rights of access to justice conferred by the Convention to EU citizens and their representatives in the NECEP process.

### 3.5 Regional co-operation (Article 11)

As an innovation compared to the 2009 energy and climate package, the Governance Regulation **obliges Member States to consult each other** (and specifically neighbouring Member States) before submitting their draft NECP to the Commission. Moreover, Article 11.5 stipulates that Member States “shall co-operate at regional level when implementing the policies and measures of their plans” with the aim of effectively achieving the 2030 targets and objectives.

The **Commission merits praise for proposing stronger horizontal interaction** between Member States which is a prerequisite of a cost-efficient energy transition in Europe. Together with the duty to conduct regional system adequacy assessments foreseen in the draft Security of Electricity Supply Directive, this obligation will ensure that Member States address cross-border impacts of their energy policy more systematically in the future. Given the diversity of existing institutions for regional co-operation – all of which cover different sets of Member States depending on their purpose<sup>19</sup> - it is positive that the proposed Governance Regulation doesn't prescribe any delineation of regional groups, but leaves the organisational set-up to Member States.

Whether or not the approach can successfully promote new or deeper forms of co-operation will however depend on **Member States' willingness** to take justified concerns of neighbours into account and to proactively define concrete projects with shared goals. The Commission's role will remain limited to facilitation (past concrete examples of how this could look like in practice include for example the initiation of the Baltic Energy Market Interconnection Plan (BEMIP)). As mentioned in section 3.1, a dedicated budget for Commission support to Member States could increase the acceptability and effectiveness of this provision.

<sup>19</sup> Umpfenbach, K.; Graf, A.; Bausch, C. (2015): Regional cooperation in the context of the new 2030 energy governance. Berlin: Ecologic Institute. <http://ecologic.eu/11776>

### 3.6 Update of the national plans (Article 13)

The regulation stipulates that **Member States must update their plan after five years**, i.e. a draft updated plan is to be submitted to the Commission for the first time in January 2023, followed by a final updated version in 2024 (Article 13).

The Commission deserves praise for proposing that “Member States shall only modify the targets, objectives and contributions [...] to reflect an **increased ambition** [...]”. This principle is consistent with the principle of “progression” of subsequent NDCs under the Paris Agreement. The draw-back is, however, that – in the absence of predetermined binding national energy targets or reference values – the framework creates an incentive for Member States to pledge low contributions for renewables and energy efficiency to leave room for higher ambition at a later stage (see section 4.2 and 4.3).

Moreover, to be in line with the substance and spirit of the PA, Article 13 needs to be placed in the context of a mechanism to review the adequacy of the EU target as a whole and increase it (see section 8 below) and it needs to fit with the foreseen NDC update five year cycle.

For these reasons, **Article 13 should be improved** in the following ways:

- **Updates must be assessed like the original plans:** The more elaborated process for Commission scrutiny of NECP as proposed in section 4.3 of this paper should also apply to draft updated plans.
- **Updates need to be informed by EU target review:** Article 13 should make an explicit reference to a possible review and ratchet of the EU’s greenhouse gas emission target in the context of the review of the EU’s NDC (see also section 8). The greenhouse gas targets are not decided at Member State level – and updates to the NECPs should reflect the expectation of, and ideally the mechanism for progressively increasing EU’s GHG target.
- **Timing aligned with Paris NDC review:** To be fully in line with the PA process, the updates to NECPs should follow in sequence the agreement on a potential new NDC by the EU as a whole. As any such process should be informed by the Global Stocktake under the PA foreseen to be taking place in 2023, an update to the NECPs should be prepared in 2024, and the timeline currently envisaged in the Regulation would need to be postponed by at least one year, if not 18 months.

## 4 Chapter 3 – Long-Term Strategies (Article 14)

Article 14 obliges **Member States to prepare of long-term low emission strategies** (LTSs). It requires Member States to submit such strategies to the Commission by 1 January 2020 (and every 10 years thereafter) and stipulates that these should cover a 50 year time horizon, meaning that the first LTS will look towards 2070. LTSs should be consistent with NECPs (Article 14.3).

Such strategies are already a **requirement under the existing MMR** (Article 4)<sup>20</sup>, but the MMR does not require Member States to prepare strategies with a specific deadline and there is no explicit timeframe. The PA requires Parties to prepare “long-term low greenhouse gas emission development strategies” (article 4.19).<sup>21</sup> The Regulation thus implements this element of the Paris Agreement through Article 14.

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<sup>20</sup> In the MMR these are known as Low Carbon Development Strategies (LCDSSs) as per the terminology used in the international negotiations at the time (e.g. Cancun Decisions from 2010).

