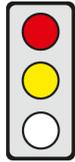


## KEY ISSUES

**Objective of the Regulation:** The “governance mechanism” aims to enable coordination of the energy policy measures of the Member States, and at EU level, and tighten planning and reporting duties.

**Affected parties:** Member States



**Pro:** Consolidation of the reporting obligations of the Energy Union and the UN climate change agreements creates clarity and reduces excess red tape.

**Contra:** (1) The duty of Member States to “take utmost account” of the recommendations from the Commission is too vague. Quasi-binding “recommendations” from the Commission would be contrary to EU law because essential provisions must be passed by the EU legislative.

(2) The authorisation allowing the Commission to adopt the “necessary provisions for the establishment and functioning” of a financing platform for renewable energy projects is contrary to EU law.

## CONTENT

### Title

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

### Brief Summary

#### ► Background

- The EU Framework Strategy for energy and climate policy (“Energy Union”, see [cepPolicyBrief 2015-8](#)) has five objectives (“dimensions”): (1) to increase energy security; (2) strengthen the internal energy market; (3) increase energy efficiency; (4) reduce greenhouse gas emissions (GHGs); (5) promote research and innovation in the energy sector.
- Within the framework of the Energy Union, by 2030 the European Council wants (“2030 Targets” see [cepInput 2/2015](#))
  - an obligatory, EU-wide reduction in greenhouse gas emissions (GHGs) of 40% as compared with 1990 levels, and sectors outside EU emissions trading (ETS; see [cepCompass](#), p. 10 et seq.) – such as road transport and buildings – will be subject to national GHG reduction targets [COM(2016) 482, see [cepPolicyBrief 2016-26](#)];
  - an obligatory, EU-wide increase in the proportion of renewable energies to 27% without imposing national development targets (see [cepInput 2016-05](#));
  - a non-binding improvement of 27% – and possibly 30% – in energy efficiency without imposing national improvement targets. (see [cepInput 01/2017](#))
- To achieve the Energy Union objectives and the 2030 Targets, the Commission has, inter alia, proposed changes to the Energy Efficiency Directive [2012/27/EU; COM(2016) 761, see [cepPolicyBrief 2017-1](#)], the Energy Performance of Buildings Directive [2010/31/EU; COM(2016) 765, see [cepPolicyBrief 2017-6](#)] and the Renewable Energy Directive [2009/28/EC; COM(2016) 767, s. [cepPolicyBrief 2017-7](#)] as well as the current Regulation [COM(2016) 759; this [cepPolicyBrief](#)].
- EU energy and climate policy legislation contains 91 planning and reporting obligations for the Member States as well as monitoring rights for the Commission [SWD(2016) 396, p. 2 et seq.].

#### ► “Governance” targets for the Energy Union

- As from 2021, the “governance mechanism”, which aims to provide central supervision for the Energy Union (p. 3 et seq., Art. 1), will
- enable the monitoring, cross-border coordination and – where necessary to achieve targets – the modification of measures of Member States and possibly additional measures at EU level;
  - tighten planning and reporting obligations;
  - ensure the “timeliness, transparency, accuracy, consistency, comparability and completeness” of reporting by the EU and its Member States on GHG emissions to the Secretariat of the UN Climate Convention and the Paris Agreement (see [cepPolicyBrief 2016-13](#)).

► **Integrated National Energy and Climate Plans (INEC plans)**

- Every Member State must prepare an “integrated national energy and climate plan” (INEC Plan) (Art. 3 (1)).
- This must cover a ten-year period – initially from 2021 to 2030 – and set out (Art. 3 in conjunction with Annex I)
  - for the Energy Union objectives
    - the national objectives, targets and contributions (Art. 4).
    - the planned policies and measures for implementing them (Art. 7),
    - the current situation (Art. 8),
    - projections for achieving targets by way of existing policies and measures as well as
    - impact assessments for planned policies and measures;
  - the methods and measures for meeting the national energy savings obligation (Annex II in conjunction with Art. 7 and Annex V Energy Efficiency Directive [2012/27/EU as amended by COM(2016) 761]).
- Under the Commission Proposal Member States must, when setting for 2030,
  - their – non-binding – “national share” of renewable energy in gross final energy consumption, collectively ensure that the total contributions add up to an EU-wide share of 27% (Art. 5 (2)).
  - their “indicative” – non-binding – “national energy efficiency contribution”, ensure that the “binding requirement” for the EU-wide energy efficiency target of 30% (Art. 1 and 3 Energy Efficiency Directive [2012/27/EU as amended by COM(2016) 761]) is achieved (Art. 6 (1) (b)).

