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GOVERNANCE OF EU 2030 TARGETS: THE JURY IS STILL OUT

STATE OF PLAY OF THE NEGOTIATIONS ON ENERGY UNION GOVERNANCE

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The EU's Energy Union Governance regulation is entering the second, and probably last, step of the legislative process that should lead to its adoption. The regulation oversees climate and energy planning and reporting after 2020 and set out rules for member state accountability. Parliamentarians, diplomats and Commission officials are now seeking agreement on a common text after intense discussion to set each institution's negotiating mandate. Core elements are still undecided, however, and the robustness of the framework hangs in the balance.

- > **Energy efficiency has the most to win or lose from upcoming discussions.** Member states have so far avoided any in-depth discussion about who is ultimately accountable for the delivery of the 2030 energy efficiency target. The regulation needs to include a methodology to equitably share the overall ambition if national targets do not add up. The Commission should monitor progress made by each member state against a trajectory based on mandatory and common checkpoints. In case of delivery gap, national measures must come first.
- > **Commission recommendations are at risk of becoming ineffective.** The regulation enables the Commission to issue recommendations in response to national plans. This is important to guarantee an adequate level of ambition, consistency of the plans and delivery of the targets. The Council has however significantly restricted their political reach by refusing the 'comply or explain' approach and quantitative recommendations if there is an ambition gap. These restrictions mean that the recommendations would lack the necessary political weight to fulfil their mission.
- > **Public consultation must be based on common standards to guarantee minimum quality.** The regulation provides for a mandatory public consultation on a country's climate and energy plan. It is an opportunity to open a political space at national level for a discussion on 2030 and 2050 ambition and policies. It will bolster public acceptance and improve policy implementation. Policy-makers need to set minimum requirements to guarantee an effective public participation across European countries (timeline, stakeholders, permanent forum).



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What is Energy Union Governance?

The European Commission introduced in October 2016 a package of legislative texts aiming at delivering ‘Clean Energy for All Europeans’. The publication of the draft directives and regulations was eagerly awaited as such a legislative package typically occurs only once in a decade. The aim of the package is to set the 2030 energy targets and revising the policies, measures and the market design accordingly. While most the proposals included in that package are revising existing legislation, one stands out for its novelty. The Energy Union Governance regulation is probably the biggest change in approach for the post-2020 period.

The Commission initially presented the regulation as a tool to reduce member states’ administrative burden. The proposed text would rationalise existing planning and reporting requirements, hunting duplications and harmonising deadlines. While laudable, such an exercise is not likely to trigger the kind of transformative change Europe needs to remain a leader in renewables and put Efficiency First. Fortunately, there is more to it than catches the eye.

The regulation requires member states to produce national energy and climate plans. This national plan encompasses all things climate and energy in order to provide a comprehensive overview of the state of play of the energy transition and next steps. The plan also includes the 2030 targets for renewable energy and energy efficiency, and the policies, measures and financing to deliver them. These plans will be based upon a mandatory template to guarantee comparability, informed by consultations with the public and neighbouring countries. The final plan should take into account the recommendations issued by the Commission on the draft.

The plan must be consistent with a 2050 strategy that should also be developed under this regulation. This long-term blueprint can and should become the backbone of a country’s infrastructure plan. A new wave of investments is needed to replace Europe’s ageing infrastructure. There is a risk that governments will build infrastructure that might ultimately slow down the transition or even become useless, wasting tax payers’ money if they do not take the long view of a decarbonised society.

The regulation is also, if not mostly, about accountability. European leaders have tasked the Commission to come up with a framework that would compensate for the absence of national targets for renewable energy after 2020. This ‘Paris Agreement for Europe’ relies entirely on member states’ ambition and sense of common interest. It will be a test-case for European solidarity as each member state is expected by its neighbour to pledge its fair share.

It is with this in mind that the proposed text also provides mechanisms in case member states’ pledges do not add up to EU targets and if countries fail to deliver their national energy and climate plan. Finally, it codifies the role of the Commission by setting out how the Commission will track progress and what are the tools at the Commission’s disposal to bridge any gap and ensure consistent and credible plans.



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How wide a gap are we talking about?