<sup>21</sup> A number of countries already complied with this request in 2016 and presented their national long-term strategies at the Marrakesh climate summit (Canada, USA, Mexico, Germany).

The proposal contains a number of **positive elements**:

- **Explicit long-term dimension:** LTS help introduce a long-term perspective beyond 2030. This is positive given the long term dimension of climate change and investments timeframes for decarbonising economies. The LTSs 50-year timeframe, however, should not be a pretext for delaying action.
- **Reference to objectives of the Paris Agreement:** The proposal explicitly determines that LTS contribute to fulfilling in the PAs temperature objectives. It also states that LTS contribute to achieving long-term emission reductions – in line with the EU’s objective of reducing emissions by 80-95% by 2050 (from 1990 levels). These long-term objectives give clear direction to the development of both near and long-term strategies.
- **Specific deadline:** A specific deadline for the submission of the LTSs is an important improvement over the MMR’s Article 4. It should ensure that every Member State produces a strategy in the next four years.
- **Publication and regular updates:** Article 14 requires that strategies and any updates are made available to the public (paragraph 4) – and it establishes that Member States have to deliver new strategies at regular ten-year intervals, which creates an ongoing process and instils a sense of long-term accountability.

However the proposal contains a number of **important shortcomings**:

- **Connection between 2030 plans and long-term strategies too weak:** The planning for 2030 (both targets and policies) should be explicitly informed by the long-term objectives. While Article 14.3 requires that NECPs and LTS “should be consistent with each other”, the timing foreseen (NECPs in 2018/2019 and LTS in 2020) suggests that the onus for consistency is on the strategies and not the plans. To address this shortcoming, these closely linked processes should take place in parallel with a view to achieving the long-term target (see also section 3.1).
- **No EU level long-term document foreseen:** According to Article 4.19 of the PA, the EU is required to produce long-term low emissions strategies. The MMR contains a similar obligation. In contrast, the Article 14 of the GR does not foresee any long-term guiding document or strategy for the EU. Such guiding document at EU level will be an important reference point for Member States when developing their LTSs.<sup>22</sup>
- **Lack of detail on content:** Article 14.2 contains some qualitative criteria but the provision lacks detail on the development and content of the LTSs. As it stands, the procedure will inevitably produce strategies of varied quality. To address this problem, the Regulation should include a template for LTSs in an Annex – borrowing elements from the template for the NECPs.
- **No provision for stakeholder inputs:** The GR does not foresee stakeholder involvement in the process of developing LTSs. Politically and socially acceptable LTs will depend on the involvement of stakeholders. For this reason Article 14 should make reference to Article 10.
- **No assessments or review:** Article 14 does not foresee an assessment of submitted strategies or monitoring of their implementation. This is a step backwards compared to the MMR, which requires regular biennial reporting on updates (of their) their low-carbon development strategies and progress in implementing those strategies (MMR Article 13.1). Progress monitoring and a review of the long-term strategies should be part of the GR, akin to what is foreseen for the NECPs. For example, long-term strategies should be informed by insights from the PA’s global stock-take process and be reviewed at the same intervals as the NDC and the NECPs – to ensure coherence with the NECPs and the state of the debate on scientific insights and technological development.

<sup>22</sup> See also Sartor, Duwe, Donat (2017) forthcoming

## 5 Chapter 4 – Reporting (Articles 15 – 24)

The draft regulation obliges Member States to report biennially on their progress towards the national targets and objectives set in their NECPs for all five dimensions of the Energy Union. In addition, annual reporting is required for certain specific indicators and measures, in particular for GHG inventories (Article 23). Based on a first coarse analysis, the proposed scope of the progress reports appears to be comprehensive and relatively detailed, streamlining numerous currently separate reporting requirements. However, a full analysis is difficult because the regulation does not include a template for the progress reports. Article 15.3 allows the Commission to establish a template through an implementing act. To ensure high-quality reporting, the regulation should clarify that this future template will be binding for MS and involve a quality review process – connected to the e-reporting platform (Article 24).

In the context of follow-up to recommendations as a reaction to indications from progress monitoring (see next section) the scope for annual reporting may need to be expanded to ensure that timely reporting by Member States on the implementation of these recommendations will take place. The reporting provisions will also need to be complemented to include an obligation to communicate progress on the implementation of long-term strategies established under Article 14.

## 6 Chapter 5 – Assessment and monitoring

### 6.1 Aggregate Assessment of National Plans and Union Target Achievement – Commission Monitoring (action gap filler), Articles 25-28

Chapter 5 of the proposal establishes a **fairly comprehensive mechanism for the assessment of the implementation of national plans (and Member States' progress towards their national targets) and progress towards EU target achievement**. It determines that the Commission is obliged to issue recommendations to a specific Member State if progress in implementing its NECP is insufficient. It obliges the Commission to take measures at EU level if contributions are insufficient for the collective achievement of the Energy Union objective. Chapter 5 also establishes an annual monitoring cycle, starting with the publication of the Commission's assessment in the form of the "State of the Energy Union" report at the end of October every year.

