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## Governance Challenges of the EU's 2030 Energy and Climate Framework

by Sirja-Leena Penttinen, Nicolò Sartori and Kim Talus

### ABSTRACT

Over the last two decades, the European Union has put in place various policy and regulatory instruments to address climate change and ensure environmental protection. These European efforts, however, have been far from fully successful for a number of reasons, including the difficulty of achieving simultaneously the objectives set by the “2020 Climate and Energy Package” and the inefficient governance mechanisms to pursue them. For this reason, the 2030 policy framework for climate and energy agreed by the European Council in October 2014 proposes a new governance structure which introduces greater flexibility for governments in reaching the targets. While the new structure allows Member States to choose policies that are best-suited to their national energy mix and preferences, it will have to ensure that the commitments undersigned at EU level are respected and the overall targets set by the Commission are met.

*European Union | Climate change | Energy*

keywords

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### Introduction

The European Union (EU) has progressively extended its policy and regulatory activity on energy, starting with addressing issues such as climate change and the security of energy supplies despite the apparent competence limits. As the EU's action in these domains has proved to conflict with the traditional EU objective of free competition in the energy sector (i.e. liberalization and competition policies vs. national support schemes for renewable energy, or vs. incentives for infrastructure development), the need to integrate and reconcile these contradictory policies is now at the centre of the European institutional debate.

As a result of the growing attention to climate change and protection of the environment, in the last two decades the EU has put in place various policy and regulatory instruments to address the issue. These include the 2001 and 2003 directives on renewable energy and biofuels as well as others relating to energy efficiency, and in particular the first "Climate and Energy Package" in 2007, which set ambitious binding targets in the renewables, energy efficiency and CO<sub>2</sub> emissions domains, to be met by 2020.

Despite these significant efforts, the EU's action has been far from fully successful for a number of reasons. Along with specific policy issues, such as the conflicting nature of market-based objectives with measures fostering sustainable energy policies as well as the difficulty of achieving simultaneously the three objectives set by the 2020 Climate and Energy Package, the inefficient mechanisms for the governance of the European energy policies have prevented the EU from completely achieving its ambitious climate and energy goals.

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For this reason, the new policy framework for climate and energy for 2030 that was presented in January by the Commission and agreed by the European Council in October – not only contains new measures and tools to adjust and improve the EU's policy in terms of objectives, but also proposes a new governance structure that would apply to national plans for greenhouse gas emissions reduction in the non-ETS sectors of renewable energy and energy efficiency.

The new governance is expected to foster coherence on energy and climate policies while introducing greater flexibility for Member States in reaching the targets. This last point, however, responding to the principle of subsidiarity, risks undermining the capacity of the Commission to effectively supervise and coordinate the efforts of individual Member States towards shared, EU-wide energy and climate objectives.

## 1. The 20-20-20 targets and the 2020 Climate and Energy Package

The conclusions of the European Council of March 2007, which underlined the importance of achieving the strategic objective of limiting the global average temperature increase to not more than 2°C above pre-industrial levels, committed the EU to become a highly energy-efficient and low carbon economy by setting the so-called "20-20-20 targets". These included:

- a 20 percent reduction in EU greenhouse gas emissions from 1990 levels;<sup>1</sup>
- raising the share of EU energy consumption produced from renewable resources to 20 percent; and
- a 20 percent improvement in the EU's energy efficiency.<sup>2</sup>

In 2009 the EU adopted the 2020 Climate and Energy Package, a set of complementary legislation expected to achieve the ambitious objectives agreed upon in the Council's conclusions. These measures included the reform of the ETS and the definition of new targets for non-EU ETS sector emissions and renewable energies. Energy efficiency, not dealt with in the package's provisions, was subsequently addressed through the adoption of separate legislation.

### 1.1 Greenhouse gas emissions reduction

The 2020 Climate and Energy Package entailed a comprehensive revision and strengthening of the legislation that underpins the EU ETS, as well as a revision of the national targets for non-EU ETS emissions.

