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RSCAS 2017/51
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The Governance of the EU's Energy Union:
Bridging the Gap?

Marie Vandendriessche, Angel Saz-Carranza and Jean-Michel
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EUI Working Paper **RSCAS** 2017/51

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ISSN 1028-3625

© Marie Vandendriessche, Angel Saz-Carranza and Jean-Michel Glachant, 2017

Printed in Italy, October 2017

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

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Florence School of Regulation

Robert Schuman Centre for Advanced Studies

European University Institute

Casale, Via Boccaccio, 121

I-50133 Florence, Italy

Tel: +39 055 4685 878

E-mail: FSR.Secretariat@eui.eu

Web: <http://fsr.eui.eu/>

Abstract

The unique and idiosyncratic project of governance of the Energy Union is mainly a response to the 2030 renewables and energy efficiency targets which are not nationally binding. In this way, the new proposed governance model resembles the design of the Paris Agreement mechanisms to some degree. A divergence with the Paris Agreement is that the Energy Union governance model does not foresee any ratcheting up of targets. The EU's long-standing experience in monitoring and accounting of greenhouse gas emissions – both its Union-wide target and national targets has been helpful.

However, despite some clear corrective measures for the greenhouse gas emissions target, many of the Commission's tools to address gaps remain in the realm of soft governance. More clarity is needed regarding some aspects of the Commission's proposal. And a weakening of the proposed governance system may come mainly in the shape of member states pushing back on timing

Keywords

European internal electricity market; European electricity regulation; ACER; ENTSO-e; Electricity transmission system operators.

Introduction*

On November 30, 2016, the European Commission's Vice President for the Energy Union Šefčovič and Commissioner for Climate Action and Energy Cañete presented a long-awaited and extensive package of legislative and non-legislative proposals, the so-called 'Winter Package' – or in full, the 'Clean Energy for All Europeans Package'. Weighing in at over one thousand pages, this package checked the box of making 2016 'the year of delivery' for the Energy Union.

In our paper, we will focus on one part of this sizeable package, namely the proposal on governance of the Energy Union. Governance is the major novelty element in the Commission's Winter Package, and it has certainly become a particularly relevant issue in light of recent policy developments, including the Energy Union policy, the transition from the EU's 2020 energy and climate targets to the 2030 goals, and the Paris process under the UNFCCC (United Nations Framework Convention on Climate Change) track.

The Energy Union concept, born in 2014-2015, represents an attempt to move beyond the 'silo thinking' the EU has up to now been renowned for in its energy policy. In integrating five different dimensions – security of supply, a fully integrated internal energy market, energy efficiency, decarbonization, and research and innovation – into one strategy, the need was created (or perhaps simply cast in a starker light) for improved coordination between policy instruments, measures and levels of government.

The 2030 Climate and Energy Framework has also presented new challenges in governance. One of the chief novelties in the 2030 targets, which were approved in 2014, is that there are no longer binding renewables targets for every member state (i.e. member states are no longer bound to achieving a particular target share of renewables in the total energy consumption), as was the case in the 2020 strategy. Rather, the renewables target has become binding at the Union level only. In order, then, to reach the Union-wide objective of generating at least 27% of total energy consumption by renewables *without* binding targets at member state level, there is a need for a governance system to safeguard ambition and delivery. The second 2030 target, on energy efficiency, is currently only indicative and applies at EU level solely,¹ and therefore also requires an advanced system of governance.

Finally, in December 2015, the EU signed the Paris Agreement under the UNFCCC. With the EU's ratification of the Agreement in October 2016, the Union and its member states have agreed to comply with the 'ratcheting up' mechanism of the Agreement, which involves a number of reporting requirements and commitments. Here again, governance will be needed to ensure compliance with the Agreement (although the EU already has rich experience in monitoring and accounting in greenhouse gas emissions, developed throughout its participation in the Kyoto Protocol), but especially to safeguard credibility – through delivery – if the EU is to maintain the significant role it values in international climate change process and negotiations. It is interesting to note, in addition, that a number of the reiterative reporting and monitoring provisions of the governance part of the Winter Package bear formal resemblance to the mechanisms of the Paris Agreement.

In sum, in order to make the Energy Union, the 2030 Climate and Energy Framework, and the Paris Agreement operational, there is a need for governance at the EU level. It is the aim of this paper to

* This paper was developed with the financial support of Gas Natural Fenosa, under the umbrella of the Gas Natural Fenosa-ESADE Chair in the Geopolitics of Energy. All content, views and positions in this paper are the sole responsibility of its authors and do not necessarily represent the positions of Fundació ESADÉ, the EUI, or any of their funders.