This mechanism has a number of **positive elements**, notably

- **Measures at EU level if contributions are insufficient:** If the Commission concludes that the national contributions are insufficient for the collective achievement of the Energy Union objectives –, it shall take measures at Union level (article 27.1). These rules provide for a comprehensive and mandatory response at EU level.
- **Structured assessment of overall EU progress and recommendations to all Member States:** According to Article 25.1 (a), the Commission assesses, "the progress made at Union level towards meeting the objectives of the Energy Union".<sup>23</sup> According to Article 27.3, the Commission may issue recommendations to all Member States if its aggregated assessment demonstrates that the Union is at risk of not meeting the objectives of the Energy Union. In broad terms, this structured approach to assessing EU progress and responding to all Member States is useful. It should be noted that the Commission has a discretion to issue recommendations or not ("may issue").
- **Fairly strong assessment of implementation of progress on individual national plans and recommendations to Member State concerned:** Pursuant to Article 25.1 (b), the Commission also assesses progress achieved by each individual Member States

<sup>23</sup> Full provision reads: "the progress made at Union level towards meeting the objectives of the Energy Union, including for the first ten-year period the Union's 2030 targets for energy and climate, notably in view of avoiding any gaps to the Union's 2030 targets for renewable energy and energy efficiency".

towards implementing their respective integrated national energy and climate plans (and the targets and contributions set out in these plans). Given their level of detail, plans are a fairly strong basis for assessment (even though the respective specificity of the reporting is still to be decided). However the assessment process suffers from the fact that the national contributions may be insufficiently ambitious (see section 4.2 above). It is thus important that the Commission shall issue recommendations to the Member State concerned, if the assessment demonstrates that progress by a Member State is insufficient (Article 27.2). A mandatory follow-up by the Commission to an individual underperformance (here via the issuing of a recommendation) is positive because it ensures that insufficient implementation has a consequence.

- **Obligatory response by Member States to individual recommendations:** Article 28.2 (b) and Article 15.5 both oblige Member States to make reference to received recommendations in their biennial reporting and specify policy action taken or intended. Article 15.5 demands a “detailed timetable” for that action and Article 28.2 (b) notes that Member States have to justify any deviation from the recommendation. Article 28 also states that recommendations should be complementary to the latest country-specific recommendations issued in the context of the European Semester.
- **Fairly strong system to maintain baseline shares for renewable energy:** Article 27.4 determines that Member States ensure that any gap to the baseline share “is covered by making a financial contribution to a financing platform” (which in turn is meant to fund renewable energy projects making up for the shortfall). This provision helps ensure that backsliding behind the 2020 shares in renewable energies is avoided. The effectiveness of this mechanism will largely depend on a delegated act that the Commission can issue. This delegated act is meant to set out the necessary provisions for the establishment and functioning of this financing platform (Article 27.4.).

However, this proposal has a number of **important shortcomings**:

- **Weak Member State accountability:** The regulation does not state what exactly happens if a Member State does not comply with recommendations issued pursuant to Article 28. This silence suggests that there are no consequences. This reading is reinforced by the fact that recommendations are non-binding. This risks repeating the failings of the European Semester, which suffers from a low compliance rate.<sup>24</sup> As a first step, a dedicated follow-up process should be foreseen to assess the actions reported by Member States in terms of their expected ability to address the problem. As a second step, an explicit implementation check regarding the reported actions and timetable should be installed (“are they really happening?”) – to enhance Member States’ accountability. As a third step, consequences for not delivering could be devised. As a minimum, the status of follow-up on recommendations by Member States should be discussed in the respective Council meeting – similar to the practice under the Macroeconomic Imbalance Procedure<sup>25</sup>.
- **Reporting on recommendations must be annual:** Article 28.2 establishes that Member States must report on the implementation of the recommendations “in its integrated national energy and climate progress report made in the year following the year the recommendation was issued.” With recommendations concerning progress first to be issued alongside the State of the Energy Union report in October 2021 (see Article 25.1 combined with Article 29.1(b)) the first instance would be year 2022 – in which no (biennial) integrated national energy and climate progress report is scheduled (first one in March 2021 (Article 15)). This could imply a delay in the Member States formal response of 12 months if the recommendation is issued in an odd year. In such cases the report on action towards recommendations should be included in annual reporting (Article 23).