<sup>1</sup> See the European Union website: *Summaries of EU legislation: Strategy on climate change for 2020 and beyond*, updated 31 August 2011, [http://europa.eu/legislation\\_summaries/energy/european\\_energy\\_policy/l28188\\_en.htm](http://europa.eu/legislation_summaries/energy/european_energy_policy/l28188_en.htm). See also European Commission, *Limiting global climate change to 2 degrees Celsius. The way ahead for 2020 and beyond* (COM(2007)2), 10 January 2007, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52007DC0002>.

<sup>2</sup> Compared to consumption projections of 1842 Mtoe from the 2007 PRIMES baseline.

The revision of the EU ETS, which applies to the third trading period that started in 2013, introduced three main innovations. The first concerns the application of a single EU-wide cap on emissions allowances in place of the existing system of national caps. The second consists of the progressive phase-in of auctioning of emission allowances, which is expected to progressively replace the previous free allocation scheme (the power generation sector being subject to a different regime in this respect). The third entails the extension of the ETS perimeter so as to include additional sectors such as civil aviation and specific chemical industrial segments. The introduction of these measures was mainly a response to the need to address the surplus of emission allowances resulting from the economic crisis that hit the EU starting in 2008, and which has significantly weakened the carbon price signal and undermined the functioning of the whole ETS system.

The reform of the EU ETS was accompanied by new measures introduced by the "Effort Sharing Decision" and applied to the non-ETS sectors. The decision sets binding national targets for sectors not covered by the European trading scheme, and it is expected to significantly reduce greenhouse gas emissions for the period 2013-2020. In fact, in order to achieve the overall 20 percent reduction by 2020, emissions in non-ETS sectors – which include energy supply, industrial energy use and processes, household energy use, services energy use, transports, waste, and agriculture, and which represent approximately half of the EU's total GHG emissions – have to decrease by 10 percent in the period considered.<sup>3</sup>

To ensure a fair and equitable subdivision of the emissions cut efforts, the EU legislation even allows Member States with a relatively low GDP per capita to increase their greenhouse gas emissions compared to 2005,<sup>4</sup> while obliging countries with relatively high GDP per capita to reduce their emissions. The efforts of Member States are regularly monitored by the Commission, which receives National Programmes every year that provide information on national policies and measures introduced to decrease emissions as well as the description of national results and projections. The Commission is required to evaluate each Member State's progress towards fulfilling their obligations under the Effort Sharing Decision framework.

## *1.2 Promotion of renewables*

The Directive 2009/28/EC on the promotion of the use of energy from renewable sources was adopted to replace the Directive 2001/77/EC. It established a set of measures necessary to meet the objective to raise by 20 percent by 2020 the share of EU energy consumption met by renewable resources.<sup>5</sup> The Directive introduced

<sup>3</sup> The emissions limits range from +20 to -20 percent and altogether equate to an overall 10 percent EU GHG emissions reduction by 2020 compared to 2005.

<sup>4</sup> This increase should be limited in order to contribute to the independent reduction established by the Community.

<sup>5</sup> Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources ... (OJ L 140, 5.6.2009), <http://eur-lex.europa.eu/legal-content/en/>

mandatory national targets for Member States, taking into account their different starting points and potentials, including the existing level of energy from renewable sources in the energy mix and relative GDP per capita. In addition, the Directive significantly improved the regulatory framework for biofuels, setting a 10 percent target for renewable energy sources in final energy consumption in the transport sector.

Member States are required to prepare and implement national measures to reach the mandatory targets set by the Directive. In order to achieve these results, Member States are allowed to use different support instruments, including schemes or mechanisms that promote "the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased."<sup>6</sup>

To ensure the monitoring of the progress in the development of renewables both at the national and the European level, the EU legislation requires Member States to submit harmonized National Renewable Energy Action Plans (NREAPs), and to deliver reports of their activities and of the results achieved in the promotion and use of energy from renewable sources. Information to be provided include details about support schemes to promote renewables, developments in the availability and use of biofuels and biomass resources for energy purposes, estimated net greenhouse gas emissions-saving due to the use of energy from renewable sources, and so forth.

### 1.3 Energy efficiency

After the adoption of the 2011 Energy Efficiency Action Plan<sup>7</sup> and the Europe 2020<sup>8</sup> strategy, the EU introduced a significant number of energy efficiency measures in fields such as the energy performances of buildings,<sup>9</sup> the labelling and product information of energy related products,<sup>10</sup> the labelling of tyres with respect to fuel

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TXT/?uri=celex:32009L0028.

