

# “Soft” Governance in European Energy Policy. The “Winter Package” for the Energy Union of the European Commission.

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# “Soft” Governance in European Energy Policy. The “Winter Package” for the Energy Union of the European Commission.\*

Michèle Knodt, Marc Ringel

## Abstract

The new governance mechanisms of the European energy policy proposed by the European Commission in its “Winter Package” will contribute to a redefinition of the European energy and climate governance. This contribution reviews the proposal, its supporting documents and overall stakeholder positions along the criteria of governance efficiency, effectiveness and acceptance in order to assess its ability to support the European energy and climate goals. We find that the proposed governance sums up to a densely-meshed coordination of policies between the European level and Member States. Compared to the present governance, the enhanced mechanism can draw on significant synergies and reduce administrative costs. Our review of stakeholder positions shows a solid acceptance for enhanced coordination. Nonetheless our review identifies some potential flaws in terms of governance effectiveness: With unspecific or not further nationally attributed targets for 2030, the underlying governance structure can get blurred easily. Second, the proposal foresees in some cases direct corrective action of the European level, in the case Member States lag ambition. This surpasses the method of open coordination or could be seen as a case of “harder” soft governance which at the same time conflicts with article 194(2) TFEU (right of Member States to determine their national energy mix). Finally, the local level is left out. The proposal misses to link to on-going local actions like the Sustainable Energy and Climate Action Plans (SECPs) to the overall governance structure.

**Keywords:** European Union, energy governance, climate and energy policy planning, formal policy coordination

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## 1. Introduction

Since the last 10 years the European energy policy witnesses a blockade which does not allow the European Union (EU) to swiftly move on in its decarbonisation and CO<sub>2</sub> reduction strategy. On the one side, member states as Germany and Denmark lead a group of environmental and climate friendly governments within the EU and pushed for the decarbonisation strategy of the Commission. On the other side, especially the Visegrád states (Poland, Slovakia, Czech Republic and Hungary) and Bulgaria as well as Rumania under the lead of the Polish government opposed the new targets and insisted on national sovereignty within decisions on their national energy mix, a limited role of the EU and a priority for the goal of energy supply security (Fischer 2014, Knodt 2016, Knodt 2017 forthcoming).

The new elected president of the European Commission, Jean-Claude Juncker, launched the idea of the Energy Union after his election in 2014 and gave a work order to Vice-Commissioner Maroš Šefčovič (responsible for the Energy Union) and Commissioner for Climate Action and Energy, Miguel Arias Cañete to draft a framework for the Energy Union (Fischer/Geden 2015). Obviously, the Commission and Juncker are pushing the project in order to work towards a broader mutual consent about all three goals of security of energy supply, sustainability and competitiveness within the Energy Union and overcome the blockade. According to article 194 TFEU of the Lisbon Treaty the EU lacks energy competences especially with respect to national policy mix. Still, the European Commission tries to bridge the cleavage with its newest legislation act, the “Clean and Secure Energy for All Europeans” or so-called “winter package” of November 2016. The package is designed to set the goals for the next decades and find a governance mode to nevertheless push Member States in the direction of more ambitious and better coordinated climate and energy policies.

This contribution analyses the draft Governance Regulation of the Energy Union proposed by the Commission and asks if it will be accepted by the actors involved, as well as economically efficient and effective with regard to the governance side.

It is based on a qualitative review of the proposed governance of the European Energy Union. More specifically we review the structures and processes foreseen in the present proposal for energy and climate governance in the EU in a post-2020 framework. Our contribution uses content analysis as its main method. Content analysis allows us to evaluate content from different text sources such as EU official text as well as consultant texts in a systematic and consistent manner. The documents and information sources analysed include primary and secondary sources such as parliamentary hearings, policy reports and stakeholder position papers as well as scientific articles on the larger EU energy and climate policy framework.

The Governance Proposal is part of the so-called “Winter Package” of EU energy policy legislation. It was published on 30 November 2016 by the Commission. The proposal initiates the legislative process which should be concluded in a more or less 18 months period. It contains over 4,500 pages of legislative text and supporting analysis.

