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Governance of the Energy Union

Regulating EU Energy and Climate Policy

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In 2018, a new mechanism for "Governance of the Energy Union" was passed in order to regulate energy and climate policy in the EU. It aims to achieve the EU's energy and climate targets and to coordinate the measures of the EU and its Member States post-2021. cep gives the following assessment of the new legislation:

- The Governance System is a manifestation of the major differences between Member States regarding type and extent of energy and climate policy measures. Whether its targets can be achieved is doubtful.
- By setting targets that are only binding EU-wide, without reinforcing them by way of binding national targets, the EU Commission loses the enforcement measure of infringement proceedings. The Governance Regulation's attempt to achieve the energy and climate targets by other means amounts to a procedural stopgap measure.
- Although the streamlining and consolidation of existing reporting obligations does, to a certain extent, reduce red tape, the governance mechanism also creates many new planning and reporting requirements.
- Expanding the EU Emissions Trading System to all sectors would avoid extremely bureaucratic planning and reporting obligations as well as conflict-prone coordination proceedings.

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1 Introduction

The EU has revised its energy and climate policy[1], until now focussed on 2020[2], to cover the period post-2021. For the purpose of centralised regulation at EU level, the new Governance Regulation[3] creates a mechanism for "Governance of the Energy Union". As of 2021, it is meant to ensure the achievement of the EU's energy and climate targets and its obligations under the 2015 Paris Climate Change Agreement ("Paris Agreement")[4] as well as coordinating the legislative and non-legislative measures of the EU and its Member States.[5]

In this cepInput, we first outline the main targets and regulations of the EU's energy and climate policy post-2021 (Section 2) and the objectives and instruments of the new governance mechanism aimed at regulating and controlling the said policy (Section 3). In conclusion, we assess the governance mechanism based on economic and legal considerations (Section 4).

2 EU Energy and Climate Policy post-2021

In 2014, the European Council decided on four "key targets" for the realignment of EU Energy and Climate Policy post-2021 ("2030 targets"):[6] (1) the EU-wide binding target of reducing greenhouse gas emissions (GHG) by at least 40% as compared with 1990 levels; (2) the non-binding – "indicative" – target of increasing energy efficiency by at least 27%; (3) the non-binding target of increasing the proportion of renewable energy (RE) used in overall EU energy consumption to at least 27% and (4) the non-binding target of increasing the capacity of cross-border electricity connections with other Member States to at least 15% of domestic electricity production capacity ("interconnection level") in every Member State.

In 2015, in its "Framework Strategy" for EU Energy and Climate Policy (Energy Union") up to 2030 and beyond, the EU Commission specified five targets ("Dimensions"):[7] (1) to increase energy security; (2) strengthen the internal energy market; (3) increase energy efficiency; (4) reduce GHG emissions and (5) support research and innovation in the energy sector.

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1 The EU's power to legislate on energy and climate policy is laid down in Art. 191 and Art. 194 (1) Treaty on the Functioning of the European Union (TFEU), https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A12012E%2FTXT (this and all other links were last accessed on: 25 March 2019).

2 For a comprehensive assessment of the EU's climate and energy policy targets up to 2020 and the legislation designed to achieve them see Bonn, M. / Heitmann, N. / Reichert, G. / Voßwinkel, J. (2015), EU Climate and Energy Policy, cep**Compass**.

3 Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action [hereinafter: "Governance Regulation"]; see cep**PolicyBrief** 2017-17.

4 Paris Agreement of 12 December 2015, United Nations Treaty Collection, C.N.92.2016.TREATIES-XXVII.7.d, https://unfccc.int/sites/default/files/english_paris_agreement.pdf; on this: EU-Commission, Communication COM(2016) 110 of 2 March 2016, After Paris: Assessment of the Consequences of the Paris Agreement; see cep**PolicyBrief** 2016-13. The Paris Agreement currently has 184 signatories that are also parties to the overarching UN Framework Convention on Climate Change of 9 May 1992 - UNFCCC).