<sup>6</sup> Ibidem, Article 2(k). See also Angus Johnston and Guy Block, *EU Energy Law*, Oxford, Oxford University Press, 2012, p. 331.

<sup>7</sup> European Commission, *Energy Efficiency Plan 2011* (COM(2011)109), 8 March 2011, p. 2, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0109>.

<sup>8</sup> European Commission, *Europe 2020. A strategy for smart, sustainable and inclusive growth* (COM(2010)2020), 3 March 2010, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52010DC2020>.

<sup>9</sup> Directive 2010/31/EU of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010), p. 13-35, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32010L0031>.

<sup>10</sup> Directive 2010/30/EU of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ L 153, 18.6.2010), p. 1-12, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32010L0030>.

efficiency,<sup>11</sup> the labelling of office equipment,<sup>12</sup> and the eco-design requirements for household washing machines.<sup>13</sup>

The most recent push towards more ambitious energy efficiency goals was provided by the adoption of the so-called “Energy Efficiency Directive”, which established a common framework of measures to promote energy efficiency and introduced two new targets for Member States.<sup>14</sup> The first is a non-binding, indicative national energy efficiency target for 2020, to be set by each Member State and taking into account the EU-wide, non-binding 20 percent efficiency target for 2020. The target can be set in the form that the Member State prefers (primary or final savings, energy intensity or consumption), thus leaving leeway for the Member States. The second is the legally binding target to save an annual 1.5 percent of energy consumption between 2014 and 2020. This target is reached by setting energy efficiency obligation schemes or other measures to drive efficiency improvements at every consumption level, meaning households and the industry sector as well as the transport sector.

The Directive left much margin of manoeuvre for the Member States in setting up their national schemes, allowing Member States to have a choice of two methods to meet the obligations set out in the Articles. On the one hand, Member States have to submit National Energy Efficiency Action Plans (NEEAPs), which provide details about energy efficiency improvement measures and expected and achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use. On the other hand, the possibility of adopting alternative measures enables the Member States to choose the best regulatory tools that fit into their legal framework but also take into consideration national specificities (i.e. the characteristics of the Member States in relation to their energy mixes, such as changes of energy imports and exports as well as development of renewable energy sources).

Furthermore, the Directive sets out obligations to draw up different strategies in addition to the NEEAPs, e.g. strategies for mobilising investments in the renovation of the national stock of residential and commercial buildings, which need to be updated and reported to the Commission until certain deadlines.

<sup>11</sup> Regulation (EC) No 1222/2009 of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342, 22.12.2009), p. 46-58, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32009R1222>.

<sup>12</sup> Regulation (EC) No 106/2008 of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment (OJ L 39, 13.2.2008), p. 1-7, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32008R0106>.

<sup>13</sup> Directive 2009/125/EC of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009), p. 10-35, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32009L0125>.

<sup>14</sup> Directive 2012/27/EU of 25 October 2012 on energy efficiency (OJ L 315, 14.11.2012), <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32012L0027>.



## 2. Shortcomings of the 2020 package

The EU's decision to embed its 2020 Package in legally binding obligations sent a powerful message to Member States, providing greater clarity about the European commitment in the field of sustainability and climate action. Indeed, it is necessary to note that the currently existing scheme represents a significantly improved and more robust regulatory set-up compared to the previous regimes, which had failed in most areas due to their imprecise and voluntary measures. The existing measures have created a framework of clear obligations for Member States that, combined with the increased supervision powers of the Commission concerning both the implementation and the end results, has played an important practical role in driving national efforts.

The framework established through the 2020 Package, however, presents shortcomings both in terms of policies and definition of objectives, as well as with respect to the governance mechanisms in place to ensure the success of the EU's and Member States' actions. In fact, although the EU is generally on track to meet its greenhouse gas and renewable energy targets, the European climate action and energy policy is commonly perceived as unsuccessful. The decision to adopt separate binding targets in the fields of carbon emissions reduction, renewable energy and efficiency has been largely criticized as an ineffective approach to tackle climate change. The interlinked targets – believed to be mutually supportive – did not complement each other in reality, leading to sub-optimal results in the three sectors.