¹ However, the Winter Package proposes – in its proposed revision of the Energy Efficiency Directive (European Commission, 2016g) – to shift this target to a *binding* Union-level target and to increase ambition.

examine the governance proposal the Commission has put forward, as well as the processes it contains.

The central questions this paper aims to answer are: What is the proposed governance system for the Energy Union? How does the proposed system attempt to connect Union-level energy and climate targets with voluntary, national-level planning and execution? What political and energy context was this proposal born in and how are these circumstances reflected in the legislative text? And finally, which political issues are likely to arise as this proposal is studied by various EU bodies throughout the legislative process?

We find that the proposed governance regulation is quite elegant as an interactive institutional footbridge, but questions remain over the effectiveness of some of its provisions. We also point to the issues and preferences the member states will likely struggle over during the upcoming legislative process. The political debate over the Energy Union's governance will not, however, be independent of discussions on other parts of this large and complex package.

1. The Birth of the Energy Union

The EU's Energy Union strategy is the latest installment in the Union's energy policy. While the European Union itself partially finds its origins in two international organizations working on energy-specific topics (the European Coal and Steel Community and Euratom), energy policy was in fact slow to develop at the EU level. A number of moments might have led to more policy impetus: the 1973 oil crisis, for example, provided a wakeup call on the need for cooperation for many European states, but it did not convince key players such as France. Subsequently, the US-led creation of the International Energy Agency (IEA) and its establishment of oil stocks underlined how little progress had been made in Brussels once again. Although a resolution expressing the need for addressing energy supply and demand was passed in 1974, it did not lead to any significant practice.

By the late 1980s, the market-based only approach of the then-European Community, blessed by the Single Act promising a single EU internal market with no seams, started to be reflected in energy, through a Commission (1988) working paper on the internal energy market. The 1990s, however, provided another lull in energy-policy making. Member states relaxed in the face of a favorable energy supply situation of low oil prices, and the "end of history" moment (Fukuyama, 1998) pushed Europeans and former communist countries to adopt the investment-protecting Energy Charter Treaty (1994) which aimed at expanding the EU internal market-based approach in the Union's neighborhood. Finally, by the late 1990s, the European Commission formally embarked on its path of market liberalization and integration for energy, which it has continued until today.

The European Commission proposed, in a series of waves, three energy legislative packages (1996, 2003 and 2009). The first wave was one of soft market integration, establishing fora and platforms for European energy regulators and ministries to cooperate and coordinate. The second wave was somewhat stronger, and required all member states to create independent national regulatory authorities to regulate access to the energy markets that were slowly being built. It also stipulated that power and gas markets were to be fully open by mid-2007. By early 2007, the Commission concluded that integration towards that European market had not progressed as intended, and the third wave, which kicked off that same year, therefore strengthened European-level coordination, establishing the Agency for the Cooperation of Energy Regulators (ACER) and creating two more European bodies: the Networks of Transmission System Operators (ENTSOs) for gas (ENTSO-G) and electricity (ENTSO-E). It also imposed a minimal 'unbundling' of supply and transmission operations to further market liberalization.

Before continuing, it is important to touch on the rupture occurring with the Lisbon Treaty. Before Lisbon (December 2007), energy did not feature in any of the EU's treaties except for the Coal and Steel Community (1952-2002) and the Euratom Treaty (1957); or as trans-European networks in the

1992 Maastricht Treaty. In the Lisbon Treaty, it was stated that Union policy on energy would aim (“in the spirit of solidarity between member states”) to “(a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks.” [TFEU Art. 194]. However, it very importantly warned that Member States have strong rights in energy: “Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.” [Art. 194(2)]. Member states thus retained full sovereignty over their energy mixes (Delbeke, Klaassen & Vergote, 2015, p.62).

The EU subsequently presented its ‘Europe 2020 Strategy’, which included a package of measures on energy and climate change that confirmed three binding targets (set by the Council in March 2007 and 2008 and voted in Parliament in December 2008) for member states by 2020:

- reducing greenhouse gas emissions by 20% (relative to 1990 levels);²
- increasing the share of final energy consumption from renewable sources to 20%; and
- improving energy efficiency by 20% (relative to projected energy use levels for 2020).

In 2011, the Commission took a much longer-term view, publishing, based on European Council requests, a Communication called *A Roadmap for Moving to a Competitive Low Carbon Economy in 2050* (European Commission, 2011). This roadmap provided some guidance on a far more ambitious target, namely the EU objective of reducing greenhouse gas emissions by 80-95% by 2050 compared to 1990 levels.