► **Consultation procedure in the development and updating of INEC plans**

- Step 1: By January 2018 and every ten years thereafter, Member States prepare the INEC plans (Art. 9 (1)), in consultation with the public (Art. 10) and with neighbouring Member States and those “expressing an interest” (“regional cooperation”, Art. 11).
- Step 2: The Commission evaluates the draft INEC plans and may issue recommendations to Member States in order to ensure that the Energy Union’s targets are realised (Art. 9 (2) in conjunction with Art. 28).
- Step 3: Member States must take “utmost” account of any recommendations from the Commission and justify any deviations (Art. 9 (3) in conjunction with Art. 28 (2)).
- Step 4: By January 2019 and every ten years thereafter, Member States submit their final INEC plans to the Commission (Art. 3 (1)).
- Step 5: The Commission evaluates the INEC plans (Art. 12). It examines whether
  - the national objectives, targets and contributions are sufficient to collectively achieve the Energy Union’s objectives and the 2030 Targets, and
  - the INEC plans correspond to the Commission’s recommendations.
- Step 6: If the Commission concludes that the targets, objectives and contributions of the INEC plans are “insufficient” to achieve the Energy Union objectives, it can take additional measures at EU level (Art. 27 (1)).
- Step 7: By January 2023, and every ten years thereafter, Member States submit a draft update of their INEC plans in consultation with neighbouring Member States and those expressing an interest (Art. 13 (1) and (6) in conjunction with Art. 11); thereafter steps 2 and 3 are repeated.
- Step 8: By January 2024, and every ten years thereafter, Member States submit an update of their INEC plans to the Commission (Art. 13 (2)); in this regard, they can only modify their national targets, objectives and contributions in order to achieve an “increased ambition” as compared to the previous INEC plan (Art. 13 (3)); thereafter steps 5 and 6 are repeated.

► **Reporting by Member States**

- By March 2021, and every two years thereafter, Member States must provide the Commission with “INEC progress reports” on the status of implementation of their INEC plans (Art. 15–22).
- By March 2021, and every two years thereafter, Member States must report to the Commission
  - on the use of ETS auctioning revenues (Art. 17 (2)) and
  - on the national inventories documenting the emission and reduction of GHGs (Art. 23 and Art. 30–33 in conjunction with Annex III).
- The Commission will provide an online platform for reporting (Art. 24).

► **Progress assessment and follow-up measures by the Commission**

- By 31 October 2021 and every second year thereafter the Commission shall assess, on the basis of the INEC progress reports, (Art. 25 (1))
  - the overall progress of the EU towards meeting the objectives of the Energy Union and
  - the progress made by each Member State towards meeting its targets, objectives and contributions and implementing the policies and measures set out in its INEC plan.
- If the Commission concludes that a Member State has made “insufficient progress” towards meeting the targets, objectives and contributions or implementing the policies and measures set out its INEC plan, it issues “recommendations” to the Member State. Member States must “take utmost account” of the Commission’s recommendations and justify any deviations. (Art. 27 (2) in conjunction with Art. 28)

- If the Commission concludes that EU-wide achievement of Energy Union objectives is at risk it may (Art. 27 (3))
  - issue recommendations to all Member States (Art. 28) and
  - take additional measures at EU level, in particular to ensure that the EU requirements on renewable energy and energy efficiency for 2030 are achieved.
- If, in 2023, the EU is nevertheless at risk of failing to meet the EU-wide “linear trajectory” for increasing the share of renewable energy from 20% to 27% between 2020 and 2030, the Member States must take additional measures (Art. 27 (4)), inter alia,
  - increase the share of renewable energy in the transport sector or in the heating and cooling sector (Art. 23 and 25 Renewable Energy Directive [2009/28/EG as amended by COM(2016) 767]) and
  - provide funds for an EU-wide “financing platform” for renewable energy projects; the Commission can determine the “necessary provisions for the establishment and functioning” of the financing platform and manage it “directly or indirectly”.
- If, in 2023, the EU is at risk of failing to meet the energy efficiency target for 2030, the Commission will take additional measures at EU level to increase efficiency in relation to products and buildings as well as in the transport sector (Art. 27 (5)).

#### ► Long term strategies for reducing GHG emissions

By 1 January 2020 and every ten years thereafter, Member States will develop a strategy for reducing GHG emissions over the next 50 years. It should be consistent with the INEC plans. (Art. 14)

### Main Changes to the Status Quo

- Until now, the Energy Union’s planning and reporting obligations were spread over various different legal acts. Now, many of them have been consolidated within the framework of the INEC plans.
- New: Member States must take utmost account of the Commission’s recommendations.
- New: the Commission can take additional measures at EU level where achievement of the Energy Union objectives is at risk.
- New: the establishment of a financing platform for renewable energy projects at EU level.