<sup>24</sup> See assessment by Green Budget Europe: Adolf, C., Nix, J. (2016) The effectiveness of the European Semester from a governance perspective. Green Budget Europe. Available online at <http://green-budget.eu/the-effectiveness-of-the-european-semester-from-a-governance-perspective/>

<sup>25</sup> See also Duwe, Velten (2016) Lessons from the European Semester for Effective 2030 Governance for Energy and Climate. Available online at <http://ecologic.eu/14238>



- **Relationship to compliance control under ESR:** Articles 8 and 9 of the ESR contain specific measures to address non-compliance: corrective action and a compliance check, including a correction factor of 1.08. This system differs significantly from the recommendations under Chapter 5 of the Regulation, which is less stringent than that of the ESR. It is clear that the compliance measures under the Articles 8 and 9 ESR do not exclude recommendations under Article 26.1<sup>26</sup> but the practical value of recommendations is unclear when the more detailed and forceful corrective action under the ESR already applies – within the annual compliance cycle of the ESR. There is a risk of an unnecessary duplication of EU responses to the same problem.<sup>27</sup>
- **General Principles under Article 28 in parts contradictory:**
  - **Commission shall or may make recommendations:** According to Article 28.1, the Commission shall - as appropriate - issue recommendations to Member States to ensure the achievement of the objectives of the Energy Union". This provision is ambivalent in itself because "shall as appropriate" is an oxymoron. The provision also conflicts with Article 27.3 where the Commission may issue recommendations, i.e. in this case the Commission has discretion.
  - **Utmost importance:** The provision determines that the Member State concerned shall take utmost account of the recommendation "in a spirit of solidarity between Member States and the Union and between Member States". This provision is different from Article 9.3 where Member States are required to take utmost account of any recommendations from the Commission but are not expected to adopt recommendations in the "spirit of solidarity between Member States and the Union and between Member States". The content of the spirit-of-solidarity-clause is also unclear.

## 7 Chapter 7 – Cooperation and Support

### 7.1 Cooperation between the Member States and the Union (Article 34)

According to Article 34, **Member States "shall cooperate and coordinate fully"** with each other and the Union (i.e. the European Commission and other EU institutions) in relation to the obligations under the regulation. The provision is largely identical with Article 24 of the MMR, but introduces a number of new items for cooperation. New items include the process for preparing, adopting, notifying and assessing" the NECPs, the respective biannual progress reports and the annual report, as well as the process related to the recommendations. Mandatory cooperation is useful.

Furthermore, Member States can request **technical support from the Commission** for the implementation of the Regulation. This is positive but would benefit from explicit financial backing, for example through the next Multiannual Financial Framework. Considering the integrated nature of the NECPs and the level of detail requested Member States will probably have to increase their information and administrative capacities.<sup>28</sup>

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<sup>26</sup> Article 26.2 determines that the Commission may issue opinions on the ESR action plans.

<sup>27</sup> It is clear that recommendations under Article 26 and 27 do not address cases of non-compliance but cases where there is a risk of insufficient progress. Despite this important difference there is a real risk that responses duplicate because corrective action and assessment under Article 25 occur in similar short time spans – annually and bi-annually, respectively.

<sup>28</sup> see Duwe, Donat, Sartor (2016) Integrating National Reality into the 2030 Governance System. <http://ecologic.eu/14326>

## 7.2 Role of the European Environment Agency (Article 35)

Article 35 mandates the **European Environment Agency (EEA) to assist Member States** and the Commission in handling the information being produced and processed under the regulation under the Energy Union columns decarbonisation and energy efficiency. It is almost identical to Article 24 of the MMR. Importantly, the EEA is tasked to collect and collate Member States inputs on policies and measures, projections and greenhouse gas inventories. These are important functions that the EEA is already practising and is well equipped to handle.

However, there are **additional functions** that are required and should be mentioned explicitly, for taking up by the EEA or in fact another independent expert body that could be created under this Regulation. These include the following

- **Quality assurance and review on all reporting requirements:** Recent analysis has shown that Member States' reports do not always contain sufficiently accurate and coherent information.<sup>29</sup> Article 35 only foresees a quality control (QC) and assurance (QA) role for the EEA on greenhouse gas inventories, policies and measures and projections. This QA/QC role should be extended to all reporting by Member States.
- **Scientific input to the adequacy review:** Article 35 does not foresee assistance by the EEA to the review under Article 38. As the scope for this review needs to be broadened (see below), additional scientific input to this process is essential and could be delivered by the EEA or another independent expert body (see section 9 below).