For the 2020 targets, the EU’s progress is monitored using two different tools. With regard to the adoption of renewable energy sources (European Parliament & Council of the European Union, 2009b) and energy efficiency increase (European Parliament & Council of the European Union, 2012), the key instrument is the European Semester. Created as a response to the Eurocrisis in 2010, the European Semester is the annual cycle of macro-economic, budgetary and structural policy coordination between the Commission and the Member States. The yearly assessment is based on the Member States submitting their National Reform Programs (NRPs) and the Commission reacting to these by producing Country-Specific Recommendations (CSRs). Importantly, the European Semester goes far beyond energy-related policies and is the main macro-economic monitoring tool in the hands of the Commission. It covers country public and private debts, fiscal deficits and unemployment, among other issues.

With regard to emissions (European Parliament & Council of the European Union, 2009a), all EU countries are required to monitor their emissions under the EU's Greenhouse Gas Monitoring Mechanism, which sets the EU's own internal reporting rules. The national reporting in this mechanism covers, among others: emissions, projections and policies to cut greenhouse emissions, national measures to adapt to climate change, support for developing countries related to emissions reductions, and national governments' use of revenues from the auctioning of allowances in the EU emissions trading system.³ Importantly, while the European Semester is managed by the Vice Presidency for the Euro and Social Dialogue, it is DG Clima that manages the Greenhouse Gas Monitoring Mechanism. Finally, both the greenhouse gas emissions and renewables targets are

² Note that as per the European Council conclusions of March 2007 (Council of the European Union, 2007), the EU was willing to raise its greenhouse gas emissions target to a 30% reduction relative to 1990 levels. It offered this provisional target as a carrot in the lead-up to the fateful COP-15 UNFCCC conference, in which it was hoped a global and comprehensive climate agreement would be signed. The 30% target was thus offered “provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities.”

³ Under the emissions trading system, national governments have committed themselves to spend at least half of the system’s revenues on climate measures.

binding at the member state level in the 2020 framework, opening the door for Infringement Procedures if national targets are not met by 2020.

According to the 2016 State of the Energy Union report (European Commission, 2017), the EU is in line to achieve the three 2020 targets: it currently stands at a 22% reduction in greenhouse gas emissions; 16% in energy produced by renewable resources;⁴ and in energy efficiency, the final energy consumption target has already been met, while primary consumption will still require some progress.

At the beginning of 2014, the Commission proposed its new energy and climate targets for 2030, which the Council approved in October of the same year.⁵ The targets for 2030 are to:

- reduce greenhouse gas emissions by at least 40% (relative to 1990);
- increase the share of renewable energies in total final energy consumption to at least 27%; and
- improve energy efficiency by at least 27% (as compared to a business-as-usual scenario).

A strong difference with respect to the 2020 targets is that only the emissions reduction target is binding at the member-state level (Glachant, 2015, p.8). The renewables target is binding at the aggregate level (the EU level) only; while the energy efficiency target is merely indicative at EU and member state level. This new setting clearly sets a challenge for the overall governance of the 2030 targets.

As the 2030 targets were being set, the idea of an Energy Union emerged, rather unexpectedly, in the spring of 2014, when the crisis over Russia's annexation of Crimea pushed energy concerns back to the top of the priority list, particularly for eastern EU member states. Donald Tusk, then Poland's prime minister, called for an energy union in the face of the external threat that was Russia (one of Europe's chief suppliers of gas, accounting for around 40% of imports at the time), and proposed that the EU could jointly negotiate its gas contracts with Russia (Tusk, 2014). This was particularly relevant for those eastern member states that import around 90% of their gas from Russia, such as Bulgaria and Slovakia.

Tusk's initial proposal was deeply modified, but the *concept* of an energy union was maintained as key by the incoming Juncker team, and finally published in the shape of a Commission communication on February 25, 2015, called *A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*.⁶ This strategy became the avenue the Juncker Commission chose to depart from the Barroso's two Commissions, and to move beyond the consideration of various energy-related policies from separate angles (so-called 'silo thinking'), while integrating certain climate and energy policies.

Remarkably, the Juncker Commission strategy developed in a deeply Eurosceptic setting, with support for the European project in decline and political groups with centrifugal mindsets becoming more popular in multiple member states. Energy, however, was one issue area in which citizen support could be found for European policies (Keay & Buchan, 2015): recent Eurobarometers (European Commission, 2016k) have found that a steady 70% of European citizens support a common energy policy among EU member states.

In energy, the Commission had, therefore, found a window to move forward – and moreover, progress on energy policy was necessary. The confluence of climate and energy policies has led to a fraught situation where the traditional liberalization agenda pursued by the Commission is in competition with a stark increase in national regulation and policy measures. Remarkably, these national regulations and policies were largely put in place in order to achieve a number of EU climate

⁴ For a recent overview of progress on this target by individual member states, see Hassel, Nicolescu, Egenhofer, Nica & Elisei, 2017.