Early on, the Council was wary of the approach chosen by the Commission to this new piece of legislation. This comes as no surprise: the concept of Energy Union Governance originates from a discussion among Heads of State where they rejected the continuation of national binding targets for renewable energy after 2020¹, shifting away from the successful approach taken during the 2010s.² It was therefore clear that negotiations would be intense to find the right balance between flexibility and the guarantee that the 2030 targets will be delivered.

The proposal put forward by the Commission was not without weaknesses. Observers have criticised the text for including mechanisms that are too weak to guarantee that the final plans would be ambitious enough in case of ambition gap or the actual delivery of the national plan in case of delivery gap. Another set of criticisms have also focused on the poor integration of the Paris Agreement's timeline, and a disconnected approach between 2030 and 2050 plans.³

The combination of these structural weaknesses and the political attention from member states ultimately led to quite diverging positions between the Council and the Parliament. Some of the elements included in the European Parliament's position have not even been discussed among member states. The Bulgarian Council Presidency have identified a long list of policy proposals that appear in the Parliament's position and not in the Council's text.⁴ The list includes among others: replacing the updates by a new 10 years plan every five years, adding investment strategies and Efficiency First to the 2030 plans, an assessment of the EU's fair share of the global carbon budget, a 2050 target of 'net 0' greenhouse gases emissions, a multilevel climate and energy dialogue platform and a methane strategy. These divergences stem from the Parliament's more comprehensive approach to climate and energy planning as opposed to the Council's narrower stance focused on eliminating red tape.

The following sections scrutinise three main differences between the Parliament and the Council approaches with a specific focus on the 2030 targets. The climate dimension of the regulation is not studied as it deserves a longer analysis and is relatively separate from the mechanisms presented here. The Governance of the renewable energy target is also left out as the item topped the agenda of both the Council and the Parliament. Hence it seems fair to assume there is a strong political will to find a political compromise, especially considering that the two positions are relatively close.⁵ Finally, the paper does not discuss the national energy and climate plans and the long-term strategies.

¹ European University Institute (2017), **The Governance of the EU's Energy Union: Bridging the Gap?**

² EUROSTAT (2018), **Renewable Energy Statistics**

³ ECOLOGIC (2017), **Assessment of the Commission Proposal for a Governance Regulation**

⁴ Council of the European Union (2018), **Preparation of the First Trilogue on the Governance of the Energy Union**

⁵ Both Council and Parliament have agreed on mechanisms in case of ambition and delivery gaps. For the ambition gap, the Parliament is proposing a formula for deriving the fair level of national contributions while the Council suggests to take into consideration a list of objective criteria.



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Energy Efficiency, mere guidelines or Efficiency First?

Energy efficiency is still largely under-valued in Europe⁶, although analysis shows its paramount importance in the energy transition.⁷ There is now a better understanding of the multiple direct benefits of energy savings (reduced electricity bills, more comfortable homes and more jobs) and the indirect advantages of a highly energy efficient economy (easier integration of renewable energy sources, reduced dependence on third-country gas suppliers and industrial competitiveness to name only a few).⁸

Yet, the original ambition and the governance of the post-2020 framework proposed by the Commission lacked ambition. The target put forward was below the cost-effective potential for 2030. The governance of the target was weaker than the one foreseen for renewable energy and probably not stringent enough to guarantee target delivery. The robustness of the governance framework can be measured against the following questions: what happens if the national targets do not add up to the EU-wide target (the ‘ambition gap’)? How does the Commission monitor progress? What happens if there is a delivery gap?

Member states have tweaked the framework to escape individual responsibility. The Parliament on the other hand has put member states at the centre of the governance proposal with a clear monitoring mechanism. The table below illustrates that point.

	Parliament	Council
Ambition gap	Commission may request member states whose ambition it deems insufficient to increase their targets – no methodology	Commission may issue non-quantitative recommendation requesting specific member states to increase their targets – no methodology
Trajectory	Linear trajectory for each member state from 2021 to 2030 consisting of biennial interim targets starting in 2022 and every two years thereafter	Non-binding trajectory and no backstops
Assessment of progress	Are the EU and each member state making sufficient progress to meeting their trajectory and target?	Is the EU as a whole on track to deliver the 2030 target?
Corrective action	If not, the member state has one year to cover the gap by additional measures. Measures should be included in the following progress report ⁹	If not, Commission shall propose additional measures that may be related to the energy efficiency of products, buildings and transport

⁶ RAP (2017), **Efficiency First in the Energy Union: Progress Report**

⁷ IEA (2017), **Perspectives for the Energy Transition**

⁸ Stefan Scheuer (2017), **Benefits of increasing the EU’s 2030 energy efficiency target**

⁹ The Commission retains the right to propose additional measures similar to the ones set out in the Council position under the general catch-all corrective mechanism of article 27.3.