As the Commission proposals are highly political and the process of preference building in the Member States has just started, we discarded the method of elite interviews as an adequate instrument at this point in time. However, the literature on content analysis highlights as its main strengths the low level interference by the researcher in the production of data. Thus, its bias is limited and the intersubjective traceability is increased (Früh 2011) which makes it an appropriate instrument for screening and reviewing the input sources.

Subsequent to the analysis of the proposed governance structures and procedures, we present the results of our review. To structure this review we apply three analytical criteria, most commonly used in the analysis of political economics (see e.g. Gillingham 2009; Tietenberg and Lewis 2016):

- (1) Governance effectiveness – structures and processes set in place need to support and eventually safeguard that the overall European climate and energy objectives are met;
- (2) Economic efficiency – the objectives have to be reached in a cost-efficient manner; that is, the administrative burden posed by governance should optimally be reduced compared to the present status-quo;
- (3) Acceptance of the governance provisions by the relevant actors.

Pursuing this methodology allows us to draw first qualitative corollaries on the present proposal for a European energy and climate governance. On this basis we are able to formulate policy conclusions which can help to support the upcoming negotiation process.

Thus, we start with a first look at the governance of the EUs energy policy in general with special emphasis on soft mode of governance predominantly used in the energy policy of the EU (chapter 2). Chapter 3 turns to the governance of the Energy Union). In order to understand the current legislative proposals by the Commission we present the precursor governance models in energy and climate policies as the National Energy Efficiency Action Plans (NEEAPs) from 2006 and its advancements as well as the “European Semester” (chapter 3.1). The “winter package” is analysed in its formal structure with respect to the proposed governance mode in chapter 3.2. We present the main instruments, the Strategic energy and climate policy planning and short term reporting by the Member States as well as Progress assessment and follow-up of the European Commission. Following our analysis we then present a first tentative evaluation of the governance regulation in terms of our three criteria (i) economic efficiency; (ii) governance effectiveness; and (iii) acceptance by the actors (chapter 4). The contribution ends with a summing up of the findings and some policy recommendations in chapter 5.

## **2. European Union energy policy – modes of governance**

The European Union is considered to be an organisation “*sui generis*” when it comes to the way it is governed. The term refers to the unique mix of different mode of governance referring to the broad categories of hierarchy, network and markets. All in all, governance can be described as comprising of interactive arrangements, which rest on “horizontal forms of interaction between actors who have conflicting objectives, but who are sufficiently independent of each other so that neither can impose a solution on the other and yet sufficiently interdependent so that both would lose if no solution were found” (Schmitter, 2002, p.53). In those governance arrangements different kinds of actors, non-state actors as well as supranational actors, cooperate. These forms of liberal governance arrangements aim at “solving societal problems or creating societal opportunities” (Kooiman, 2002, p.73) (Müller/Knodt/Piefer 2015: 18). The range of governance modes reaches from supranational hierarchical governance as we can witness in ordinary legislation which allows for the adoption of legally binding decisions up to forms of soft governance trying to steer without legally binding acts. The mode of governance very much determined by the distribution of competences within a given policy field.

During most of the period of European integration, the European Community and later Union carried out energy measures through secondary legislation without regulating energy policy in the primary law. Only with the 2009 Lisbon Treaty did energy policy enter the treaties as a policy area with its own title. However, this step was not accompanied by any substantial transfer of competences to the supranational level. The treaty, for the first time, delivered a contractual basis for energy policy within the European treaties. Article 194 TFEU defines common objectives and an energy policy at the EU level addressing among others the internal energy market as well as energy efficiency as areas of EU competence. Article 194, 2 states that decisions concerning the energy mix of the member states are not affected. Thus, member states continue to determine the conditions for exploiting their energy resources, their choice among different energy sources and the general structure of their energy supply (Knodt 2017 forthcoming).

In addition, a distinctive feature of energy policy is its ‘nexus quality’: Energy as a policy field is an almost classical cross-cutting issue, standing in close connection especially to climate policies, but also to development cooperation, research and innovation policies, trade policies, and foreign and security policies. (Müller/Knodt/Piefer 2015: 18). Thus, governance of energy

policy can also be carried out e.g. referring to the competences of the EU in the policy field of climate change (referring to articles 191 and 192 TFEU). However, this nexus quality had not been taken into account systematically for energy policy with its full consequences and challenges until now.