⁵ The European Parliament adopted a non-legislative resolution on the 2030 framework on February 5, 2014.

⁶ The strategy was endorsed by the European Council in March 2015.

change mitigation goals that required the implementation of specific technologies (such as renewables) (Glachant, 2016). Meanwhile, the instrument that was designed to leave to markets the task of welding together climate and energy policy– the EU's Emissions Trading Scheme (ETS) – did not provide the robust market signals it was created for. With integration flagging, more action was needed to take off.

The Juncker Commission stated that the overarching goal of the Energy Union would be to increase energy security, sustainability and competitiveness, by creating a “resilient Energy Union with an ambitious climate policy at its core”. This involved five main dimensions, which were meant to be integrated to achieve mutual reinforcement and close interrelations between them. These five dimensions are: (1) energy security, solidarity and trust; (2) a fully integrated European energy market; (3) energy efficiency contributing to moderation of demand; (4) decarbonization of the economy; and (5) research, innovation and competitiveness. With a Pole at the head of the European Council (Donald Tusk), the vice presidency for the Energy Union was given to a Slovakian: Maroš Šefčovič. 2016 was announced as the ‘year of delivery’ for this policy.

2. The Proposed Governance of the Energy Union

On November 30, 2016, the European Commission published a new energy package in the context of its Energy Union strategy, formally titled ‘Clean Energy for All Europeans’. It is a jumbo package, covering many policy areas from various angles, which introduces eight legislative proposals for revised or new regulations and directives and includes three approved eco-design regulations.⁷ It also contains one proposed change to the 2030 targets (which were originally decided in 2014): a shift to an EU *binding* energy efficiency target of 30% by 2030, from the original *indicative* Union-wide target of 27%.

The proposals housed under this jumbo package can largely be divided into four overarching categories: electricity market and consumers; energy efficiency (including eco-design); renewables and bioenergy; and governance. The informally dubbed ‘Winter Package’ furthermore contains a host of other documents such as communications, impact assessments, reports on sector inquiries, and evaluations.

Our paper will focus on the governance portion of the package, which consists of a proposed regulation, an impact assessment, and a fitness check of existing EU energy legislation.

2.1 Goals

The Commission explains that the overarching goal of the governance proposal is to ensure that “policies and measures at various levels are coherent, complementary and sufficiently ambitious” (European Commission, 2016j). More concretely, the proposed regulation aims to:

- streamline and integrate existing planning, reporting and monitoring;⁸
- start a political progress where member states and the Commission – with close involvement of other EU institutions – come together to work towards the Energy Union and 2030 targets and objectives; and
- contribute to implementing the Paris Agreement.

⁷ The three regulations cover: eco-design requirements for air heating and cooling products and chillers (European Commission, 2016c), tolerances in verification procedures for all eco-design measures (European Commission, 2016b), and tolerances in verification procedures for all energy labelling measures (European Commission, 2016a).

⁸ The proposal states that it “integrates, streamlines or repeals more than 50 existing individual planning, reporting and monitoring obligations of the energy and climate acquis (integrating 31 and deleting 23).” (European Commission, 2016j)

Additional goals include increasing transparency (both on the Union and the member states' side) and improving investment certainty.

In essence, the proposal aims to satisfy the divergent needs of the range of players in this process. For the *Commission*, the goal is to ensure that the ambition level and the coherence of the member states' actions are sufficient to match the Energy Union and 2030 targets and objectives. For the *member states*, the governance proposal should provide flexibility, based on national specificities and preferences – although a number of member states might add another goal here, namely the same one as the Commission: to ensure the national actions add up to a high enough sum to reach Union-level goals. Another stated aim is to signal to *market actors* a degree of investment certainty and regulatory stability (European Commission, 2016f).

The proposed regulation outlines an intricate system of planning, reporting and assessments. It describes:

- the procedure and template to prepare national integrated energy and climate plans (NECPs) for 2021-2030, as well as the iterative consultation process between the Commission and the member states to finalize the plans;
- the biennial progress reports which member states are to submit on their progress towards the Energy Union's goals and their NECPs, as well as other annual reporting requirements;
- the monitoring and assessment that the Commission will carry out and a recommendations process flowing from it – both with regard to the NECPs and the progress reports;
- requirements for reporting on greenhouse gas (GHG) emissions inventories, policies, measures and projections, and for the preparation of member states' long-term low emissions strategies with a 50 year perspective; and
- the mechanisms necessary to implement this proposed regulation.

The main building blocks are, on the one hand, the NECPs and the reporting and monitoring associated with them (especially via the biennial progress reports); and on the other, a set of specific reporting and monitoring provisions for greenhouse gas emissions inventories.

