

EU Climate and Energy Policy 2030

Comments on an Evolving Framework

Moritz Bonn, Nadine Heitmann, Götz Reichert & Jan S. Voßwinkel



- ▶ With regard to the greenhouse gas reduction target of 40% by 2030, the European Council should have adopted a two-step approach: an ambitious target conditional on the conclusion of a global climate agreement, and a less ambitious one in case international negotiations fail.
- ▶ Since the renewable energy target of at least 27% by 2030 is binding only on EU-level, it remains unclear to what extent Member States will promote renewables in the future.
- ▶ Although the energy efficiency target of at least 27% by 2030 is not binding at the EU level or at the national level, it will have some effect, because the European Commission is expected to propose implementation measures that underpin this target.

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1 Introduction

In October 2014, the European Council agreed on the future climate and energy policy of the European Union for the period from 2021 to 2030.¹ The new framework includes the following key targets:

- (1) to reduce the EU's domestic greenhouse gas emissions internally by at least **40%** by 2030 relative to 1990 levels ("**GHG reduction target**"; binding) to be achieved by GHG emissions reductions
 - a) in the ETS sectors of at least 43% (base year 2005), and
 - b) in the non-ETS sectors of at least 30% (base year 2005);
- (2) to increase the proportion of renewable energy to at least **27%** of overall EU energy consumption ("**renewables target**"; binding at EU level, no binding national targets);
- (3) to reduce projected energy consumption for 2030 by at least **27%** ("**energy efficiency target**"; non-binding);
- (4) to increase the level in each Member State of electricity interconnections to other Member States to at least **15%** of their installed production capacity by 2030 ("**electricity interconnections target**").

These 2030 targets will form the basis for more specific legislative measures by the EU in the years to come. Their effective implementation throughout the EU shall be ensured jointly by the European Commission and the Member States within a **new governance system**.

The new 2030 framework is the enhancement of the EU's current climate and energy policy that has been implemented since 2007² to achieve the EU's long-term aim of becoming a low-carbon economy by using less fossil fuel. The present framework, which will expire at the end of 2020, is defined by three key targets ("20-20-20 targets"): By 2020, the EU has to reduce its GHG emissions by 20% relative to 1990 levels, increase the share of renewables in overall energy consumption to 20%, and reduce the projected level of energy consumption for 2020 by 20% by increasing energy efficiency. Projections show that the EU is on track to meet at least its GHG reduction target and its renewables target in 2020.³

Given the approaching deadline for the 20-20-20 targets and the considerable political and economic changes since their adoption, the European Commission called for a timely decision on the basic features of the subsequent policy framework in order to provide both for a coherent EU stance in the upcoming negotiations on an international climate agreement at the UNFCCC conference in Paris at the end of 2015 and also regulatory certainty for investors in low-carbon technologies "as early as possible".⁴ The final decision of the European Council in October 2014 was preceded by controversial discussions among Member States, reflecting the differing attitudes, interests and views on climate and energy policies in the EU. This debate will continue over the next five years as the 2030 policy framework is fleshed out with specific regulatory measures. As a contribution to the ongoing discussion we will be analysing the design of the three key targets

¹ European Council, Conclusions of 23/24 October 2014, EUCO 169/14 CO EUR 13 CONCL 5, recital 1 et seq.

² European Council, Conclusions of 8/9 March 2007, 7224/1/07 REV 1 CONCL 1, recital 27 et seq.

³ European Commission, Impact Assessment SWD(2014) 15 of 22 January 2014, p. 15 et seq.

⁴ Ibid., p. 3.

(Chapter 3), the new governance system (Chapter 4) and the role of the European Council in the future legislative specification of the 2030 framework (Chapter 5).

Table 1: EU GHG Emission Reduction Targets

	Target	Source
2008–2012	GHG emissions reduction of 8% (base year 1990; EU-15)	Kyoto Protocol (1997)
2013–2020	GHG emissions reduction of 20% (base year 1990; EU-28)	European Council (2007)
2021–2030	GHG emissions reduction of 40% (base year 1990; EU-28)	European Council (2014)
2050	GHG emissions reduction of 80–90% (base year 1990; EU-28)	European Commission (2011)