### Statement on Subsidiarity by the Commission

As several Energy Union objectives have been established for the EU as a whole, EU action is necessary in order to ensure that targets are met and that there is coherence between energy and climate policy at EU level and between the Member States. In addition, only EU measures can ensure participation of the EU in the examination procedure under the Paris Agreement. (p. 5)

### Policy Context

In October 2014, the European Council decided that a “reliable and transparent Governance, without any unnecessary administrative burden” had to be developed to ensure that “the EU meets its energy policy goals”. The Paris Agreement, approved by the UN Climate Conference in December 2015, was ratified by the EU in October 2016 and came into force in November 2016. Its monitoring, reporting and inspection requirements will be met by way of the governance mechanism.

### Legislative Procedure

30 November 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

### Options for Influencing the Political Process

Directorates General:	Energy
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: Claude Turmes (Green Party, LU); Environment, Public Health and Food Safety, Rapporteur: Michèle Rivasi (Green Party, FR)
Committees of the German Bundestag:	Economic Affairs and Energy (leading); EU Affairs; Environment
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

### Formalities

Legislative competence:	Art. 192 (Climate) and Art. 194 TFEU (Energy)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU) Legislative procedure:
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

## ASSESSMENT

### Economic Impact Assessment

**Consolidation**, within the framework of the INEC plans, **of the reporting obligations** contained in the various legal instruments **of the Energy Union and the UN Climate Change Agreement**, is appropriate because it **creates clarity and reduces excess red tape**. The more comprehensively the achievement of energy and climate policy targets is left – subject to an appropriate framework such as the EU Emissions Trading System – to market forces, the greater the possibility of dispensing with extensive planning, reporting and progress analysis obligations. **Expanding the EU Emissions Trading System to all sectors** (see [ceplnput 01/2017](#)) would **allow for** not only the actual energy policy targets, such as climate protection and security of supply, to be achieved cost effectively but also **bureaucratic planning and reporting obligations and conflict-prone coordination proceedings** between the Member States and the Commission **to be largely avoided**.

### Legal Assessment

The European Council's **requirement for mainly binding EU targets** e.g. for the development of renewable energy sources, **without further defining these by way of binding national targets, is unrealistic as well as being** politically and **legally inconsistent** and is what created the need for a governance mechanism in the first place.

On the one hand, – in line with the principle of subsidiarity (Art. 5 TEU) – energy and climate policy measures of the EU and its Member States can only be coordinated, and where necessary legally enforced, at EU level. On the other hand, however, the instrument provided under EU law for enforcing them, that of infringement proceedings (Art. 258 et seq. TFEU), has been taken out of the hands of the Commission due to a lack of binding national requirements. Thus, although the Commission's attempt to rein in the Member States, by way of "quasi-binding recommendations" and where appropriate additional EU measures – particularly to develop renewable energy and increase energy efficiency – is understandable, it should be rejected in the proposed form on several legal grounds:

**The duty of the Member States to "take utmost account" of the "recommendations" from the Commission** does not clearly indicate the legal consequences for the Member States of a breach of this duty and **is therefore too vague**. If the Commission's "recommendations" were legally enforceable by way of infringement proceedings (Art. 258 et seq. TFEU), they would attain – by the back door – a binding effect upon the Member States which it was the European Council's express intention to avoid in relation to national targets – not to mention concrete national measures – for renewable energy and energy efficiency. **Quasi-binding "recommendations" of the Commission** would give it excessive scope for decision-making. It **would be contrary to EU law because** these types of **essential provisions** on the design of energy and climate policy (analogous to Art. 290 TFEU) **must be passed by the EU legislative itself** – i.e. by the European Parliament and the Council (Art. 294 et seq. TFEU) or, in the case of encroachment upon the sovereignty of the Member States in the area of energy policy, e.g. by way of national development targets for renewable energy, unanimously by the Council (Art. 194 (2) in conjunction with Art. 192 (2) TFEU).

**The proposed authorisation allowing the Commission to adopt the "necessary provisions for the establishment and functioning" of the financing platform for renewable energy projects**, by way of delegated acts, **is also contrary to EU law**. Particularly in view of the potential financial obligations of Member States, the essential provisions on the design of the financing platform – organisation, procedure, financing obligations, decision-making powers, support criteria etc. – must be determined with sufficient specificity by the EU legislative itself (Art. 290 TFEU).

### Conclusion

The consolidation of the reporting obligations of the Energy Union and the UN climate change agreements creates clarity and reduces excess red tape. Expanding the EU Emissions Trading System to all sectors largely would allow for the avoidance of bureaucratic planning and reporting obligations and conflict-prone coordination proceedings. Setting binding EU targets, without further defining them by way of binding national targets, is both unrealistic and legally inconsistent. The duty of the Member States to "take utmost account" of the recommendations from the Commission is too vague. Quasi-binding "recommendations" from the Commission would be contrary to EU law because essential provisions must be passed by the EU legislative itself. The authorisation, allowing the Commission to adopt the "necessary provisions for the establishment and functioning" of the financing platform for renewable energy projects, is contrary to EU law.