A limited transfer of competences, the lack of competences in respect to policy mix as well as its cross-cutting nature let the EU apply different modes of governance in energy policy. Where decisions are made according to the ordinary legislature process in issues such as the internal energy market, any decision having an effect of the national energy mix have to make use of soft governance.

The most prominent example of a soft mode of governance is the Open Method of Coordination (OMC) which was introduced as a new mode of governance in 2000 within the Lisbon Strategy. It should make the EU "the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion" (European Council 2000). It rests on the principles of voluntarism, participation and convergence and works with the mechanisms of iteration, setting of standards and learning processes. It uses instruments such a benchmarking, peer-review and best practise. Political coordination, in this case, refers to the understanding of shared goals and key concepts within the EU, while the competence over all the means necessary for the achievement of these targets remains with the member states (Behning 2004). The problem fields in which the OMC is applied span from the stability and growth pact and basics of economic policy to the European employment strategy up to fields such as social exclusion, innovation and immigration (Knodt/Stoiber 2010). Thus, the OMC rests on a system of coordination through central goal setting and decentral implementation responsibilities (Schmid/Kull 2005). It varies from harder (e.g. Stability and Growth Pact) to softer (e.g. education policy) open modes of coordination (Linsenmann/Meyer 2002: 289).

The OMC was criticized for not provoking profound learning, converging and integration effects (Hartlapp 2009) but encourage limited and selected learning (Linsenmann/Meyer 2002: 290). Mostly, setting up of national plans as well as their implementation are following national paths (Knodt/Stoiber 2010). It seems that this kind of soft governance which is not set up in the shadow of hierarchy and lacks sanction potential does not function well. European advices without sanction potential do not seem to be perceived as orders to act by Member States (Linsenmann/Meyer 2002: 290).

### **3. Energy Union Governance**

#### **3.1 Precursor governance models in energy and climate policies**

As discussed in section 2, the European Commission consecutively introduced OMC throughout various policy fields. The first regulation to draw open OMC in sustainable energy policies was the Energy Service Directive of 2006. The Directive asks Member States to deliver a dedicated amount of energy savings by introducing or up-grading energy efficiency policy measures. Both measures and their impact need to be documented in tri-annual reports, the so-called National Energy Efficiency Action Plans (NEEAPs).

NEEAPs have to be submitted by the Member States to the Commission Services by 20 June 2011, 2014, 2017 and 2020. In turn, the Commission will get back to the Member States with suggestions on how to improve their policies (Coalition for Energy Savings 2013). Whereas the NEEAPs were originally conceived as reporting documents, it became soon obvious that they could be used for a structured dialogue on energy efficiency policies between European and Member State level. Recognising this fact, the Commission subsequently asked Member States to consider the NEEAPs as "policy tools" (Suomi 2015). This philosophy was subsequently taken over by the Energy Efficiency Directive (EED), presently under revision (Sajn 2017). In the framework of the EED, a template for the NEEAPs has been established. This allows a structured dialogue on the various provisions between Commission and the Member States.

Adding to the formal coordination structures in the energy efficiency field, informal coordination was added through the means of the Concerted Actions on the EED and the Buildings Directive (Energy Performance of Buildings Directive, EPBD) which enable biannual informal meetings between Member States and the Commission Services to discuss implementation issues on the Directives and enable peer learning (CA EED 2016; CA EPBD 2016).

The success of OMC and structured dialogues in the energy efficiency policy field led to the up-take of this method in the area of renewable energies (Karlsson-Vinkhuyzen et al. 2012). The Directive on Renewable Energy Sources (RES) largely adopted the same policy instruments (here named NREAPs – National Renewable Energy Action Plans, and “progress reports” thereof) and processes (a Concerted Action on RES) (see Barreto-Gómez et al. 2016).