Source: cep

2 Development of the 2030 Policy Framework

With the publication of a Green Paper⁵ in March 2013, the European Commission started the debate on the future framework for climate and energy policies up to 2030 by putting various options up for discussion and inviting stakeholders to submit their views. On the basis of the stakeholder consultation and a comprehensive impact assessment,⁶ the Commission presented its proposals for new targets on GHG emissions reduction and the promotion of renewable energies in January 2014,⁷ accompanied in July 2014 by its proposal for an energy efficiency target.⁸ The Commission envisaged the following three key targets for the new 2030 framework for EU climate and energy policies: First, the EU's domestic GHG emissions should be reduced internally by 40% by 2030 relative to 1990 levels. Second, the consumption of renewable energy as a proportion of total energy consumption should increase to at least 27%. Third, energy efficiency should increase by reducing the projected level of energy consumption for 2030 by 30%. Furthermore, the Commission proposed a new governance system to coordinate and monitor the progress made by the Member States in implementing the key targets of the 2030 climate and energy policies.

The ensuing months saw lengthy and heated controversy between the Member States⁹ who were forced to find a consensus on the new 2030 framework in the European Council.¹⁰ There was lively

⁵ European Commission, Green Paper COM(2013) 169 of 27 March 2013 "A 2030 framework for climate and energy policies".

⁶ European Commission, Impact Assessment SWD(2014) 15 of 22 January 2014.

⁷ European Commission, Communication COM(2014) 15 of 22 January 2014 "A policy framework for climate and energy in the period from 2020 up to 2030"; see cepPolicyBrief No. 2014-19.

⁸ European Commission, Communication COM(2014) 520 of 23 July 2014 "Energy Efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy".

⁹ See Fischer, S. (2014). The EU's New Energy and Climate Policy Framework for 2030. Implications for the German Energy Transition. SWP Comments 55, December 2014, p. 2 et seq.

debate on whether a triad of goals between 2020 and 2030 was going to be necessary or effective. Some EU countries, like Germany and Denmark who favour ambitious climate and energy policies, advocated retaining the basic structure of the present framework with three binding targets. In contrast, a group of Eastern European countries headed by Poland preferred only the GHG emission target to be binding and called for greater emphasis on national sovereignty in deciding on their respective energy mix.¹¹ Another aspect of the debate was the interplay between the different energy and climate policy instruments. The energy efficiency policy and the promotion of renewable energies may hinder the functioning of the European Emissions Trading System (ETS) because they reduce the demand for fossil fuels and, therefore, have a dampening effect on carbon prices. After failed attempts to reach an agreement in March¹² and June¹³ 2014, the European Council finally arrived at a compromise on the new 2030 climate and energy policy framework in October 2014.¹⁴

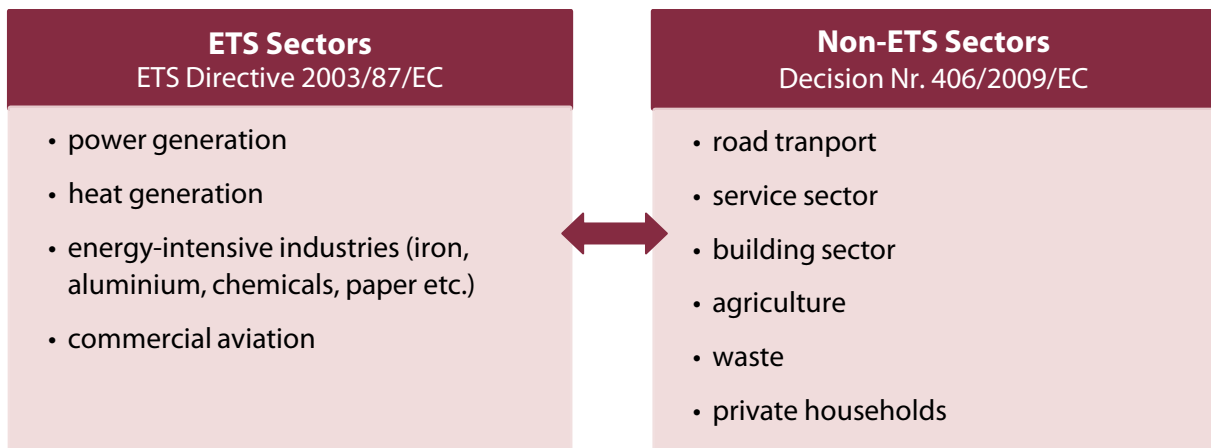
3 2030 Climate and Energy Targets

3.1 GHG Reduction Target

3.1.1 Conclusions of the European Council

The European Council agreed on a binding EU target to reduce domestic greenhouse gas emissions by 40% by 2030, relative to 1990 levels. In contrast to the 2020 policy framework, the target will have to be realised by way of reduction measures exclusively in the EU without the option of using project-based emission reductions generated in non-EU countries. To this end, GHG emissions covered by the ETS will have to be reduced by 43% and GHG emissions in non-ETS sectors by 30% by 2030, relative to 2005.¹⁵