2.2 National Energy and Climate Plans and the Iterative Process

A) Key Elements and Years

In a nutshell, the procedure is the following: once every ten years, member states prepare a draft national integrated energy and climate plan (NECP) according to a fixed template, stating their objectives and the policies to attain them for the next ten-year period (2021-2030, 2031-2040, etc.). In drafting these plans, member states are to consult with neighboring member states and with the public, taking their input into account. The Commission issues recommendations on the *draft* plans, and member states shall take 'utmost account' of these recommendations in their *final* NECPs – which are due one year after the drafts. Member states are invited to update their NECP once during the ten-year period (in 2023-2024), but *only* to reflect increased ambition.

In the first year of implementation of the NECPs and every two years thereafter, member states submit integrated national energy and climate progress reports, again according to strict content guidelines. The Commission assesses these reports to evaluate the *progress at the EU level* towards the overarching Energy Union and 2030 goals, *member state progress* toward the implementation of their NECPs, and the overall impact of the aviation on the global climate.⁹ At this point, the

⁹ The fact that the Commission includes aviation particularly in its biennial monitoring is related to the administrative streamlining the proposal aims to achieve. One of regulations to be repealed if this proposal passes is Regulation (EU) No

Commission can take a series of measures based on its assessment: issuing recommendations to a specific member state or to all member states; taking measures at the EU level; and requiring member states to take additional measures (in the case of renewables and energy efficiency) or to make a financial contribution to a financing platform (in the case of renewables). The specific circumstances in which each of these measures can be taken are explored in detail below.

Some of the key dates and years laid out in the proposal are:

- January 1, 2018 and 2019 – the dates for member states to submit their draft and final NECPs (for the 2021-2030 period), respectively.
- March 15, 2021 – the due date for the first progress reports, and hence the first opportunity for Commission scrutiny of progress towards member states' goals as stated in their NECPs.
- January 1, 2023 and 2024 – the dates for member states to report their draft and final NECP updates, respectively, in case of increased ambition.
- 2023-2024 – a stocktaking moment for the energy efficiency and renewables targets, where additional measures can be taken at member state and EU level if necessary.
- January 1, 2028 and 2029 – the dates for member states to submit their draft and final NECPs (for the 2031-2040 period), respectively.

B) Planning: The Integrated National Energy and Climate Plans

The integrated national energy and climate plans or NECPs are designed as the foundations in the implementation of the Energy Union. In a way, they are comparable to the (Intended) Nationally Determined Contributions ((I)NDCs)¹⁰ in the UNFCCC's Paris process, in that they are plans designed and submitted by *individual* member states in fulfillment of a *collective* goal, in a bottom-up type process. However, the NECPs differ from the (I)NDCs in that they cover far more policy ground and in that the requirements in terms of their content and the procedure to develop them are more precisely defined.