5 Governance Regulation, Recital 1 and 5.

6 European Council of 23/24 October 2014, Conclusions, Doc. EUCO 169/14, para. 3; see Bonn, M. / Heitmann, N. / Reichert, G. / Voßwinkel, J. (2015), EU Climate and Energy Policy 2030, cep**Input** 02/2015.

7 EU Commission, Communication of 25 February 2015, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy; see cep**PolicyBrief** 2015-08.

In order to achieve the energy and climate policy targets for 2030, the EU has amended or recast several pieces of legislation. These include the Directive on the EU Emissions Trading System (EU ETS)[8], the Energy Efficiency Directive and the Energy Performance of Buildings Directive[9], the Renewable Energy Directive[10] and the Effort Sharing Regulation[11], which lays down national GHG reduction targets for sectors not covered by the EU ETS. The new Energy Efficiency Directive establishes a target of at least 32.5% for increasing energy efficiency at EU level by 2030.[12] The recast Renewable Energy Directive stipulates an EU-wide binding RE development target of 32% by 2030.[13] Both targets are only binding at EU level so that although they have to be met by the Member States collectively, they are not reinforced by binding national targets.[14] In 2023, they are to be assessed by the Commission and possibly tightened.

3 Mechanism of "governance" for the Energy Union

3.1 Targets and instruments

The "governance mechanism" pursues the following targets:[15]

- As part of a "structured, transparent, iterative" consultation process between the Commission and Member States", integrated national energy and climate plans" (INEC plans) are to be adopted and their implementation monitored.[16] "Without any unnecessary administrative burden and with sufficient flexibility for Member States", this process is designed to ensure[17] smooth coordination of national climate and energy policies and promote regional cooperation between the Member States.[18]
- The 91 planning and reporting obligations contained, until now, in various pieces of EU legislation on energy and climate policy, as well as the Commission's monitoring rights, will be "amended, replaced or repealed"[19] and the EU system for monitoring GHG emissions will be updated.[20]

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8 Directive 2003/87/EC of the European Parliament and of the Council on support for cost-effective emissions reduction and to promote low-carbon investment [hereinafter: "EU-ETS Directive"]; see Bonn, M. / Reichert, G. (2018), Climate Protection by way of the EU ETS, cep**Input** 04/2018.

9 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency [hereinafter: "Energy Efficiency Directive"] and Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the overall energy performance of buildings [hereinafter: "Energy Performance of Buildings Directive"]; see Menner, M. / Reichert, G. / Voßwinkel, J. (2018), EU Energy Efficiency Policy, cep**Input** 05/2018.

10 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on support for the use of energy from renewable sources; see Bonn, M. / Reichert, G. (2019), Renewable Energy in the EU, cep**Input** 01/2019.

11 Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement [hereinafter "Effort Sharing Regulation"]; see Bonn, M. / Reichert, G. (2018), Climate Protection outside the EU ETS, cep**Input** 04/2018.

12 Energy Efficiency Directive, Art. 1 (1); see Menner, M. / Reichert, G. / Voßwinkel, J. (2018), EU Energy Efficiency Policy, cep**Input** 05/2018.

13 Renewable Energy Directive, Art. 3 (1); see Bonn, M. / Reichert, G. (2019), Renewable Energy in the EU, cep**Input** 01/2019.

14 Energy Efficiency Directive, Art. 3 (6); see Menner, M. / Reichert, G. / Voßwinkel, J. (2018), EU Energy Performance Policy, cep**Input** 05/2018. Renewable Energy Directive, Art. 3 (1); see Bonn, M. / Reichert, G. (2019), Renewable Energy in the EU, cep**Input** 01/2019.

15 Governance Regulation, Art. 1 (1)

16 Ibid., Art. 1 (1).

17 Ibid., Recital 12.

18 Ibid., Art. 1 (1) (b) and Recital (12).

19 EU Commission, Fitness Check SWD(2016) 396 of 30 November 2016, Reporting, Planning and Monitoring Obligations in the EU Energy acquis, p. 2 et seq.