The main shortcoming of the current EU ETS scheme is, as was noted above, its failure to provide for the necessary price signals that would guide the markets and market actors towards more sustainable energy use. Despite the measures taken, the price signals are first too modest, and second too fluctuating. Given these two failures, the EU ETS is unable to function properly. Reasons for this include the lack of interest in the system of many of the actors involved, regulatory failure (which is partially being corrected), differing approaches at national levels, uncertainty about future price developments and, most importantly, uncertainty about future EU and national measures in this area. Together, these shortcomings create an atmosphere that is not conducive to behavioural change by economic actors involved.

In the renewables domain, the definition of national binding targets is seen as an unnecessary imposition to Member States to modify their energy mix, without taking into due account the diversities and specificities of each countries in terms of sun and wind resources, resources endowment, industrial and technological capacity, and financial and investment availability. The uncontrolled and uncoordinated growth of renewables thanks to national subsidies and supporting schemes generated remarkable distortions in the European energy markets.

Finally, in the energy efficiency domain, the serious lack of progress by Member States towards meeting the EU target is mainly the responsibility of individual governments. There are some EU directives that contribute to the enhancement of energy savings, but they are not sufficient, as they are mainly aimed at increasing the energy efficiency of certain products or specific sub-sectors. It seems that these policies, focusing on the improvement of the unit energy efficiency of specific products, are insufficient to control the absolute level of energy consumption. At present, a more holistic approach to energy efficiency management lies in the hands of Member States – as established by the Directive on energy end-use efficiency and energy services – but the national plans are far from being uniform in ambition and effectiveness.

Concerns emerge also from the analysis of the governance model, which is currently based on four different and sequential levels: 1) definition of the targets; 2) implementation and reporting; 3) evaluation and assessment; 4) enforcement.

It appears clear that the main fragility of the 2020 Package governance is the weakness of the enforcement mechanisms at the Commission's disposal. For instance, the measures on renewables, while imposing binding targets on Member States, do not foresee direct and timely penalty mechanisms in case they fail to reach the target, although there have been attempts to introduce them. In this context, the Commission can only open an infringement procedure, which is based on Art. 258 of the TFEU,<sup>15</sup> against those States that fail to produce a credible national action plan or that display significant deviation from the plan or trajectory to meet their targets, a process that involves multiple steps and multiple actors and that may take a number of years to get a judgment imposing penalties by the European Court of Justice.

So far, the Commission has referred to the Court when Member States fail to transpose EU climate and energy rules, but not when they fail to reach their binding targets. In 2013, the Commission sent reasoned opinions to Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Hungary, Greece, Ireland, Luxembourg, Malta, Poland, Slovenia, Latvia and the Netherlands for not having reached individual targets for the overall share of renewable energy in energy consumption, but its action did not lead to further steps to bring the cases before the Court. This issue becomes more acute in situations where the political momentum in favour of climate action is reduced or lost.

Difficulties in the definition and implementation of national measures, as well as the complexity of the reporting procedures for each of the three targets, represent two other relevant obstacles to the proper functioning of the 2020 Package governance

<sup>15</sup> "If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union."



mechanisms. A range of administrative procedures and measures are necessary to implement the different policies at the national level (not only for public actors, but also for private ones) to ensure compliance with EU legislation and policy objectives. Such procedures, which cover domains such as licensing, planning permission, environmental impact assessments and grid access approvals, cause delays and raise costs, and they have a constraining effect on the achievement of results. Procedures not only differ among Member States, but are also diverse and not always coordinated within the national governments themselves for each of the three sectors covered by the 2020 Package.

Heavy administrative burden, multiplication of actors and procedures, and the lack of a holistic approach towards the three reference sectors characterize also the procedures of assessment and evaluation at the European level, making the work of the Commission extremely complex and difficult to be performed.