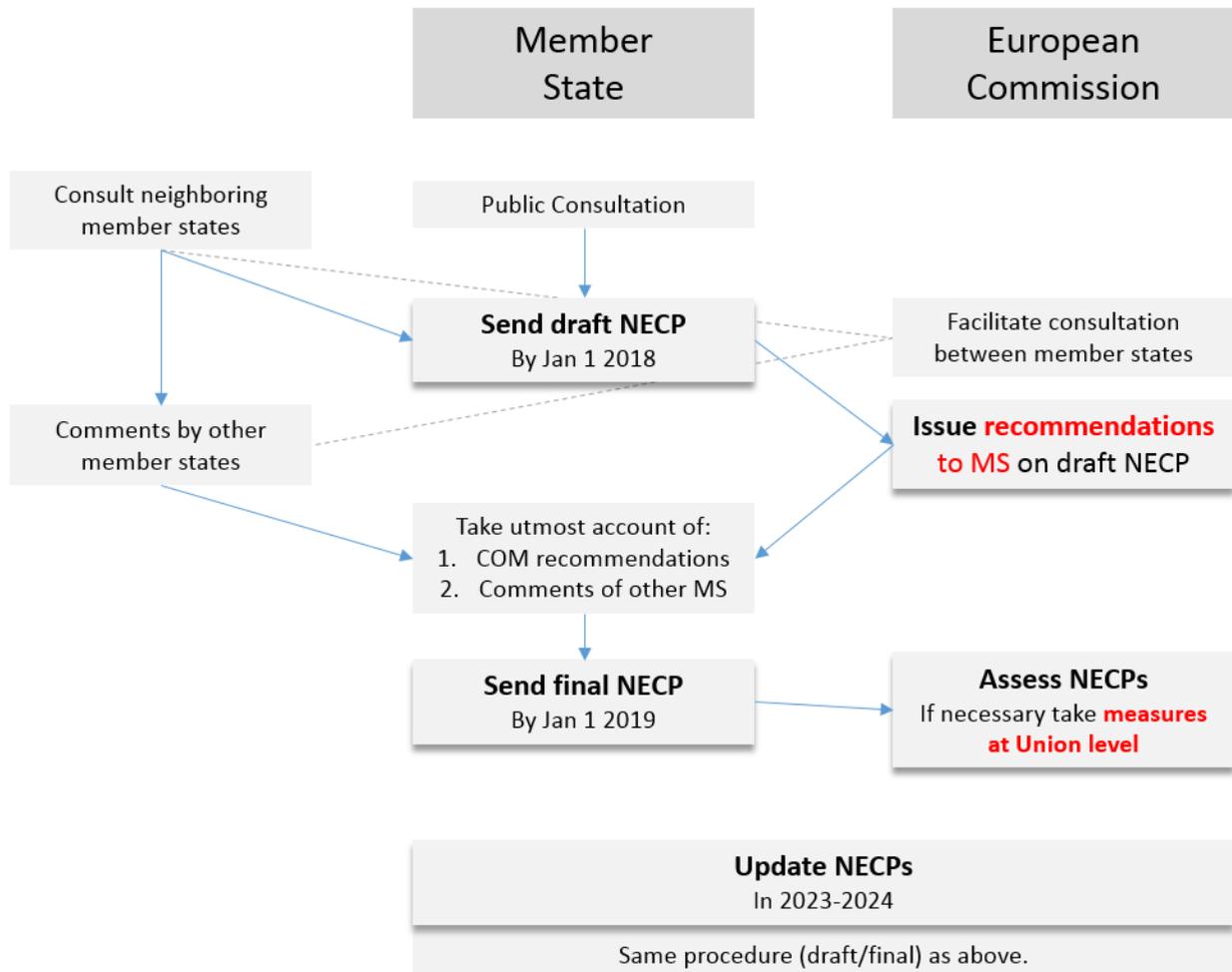
The process of developing the NECPs is depicted graphically below and described in detail in Annex 1. As is shown, the Commission has multiple occasions to intercede in case it finds that member states' ambition is lacking during the planning phase, or if it finds inconsistencies between policies and measures. First, it may issue *recommendations* – of which the state must take the utmost account – on the member states' draft plans. Second, when the final NECPs have been submitted, and in case the Commission finds that the collective effort of the NECPs will be insufficient to meet the Energy Union and 2030 objectives, it may “take *measures at Union level*”. The proposal contains no further description of these measures, effectively keeping the door open for a range of policy options. A third occasion for the Commission to provide input on member states' planning is when states submit updates to their NECPs in 2023-2024.

(Contd.) _____

525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change (European Parliament & Council of the European Union, 2013). Assessing the non-CO₂ impact of aviation on the global climate is part of that regulation.

¹⁰ These national plans were called *Intended* Nationally Determined Contributions (INDCs) until COP21 in Paris; once states ratify the Paris Agreement, the INDCs are converted into Nationally Determined Contributions (NDCs).

Figure 1 NECP drafting process



C) Reporting and Monitoring: Biennial Progress Reports and the Iterative Process

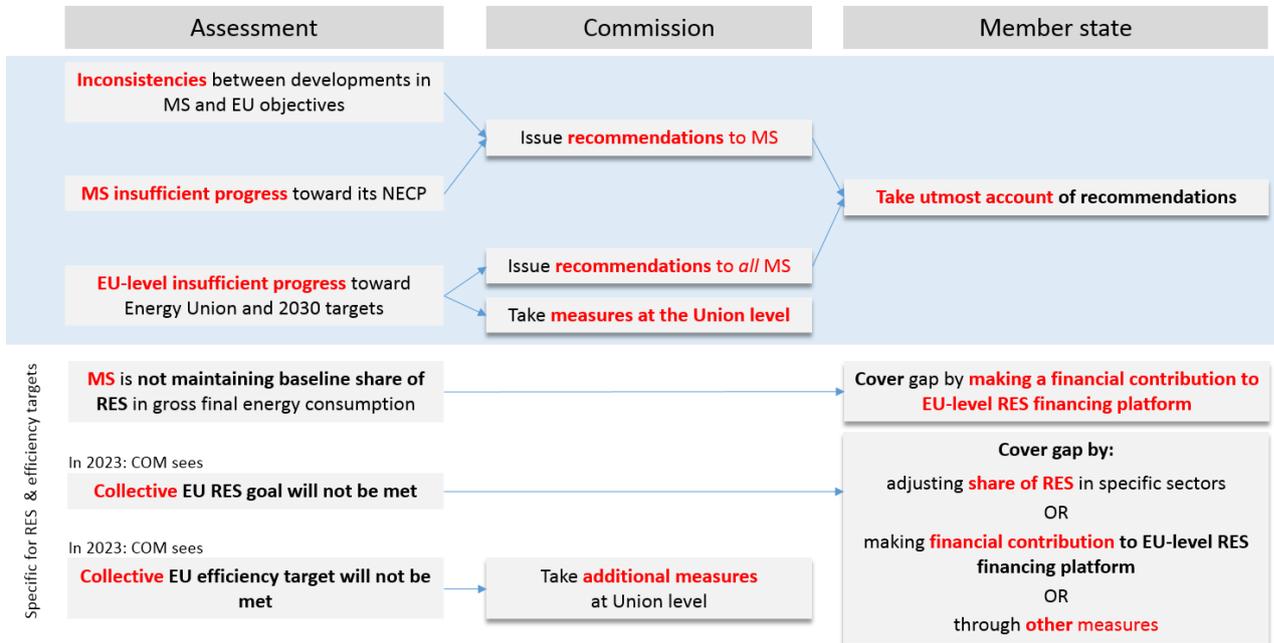
The NECP drafting process provides the Commission with a first opportunity to address inconsistencies between the collective *effort* or *ambition* laid out in the NECPs and the EU-wide targets. However, it is from 2021 on, the first year of implementation of these plans, that the iterative process designed to avoid *delivery* gaps becomes more apparent.