20 Governance Regulation, Recital 7.

- The governance mechanism is meant to ensure the "timeliness, transparency, accuracy, consistency, comparability and completeness" of reporting by the EU and its Member States to the UNFCCC secretariat within the framework of the Paris Agreement.[21]
- The governance mechanism is meant to also achieve greater transparency and predictability for investors by systematic monitoring of "key indicators" for an "affordable, competitive, secure and sustainable energy system".[22]

As instruments for achieving these objectives, the Governance Regulation provides for "integrated national energy and climate plans" ("INEC plans"), long-term strategies of the EU and its Member States for GHG emissions reduction, the recording of GHG emissions in GHG inventories, reporting obligations for Member States and the evaluation of progress towards achieving the targets, proposals for follow-up measures and an annual report by the Commission on the state of the Energy Union.

3.2 Integrated National Energy and Climate Plans ("INEC plans")

3.2.1 Content

Each Member State must prepare an INEC plan.[23] This will cover a ten-year period – initially from 2021 to 2030 – and contain, for every "dimension" of the Energy Union,[24]

- the national objectives, targets and contributions[25];
- the planned policies and measures for implementing them[26];
- the current situation and projections for achieving the objectives by way of existing measures[27];
- impact assessments for planned policies and measures[28];
- general evaluations of the impact of the measures on competitiveness.

3.2.2 Establishing the national contribution to increasing energy efficiency

In establishing their "indicative" – non-binding – "national energy efficiency contribution", Member States must take into account that the EU's maximum energy consumption, agreed with the binding EU-wide energy savings target of 32.5%[29], must not be exceeded. Likewise, each Member State must take into account the measures contained in the Energy Efficiency Directive and other measures to support energy efficiency. In addition, every Member State may take account of national peculiarities – such as remaining potential for cost-effective energy savings and economic development.

3.2.3 Establishing the national contribution to the roll-out of renewable energy

In establishing its national contribution to the RE-share, up until 2030, each Member State must take account of the measures contained in the Renewable Energy Directive and any other national

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21 Ibid., Art. 1 (1) (c).
22 Ibid., Recital 12.
23 Ibid., Art. 3 (1).
24 Ibid., Art. 3 in conjunction with Annex I.
25 Ibid., Art. 4.
26 Ibid., Art. 7.
27 Ibid., Art. 8.
28 Ibid., Art. 3 (2) (f).
29 Ibid., Art. 6 (1) in conjunction with Art. 1 and 3 Energy Efficiency Directive; see Menner, M. / Reichert, G. / Voßwinkel, J. (2018), EU Energy Efficiency Policy, cepInput 05/2018.

measures on RE support as well as the binding 2020 national targets for the RE-share.[30] In addition, "any relevant circumstances affecting renewable energy deployment" must be taken into account – such as early efforts by the Member States, economic conditions and potential, the potential for cost-effective renewable energy deployment, "geographical, environmental and natural constraints" and the level of power interconnection between Member States.

In establishing their – non-binding – national contribution to the RE-share in final energy consumption for 2030[31], Member States must collectively ensure that the sum of their contributions amounts to an EU-wide share of 32 %.[32]

3.2.4 Consultation procedure for development and updating

For the development and updating of the INEC plans, a consultation procedure between the Member States and the Commission is provided, consisting of eight steps:

Step 1: By 31 December 2018, 1 January 2028 and then every ten years, Member States must prepare INEC plans[33] in consultation with the public[34] and neighbouring "interested" Member States ("regional cooperation")[35], and submit them to the Commission.

Step 2: The Commission assesses the draft INEC plans and may issue country-specific recommendations to Member States no later than six months before their final submission deadline (see below Step 4) in order to ensure the achievement of the Energy Union's objectives.[36]

Step 3: Member States must take "due" account of the Commission's recommendations and justify any deviations.[37]

Step 4: By 31 December 2019, 1 January 2029 and then every ten years, Member States must submit their final INEC plans to the Commission.[38]

Step 5: The Commission evaluates the final INEC plans.[39] In so doing, it checks whether
- the national objectives, targets and contributions are sufficient to achieve the Energy Union's objectives EU-wide and, in particular, the 2030 targets, and
- the INEC plans take due account of 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 EU-wide, it must propose additional measures to ensure achievement of those objectives.[40]

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30 Governance Regulation, Art. 5 (1)
31 Ibid.
32 Ibid., Art. 5 (2).
33 Ibid., Art. 9 (1).
34 Ibid., Art. 10.
35 Ibid., Art. 12.
36 Ibid., Art. 9 (2) in conjunction with Art. 34
37 Ibid., Art. 9 (3) in conjunction with Art. 34 (2)
38 Ibid., Art. 3 (1).
39 Ibid., Art. 13.
40 Ibid., Art. 31 (3).