## 8 Chapter 9 – Review (Article 38)

Article 38 establishes a **review of the regulation every five years**, starting on 28 February 2026. It foresees a report by the Commission to the European Parliament and the Council which assesses the operation of the regulation and its “contribution to the governance of the Energy Union”. The report also assesses the conformity of its planning, reporting and monitoring provision with other EU laws or future decisions relating to the UNFCCC and the PA. Importantly, the Article gives the Commission the mandate to make proposals as appropriate.

The proposed reviews cover the operation of the regulation and provides for specific deadlines. The fairly **broad scope of the review, specific deadlines and reference to the UNFCCC and PA are positive** – in principle.

The proposed review, however, suffers from a **number of shortcomings**:

- **Scope too narrow:** The review does not address whether the current EU targets are sufficient to help ensure the transition to a net zero carbon economy. The proposed review only covers the operation of the regulation and its “contribution to the governance of the Energy Union”. This is a major shortcoming.
- **Too late to make a difference:** The review of the operation of the Regulation by early 2026 that leads to legislative proposals implies that changes to the system itself could be expected to only in 2027 at the earliest. This would leave only three years to the target year 2030. Should the procedures adopted under the legislation turn out to be inadequate, these changes would come too late. Thus the date for this review should be set two years earlier, to 28 February 2024.
- **Scope unclear:** The review assesses the GR's contribution to the governance of the Energy Union. It is unclear how the GR can contribute to the governance of the Energy Union. The term “governance” is not defined in the GR. It is equally unclear

<sup>29</sup> see Velten, Duwe (2016) Smart Cash for the Climate: Maximising Auctioning Revenues from the EU Emissions Trading System. An analysis of current reporting by Member States and options for improvement. Available online at [http://www.maximiser.eu/s/MaxiMiseR-ETS-full-technical-report\\_FINAL.pdf](http://www.maximiser.eu/s/MaxiMiseR-ETS-full-technical-report_FINAL.pdf)

how the GR can contribute to the governance. Furthermore, the review assesses the conformity of its planning, reporting and monitoring provisions with “future decisions relating to the UNFCCC and the PA”. It is not clear whether future decisions *relating* to the UNFCCC and PA are only decisions of the EU that relate to the international climate regime or decisions adopted in the context of the UNFCCC and PA.

- **No dedicated mechanism for ratcheting up of climate targets:** The GR proposal merely states that the Commission may make proposals, if appropriate. This is a standard clause that is common to many other pieces of EU legislation but it does not contain a dedicated mechanism for scaling-up the EU’s targets and ambition. It is up to the political will of the Commission to propose higher targets – or to make no proposal at all. Given the size of the challenge – emission reductions of probably -95 % until 2050 (compared to 1990) – and the requirement of the PA to regularly scale up targets (Article 3 and 4.3 of the PA), the new GR should provide for a system that spurs and maintains the continuous increase of EU ambition over time. If adopted as proposed now, the GR proposal would be a missed opportunity for establishing a system that raises ambition and supports the implementation of the PA and the achievement of its long-term objectives.

There are various ways in which the GR can address the lack of an adequate review and dedicated ratchet mechanism. Recent Ecologic papers explored options in detail how EU legislation provide for robust review and ratchet mechanism.<sup>30</sup> **As the strongest option, EU legislation should include quantified interim and long-term EU targets for 2040, 2050 and beyond, combined with a robust review system and a mechanism for ratcheting up targets.** In line with the PA, these reduction targets should progress over time and reflect the level of ambition the PA requires. As an additional element, the Commission would be required to review whether EU reduction targets constitute an adequate contribution of the EU to global climate action – or not. Based on these reviews, the Commission would be required to propose targets for the EU and Member States. The proposals would start the ordinary legislative process. To ensure high levels of scientific credibility, this process should be based on a preparatory report from the European Environment Agency (EEA) or another independent scientific body.<sup>31</sup>

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<sup>30</sup> Nils Meyer-Ohlendorf et al (2017): EU Climate Policies after 2020: Robust Review and Ratcheting Up Targets <http://ecologic.eu/14450> ; Nils Meyer-Ohlendorf, Ralph Bodle (2016): EU Effort Sharing after 2020: Review and Ratcheting Up EU Climate Targets. <http://ecologic.eu/14112>

<sup>31</sup> For a more detailed discussion of the mandate and composition of this independent body - see footnote above

## 9 Annex. Suggestions for amendments

Legend: Additional language is highlighted in **bold**. Deletions are marked as ~~deletions~~.

### *Article 1*

#### **Subject matter and scope**

1. This Regulation establishes a Governance mechanism to

(a) implement strategies and measures designed to meet the objectives and targets of the Energy Union, and for the first ten-year period from 2021 to 2030 in particular the EU's 2030 targets for energy and climate;

(b) ensure the timeliness, transparency, accuracy, consistency, comparability and completeness of reporting by the Union and its Member States to the UNFCCC and Paris Agreement secretariat;

**(c) support achieving the objective of reducing the greenhouse gas emissions of the Union by 80 - 95 % below 1990 levels in 2050, – x % below 1990 levels in 2040 and to achieve climate neutrality in the second half of the century.**

....