The main component here are the biennial progress reports which member states are to submit every two years starting on March 15, 2021. In these reports, member states describe, according to a binding template, their progress on the implementation of the NECPs and on the five dimensions of the Energy Union. The Commission uses these reports to comprehensively monitor both progress made by the *member states* towards their national plans and *overall* progress towards the Energy Union goals. The Commission also specifically tracks the evolution towards the 2030 *renewables* and *energy efficiency* targets.

At this point, the Commission has a set of tools at its disposal in case it detects inconsistencies or insufficient progress towards the measures outlined in the NECPs and the five dimensions of the Energy Union. For the 2030 renewables and energy efficiency targets in particular, it has an additional set of tools. The specific focus on these two targets arguably relates to the need to stitch together their

nationally determined implementation and the fact that the target lies at the Union level. The Commission's toolbox is depicted graphically below and described in more detail in Annex 2.

Figure 2 The Commission's toolbox in case of inconsistencies or insufficient progress towards targets



i. The General Toolbox

Issuing recommendations to a member state is the first in the set of general tools the Commission holds. It can choose to make recommendations if it observes either inconsistencies between policy developments in the member state and the overarching Energy Union objectives or insufficient progress toward what the member state laid out in its NECP.

Second, if the Commission finds that there is insufficient progress toward the Energy Union and 2030 targets and objectives at Union level (i.e., the Commission believes there is a risk the collective targets will not be met), it can use two tools. On the one hand, it may¹¹ issue recommendations to all member states. On the other, it shall take, as appropriate, measures at the Union level (as mentioned above, this last provision is not explained further in the proposed regulation).

ii. The Specific Toolbox for Renewables and Energy Efficiency

In addition, there is a set of specific tools the Commission disposes of in case it detects gaps in the progress towards the 2030 renewables and energy efficiency targets. For renewables, there are two, rather more concrete options. First, if the Commission finds, based on the biennial progress reports, that a member state is not maintaining its own baseline share of renewables¹² in its gross final consumption of energy, the member state will be asked to ensure any gap is covered by making a

¹¹ Note the use of the verb *may* here: the application of this measure is at the Commission's discretion.

¹² This baseline share is equal to the member state's 2020 target, and is stipulated by the proposed directive on the promotion of the use of energy from renewable sources (European Commission 2016h), another element of the Winter Package. Its proposed article 3(3) establishes the member states' (then-nationally binding) 2020 renewables targets as a baseline in their progress towards the collective 2030 renewables target, from 2021 on. In other words, member states cannot go below their national 2020 targets from 2021 onwards.

financial contribution to the financing platform. The proposed regulation provides no further information on this financing platform, leaving decisions on its establishment and functioning for later, through delegated acts by the Commission.

Second, 2023 is a review moment both for the renewables target and the energy efficiency target. If, in 2023, the Commission finds that the *collective EU renewables target will likely not be met*, member states shall ensure the emerging gap is covered through *additional measures*. These include: adjusting the share of renewables in the sectors of transport and/or heating and cooling; making a financial contribution to a financing platform set up at Union level; or other measures to increase the deployment of renewable energy.