Table 2: ETS and Non-ETS Sectors



Source: cep

¹⁰ Article 15(4) Treaty on European Union (TEU). The European Council consists of the heads of state or government of the Member States, its President and the President of the European Commission. It is responsible for the definition of the general directions and priorities in a specific field of EU policy [Article 15(1) TEU].

¹¹ Article 194(2) Treaty on the Functioning of the European Union (TFEU).

¹² European Council, Conclusions of 20/21 March 2014, EUCO 7/1/14 CO EUR 2 CONCL 1, recital 15 et seq.

¹³ European Council, Conclusions of 26/27 June 2014, EUCO 79/14 CO EUR 4 CONCL 2, recital 21 et seq.

¹⁴ European Council, Conclusions of 23/24 October 2014, EUCO 169/14 CO EUR 13 CONCL 5, recital 1 et seq.

¹⁵ Ibid., recital 2.1.

3.1.1.1 ETS Sectors

The EU has implemented various measures to fight climate change, including its most prominent one, the ETS. The European Council emphasised that the ETS “will be the main European instrument to achieve” the GHG reduction target,¹⁶ provided that it is reformed by the implementation of an “instrument to stabilise the market” in line with the European Commission’s proposal for a market stability reserve.¹⁷ The European Council also resolved:

- The maximum amount of greenhouse gases which may be emitted annually by the ETS sector (“cap”) will be reduced faster by tightening the annual “linear reduction factor” from currently 1.74% to 2.2%.¹⁸
- The free allocation of emission allowances to companies that are exposed to carbon leakage will be continued.¹⁹
- The scope of the reserve of allowances for new market entrants (“New Entrants’ Reserve”, NER) will be enlarged by adding low-carbon industry projects to the list of eligible projects. The current program “NER300”²⁰ will be increased from 300 to 400 million allowances (“NER400”).²¹

The consensus on the binding GHG reduction target came at a price demanded in particular by those Eastern European States which had favoured a less ambitious approach. As a result, the future ETS will also include the following new features:

- Member States with a per capita gross domestic product (GDP) below 60% of the EU average in 2013 are permitted to allocate free allowances to electricity generators up to 2030.²² The amount of free allowances must not exceed 40% of verified past emissions.
- Furthermore, a “reserve” will be established amounting to 2% of total allowances. These allowances will be auctioned.²³ The auction revenue will be allocated to Member States that have a per capita GDP below 60% of the EU average in order to facilitate investments in energy efficiency and to modernize the energy system in these countries.
- Member States that had a per capita GDP below 90% of the EU average in 2013 will obtain additional allowances. These allowances will amount to 10% of the allowances auctioned by these EU countries.²⁴

¹⁶ Ibid., recital 2.3.

¹⁷ European Commission, Decision Proposal COM(2014) 20 of 22 January 2014 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC.

¹⁸ European Council, Conclusions of 23/24 October 2014, recital 2.3.

¹⁹ Ibid., recital 2.4.

²⁰ The NER300 is an EU program which finances innovative renewable energy and carbon capture and storage projects and generates its funds by selling 300 million emission allowances originating from the New Entrants’ Reserve; see <http://ec.europa.eu/clima/funding/index_en.htm>. The future NER400 will, in addition, finance innovative low-carbon projects in the industry.

²¹ European Council, Conclusions of 23/24 October 2014, recital 2.6.