### *Article 3*

#### **Integrated national energy and climate plans**

...

2. The integrated national energy and climate plans shall consist of the following main sections:

...

(e) an assessment of the impacts of the planned policies and measures to meet the objectives referred to in point (b), **including quantified estimates of the greenhouse gas reduction potential of planned policies and measures**

**3. b When preparing the national plans referred in paragraph 1, Member States shall take into account the long-term greenhouse gas reduction target set out in Article 1.1 c) and ensure consistency with their respective national long-term low emissions strategy to be prepared in accordance with Article 14.1.**

*Article 4***National objectives, targets and contributions for each of the five dimensions of the Energy Union**

Member States shall set out in their integrated national energy and climate plan the following main objectives, targets and contributions, as specified in Section A.2. of Annex I:

...

- i. the Member State's binding national target for greenhouse gas emissions and the annual binding national limits pursuant to Regulation [ ] [ESR];

...

(2) with respect to renewable energy:

- i. with a view to achieving the Union's binding target of at least 27% renewable energy in 2030 as referred to in Article 3 of [recast of Directive 2009/28/EC as proposed by COM(2016) 767], a contribution **as set out in Article 5.1** to this target in terms of the Member State's share of energy from renewable sources in gross final consumption of energy in 2030, with a linear trajectory for that contribution from 2021 onwards

...

(b) as regards the dimension "Energy Efficiency":

- (1) the ~~indicative~~ national energy efficiency contribution **as set out in Article 6.1** to achieving the Union's binding energy efficiency target of 30% in 2030 as referred to in Article 1(1) and Article 3(4) of Directive 2012/27/EU [as amended by proposal COM(2016)761], based on either primary or final energy consumption, primary or final energy savings, or energy intensity;

*Article 5***Member States' contribution setting process in the area of renewable energy**

1. When setting their contribution for their share of energy from renewable sources in gross final consumption of energy in 2030 and the last year of the period covered for the subsequent national plans, pursuant to Article 4(a)(2)(i), Member States shall take into account the following:

**(a) the reference values set out in Annex x**

**(b) the EU-level target;**

...

**2) In addition, Member States shall take into account national circumstances affecting renewable energy deployment, such as:** ~~circumstances affecting renewable energy deployment, such as:~~

- (a) equitable distribution of deployment across the European Union;
- (b) economic potential;
- (c) geographical and natural constraints, including those of non-interconnected areas and regions; and
- (iv) the level of power interconnection between Member States.

*Optional paragraph 3 – in case no references values will be accepted:*

~~2-3.~~ Member States shall ~~collectively~~ ensure that ~~the sum of~~ their contributions **are adequate and that the sum of their contributions add** up to at least 27% from renewable energy sources in gross final energy consumption at Union level by 2030.

**4) Member State shall enshrine their pledged contributions, including the trajectory and measures, in national law.**

#### *Article 6*

##### **Member States' contribution setting process in the area of energy efficiency**

1 When setting their ~~indicative~~ national energy efficiency contribution for 2030 and the last year of the period covered for the subsequent national plans pursuant to Article 4(b)(i), Member States shall ensure that:

- (a) the reference values set out in Annex y**
- (b) the EU-level target;**

...

#### *Article 7*

##### **National policies and measures for each of the five dimensions of the Energy Union**

Member States shall describe, in accordance with Annex I, in their integrated national energy and climate plan, the main existing (implemented and adopted) and planned policies and measures, **including quantified estimates of their greenhouse gas reduction potential**, to achieve in particular the objectives set out in the national plan, including measures to ensure regional cooperation and appropriate financing at national and regional level.

*Article 8***Analytical basis of the integrated national energy and climate plans**

...

2. Member States shall describe in their integrated national energy and climate plan their assessment, at national and where applicable regional level, of:

(a) the impacts, **including quantified estimates**, on the development of the energy system and greenhouse gas emissions and removals for the first ten-year period at least until 2040 (including for the year 2030) under the planned policies and measures including a comparison with the projections based on existing (implemented and adopted) policies and measures referred to in paragraph 1;

(b) the macroeconomic, environmental, **innovation**, skills and social impact of the planned policies and measures referred to in Article 7 and further specified in Annex I, for the first ten-year period at least until the year 2030 including a comparison with the projections of existing (implemented and adopted) policies and measures referred to in paragraph 1;

*Article 9***Draft integrated national energy and climate plans**

...