Step 7: By 30 June 2023, 1 January 2033 and then every ten years, Member States draft updated INEC plans with the participation of neighbouring and interested Member States.[41]
This is followed once again by Step 2 (assessment of draft INEC plans and recommendations by the Commission) and Step 3 ("due" account by Member States of the recommendations).

Step 8: By 30 June 2024, 1 January 2034 and then every ten years, Member States send their updated INEC plans to the Commission.[42] In so doing, they can only modify their national objectives, targets and contributions for GHG reduction in order to achieve an "increased ambition"; the ambition level for energy efficiency and renewable energy can also remain the same.[43]
This is followed once again by Step 5 (evaluation of the final INEC plans by the Commission) and Step 6 (additional measures at EU level).

3.3 Long-term strategies for GHG emissions reduction

By 1 January 2020, 1 January 2029 and then every 10 years, Member States must develop national "long-term strategies" for reducing GHG emissions over the next 30 years. These "should" be consistent with the INEC plans and, where necessary, they must be updated every five years.[44]

At the end of 2018, the Commission will submit a proposal for an EU long-term strategy for the reduction of GHG emissions[45] which – under the Governance Regulation[46] – must be "in accordance with the Paris Agreement" and take account of the INEC plans of the Member States.

The EU long-term strategies will contain various scenarios for the EU's contribution to the Paris climate targets, inter alia a scenario on achieving net zero GHG emissions in the EU by 2050 and "negative emissions" thereafter as well as the implications of those scenarios on the amount of GHGs still available globally and in the EU that would be consistent with the Paris climate targets (remaining "carbon budget").[47] This will form the basis of a discussion about cost efficiency, effectiveness and the fairness of GHG emissions reduction.

The long-term strategies of Member States and the EU will contribute to meeting obligations under the Paris Agreement and to a "highly energy efficient and highly renewables-based energy system" in the EU.

3.4 GHG inventory systems

Under the UN Framework Convention on Climate Change (UNFCCC), the EU and its Member States are required to develop, regularly update and publish GHG inventories. Man-made GHG emissions as well as GHG removals using nature (e.g. reforestation) and technology (e.g. carbon storage facilities) must be listed in these GHG inventories.[48]

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41 Ibid., Art. 14 (1) and (6) in conjunction with Art. 12
42 Ibid., Art. 14 (2).
43 Ibid., Art. 14 (3).
44 Ibid., Art. 15.
45 EU Commission, Communication COM(2018) 773 of 28 November 2018, A Clean Planet for all - A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy ; see cep**PolicyBrief** 05/2019.
46 Governance Regulation, Art. 15 (2)
47 Ibid., Recital 10 and Art. 15 (2)
48 Ibid., Recital 41.

By January 2021, Member States must – as a basis for their inventories – establish and maintain national "GHG inventory systems". These are "institutional, legal and procedural arrangements" for estimating, reporting and archiving man-made GHG emissions as well as GHG reductions.[49] Member States must ensure the "timeliness, transparency, accuracy, consistency, comparability and completeness" of their GHG inventory systems.[50]

The Commission must establish, manage and maintain an EU inventory system to ensure the "timeliness, transparency, accuracy, consistency, comparability and completeness" of national GHG inventories. For this purpose, it must establish a quality assurance and quality control programme, issue quality objectives and implementation plans and introduce procedures for completing emission estimates to compile the EU GHG inventory.[51]

By January 2021, Member States and the Commission must establish national systems and an EU system for reporting on measures and projections of anthropogenic GHG emissions and GHG removals including the "relevant institutional, legal and procedural arrangements" for evaluating measures and making projections.[52]

By the end of July 2021 and then every year, Member States must send their preliminary GHG inventories for the previous year to the Commission. The Commission uses this to compile a preliminary EU inventory by the end of September each year.[53]