### 3. The new 2030 framework: which governance mechanisms?

On January 22, 2014 the Commission presented the Communication *A policy framework for climate and energy in the period from 2020 to 2030*, proposing a package of measures for the future of the EU policy after the current legal framework expires.<sup>16</sup> Agreed by the European Council on October 24, 2014, the new framework expects to continue to drive progress towards a low-carbon economy that ensures competitive and affordable energy for all consumers and to reduce greenhouse gas emissions in line with the cost-effective pathway described in the 2050 roadmaps, by ensuring regulatory certainty to investors in low-carbon technologies, research and innovation.<sup>17</sup>

Recognizing the results obtained through the previous regulatory schemes, the measures address only two of three key domains of its energy and climate policy: renewable energies and CO<sub>2</sub> emission reductions. With respect to efficiency, a new Energy Efficiency Communication released in July 2014 integrates the provisions contained in the 2020 Package and also proposes new objectives for the EU in this domain.<sup>18</sup>

Combined together, the two documents envisage a slight acceleration of the European energy and climate policies towards the ambitious goals of the Energy Roadmap 2050, while maintaining a pragmatic approach that takes into account

<sup>16</sup> European Commission, *A policy framework for climate and energy in the period from 2020 to 2030* (COM(2014)15 final/2), 28 January 2014, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52014DC0015R%2801%29>.

<sup>17</sup> European Council, *Conclusions 23/24 October 2014*, Brussels, 24 October 2014. [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/145397.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf).

<sup>18</sup> European Commission, *Energy efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy* (COM(2014)520), 23 July 2014, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52014DC0520>.

the current negative economic trends and the European industrial system's progressive loss of competitiveness. In fact, under the current policies the EU is already on course to achieve a 32 percent emissions reduction and a 24 percent renewable share of energy by 2030.

The targets agreed by the European Council include:

- a 40 percent reduction in EU greenhouse gas emissions from 1990 levels, to be shared between the ETS and non-ETS sectors;
- an EU-wide binding target of at least 27 percent of renewables in the total energy mix; and
- a 27 percent improvement in the EU's energy efficiency.

While not completely abandoning the triad of objectives adopted in the 2020 Climate and Energy Package, cutting emissions emerges as the centrepiece of the EU's energy and climate framework for 2030. The decision to focus on a single binding target on greenhouse gas emissions for Member States and to adopt EU-wide targets in the renewables and efficiency domains is an acknowledgement by the Commission and Member States of the weaknesses of the previous package, and an attempt to address the difficulties in achieving the three sectorial objectives simultaneously.

The overall 40 percent reduction target has to be shared between the ETS and non-ETS sectors. The former is expected to deliver a reduction of 43 percent by 2030 compared to 2005, implying cutbacks of 2.2 percent per annum after 2020 (compared with current 1.74 percent annual reductions). The latter will have to achieve a 30 percent reduction of the 2005 levels, to be allocated at the national level while taking into account distributional factors currently in use (i.e. GDP per capita). The framework does not envisage any mechanism to link the ETS and non-ETS sectors.

As for the ETS, the allowances to be auctioned by the Member States will be redistributed according to two principles:

- 90 percent redistributed among Member States on the basis of verified emissions measured as in the 2020 Package;
- 10 percent redistributed, as a solidarity measure, among the Member States whose latest available GDP per capita does not exceed 90 percent of the EU average.

The European Council also called for a new reserve of 2 percent of the EU ETS allowances, to be set aside to address particularly high additional investment needs in low income Member States.

Concerning non-ETS sectors, it will be applied the same methodology – based on the principles of fairness and solidarity – used to set the targets in the Effort Sharing Decision. Contrary to the previous package, however, in the period from 2020 to 2030 all Member States are expected to contribute to the EU's overall emission reduction efforts, and thus no target should assume an increase of emissions

compared to 2005.

In the renewables domain, the European Council endorsed the Commission's change of approach, substituting the individual targets for Member States in the 2020 Package with an EU-wide binding target to raise the share of renewables in the energy mix to at least 27 percent by 2030. This implies that by 2030 the share of renewable energy in the electricity sector would increase from the current 21 percent to at least 45 percent. In the biofuels sector, the European Council conclusions do not address the Commission proposal to abandon mandatory national targets. This proposal represented a significant change compared to the 2020 Package, which introduced the 10 percent binding biofuels target on the final consumption of energy in the transports sector.

The single EU-wide renewable target will not be translated into binding targets for Member States, and is expected to be achieved *only* through *clear* commitments to be decided by the Member States themselves. This mechanism gives great discretionary powers to Member States, while limiting the capacity of the EU to enforce the legislation and impose fines on Member States for non-compliance. In this context, therefore, the enforcement of the governance processes described in the Communication (see below) and agreed by the European Council will play a fundamental role in ensuring the reliability of the European commitments in the renewable energy domain.