2. The Commission may issue recommendations on the draft plans to Member States in accordance with Article 28. Those recommendations shall in particular set out:

(a) the level of ambition of objectives, targets and contributions in view of collectively achieving the Energy Union objectives and notably the Union's 2030 targets for renewable energy and energy efficiency;

(b) **the adequacy of proposed national contributions taking into account the requirements set out in Article 5.1 d and in Article 6.2.**

...

(d) **Interaction of objectives and measures for 2030 with the long-term dimension and consistency with the objectives of the long-term strategy to be developed under Article 14**

3. The Council shall, upon recommendation by the European Commission, discuss the findings of the Commission's assessment of draft national plans, with a view to ensuring the achievement of the Energy Union objectives and notably collectively meeting the Union's 2030 targets for renewable energy and energy efficiency.

4. Member States shall take utmost account of any recommendations from the Commission when finalising their integrated national energy and climate plan.

*Article 10***Public consultation**

Without prejudice to any other Union law requirements, Member States shall ensure that the public is given early and effective opportunities to participate in the preparation of draft plans referred to in Article 9 of this Regulation. ~~And Participation should include, but should not be limited to representatives of cities and regions, businesses, science, consumer protection associations, trade unions, civil society as well as the general public. Interested parties should be accorded at least two months to comment on the final draft plan.~~ Member States should attach to the submission of their draft integrated national energy and climate plan to the Commission a summary of the public's views **and explain how these views were taken into account.** In so far as the provisions of Directive 2001/42/EC are applicable, consultations undertaken in accordance with that Directive shall be deemed to satisfy also the obligations to consult the public under this Regulation.

*Article 12***Assessment of the integrated national energy and climate plans**

1. The Commission shall assess the integrated national energy and climate plans and their updates as notified pursuant to Articles 3 and 13. It shall assess in particular whether:

- (a) the targets, objectives and contributions are sufficient for the collective achievement of the Energy Union objectives and for the first ten-years period in particular the targets of the Union's 2030 Climate and Energy Framework pursuant to Article 25;
- (b) national contributions pledged are adequate and in line with Article 5.1 and 6.1**

...

2. **If the Commission deems that Member States have not taken utmost account of recommendations made pursuant to Article 9.2, the Council shall, upon invitation by the Commission, discuss the findings of the Commission's assessment of the national plans, with a view to ensuring the achievement of the Energy Union objectives and notably collectively meeting the Union's 2030 targets for renewable energy and energy efficiency.**

*Article 13***Update of the integrated national energy and climate plan**

1. By **30 June 2024** ~~1 January 2023~~, and every 10 years thereafter, Member States shall submit to the Commission a draft update of the latest notified integrated national energy and climate plan referred in Article 3 or confirm to the Commission that the plan remains valid.
2. By **30 June 2025** ~~1 January 2024~~, and every 10 years thereafter, Member States shall notify to the Commission an update of the latest notified integrated national energy and climate plan referred in Article 3, unless they have confirmed that the plan remains valid pursuant to paragraph 1.



3. **Taking account of the outcome of the review process under Article 38**, Member States shall only modify the targets, objectives and contributions set out in the update referred in paragraph 2 to reflect an increased ambition as compared to the ones set in the latest notified integrated national energy and climate plan

...

6. The procedures laid down in Article 9(2), **10, 11 and 12** shall apply to the preparation and assessment of the updated integrated national energy and climate plans.

#### *Article 14*

### **Long-term low emission strategies**

1. **In conjunction with the preparation of integrated national energy and climate plans**, Member States shall prepare and report to the Commission by 1 January **2019 2020** and every 10 years thereafter their long-term low emission strategies with a 50 years perspective, to contribute to:

...

(c) achieving **the** long-term greenhouse gas emission reductions **as set out in Article 1c of this Regulation** and enhancements of removals by sinks in all sectors in line with the Union's objective, ~~in the context of necessary reductions according to the IPCC by developed countries as a group, to reduce emissions by 80 to 95 % by 2050 compared to 1990 levels~~ in a cost-effective manner.

2. The long-term low emission strategies **shall be based on the template contained in Annex X** and shall cover **in particular**:

(a) total greenhouse gas emissions reductions and enhancements of removals by sinks;

...