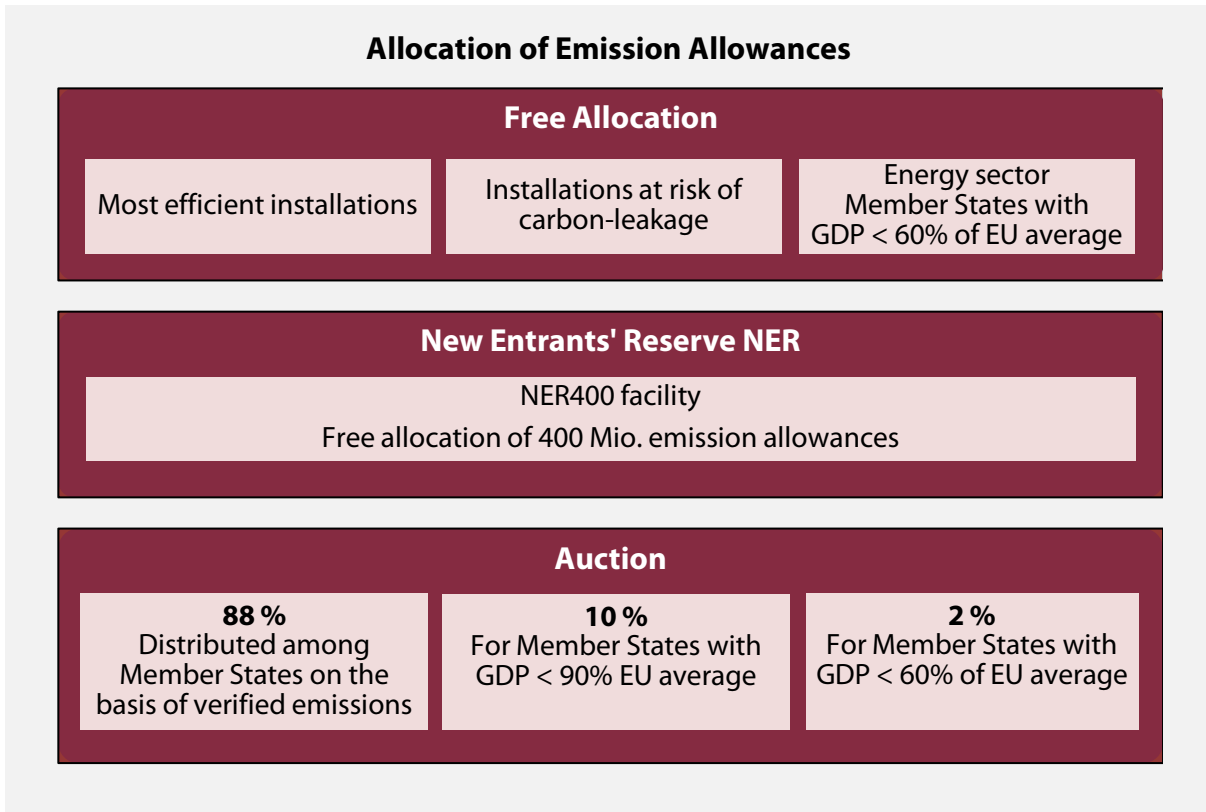
²² Ibid., recital 2.5.

²³ Ibid., recital 2.7.

²⁴ Ibid., recital 2.8.

The European Council’s resolution does not provide for the obligatory inclusion of additional sectors such as transport or agriculture into the ETS. Remarkably enough, the European Council underlines the fact that the Member States already have the option of including GHG emissions from the transport sector in the ETS under Article 24(1) ETS Directive 2003/87/EC.²⁵

Table 3: Allocation of Emission Allowances 2020–2030



Source: cep

3.1.1.2 Non-ETS Sectors

The 30% GHG reduction target for non-ETS sectors at EU level will be transformed into national reduction targets similar to the current practice according to the Effort Sharing Decision No. 406/2009/EC. These national GHG reduction targets will be determined based on the individual per capita GNP of a Member State and will range from 0% to 40% of 2005 levels by 2030.²⁶ In contrast to the 2020 policy framework, which allows some EU countries to increase their GHG emissions up to 20%, all Member States will therefore have to reduce, or at least maintain, their GHG emissions by 2030. However, specific national reduction targets have not yet been determined and will have to be set in the future, requiring a new effort sharing decision covering the period from 2021 to 2030.

The European Council emphasises the importance of reducing GHG emissions and risks related to fossil fuel dependency in the transport sector. Therefore, the European Council has asked the

²⁵ Ibid., recital 2.13.

²⁶ Ibid., recital 2.10.