As for energy efficiency, the European Council contributed to contain the Commission's ambitions. In the Energy Efficiency Communication, in fact, the Commission went beyond the indicative 25 percent energy savings target that was set by the 2030 Framework as necessary to achieve the greenhouse gas emissions reduction target of 40 percent in the most cost-effective manner, proposing a new 30 percent energy efficiency target for 2030, expected to deliver tangible economic and energy security benefits despite its additional 20 billion euros annual costs for the 2030 Framework. Though having in mind the objective of the Commission, the European Council set a 27 percent target for improving energy efficiency. The target to be achieved without binding national targets as part of the enhanced EU governance framework on energy policy and building on the framework already in place for energy efficiency, will be reviewed by 2020.

### *3.1 European governance for the 2030 Framework*

One of the most significant innovations agreed by the European Council is the new governance structure based on national plans for competitive, secure and sustainable energy proposed by the Communication *A policy framework for climate and energy in the period from 2020 to 2030*. The European Council conclusions, however, do not enter into the details of the governance mechanisms envisaged by the framework.

Based on the Commission's proposal, the national plans "should cover important aspects for a competitive, secure and sustainable energy system and demonstrate their contribution to the delivery of EU-level objectives for climate and energy. In particular, the plans would describe how a Member State intends to deliver the necessary reductions in greenhouse gas emissions as well as indicating the amount of renewable energy and energy savings the Member State intends to attain in 2030 taking into account existing Union legislation and policies."<sup>19</sup>

The governance would apply to greenhouse gas emission reduction in the non-ETS sectors, renewable energy and energy efficiency, and is expected to foster coherence, EU coordination and surveillance on energy and climate policies, while introducing greater transparency and investor certainty in this domain.

The Commission will play a pivotal role in the new three-phase governance model by:

1. providing detailed guidance on the operation of the new governance process and the content of national plans;
2. supporting Member States in the preparation of their national plans through an iterative process aimed at enhancing cooperation and regional approaches to improve the cost-effectiveness of national policies;
3. assessing Member States' plans and commitments in order to evaluate if the individual Member State's actions and pledges are sufficient to deliver the Union's climate and energy targets and objectives. If a national plan is deemed insufficient and inadequate by the Commission to reach policy objectives set by the EU, a – not yet specified – iterative process would take place between the Commission and the Member State in order to improve the content of the national measures.

Assessments and evaluations performed by the Commission will be based on the systematic monitoring of key indicators for a competitive, secure and sustainable energy system that are already defined by the Commission (i.e. energy price differentials between the EU and major trading partners; diversification of energy imports; deployment of smart grids and interconnections; intra-EU coupling of energy markets; competition and market concentration; technological innovation).

The lack of specific details about the functioning of these mechanisms raises questions about the potential impact of the newly proposed governance structure on the effectiveness of the EU's energy and climate policies. In particular, the new governance does not resolve the issue of enforcement powers at the Commission's disposal, a factor that becomes even more relevant given the absence of national binding targets either for renewables or for efficiency. The functioning of governance mechanisms, therefore, becomes fundamental for the EU to reach these two European-wide targets.

<sup>19</sup> European Commission, *A policy framework for climate and energy in the period from 2020 to 2030*, cit., paragraph 3.1.

For this reason, the Commission suggests that “governance structure may need to be set in legislation at a later date if the envisaged cooperative approach is not effective,”<sup>20</sup> in order to increase the EU powers and to assert the European dimension of the energy and climate policies.

## Conclusions and policy recommendations

In the past decade the EU made significant efforts to strengthen its energy and climate action policies, and can certainly be considered a global leader in this domain. Its performance overall can be evaluated positively, in particular if compared to that of its global competitors. In this context, the targets set by the Commission and agreed by the European Council for the 2020-2030 period can be considered a reasonable compromise between the “sustainability” ambitions of the EU and its priorities in terms of “competitiveness”, which have been made increasingly urgent by the difficulties in recovering from the economic crisis.