The energy and climate policy governance received a significant upgrade with the introduction of “climate change and energy sustainability” as one of the five headline targets of the overall macroeconomic Europe 2020 Strategy for smart, sustainable and inclusive growth (da Graça 2012; Helm 2014; Liobikienė and Butkus 2017). An annual cycle of policy coordination process was installed to implement the Europe 2020 objectives and measures. The so-called “European Semester” introduced OMC and a structured dialogue between European and national levels (Stuchlik 2017). Key means of this exchange are reports to be handed in by the Member States on the set of policy fields. These reports in turn will be screened and commented upon by the Commission. Member States are expected to take into account these recommendations and adapt their subsequent national plans and reports accordingly.

With the coordination of the European Semester, all basic governance aspects were present that have been taken up in the present Energy Union governance. In 2015, the European Commission, Member States and the European Parliament agreed to re-focus the European Semester stronger on economic and fiscal coordination, following the lessons of the Euro-crisis (Stuchlik 2017). With the emergence of the Energy Union in parallel, it became clear that the originally political coordination of energy and climate change policies would need to be followed up by a legal proposal to codify the coordination structures in a post-2020 perspective in line with the newly proposed climate and energy objectives for 2030 (Meyer-Ohlendorf 2015; Nesbit 2014; Turner et al. 2015; Turner 2015).

### **3.2 The Governance Proposal in the Winter Package: Clean and Secure Energy for All Europeans**

The European Commission’s package for “Clean and Secure Energy for All Europeans” (the so-called “winter package”) of November 2016 comprises a set of legislative measures that will define European energy and climate policies for the years to come. It codifies the politically agreed energy and climate targets of the EU and proposes a set of both regulatory and non-regulatory measures to reach the overall Energy Union objectives (EC 2016a). Included in the proposals is a “Regulation for the Governance of the Energy Union”, in which the European Commission details governance structures and processes for the years post-2020 (EC 2016b). By choosing a regulation rather than a directive, the obligations laid down would be directly binding on Member States at the time of the adoption. Member States would need to abide to this legislation without leeway in transposition.

The Governance Regulation aligns the post-2020 energy and climate change reporting. It is based on both an internal and an external review of existing governance frameworks within the individual policy action fields. Internally the review was conducted by a so-called “Fitness Check” exercise in the framework of the Commission’s Better Regulation Initiative (REFIT; EC 2016d). Externally, a stakeholder consultation was undertaken, assembling 103 submissions including 15 Member States. The information obtained was then overhauled in an impact assessment of the 2020 governance structures for climate and energy policies (EC 2016e).

According to the European Commission, the regulation reviews over 50 individual planning, reporting or monitoring obligations (EC 2016f). By deleting 23 of these obligations and integrating 31 of them, the Commission expects streamline the existing acquis and achieve a major simplification (EC 2016b). In terms of timing and process, the Commission proposal aims

to synchronise the governance process with the macroeconomic coordination of the European Semester and the planning and reporting obligations under the Paris Agreement.

The governance structure set out the Commission proposal is principally open-ended. A review of the regulation is foreseen in 2026, in line with the global stock-taking exercise of the Paris Agreement. It contains provisions asking Member States for planning and foresight exercises between one and fifty years, thus covering a period until 2070. In analytical terms, the proposed Energy Union governance can be divided into (a) strategic and long-term energy and climate planning and (b) short term reporting.

## **Strategic energy and climate policy planning**

The long term energy and climate planning comprises two strategic elements and processes: The *integrated National Energy and Climate Plan* (iNECP) with a ten year perspective on the one hand; the long-term *Low Emissions Strategies* with a fifty-year perspective on the other.

The iNECPs cover a ten-year-period from 2021 until 2030 and the subsequent ten-year-periods. The plans need to follow a binding template put forward in the annex of the regulation. The standardised reporting comprises the following sections (Governance Regulation, articles 3-13):

- (1) An overview of the process to establish the iNECP, including a mandatory consultation of national stakeholders and potentially other Member States in terms of regional energy and climate cooperation
- (2) A description of national objectives, targets and contributions in each of the five dimensions of the Energy Union. Article 4 of the regulation specifies further details for the areas of ‘decarbonisation’ including renewable energy, ‘energy efficiency’, ‘energy security’, ‘internal energy market’ as well as ‘research, innovation and competitiveness’. Articles 5 and 6 of the regulation give further guidance on setting national targets in the fields of energy efficiency and renewable energies. The objectives mainly relate to 2030, but in some cases reach out to 2050 (decarbonisation and low carbon technologies in the framework of research and innovation).
- (3) An account of national policies and measures foreseen to meet these objectives.
- (4) An analysis of the status quo on the five dimensions of the Energy Union in the given Member State, including projections as to whether the existing policies and measures are likely to achieve the national objectives.
- (5) An assessment of the impacts of planned policies and their impact on meeting the objectives.
- (6) An annex detailing the implementation of a given number of energy savings in accordance with article 7 of the revised Energy Efficiency Directive (Sajn 2017).