Each year as of 2023, Member States must report to the Commission approximated GHG inventories for the previous year by 15 January and final GHG inventories by 15 March.[54] By 15 April they must send this information to the UNFCCC secretariat.[55]

3.5 Reporting obligations of the Member States

The Governance Regulation contains extensive reporting obligations for the Member States. The Commission must set up an online platform for reporting.[56]

3.5.1 Annual Reports

By 15 March 2021 and then every year, Member States must submit reports to the Commission on the use of revenues generated by auctioning allowances from the EU emissions trading scheme EU ETS[57] and on the financial support for developing countries, specified in the Paris Agreement.[58]

[49] Ibid., Art. 2 No. 12.
[50] Ibid., Art. 37 (1).
[51] Ibid., Art. 37 (2).
[52] Ibid., Art. 39.
[53] Ibid., Art. 26 (2).
[54] Ibid., Art. 26 (3).
[55] Ibid., Art. 26 (4).
[56] Ibid., Art. 28.
[57] Ibid., Art. 19 (2).
[58] Ibid., Art. 19 (3).

3.5.2 Biennial Reports

3.5.2.1 Reports on national climate policy and GHG projections

By 15 March 2021 and then every two years, Member States must send information to the Commission on their national climate policy measures for reducing GHG emissions as well as their national projections for GHG emissions and GHG removals by natural and technological means.[59]

3.5.2.2 INEC progress reports

By March 2021 and then every two years, Member States must provide the Commission with "INEC progress reports" on the status of implementation of their INEC plans in all five "dimensions" of the Energy Union.[60]

INEC progress reports must contain information on the progress achieved towards reaching the objectives, targets and contributions of the INEC plan, and towards financing and implementing the measures necessary to meet them. Member States in which there are found to be a significant number of households in energy poverty must report on the progress made towards the objective of reducing energy poverty.[61]

Where the Commission has made recommendations, the Member State concerned shall include information in its INEC progress report regarding the policies and measures that it has adopted, or plans to implement, in order to "address" the Commission's recommendations.[62] Where a Member State does not want to address a recommendation of the Commission, it must give reasons.

3.6 Progress assessment and follow-up measures of the EU Commission

By 31 October 2021 and then every two years, the Commission will assess, based on the INEC Progress Reports "and other information", the progress made (1) by the EU as a whole towards meeting the objectives of the Energy Union and (2) by each Member State towards meeting their objectives, targets and contributions and implementing the measures set out in its INEC plan.[63]

If the Commission concludes that a Member State has made "insufficient progress" towards meeting the targets, objectives and contributions or implementing the measures set out its INEC plan, it may – and must in the case of renewable energy – issue "recommendations" to the Member State. Member States must "take due account" of the recommendations and justify any deviations.[64]

Where the Commission concludes that there is an EU-wide risk of not meeting the objectives of the Energy Union, it may issue recommendations to all Member States and take additional measures at EU level to ensure, in particular, the achievement of the EU 2030 targets for energy efficiency and renewable energy.[65]

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[59] Ibid., Art. 18 (1).
[60] Ibid., Art. 17-25.
[61] Ibid., Art. 3 (3) (d) in conjunction with Art. 24
[62] Ibid., Art. 17 (6).
[63] Ibid., Art. 29 (1).
[64] Ibid., Art. 31 (2) in conjunction with Art. 34
[65] Ibid., Art. 32 (2).

If, in 2027, it is determined that the EU is at risk of not meeting the EU-wide energy efficiency target for 2030, the Commission must propose additional measures at EU level.[66] Options in this regard include measures to increase energy efficiency in accordance with the Ecodesign Directive, by way of energy efficiency requirements for products and the labelling of their energy consumption[67], as well as measures to increase energy efficiency in the buildings and transport sectors.

Where, as regards the EU-wide "indicative trajectory" for increasing the RE-share from 20% (2020) to 32% (2030)[68], there is a risk that at least one of the EU-wide reference values for 2022, 2025 and 2027 cannot be met, Member States that fall below their national reference values[69] –as specified in their INEC plans – must take additional measures. The options in this regard include increasing the required RE-share in the transport sector or the heating and cooling sector[70] as well as "voluntary" payments to an EU-wide "financing mechanism" for renewable energy projects that is managed by the Commission[71].