4. The Member States ~~Member States~~ shall **ensure that the public is given early and effective opportunities to participate in the preparation of long term low emission strategies** ~~shall make available to the public forthwith their respective long-term low emission strategies and any updates thereof.~~ **Article 10 applies accordingly.**

5. **The Commission shall support Member States in their preparation of long-term strategies by providing information on state of the underlying scientific knowledge and technological development relevant to achieving the objectives referred in paragraph 1. The Commission shall also provide for opportunities for Member States and other stakeholders to provide additional information and discuss their perspectives. The Commission may use the outcome of this process to prepare a long-term strategy for the Union, in accordance with Article 4.19 of the Paris Agreement.**

6. **The Commission shall assess whether the national long-term low emission strategies are adequate for the achievement of the emission reductions set out in Article 1c of this Regulation. The Commission may issue recommendations to assist Member States in their efforts to prepare and implement their long-term low emission strategies.**

*Article 15***Integrated National Energy and Climate Progress Reports**

...

2. The report referred to in paragraph 1 shall cover the following elements:

...

**(h) progress on the implementation of the long-term low emission strategy developed in accordance with Article 14.**

*Article 23***Annual Reporting**

1. By 15 March 2021, and every year thereafter (year X), Member States shall report to the Commission:

...

**(d) information on the policies and measures adopted, or intended to be adopted and implemented, to address any recommendations issued by the Commission pursuant to Article 27(2) or 27 (3). Such information shall include a detailed timetable for implementation.**

*Article 27***Response to insufficient ambition of integrated national energy and climate plans and insufficient progress towards the Union's energy and climate targets and objectives**

...

3 ... The Commission shall, ~~as appropriate,~~ take measures at Union level in addition to the recommendations in order to ensure in particular the achievement of the Union's 2030 targets for renewable energy and energy efficiency. With regard to renewable energy, such measures shall take into consideration ambitious early efforts by Member States to contribute to the Union's 2030 target.

*Article 28***Commission recommendations to Member States**

~~1. The Commission shall as appropriate issue recommendations to Member States to ensure the achievement of the objectives of the Energy Union.~~

~~2.~~ **1.** Where reference in this Regulation is made to this Article the following principles shall apply:

(a) the Member State concerned shall take utmost account of the recommendation ~~in a spirit of solidarity between Member States and the Union and between Member States;~~

(b) the Member State shall set out, in its ~~integrated national energy and climate progress~~ report made **pursuant to Article 15 and Article 23** in the year following the year the recommendation was issued, how it has taken utmost account of the recommendation and how it has implemented or intends to implement it. It shall provide justifications where it deviates from it;

(c) The recommendations should be complementary to the latest country-specific recommendations issued in the context of the European Semester.

**3. The Council shall, upon invitation by the Commission, discuss the status of implementation of individual recommendations in the context of monitoring progress towards the Energy Union's objectives and in particular the achievement of the Union's 2030 targets for renewable energy and energy efficiency.**

*Article 35***Role of the European Environment Agency**

The European Environment Agency shall assist the Commission in its work as regards the decarbonisation and energy efficiency dimensions to comply with Article 14, 15, 16, 17, 18, 19, 23, 24, 25, 29, 30, 31, 32, ~~and 34~~ **and 38** in accordance with its annual work programme. That shall include assistance as required with:

...

(k) **performing quality assurance and quality control procedures on other annual and biennial reporting duties by Member States, including in particular on the information submitted on financial and technology support and auctioning revenues as set out in Article 17.2;**

(l) **providing inputs to the review process as set out in Article 38.**

*Article 38***Review**

1. The Commission shall report to the European Parliament and to the Council by 31 October 2023 and every five years thereafter on the operation of this Regulation, its contribution to the Governance of the Energy Union and the conformity of the planning, reporting and monitoring provisions of this Regulation with other Union legislation or future decisions relating to the UNFCCC and the Paris Agreement. The Commission may make proposals if appropriate.

**2. The Commission shall report to the European Parliament and to the Council on progress towards meeting the targets set out in Article 1.1 c and its contribution to the goals of the Paris Agreement by 31 October 2023 and every five years thereafter. If recent scientific evidence, particularly as set out in relevant IPCC assessments, suggests that the EU targets set out in Article 1.1 c constitute an insufficient contribution to global climate action, the report shall also be accompanied by a proposal to increase the Union's greenhouse gas reduction target for 2030, as well as those set out in Article 1.1 c). In accordance with Articles 3 and 4.3 of the Paris Agreement, the proposed reduction targets shall represent a progression beyond previous targets.**

**2. With regard to the review of the objectives for 2030, as well as those set out in Article 1.1 c), the review shall be informed by a preparatory report to be prepared by the European Environment Agency (or another independent body) on the implementation of this Regulation. The preparatory report shall include recommendations on increasing the Union's quantitative objectives if required. The European Environment Agency (or the independent body) shall publish its report by 31 March 2022 and every five years thereafter. If the Commission intends to deviate from the recommendations contained in the report for its own report referred to in paragraph 2, it shall coordinate with European Environment Agency (or the independent body) and publish explicit reasons for the deviation after that coordination.**