Unlike a pure policy monitoring tool, the iNECPs are supposed to serve as a dynamic governance tool. To this aim, the regulation puts an equally strong emphasis on the process of establishing the iNECPs as on the contents. Member States are supposed to submit their iNECPs by 1 January 2019 and 10 years thereafter for the subsequent reporting periods. In order to allow for an iterative consultation process between Member States and the Commission, the draft plans have to be handed in to the Commission by 1 January 2018 and every ten years thereafter.

This is to allow the Commission to comment on the process and give recommendations “regarding the level of ambition of objectives, targets and contributions as well as on specific policies and measures included in the plan” (EC 2016b). Likewise, interactions between existing and planned policy measures will be commented upon. Member States “shall take the utmost account of any recommendations from the Commission when finalising their integrated national energy and climate plan” (article 28; EC 2016b). As a consequence to the recommendation, a Member State is obliged to set out within one year how the recommendation is taken into account or provide justifications in case it deviates from the recommendation. It should be noted that such



a direct influence of the European level on national policy-making is presently not laid down in the acquis and implies a growing influence on national energy and climate policies.

The 10 year planning cycle is complemented by a mid-term update of the iNECPs. This update needs to be notified to the European Commission by 1 January 2024 and every ten years thereafter. Again, this update is preceded by a draft to be handed in one year earlier and lead to recommendations from the European Commission.

Second pillar in the strategic climate policy planning are the *Low Emission Strategies (LES)* covering a fifty year horizon and integrating the EU's and Member States commitments towards achieving the greenhouse gas reductions of 80-95% by 2050 in accordance with the objectives of the Paris Agreement. In parallel, the climate action is seen as key to contributing to green growth of the EU and its Member States (Ringel et al. 2015) in terms of economic transformation, jobs and growth. It thereby establishes a strong link to the macroeconomic governance within the European Semester process.

Along this integrated line of thought, the LES cover:

- (1) Total greenhouse gas emissions reductions including removals by sinks;
- (2) Emissions reductions per sector (electricity, industry, transport, buildings) as well as agriculture including land-use, land-use change and forestry (LULUCF);
- (3) Expected Progress towards a low greenhouse gas emission economy (green economy), including strategies for related research, development and innovation;
- (4) Links to other national long-term planning or strategies.

The LES documents are conceived as continuous, rolling planning: Member States need to provide their strategies to the Commission by 1 January 2020 and every 10 years thereafter. A screening of the draft LES as with the iNECPs is not foreseen.

In addition to the long-term strategies and planning foreseen in the Governance Regulation further long-term strategies apply by means of individual Directives. To cite only one example, the Energy Performance of Buildings Directive (EPBD) asks for the continuation of national building renovation strategies after 2020, including a roadmap until 2050 and milestones for 2020 and 2030 (Rosenow et al. 2017).

Short-term reporting from both Member States and the European Commission complements the long term strategic planning. The reporting is foreseen in two forms: (a) biennial progress reports and (b) annual reporting. Both reporting strands are organised as structured dialogue, like in the case of the strategy documents. After Member States have handed in their reports, the Commission Services will issue recommendations on the reports which in turn need to be taken into account by the Member States when issuing an update of the respective report.