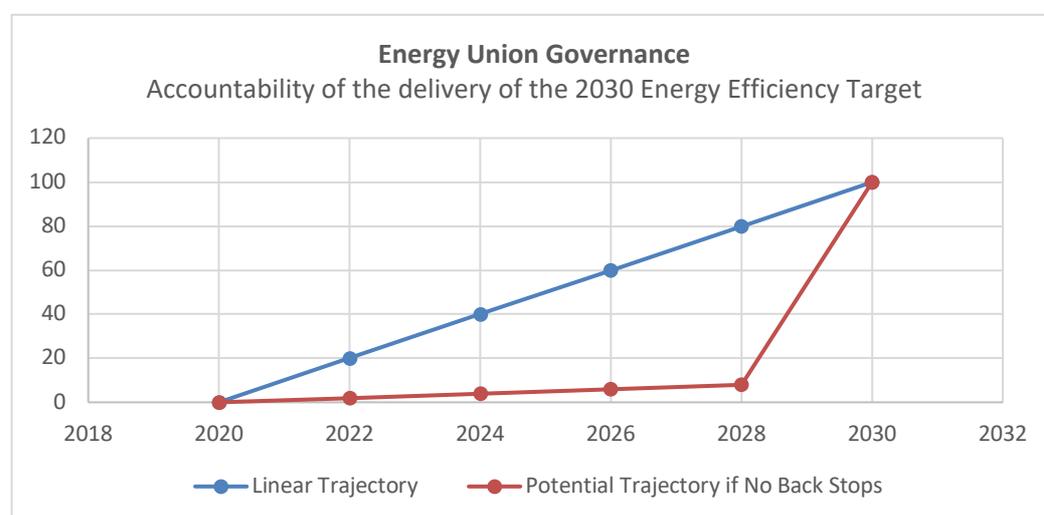


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The first test of the future Governance regime will happen in 2019. The Commission will assess the energy and climate plans, in particular whether national pledges add up to EU-wide targets. If they do not, the Parliament suggests that the Commission may request immediately that those member states whose ambition is too low to increase their targets.¹⁰ The Council on the other hand is proposing that the Commission would issue a recommendation to those member states to increase their targets. The recommendation-based system proposed by member states is less stringent as the text adopted by member states grant them the right to ignore Commission's recommendations without having to provide any justification. Both Council and the Parliament positions however lack a methodology to assess ambition and identifying countries that need to increase ambition – while such mechanism is foreseen for renewable energy.

The other difference is one of focus: while the Council's position put the emphasis on the EU as a whole, the Parliament stresses the need for action at national level and the delivery of the national plans. The Council's approach is vague and does not eliminate risks of free-riding, while the Parliament's approach is overall safer, fairer and swifter.

The member-state focused approach is safer as investments will have to happen progressively over the period. A non-linear, non-binding trajectory means delaying some of the investments to later in the period and create an unstable regulatory climate for projects and policies while investors call for stability and certainty.¹¹ There is an inherent delivery risk in betting on a last-minute surge.



An assessment country per country is also fairer. The European Union as a whole might be on track to deliver its 2030 target, but the situation among member states might differ considerably. Some member states are indeed outperforming while others might

¹⁰ The Commission may also issue country-specific recommendations if the policies and measures proposed made it unlikely for a member state to reach their targets for instance.

¹¹ ENDS Europe, [Investors in 'green energy legal limbo' may shun EU](#)



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be under-delivering without being held accountable. The framework was built so that countries have the possibility to set their own target for 2030¹², but they should be responsible for delivering it. This is the basis for collective action on energy and climate policies and a fundamental aspect of mutual cooperation.