European Commission to “further examine instruments and measures for a comprehensive and technology neutral approach” for promoting GHG emissions reduction and energy efficiency in transport, for electric transportation and for renewable energy sources in transport after 2020.²⁷ Finally, the European Council has suggested the inclusion of land use, land use change, and forestry in the 2030 framework “as soon as the technical conditions allow” for it.²⁸

3.1.2 Comment

As greenhouse gases result in global warming, the reduction of GHG emissions is a legitimate aim. It is, therefore, also appropriate to update the EU-wide objective of reducing GHG emissions by way of a binding target. In this respect, the reduction target of 40% by 2030, based on 1990 levels, is in line with the long-term EU decarbonisation goal of a 80–95% of GHG emissions by 2050 and the respective “roadmaps”.²⁹ However, the roadmap scenarios of the European Commission are based on the assumption that there will be an international climate agreement. Negotiations for such an agreement might fail. A unilateral climate policy places a disproportionate cost burden on the EU which is not accompanied by a corresponding benefit in terms of climate protection: The European Commission estimates that currently less than 11% of global GHG emissions derive from the EU³⁰, in 2020 it will be just 9%³¹.

To strengthen the EU’s bargaining position, a clearly defined two step approach would have been more appropriate: The European Council should have agreed on an ambitious GHG target conditional upon agreement to conclude a global instrument with a second, less ambitious option available in case international negotiations fail.

The ETS enables GHG reductions at comparatively low abatement costs, since it encourages activities with abatement costs that are lower or equal to the carbon price. The fact that the European Council referred to the ETS as the “main instrument” for achieving the GHG target is, therefore, a positive step towards a more efficient climate policy. Making the ETS truly the main instrument by expanding its scope would be the next logical step. In this respect, the European Council’s reference to the fact that Member States can opt to include GHG emissions from the transport sector in the ETS [Article 24(1) ETS Directive 2003/87/EC]³² points in the right direction.

²⁷ Ibid., recital 2.13.

²⁸ Ibid., recital 2.14. For example, the GHG emissions of indirect land use change cannot be measured exactly, but only estimated; see European Commission, Impact Assessment SWD(2012) 343 of 17 October 2012, p. 12; Delzeit, R., Lange, M. (2011). Biofuel Policies and Indirect Land Use Change. Kiel Policy Brief, 37, Kiel Institute for the World Economy, Kiel, 2013.

²⁹ European Commission, Communication COM(2011) 112 of 8 March 2011 “A Roadmap for moving to a competitive low carbon economy in 2050”; Communication COM(2011) 885 of 15 December 2011 “Energy Roadmap 2050”.

³⁰ European Commission, Communication COM(2013) 167 of 26 March 2013 “The 2015 International Climate Change Agreement: Shaping international climate policy beyond 2020”, p. 10. See cepPolicyBrief No. 2013-33 “Climate Change Agreement 2015” <<http://www.cep.eu/en/eu-topics/energy.html>>.

³¹ European Commission, Impact Assessment SWD(2013) 97, p. 11.

³² European Council, Conclusions of 23/24 October 2014, recital 2.13.

3.2 Renewables Target

3.2.1 Conclusions of the European Council

The European Council agreed to increase the share of renewable energy consumed in the EU to at least 27% by 2030.³³ No sector-specific targets, e.g. for the transport sector, will be set. The renewables target is binding at EU level. In contrast to the present 2020 policy framework and legislation [Article 3(1) and Annex I Part A Renewable Energy Directive 2009/28/EC], however, Member States will not receive individual binding targets. Thus, no obligatory effort-sharing between the Member States will take place in this respect. Instead, Member States are asked to present their self-defined renewable energy targets and their plans for the respective implementation measures. Member States are free to set targets that are stricter (“gold-plating”). However, national measures need to be in line with the State aid guidelines of the European Commission.³⁴ Furthermore, the European Council stresses that the production of renewable energy, which is inherently intermittent, requires more interconnected energy markets and backup capacity which should be coordinated at the regional level.

3.2.2 Comment

The promotion of renewables as a long-term strategy is making progress in many Member States. However, promoting renewables will give rise to unnecessary expense as long as it continues to take place principally in areas where operators receive particularly large subsidies from the Member States rather than in regions with the best energy yield. In addition, national subsidies undermine competition in the internal energy market. The EU should therefore only set an EU-wide target for renewables once a greater convergence of the national support schemes that allows for competition within the internal energy market has been established. Instead, the European Council has agreed on the second step (a target) without taking the first step (convergence of support schemes). Without effort-sharing, it remains unclear to what extent Member States will encourage renewables in the future.

The promotion of renewables tends to be accompanied by a reduction of GHG emissions. Thus, a conflict between renewable energy support schemes and the functioning of the ETS is unavoidable. The ETS produces GHG reductions at the lowest abatement costs which is why the European Council with good reason declared the ETS to be the “main” instrument for GHG reduction. Its effectiveness should not therefore be hampered. Instead, the aim should be to phase out support for renewables in the long run, once they have become economically compatible.