The draft Governance Directive envisages biannual progress reports on the iNECPs and climate policy issues supporting the LES. By 15 March 2021 and every two years thereafter, Member States are expected to report on:

- (1) The progress with the implementation of the iNECPs; this includes progress with reaching the targets, updated policy measures;
- (2) Various information on greenhouse gas reduction efforts, policies, measures, and updated projections;
- (3) Climate change adaptation actions, the use of revenues generated by auctioning allowances within the EU emissions trading scheme as well as financial and technology support to developing countries;
- (4) The progress on implementing policies and measures to deploy renewable energies
- (5) Detailed reporting on the further dimensions of the Energy Union, notably energy efficiency (article 19), energy security (article 20), internal energy market (article 21) as well as research, innovation and competitiveness (article 22).

Annual reporting further substantiates the governance cycle. Largely, the annual reports are to provide information to comply with the international commitments of the EU and its Member States. The information to be provided in the reports mainly relates to greenhouse gas and

LULUCF inventories as stipulated by the UNFCCC reporting (article 23). Starting date for the annual reports is March 15, 2021. In case the annual reports overlap with biannual progress reporting, both reports can be merged.

The Commission plans to set up an E-reporting platform in which Member States can upload their reports. This platform is supposed to supply technical support and data from Eurostat, the European Environment Agency (EEA) and the Joint Research Center (JRC). Further to this, the platform is supposed to facilitate dialogue between the Commission and the Member States as well as between the Member States (article 24; EC 2016b).

Following the planning and reporting obligations of the Member States, the governance regulation lays out the details for tracking progress with the Energy Union by the European Commission. As described above, the role of the European level is two-fold: (a) assess the progress Member States have made in terms of reaching the energy and climate objectives and policies; (b) providing feedback and taking corrective action, in case of insufficient ambition.

The progress assessment comprises in sum three fields of action:

- (1) Overall EU assessment in the form of the State of the Energy Union report: The report is to be submitted to the European Council and the European Parliament by 31 October every year;
- (2) Overall assessment of the Member States' national progress reports: The assessment is performed by 31 October 2021 and every two years thereafter;
- (3) Individual assessment of Member States' progress with various Directives, following different timings laid down in the individual Directives and Regulations in the energy and climate policy fields.

The Governance Regulation empowers the European Commission to take corrective action in case of inconsistencies, insufficient progress towards the overarching Energy Union objectives and insufficient ambition of the iNECPs. Generally the follow-up action takes the form of a recommendation to the respective Member State which shall be taken into account. This is in line with the status quo of the European method of open coordination.

In the fields of renewable energy and energy efficiency, the Governance Regulation – if adopted in its present form – enacts precise EU policy measures to be taken in case the 2023 progress is insufficient. In this case, an automatic gap-filling mechanism would be triggered; adjusting inter alia the share of renewable energies in both the heating and cooling as well as in the transport sector and/or contributing financially towards developing renewable energy projects (Wilson 2017). Likewise, the short-fall of ambition would directly empower the European Commission to take corrective action by means of revising the Energy Efficiency Directive, the EPBD, the product efficiency regulations (eco-design) or energy efficiency measures in the transport sector (see article 27 Governance Regulation).

## **4. Discussion of the proposed governance mode**

It should be noted that the analysis of the draft Governance Regulation only covers the formal coordination steps whereas in addition a multitude of informal coordination mechanisms exist in parallel throughout all policy fields (Ringel 2016). These formal mechanisms complement the overall macroeconomic and fiscal governance processes and structures of the European Semester.

Following our analysis we will now present a first tentative evaluation of the governance regulation in terms of our three criteria (i) economic efficiency; (ii) governance effectiveness and (iii) acceptance by the actors.

Ad (i) Albeit streamlined, the governance cycle remains comprehensive and resource-intensive. It asks Member States to draft and update strategies in a relatively short timeframe. This is complemented by a close-meshed reporting structure. The Commission side mirrors this process by annual reviews and recommendations directly addressing the Member States in addition to an overall review in the State of the Energy Union report.

The Impact Assessment analysis of the European Commission (EC 2016e) presents a comparison of administrative costs for both the present reporting structure and the revised governance proposals. According to this analysis, the present reporting and monitoring exercises are likely to lead to cumulative costs for the Member States of €222.7m for the years 2021-2030. This comprises one-time installation and capacity building costs as well as cumulated annual costs (€21.2m per annum, including annual planning and reporting costs of €4.2m). These administrative costs occur against a background of some €200bn investments needed in the next decade to achieve a transition towards a more secure and sustainable energy system (EC 2016e).