3.7 Report on the State of the Energy Union

By 31 October of each year, the Commission must submit a "Report on the State of the Energy Union" to the European Parliament and the Council.[72] This report must include the following:

- the progress assessment pursuant to Article 29 of the Governance Regulation;
- any recommendations to Member States pursuant to Article 34 of the Governance Regulation;
- a progress report on competitiveness;
- the report on the "functioning" of the carbon market[73];
- an overall report of the application of the Internal Electricity Market Directive[74];
- an overall report of the application of the Internal Natural Gas Market Directive[75];
- an overall report on the progress of the Member States towards the creation of a "complete and operational energy market";
- information on the progress of Member States towards the gradual phase-out of energy subsidies, in particular for fossil fuels.

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66 Ibid., Art. 32 (3).

67 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products ["Ecodesign Directive"] and Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling ["Energy Labelling Directive"]; see Menner, M. / Reichert, G. / Voßwinkel, J. (2018), EU Energy Efficiency Policy, cep**Input** 05/2018, p. 9 et seq.

68 Governance Regulation, Art. 29 (2)

69 Ibid., Art. 4 (a) No. 2.

70 Ibid., Art. 32 (3) (b) and (c) in conjunction with Art. 23 and 25 Renewable Energy Directive; see Bonn, M. / Reichert, G. (2019), Renewable Energy in the EU, cep**Input** 01/2019.

71 Ibid., Art. 32 (3) (d) in conjunction with Art. 33

72 Ibid., Art. 35 (1).

73 The report must be drafted according to Art. 10 (5) EU ETS Directive; see Bonn, M. / Reichert, G. (2018), Climate Protection by way of the EU ETS, cep**Input** 04/2018.

74 Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity.

75 Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas.

4 Assessment

4.1 Economic Assessment

Consolidating the reporting obligations, arising under various legislative acts of the Energy Union and Paris Agreement, by way of INEC plans, creates clarity and reduces excess red tape.

However, it is also true that: If the achievement of energy and climate policy targets were left – subject to an appropriate framework such as the EU Emissions Trading System – to a greater extent to market forces, such extensive planning, reporting and progress assessment obligations could be largely dispensed with.

Extending the EU-ETS to all sectors[76] – or, as a transitional measure, the creation of a sector-specific emissions trading scheme separate from the EU ETS, for those sectors not yet included in the EU ETS[77] – would not only allow targets such as climate protection and security of the energy supply to be achieved. Bureaucratic planning and reporting obligations as well as conflict-prone coordination proceedings between the Member States and the Commission could be largely avoided because the only thing subject to monitoring would be compliance with the allowance obligation. Climate targets would then be achieved automatically by reducing the number of allowances.[78]

4.2 Legal Assessment

The European Council's requirement for mainly "EU-wide binding" targets, e.g. for the increase in energy efficiency or development of renewable energy sources, without further defining these by way of binding national targets, is politically and legally inconsistent and is in fact 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, the Governance Regulation's attempt, to achieve energy and climate targets by other means, amounts to no more than a procedural stopgap measure. This includes (1) the legally non-binding recommendations [Art. 288 TFEU] of the Commission to the Member States and their "soft" obligations to take "due" account of these Commission recommendations or to justify any deviations and (2) additional EU measures to increase energy efficiency and expand renewable energy. Ultimately, these provisions of the Governance Regulation are a manifestation of the major differences between the Member States regarding the type and extent of the EU's energy and climate policy measures. Whether the governance mechanism can achieve its targets is doubtful.

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[76] See on this Nader, N. / Reichert, G. (2015), Extend emissions trading, cep**Input** 05/2015.

[77] By way of an example as regards the transport sector see cep**PolicyBrief** 2016-30 on the Commission's Communication COM(2016) 501 of 20 July 2016, A European strategy for low-emission mobility.

[78] see Bonn, M. / Reichert, G. (2018), Climate Protection by way of the EU ETS, cep**Input** 04/2018.

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