3.3 Energy Efficiency Target

3.3.1 Conclusions of the European Council

The European Council has agreed to reduce projected energy consumption for 2030 by at least 27% compared to current projections of future energy consumption.³⁵ In contrast to targets on GHG emissions reductions and renewable energy, the energy efficiency target is merely

³³ Ibid., recital 3.

³⁴ European Commission, Guidelines on State aid for environmental protection and energy 2014-2020, Official Journal of the European Union, C 200, 28.6.2014, p. 1 et seq.

³⁵ European Council, Conclusions of 23/24 October 2014, recital 3.

“indicative”, meaning that it is not binding on the EU level or on the national level. The target shall be reviewed in 2020, “having in mind” a target of 30%. Again, Member States are free to set more ambitious targets. Despite this fact, the European Commission will identify “priority sectors” that have a significant potential for energy efficiency gains. The Commission will then suggest measures to be applied at EU level in order to exploit the identified potential for energy efficiency.

3.3.2 Comment

The European Council has only agreed on an “indicative” target for energy savings and energy efficiency. This non-binding target will not have a large impact on Member States’ energy policy. Nevertheless, the European Commission is expected to submit new policy proposals aimed at achieving the new “indicative” target which will give the target some impact.

The European Council should have refrained from setting an efficiency target altogether. There is simply no economic reason for making energy efficiency itself an objective of energy or climate policy – either at EU or at national level – since not all uses of energy cause the same level of environmental damage or other losses to third parties. If there are damages, they should be dealt with by the ETS rather than by way of an imprecise energy efficiency target. Furthermore, like renewables support schemes, the energy efficiency target impairs the efficiency of the EU-ETS.

Reduced energy consumption in the Member States may lead to improved energy security and an increased level of independence from energy imports. A common target for reducing overall energy consumption in the EU, however, is not sufficiently aimed at the energy imports of the Member States. In addition, energy mix and import-dependence vary considerably between Member States. Less energy consumption in Germany, for instance, does not necessarily improve the energy security in Slovenia to any great extent.

Therefore, the EU should abstain not only from a binding target on energy savings and but also from an “indicative” target that will authorize the European Commission to propose new instruments in this field.

3.4 Electricity Interconnections Target

3.4.1 Conclusions of the European Council

The European Council stresses the need to complete the internal energy market in order to sufficiently interconnect the electricity and gas networks of all Member States. In this respect, the European Council requests the Member States to ensure a level of electricity interconnection equivalent to at least 10% of their installed production capacity by 2020 and to at least 15% by 2030 (“electricity interconnection target”). The electricity interconnections of the Baltic states (Estonia, Latvia, Lithuania), the Iberian peninsula (Portugal, Spain) as well as of the Member States which are the main points of access to the internal energy market for these regions (e.g. France) shall be improved as a matter of priority. “Projects of common interest” (PCIs)³⁶, including the infrastructure projects set out in the 2014 European Energy Security Strategy³⁷, will help to achieve the electricity

³⁶ Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure. See cepPolicyBrief No.2012-05 “Trans-European Networks for Energy (TEN-E)” <<http://www.cep.eu/en/eu-topics/energy.html>>.

³⁷ European Commission, Communication COM(2014) 330 of 28 May 2014 “European Energy Security Strategy”. See cepPolicyBrief No. 2014-38 “Security of Energy” <<http://www.cep.eu/en/eu-topics/energy.html>>.

interconnection targets. For this reason, the European Council emphasises the importance of the successful implementation of the PCIs. However, if the PCIs fail to achieve the electricity interconnection targets, additional projects will be identified.³⁸

Successful implementation of the PCIs is crucial to guaranteeing security of the energy supply. This applies particularly to PCIs which contribute to the diversification of the European gas supply routes. These include the development of the North-South corridor, the promotion of a new gas hub in Southern Europe as well as gas infrastructure projects in the Baltic states and Finland. Furthermore, according to the European Council, the EU's dependency on energy imports from non-EU countries should be reduced by moderating energy demand through energy efficiency measures, the exploration of indigenous fossil energy sources as well as further expansion of renewables. The Member States should also use a mechanism to exchange information on bilateral intergovernmental agreements with non-EU countries to improve the EU's bargaining power in energy negotiations. This information is also necessary to assess whether intergovernmental agreements comply with EU legislation and its energy security priorities. The European Council will again assess the progress in energy security in 2015.³⁹

3.4.2 Comment

Completion of the EU internal energy market will increase competition among energy providers and thus lead to lower energy prices for households and companies. The European Council therefore rightly backs the promotion of key energy infrastructure projects. These "projects of common interest" are necessary to diversify energy supply routes and help to abolish the isolation of certain regional energy markets such as that of the Baltic countries.