The streamlined governance cycle is assessed to lead to cumulative costs of €219.3m again including one-off costs and annual costs (a total of €20.1m, including annual planning and reporting costs of €3.0m and strategic planning costs of €3.7m). Details of the cost estimates are analysed in the wider framework of two background studies commissioned by the Directorate Generals for Energy and Climate (Amec Forster Wheeler 2016; Trinomics 2016). Summing up the cost discussion, the streamlining of the governance process would draw on considerable synergies and lead to net cumulated economic gain of €3.4m. Against the background of the considerably increased structured interaction, this would satisfy the criterion of economic efficiency. It has to be noted that this analysis only reviews the direct tangible costs but leaves out a quantification of further benefits of a streamlined reporting (cf. for an overview Umpfenbach 2015).

Ad (ii) According to the criterion of “governance effectiveness” the set of strategic documents (iNECPs and LEPs) as well as their monitoring in the policy progress and annual reports need to lead to supporting and eventually reaching the overall European climate and energy objectives.

Clearly, the proposed governance structures and processes have benefitted from the experiences gained with the on-going governance of the European Semester and the energy and climate monitoring processes. According to the Trinomics (2016) background study for the European Commission, 65% of interviewed stakeholders in Member States’ public administrations confirmed a positive influence of reporting and planning obligations on policy developments and ambitions. Notably in the cases of renewable energy sources and the internal energy market this correlation was slightly higher.

A survey brought forward in the Fitness Check (EC 2016d) showed that 39% of surveyed actors saw EU obligations as a means to ensure compliance with the overall energy and climate objective in a considerable way; 32% acknowledged a moderate influence of governance on policy effectiveness. The Commission notes, however, that “old” and “new” Member States (meaning those that joined with the 2004 enlargement) differ in this aspect. With many planning and reporting obligations in place in the “old” Member States, the additional effectiveness of EU regulation is limited compared to the potential in the “new” Member States (EC 2016e).

A clear majority of respondents saw strategic planning obligations as very important to ensure the governance effectiveness. This strong emphasis on planning obligations for an effective governance is mirrored in many position papers supporting key elements of the governance regulation (see for non-exhaustive examples the positions of EEB 2016; E3G 2016; Eurelectric 2016).

In spite of cumulated 71% of the stakeholders attributing governance effectiveness to additional EU regulation, it remains at this point in time open whether the criterion of “governance effectiveness” will eventually be satisfied. This necessitates Member States’ authorities effectively following the structures and procedures set out in the Governance Regulation in terms of both content but also timing. Whereas only a mid-term review of the governance structures – as foreseen for 2026 – will be able to effectively reply to this question, we would caution against a premature judgement. This is mainly for two key reasons:

- (1) While the governance process is laid down in a stringent, densely meshed and clear manner, it can only be as good as the underlying indicators to be monitored. In case the 2030 targets in the energy and climate field remain unspecific or not directly related to clearly fixed contributions by individual Member States, the monitoring and review method will not rest on a solid foundation and can get blurred easily.
- (2) The presently laid out mechanism allows the Commission to comment on the ambition of implementation national policies and measures. In the cases of energy efficiency and RES a

lack of ambition and delivery might directly trigger additional legislation at European level, including the potential contribution to a fund supporting the deployment of RES in the EU. As this clearly surpasses the original concept of OMC, it remains to be seen if this is accepted by Member States. The call for more and more ambitious instruments might in extremis be judged as indirect influence on Member States’ right to fully determine their national choice between different energy resources – thus surpassing article 194(2) TFEU. Along this line of thought it will be telling to evaluate the Council’s position on these parts of the Governance Regulation proposal.

Ad (iii) The densely-meshed Energy Union governance cycle put forward in the proposal has to be accepted by the relevant actors (mainly Member State authorities preparing the strategies and reports) to be effective. A delay in submitting key documents engenders a delay in (a) the Commission feedback and (b) in some years in the aggregated assessment in the form of the State of the Energy Union report. Respecting the timelines and the comprehensive set of reporting will thus be crucial for the process as a whole (Slingerland et al. 2015; van Nuffel et al. 2016). It is too early to formally assess the willingness of all actors to stick to the process; still, tentative indications can be retrieved from the Impact Assessment on the Governance Regulation proposal (EC 2016e). This assessment includes the results of a broad stakeholder consultation on possible governance options. The Commission received 109 contributions.