The focus on national action to bridge any emerging gap will allow for swifter response than relying on EU-level action. The European legislation that deals with energy efficiency requires transposition into national law and/or lengthy approval process for energy efficient standards. There is a serious risk that actions at EU-level will not be able to kick-in swiftly enough to cover an emerging gap. Furthermore, EU-wide measures cannot easily differentiate between Member States, which leads to quasi-punishment of the entire group in case some individual Member States do not deliver sufficient progress.

Finally, the Parliament has also mainstreamed the duty of putting Efficiency First across the regulation.¹³ It started as a political slogan but the intention is there to make it a principle of decision-making.¹⁴ Too often, policy-makers focus narrowly on options that will provide more energy onto the market to match a given demand. Demand-side options (energy efficiency, demand side flexibility) are overlooked and are not allowed to compete on an equal footing with supply-side alternatives.¹⁵ Mainstreaming this principle is an opportunity to make up for this behavioural flaw.

Commission recommendations, how low can you go?

The proposed system relies on an “iterative dialogue” between the European Commission and the member states. This codification of the interactions between the member states and the Commission is welcome as it is key to ensure the quality, comparability, overall ambition and consistency of the national plans. They are an ‘essential component of the governance system’, according to energy ministers.¹⁶ The devil, however, lies in the details.

The proposed framework is somewhat similar to the one set up in the aftermath of the economic crisis with the implementation of the European Semester. The choice of a soft governance tool is probably the right one for areas where the European Union does not have full competence but relies on member states’ goodwill.¹⁷ Recommendations are indeed non-binding.¹⁸ They should be seen by countries as guidance for further actions in a spirit of better aligning national policy frameworks. While both the

¹² A different set of rules apply in case of ambition gap. See article 27.1 of the regulation.

¹³ Efficiency First is defined in article 2 as the prioritisation, in all energy planning, policy and investment decisions, of measures to make energy demand and energy supply more efficient, by means of cost-optimal energy end-use savings, demand-side response initiatives and more efficient conversion, transmission and distribution of energy.

¹⁴ E3G (2016), **Efficiency First and Where to Find It** and E3G (2017), **Efficiency First Scorecard: Is the EU’s Energy Union on Track?**

¹⁵ RAP & OpenExp (2017), **Efficiency First in the Energy Union: Progress Report**

¹⁶ Council of the European Union (2015), **Conclusions of the Energy Council of 26 November 2015**

¹⁷ European University Institute (2017), **Mind the gap: the proposed governance of the Energy Union**; Marc Ringel and Michèle Knodt in *Energy Policy* (2018), **The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016**

¹⁸ Article 288 of the Treaty on the Functioning of the European Union.



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Parliament and the Council agree on the importance of this dialogue, member states have been very careful in framing what these recommendations can and cannot do, undermining their capacity to trigger any change at all. The table illustrates the main differences between the Parliament and the Council.

	Parliament	Council
Nature	Recommendations as a rule or country-specific recommendation on draft plan	Recommendations as a rule or non-quantitative-recommendation if ambition gap
Scope	Same as Council, and add the possibility to comment on cross-border cooperation, opportunity of major infrastructure projects and compatibility of policies with long-term climate objective	Draft 2030 plan, if a member state is not delivering its 2030 plan and if a member state is not on track to deliver its renewable energy target
What if not followed?	Member states have to explain if decide not to follow a recommendation	Member states do not have to explain if decide not to follow a recommendation
Publicity	Publicly available	Publicly available

The most worrying issue is the consequences attached to recommendations. The Commission initially proposed that the member states would provide a justification for not following recommendations.¹⁹ This would allow for a better calibration of the recommendation the second time round to accommodate country specificities, more transparency for stakeholders and a guarantee that they would be seriously considered. The rejection by the Council of this approach significantly weakens the political weight of the recommendations – the only weight they have.

The Commission is entitled to issue recommendations on specific topics at a given time. The most important of moment for recommendations is between the submission of the draft national plan and the development of the final version. The Commission will assess the overall level of ambition and whether national targets are sufficient to reach the EU-wide targets for renewable energy and energy efficiency. It will then address Member States with a view of closing any gap. The Council and the Parliament have both focused on this moment but have taken opposing approaches. While the Parliament proposes that the Commission may directly request Member States to increase their planned 2030 contributions in case of ambition gap - not using recommendations - the Council only foresees recommendation to Member States, which in addition are restrained to be strictly non-quantitative.