The main driver of rising insecurity in relation to gas supply is the high dependency of some Member States on gas imports from non-EU countries like Russia. A competitive internal energy market, in which natural gas can be freely traded, limits the market power which large energy exporters from non-EU countries can wield over individual Member States.

A higher degree of energy security may also be achieved by moderating energy demand using energy efficiency measures as well as increasing indigenous fossil or renewable energy sources. However, private investors, rather than the government, should decide on such measures to avoid the danger of implementing too many measures that are economically inefficient.

Closer coordination among the Member States on bilateral energy agreements with non-EU countries may prevent the conclusion of such agreements which undermine trade in the internal energy market and have a negative effect on the security of supply.

³⁸ European Council, Conclusions of 23/24 October 2014, recital 4. The European Commission plans to publish a communication dealing with the most effective way to achieve the target of electrical interconnections before of March 2015.

³⁹ European Council, Conclusions of 23/24 October 2014, recital 5.

4 New Governance System

4.1 Conclusions of the European Council

The European Council decided that a new “reliable and transparent” governance system will be developed to support the implementation of the 2030 energy targets.⁴⁰ Given that no binding national targets for renewables and energy efficiency will be in place after 2020, the main objective of the governance system will be to ensure that these targets are achieved by the joint efforts of the Member States, as represented by their respective national plans. More specifically, the governance system shall ensure that suitable implementation measures are adopted by the Member States and coordinated at EU level, while “fully respecting” the Member States’ “freedom to determine their energy mix”.

The governance system shall be “without any unnecessary administrative burden” and built on already existing national programs and plans on climate change, renewable energies and energy efficiency. Key indicators for an “affordable, safe, competitive, secure and sustainable energy system” shall be developed and monitored in order to enhance the role of consumers and the predictability for investors.

The European Commission outlined its vision of the basic features of such a governance system in January 2014.⁴¹ Since the European Council has explicitly endorsed the Commission’s proposal, it seems likely that the new governance system will be developed on this basis. To ensure that the 2030 targets are achieved by the joint efforts of the Member States, the Commission proposed that the new governance system follow a three-step approach:

- Step 1: The Commission develops detailed guidance which the Member States have to take into account when preparing their national plans.
- Step 2: The Member States prepare their plans and in doing so consult with other Member States in order to take account of cross-border effects.
- Step 3: The Member States’ plans are assessed by the Commission as to whether they are sufficient to deliver the EU’s targets or whether they must be revised “subject to continual consultation” with the Commission.

According to the European Council, the new governance system will have several advantages. The Member States will gain more flexibility by acting jointly to reach the given EU level targets.⁴² In addition, it will contribute to promoting regional cooperation between EU countries. Furthermore, it will provide certainty by monitoring key indicators that, *inter alia*, map the competitiveness of the energy system. On this basis, companies will be able to make informed investment decisions.⁴³

⁴⁰ Ibid., recital 6.

⁴¹ European Commission, Communication COM(2014) 15 of 22 January 2014 “A policy framework for climate and energy in the period from 2020 to 2030”; see cepPolicyBrief No. 2014-19.

⁴² European Council, Conclusions of 23/24 October 2014, recital 6.

⁴³ Ibid.

4.2 Comment

By not setting binding national targets for renewables and energy efficiency, the regular procedures for the enforcement of Member States' legal obligations, as laid down in EU law, do not apply. Whether the envisaged governance system is an effective substitute in this respect depends in no small measure on its concrete design. Ill-conceived, cumbersome coordination processes may give rise to time-consuming conflicts between the Commission and individual Member States – and possibly “package-deals” in order to solve them. The impact of the Commission's guidelines and the consequences of unresolvable disputes with Member States will play a crucial role. In its original outline of the basic features of the governance system, the Commission had considered a legislative approach in the event that the governance structure proved ineffective. It seems unlikely, however, that the Member States would be willing to surrender their newly gained freedoms.