Surprisingly, the new EU framework for 2030 does not establish either a unique overall target for carbon emissions reduction or clear national binding targets for Member States in the three main sectors: carbon emissions, renewables and efficiency.

The Commission’s choice would allow the EU to encourage and monitor progress in all three sectors, while ensuring Member States greater flexibility on the way to reach these objectives (as established by the Lisbon Treaty provisions and suggested by the current economic contingencies). However, the non-binding nature of the targets on renewables and energy efficiency raises a reasonable suspicion about the EU’s capacity to meet its 2030 targets in these sectors.

In this context, enhanced governance mechanisms will play a crucial role in ensuring the voluntary commitment of Member States towards the achievement of EU-wide goals. The new governance is expected to improve joint planning mechanisms and to foster coherence and convergence towards EU-wide objectives. By doing this, it will necessarily balance the flexibility requests expressed at the national level – as energy and climate policies have different impacts on different Member States – and the EU’s unquestionable objective to move towards the integration of the energy market. The Commission’s idea to simplify planning and implementation procedures through the adoption of comprehensive (and possibly more coherent) national plans for competitive, secure and sustainable energy, as recalled by the European Council conclusions, certainly represents a step forward to better governance of the energy and climate policies.

<sup>20</sup> Ibidem.



However, based on the provision of the 2030 Framework, the Commission will not have enforcement powers to impose cooperation among Member States to reach jointly, and on a voluntary basis, the EU-wide targets on renewables and efficiency. The Commission's mandate, in fact, is to assist Member States in setting out a clear approach to achieve their own domestic objectives (supporting them in the preparation of national plans), but it does not give Brussels control of, or a say in, how each single national objective relates and contributes to the overarching 27 percent targets for renewables and efficiency, calculated at the European level. And at the same time, the Commission will not have any penalty mechanisms at its disposal if Member States do not act together and reach the European targets in the two sectors.

From the provisions contained in the Communication, it is not even clear whether the Commission will be able to start infringement procedures against those States that fail to produce a credible national plan. In fact, it is not clear how the credibility of each national plan would be assessed if no indicative targets and parameters (at least in terms of renewables and efficiency) for Member States are defined.

The Commission implicitly recognizes the shortcomings of the new governance measures and adopts a prudent approach in the Communication, highlighting that – in the case of the cooperative governance mechanisms established by the Framework 2030 failing to ensure the achievement of the EU-wide targets – more appropriate governance mechanisms may need to be set in legislation at a later date.

In this context of uncertainty, the innovative approach to energy policy introduced by the new Juncker Commission may provide a stimulus towards greater powers, and possibly better governance, in the field of energy and climate action. In fact, President Juncker created a new Vice President post for the Energy Union and a new Commissioner for Climate Action and Energy, the former being expected to “bring about a resilient Energy Union, with a forward-looking climate change policy,”<sup>21</sup> and the latter – finally merging the competencies of DG Energy and DG for Climate Action – being called upon to approach the subject from a unique, holistic, perspective. This aspect has been highlighted also by the European Council, which recalled its goal to build an Energy Union aiming at affordable, secure and sustainable energy, ensuring that it keeps the implementation of this goal under regular review.

In the meantime, the EU is called upon to establish governance mechanisms that ensure Member States the flexibility to choose policies that are best-matched to their national energy mix and preferences, but that at the same time guarantee that

<sup>21</sup> Juncker mission letter to Alenka Bratušek. See “Parliamentary Confirmation Hearing of the Commission Vice-President-Designate for Energy Union (6 October 2014)”, in *Sustainable Energy Law Notebook*, 6 October 2014, <http://sustainableenergylaw.blogspot.it/2014/10/parliamentary-confirmation-hearing-of.html>.



the commitments undersigned at the European level in the domains of efficiency and renewables are respected and the targets set by the Commission are met.

### *Recommendations*

As the complexity of the implementation, reporting and assessment procedures is certainly one of the key weaknesses of the 2020 Package governance settings, the Commission's attempt to define simplified, streamlined and coherent governance mechanisms through the introduction of the national plans for competitive, secure and sustainable energy and through the establishment of new iterative procedures, is certainly praiseworthy.