The identification and remedy of an ambition gaps happens in a race against the clock. Both positions indeed foresee only one year between the draft and the final plan with a submission of the final plan just before the 2020 deadline if the timeline proposed by

¹⁹ Article 28 of the Commission's proposal provides "the Member State shall set out [...] 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".



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the Council is to be followed. Within these twelve months, the Commission must analyse all EU28 plans, state whether there is an ambition gap, identify laggards and request them to provide more ambitious final plans. National governments would then have to re-run some of the modelling, reach a political agreement on higher targets and submit their final plan. The Commission would save member states time and political negotiations by directly proposing what “fair share” is expected from them if the drafts to do not include enough ambition. Otherwise, there is no guarantee that the final plans will include revised targets that add up to the EU-wide targets.

Public participation, a rubber-stamping exercise?

The drafting of the 2030 plans - including setting national targets - needs to be informed by a public consultation to get stakeholders’ buy-in. The plans should guide investments by private actors, act as the blueprint for the delivery of a low-carbon economy in a country while public participation means faster and better implementation. The importance of public participation is recognised by both the Parliament and the Council, the means to deliver it vary considerably.

The Council has followed its mantra of simplifying the provisions while the Parliament has included procedural guarantees to ensure the quality of the consultation. The table below explores the differences in approaches.

	Parliament	Council
Scope	Draft NECP, long-term strategies	Draft or final NECP
Timing	Early enough so that all options are still open and the public consultation is effective	Draft NECP or well before adoption of final NECP
Procedure	Guarantee of reasonable timeframe to prepare and effectively participate, information on all practical arrangements and access to all relevant documents	-
Follow-up	Summary of public view and way they have been taken into consideration in submission of draft or final NECP and long-term strategy	Provisional or final public views attached to draft or final NECP

As analyses have shown, the Commission’s initial proposal would not entrust the public with the full suite of public participation rights.²⁰ This limits the ability of the public to make a meaningful contribution to the debate. It is however one of the most crucial elements of the regulation: opening a debate at national level about the ways and means of the energy transition. Recent examples demonstrate the interest of the public at large in shaping the future of climate and energy policies at national level. The Eurobarometer indeed ranks climate change as a serious concern for nine Europeans out of ten.²¹ A broad, inclusive and conclusive public participation would also foster public acceptance for some of the political choices required to decarbonise our

²⁰ ECOLOGIC (2017), [Assessment of the Commission Proposal for a Governance Regulation](#)

²¹ European Commission (2017), [Special Eurobarometer on Climate Change](#)



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societies at a pace compatible with avoiding dangerous global warming. With this in mind, the additional rights requested by the Parliament are welcome.

The Parliament is also proposing to create a permanent and multilevel climate and energy dialogue platform. The member state would submit options and scenarios for the short-, medium-, and long-term strategies to the stakeholder platform together with an impact assessment for each option.

The energy transition will induce a transformation of the broader economic framework. This shift to a zero-carbon economy needs to have the support of the public. A national consensus-building exercise that would integrate all stakeholders and the public at large is therefore required.²² As pointed out by ClientEarth, these platforms could enable a more representative panel of interests to feed in the discussion and would open the floor to a much broader and engaging exchange.²³ The decentralisation of energy and the success of energy communities demonstrate that planning at central level only, without involvement of the local level, would be a mistake, leaving aside key players of the energy transition.²⁴

About E3G

E3G is an independent climate change think tank operating to accelerate the global transition to a low carbon economy. E3G builds cross-sectoral coalitions to achieve carefully defined outcomes, chosen for their capacity to leverage change. E3G works closely with like-minded partners in government, politics, business, civil society, science, the media, public interest foundations and elsewhere.

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²² Martin Jänicke and Rainer Quitzom in Environmental Policy and Governance (2017), **Multi-level Reinforcement in European Climate and Energy Governance: Mobilizing economic interests at the sub-national levels**

²³ ClientEarth (2018), **Public participation as part of the EU Climate Governance Regulation could help transition to a cleaner, more efficient energy future**

²⁴ ClientEarth & EnergyCities (2017), **Joint Briefing: The Case for a Multi-level Climate and Energy Dialogue Platforms**