5 The Role of the European Council

5.1 Conclusions of the European Council

The 2030 framework for the EU's climate and energy policy between 2020 and 2030 as concluded by the European Council in October 2014 will have to be specified at both national and EU level. In this respect, the European Council defined its own role as follows: “The European Council will keep all the elements of the framework under review and will continue to give strategic orientations as appropriate, notably with respect to consensus on ETS, non-ETS, interconnections and energy efficiency”.⁴⁴ This much-noticed announcement, prominently placed in the introductory paragraph of the European Council's Conclusions, is rather unusual and has already prompted a discussion⁴⁵ about potentially undue interference with the well-balanced institutional set-up of the European Union.

5.2 Comment

There is certainly a query over the legal implications of the European Council's definition of its own role in the further elaboration of the EU climate and energy policy. The European Council's indication that it “will continue to give strategic orientations as appropriate, notably with respect to consensus on ETS, non-ETS, interconnections and energy efficiency” indeed raises questions about the future role of the European Council in the legislative decision-making process.

While both the European Council of the Heads of State or Government (Article 15 TEU) and the Council of Ministers (Article 16 TEU) are comprised of representatives of the Member States, they differ not only in their composition, but also in their respective functions and powers in the institutional fabric of the EU. Pursuant to Article 17(1) TEU, the European Council “shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof.” In this respect, decisions are taken by consensus [Article 15(4) TEU]. It

⁴⁴ European Council, Conclusions of 23/24 October 2014, recital 1.

⁴⁵ See, e.g., Brief Enquiry of the Bündnis 90/DIE GRÜNEN Parliamentary Group of 5 November 2014, BT-Drs. 18/316, recitals 8-11; Reply of the German Federal Government of 28 November 2014, BT-Drs. 18/3368; O'Leary, A. (2014). Consensus v QMV in Climate & Energy Law. Distinguishing the rhetoric from the law in the European Council Conclusions of 23 and 24 October 2014, October 2014 <<http://www.clientearth.org/reports/Consensus-v-qualified-majority-voting-in-climate-legislation.pdf>>.

is stated explicitly, however, that the European Council shall not “exercise legislative functions” [Article 15(1) TEU]. It is therefore not competent to decide on the details of climate and energy policy. These must be codified by Regulations or Directives, a task which clearly falls within the domain of the EU legislating bodies, including the Council of Ministers.

In the aforementioned policy areas, EU legislation will continue to be adopted following the “ordinary legislative procedure” in accordance with Article 294 TFEU as prescribed by Article 192 TFEU (environment, climate) and Article 194 TFEU (energy). Pursuant to Article 294 TFEU, only the Council of Ministers and the European Parliament are entrusted with the power to decide on the legislative proposals initially submitted by the European Commission. In this respect, the Council of Ministers decides by a qualified majority [Article 16(3) and (4) TEU]. The European Council itself is not empowered by the EU treaties to interfere with these decision-making rules. It can neither alter the voting modalities of the Council of Ministers within the ordinary legislative procedure, nor can it claim decision-making power regarding legislative acts for the implementation of the 2030 policy framework.

In past political practice, however, gridlocks in the Council of Ministers with regard to climate and energy policy were frequently solved only by informal agreements between the heads of state or government.⁴⁶ Against this background, the European Council’s statement can be interpreted as a non-binding, political signal to certain Member States to refrain from majority decisions in the Council of Ministers which are contrary to the views of an individual Member State, and to strive for a consensus previously defined in “strategic orientations”. This would nevertheless give a de-facto power of veto to a single Member State, not provided for in the EU treaties, bringing with it the inherent danger of political deadlock. This is a risk which is intended to be overcome by the general principle of qualified majority voting as established in the TFEU – but it is a risk that may be welcomed by some Member States.

⁴⁶ See Fischer, S. (2014). The EU’s New Energy and Climate Policy Framework for 2030. Implications for the German Energy Transition. SWP Comments 55, December 2014, p. 4.

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Authors:

Dr. Moritz Bonn is policy analyst at the cep Energy & Climate Department.

Dr. Nadine Heitmann was co-head of the cep Energy & Climate Department until December 2014.

Dr. Götz Reichert is head of the cep Energy & Climate Department.

Prof. Dr. Jan S. Voßwinkel is scientific advisor to the cep Energy & Climate Department.

cep | Centrum für Europäische Politik

Kaiser-Joseph-Straße 266 | 79098 Freiburg | Germany

Phone +49 761 38693-0 | www.cep.eu

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