However, the Commission efforts risk becoming ineffective if not accompanied by further adjustments to the proposed governance model. These adjustments mainly concern the Commission's powers to lead and enforce cooperation among Member States in the definition of joint (voluntary) policies to achieve the European objectives, and its capacity to use direct and timely penalty mechanisms in case the targets are not reached. These powers, in any case, have to be compatible with Member States' right to adapt their energy policies according to their national exigencies and characteristics.

The tension between these two exigencies will arise immediately when Member States are called to elaborate their national plans, in which they are expected to include voluntary measures and tools functional to reach the EU-wide targets on renewables and energy efficiency. How can the Commission enable cooperation among Member States in these sectors, considering that the 2030 Framework does not provide it any power to influence national governments' decisions and actions?

Some actions can be proposed to strengthen the Commission's power to play this role.

**1)** Introduce flexible mechanisms to link national performances in the sectors of renewables and energy efficiency to the single binding targets on the reduction of carbon emissions.

- First, objectives in the sectors of renewables and efficiency should be calculated in terms of CO<sub>2</sub> emissions abated/avoided.
- Second, two separate target ranges – one for renewable, the other for efficiency – should be defined for each Member State on the basis of expected national contribution to the achievement of the greenhouse gas emissions reduction target in the non-ETS sector.

The national target ranges would be defined as part of the iterative process on the negotiation of the national plans between the Commission and Member States. The target ranges for renewable and efficiency – though separate – will be linked and coordinated with each other, in order to allow Members States to be flexible and adapt their policies in the two sectors according to their national exigencies and

characteristics. In fact, each Member State should be allowed to identify *reference targets* within the two ranges, in order to create sustainable and coherent carbon reduction paths thanks to the development of flexible renewables and efficiency measures. These reference targets can be flexible and adjustable – in a coordinated manner with one another, and remaining within the ranges set by Member States and the Commission – during the period of reference.

**2)** Involvement of the Commission in the implementation of the national policies, with close supervision of the adjustments introduced by Member States and their impact on carbon emissions objectives.

The two reference target values, set within the ranges defined at the national level, would be set out by Member States in the national plans, together with measures and tools identified to achieve the objectives. Any proposed modification of the values of the reference targets will be submitted to the Commission, which will assess the sustainability of the changes to be introduced – in particular their impact on the binding target on carbon emissions – and will evaluate the new measures proposed.

Despite the possibility of modifying the national plans and the two reference parameters for renewables and efficiency, a series of fixed deadlines (milestones) should be set to evaluate the progress done by Member States, and to ensure policy certainty for long-term planning and investments. These checks would prevent Member States from undertaking undesirable paths and, if needed, would identify possible adjustments and mitigation actions in accordance with the Commission, which as a last resort should have the opportunity to enforce the implementation of the plans (contrary to what is currently established by the 2030 Framework proposal).

**3)** Introduction of direct enforcement proceedings and penalty mechanisms for Member States that fail to produce a credible plan for competitive, secure and sustainable energy, and/or to achieve the targets set.

- In the carbon emissions sector, the mechanism would impose direct penalties on Member States that fail to achieve the binding target or even to closely follow the reduction trajectory;
- In the renewables and efficiency domains, the mechanism would impose penalties on Member States that go below the lower bound of the target ranges.

**4)** Definition of negotiation mechanisms to strengthen cooperation and integration among Member States policies in the sectors of renewables and efficiency, leading to the definition of joint target ranges.

Those Member States that are particularly interconnected and/or complementary to each other, might decide to define common target ranges, either bilateral or multilateral/regional, whose definition will be based on the sum of the expected national contributions to the achievement of the greenhouse gas emissions reduction target in the non-ETS sector. Within these ranges, Member States would

set common reference targets for renewables and efficiency, which could be jointly adjusted according to specific national needs or exigencies. Also, reporting to and negotiation of mitigation measures with the Commission will be done jointly. Such a solution would also be in line with the request of the Commission to ensure further progressive market integration through the new governance mechanisms.

These adjustments – to be applied to the governance mechanisms proposed by the Commission in its 2030 Framework Communication – would on the one hand guarantee Member States a degree of flexibility to choose policies that are best-matched to their national energy mix and preferences, while on the other would ensure that the commitments undersigned at the European level in the domains of efficiency and renewables are respected, and the targets set by the Commission are met.

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