A total of 15 Member States replied to the consultation. In line with a majority of respondents (31%), seven Member States opted for streamlined governance legislation, combining energy and climate reporting obligations. The Commission notes: “according to stakeholders this option would i) increase the coherence of planning instruments (“improvement” or “considerable improvement” for 52% of overall respondents); ii) improve the monitoring phase (“improvement” or “considerable improvement” for 47% of overall respondents); facilitate the achievement of the Energy Union targets (“improvement” or “considerable improvement” for 44 % of overall respondents) while ensuring iv) the effective implementation of the legislation (“improvement” or “considerable improvement” for 43 % of overall respondents).” (EC 2016e)

As a first tentative conclusion on criterion of “acceptance by the actors”, the present approach seems to be backed by a solid number of actors. Still, several caveats apply to this qualitative judgement: (a) As underlined above, the process needs to be supported by all actors – then most likely 27 Member State administrations - through the concrete support of the process in terms of input, resources and timing. (b) This support needs to be continuous over a long time-span and within tight feedback deadlines. (c) The support is largely expressed against the present lines of thought laid down in the Governance Regulation proposal. Given that the proposal will likely be amended by both Council and European Parliament, the present support is only a “snapshot picture” which might change in the course of the negotiations on the regulation.

## **5. Conclusions**

This paper analysed the governance structure for the Energy Union proposed by the European Commission in its winter package.

An efficient and effective as well as accepted governance regulation is crucial for the energy and climate targets agreed at the European level. It impinges a fragmented and antagonistic interest constellation at the Member State level where especially the Eastern European Member States are extremely reluctant to contribute to the European decarbonization strategy. Thus, against this background the regulation should be efficient, effective and accepted by the actors involved.

First of all as a positive effect we could witness tangible synergies by the attempt of the Commission to take into account the cross-cutting nature of energy policy and combine the energy and climate reporting for the first time. Especially with a look at the economic efficiency we could show that the separate and single reporting is much more resource intensive, time consuming and all in all more expensive. Nevertheless, the proposed tightly woven procedures will tie a crucial amount of resources.

Another criterion to evaluate the proposed governance structure we used was the acceptance of the actors involved. Even if it is not possible to finally evaluate the willingness of all actors due to the early stage in the process we could indicate a somehow positive resonance so far. Around half of the Member States taking part in an Impact Assessment on the Governance Regulation perceived the coherence of planning instruments as well as the monitoring phase will increase by the implementation of the regulation. A bit more reluctant the Member States assessed the impact on the European target. Around 44 percent perceived an improvement towards a facilitation of the achievements of the Energy Union targets and an effective implementation of the legislation (EC 2016e).

The overall question will be whether the new regulation will help to overcome the blockade in the European energy and climate policy along the East-West cleavage described above and help achieving the agreed targets at the European level. Soft governance mechanisms in most cases are not seen to be very effective (Linsenmann/Meyer 2002) except in cases where the European Commission has a possibility to sanction non delivery as in the case of the stability and growth pact. After the review of the new regulation we would compare the new energy governance regulation as a “harder” soft governance. This point addresses the “ambition” and “delivery” gaps the Commission apprehends. At the one hand, the worries of the Commission are comprehensible as we know from the experiences of the OMC that soft governance modes are not predestinated to deliver high compliance. On the other hand, the Commission has inserted a strong tool into the regulation in order to ensure an effective use of the soft coordination. Its “blank check” to go directly for additional legislation at European level the Commission inserted in case of ambition gaps seems as a harder tool than in other OMCs.

Finally, the local level is left out. The Governance Regulation achieves a streamlining and integration of a large *acquis* of monitoring and reporting at national level. The 2030 targets however need strong support at local level, where the implementation of energy efficiency, RES and low-carbon technologies need to take place. Still, the proposal misses to link the on-going actions like the local Sustainable Energy and Climate Action Plans (SECPs) to the overall governance structure.

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