For the *energy efficiency target*, 2023 is also a review year, but here, it is the *Commission* that will take *additional measures* if the *collective EU energy efficiency target is likely not to be met*. These would be designed to improve the energy efficiency of (a) products, (b) buildings or (c) transport.

iii. Assessing The Power Under The Hood

To sum up, the Commission's main tools in the governance proposal – for all aspects but greenhouse gas emissions, where additional measures are available (these are examined in the next section) – are: Union-level measures, recommendations to member states, and specific gap-closing measures for renewables and energy efficiency.

Union-level measures are available in case of a gap in ambition or in the execution of plans. However, the governance proposal leaves the shape of these measures fully open (except in 2023, for the energy efficiency target). This leaves room to the imagination. Nevertheless, for these type of measures, political limitations will likely persist: implementing new Union-level measures would presumably require the ordinary legislative procedure and, hence, political (member state) consent. In other words, this hardly seems like a flexible tool in the Commission's hands.

Recommendations to a member state can be given at various moments: (a) in the process of finalization of the NECPs, (b) in case of inconsistencies between policy developments in a member state and the overarching Energy Union objectives, and (c) in case of insufficient progress towards what is laid out in a member state's NECP. In subsequent progress reports, member states are to take these recommendations into the 'utmost account' and explain how they were addressed. If they deviate from the recommendations, they must explain why.

The burning question remains: how effective will the recommendations be? On the one hand, previous experience with country-specific recommendations (CSRs) – in the European Semester – has not been particularly fruitful. According to Green Budget Europe (Adolf & Nix, 2016, p.5), which draws from a European Parliament briefing, none of the CSRs relating to climate energy and environment were fully implemented between 2012 and 2014. "Some progress" was made on 53% of the CSRs; none was made on 46%. Wyns, Khatchadourian & Oberthür argue that the focus of the European Semester was too economic, which limited its potential usefulness for energy and climate issues (2014, p.24). Moreover, the governance proposal under study in this paper does not explicitly contain a backstop in case recommendations are not implemented.¹³ This casts some doubt on their potential effectiveness; however in this kind of 'soft governance' system, much of course depends on the goodwill of member states.

¹³ Duwe, Ohlendorf & Umpfenbach (2017, p.15) suggest that "a dedicated follow-up process should be foreseen to assess the actions reported by Member States" in order to evaluate whether these actions will truly suffice to remedy the problem addressed in the recommendation. In addition, they propose that in a second step, "an explicit implementation check regarding the reported actions and timetable should be installed." Finally, on the consequences for non-delivery, they suggest that as a minimum, this issue could be discussed at the Council – as is the case under the Macroeconomic Imbalance Procedure.

On the other hand, Duwe et al. (2017, p.15) have pointed out that there could be a timing gap between when the Commission issues a recommendation and when the member state reports on its implementation. If the recommendation is issued shortly after a state has published its biennial progress report, that state will not have to report on the implementation of the recommendation until its next progress report, two years later. This does not exactly make for a very agile tool.

The gap-closing measures for renewables and energy efficiency (in 2023) are more concrete, as are the measures in case a member state goes beneath its baseline share of renewables in its gross final energy consumption. One very concrete measure is requiring member states to adjust their renewables shares in specific sectors (a measure that was already hotly opposed by member states such as Romania and Hungary at the first Energy Council meeting on the Package in February 2017). Another is to require member states to make a contribution towards a financing platform for renewables. However, as the governance proposal contains little to no information on the financing platform that is to be set up, it is difficult to guess how effective this measure might be.

While the full process calls for a far more detailed description, potential gap-closing measures will most likely first be discussed in the Climate Change Committee – or the future Energy Union Committee – which meets every 4-6 weeks and brings together all member states. The Climate Change Committee was created by Decision 280/2004/EC to deal with matters relating to greenhouse gas emissions and the Kyoto Protocol, while the forthcoming Energy Union Committee will deal with matters concerning energy efficiency and renewables. These Committees would typically seek a solution at the technical level. Ultimately, if no agreement is reached, matters would be decided in the Council.

On the whole, the reporting and monitoring system described above is a result of a balancing game, driven by political and structural elements. It is strong on formal processes and procedures, but very much open-ended on substance – and particularly enforcement rules. The potential measures described here raise many effectiveness questions still, some of which may be clarified in part in the future legislative debates on this proposal.

2.3 Greenhouse Gas Emissions Reporting and Monitoring

The governance of the 2030 greenhouse gas (GHG) emissions target differs from the other two in a number of respects. First, and most critically, this target has remained nationally binding.¹⁴ Second, the EU has a long track record and experience in monitoring and accounting for its emissions, built through its experience with the Kyoto Protocol, where a Union-level target was distributed among member states and monitored using a sophisticated and robust set of metrics, databases, and reporting (Delbeke & Vis, 2015, p.128). Third, the GHG target is closely linked to the commitments made by the EU and its member states under the UNFCCC process – particularly the reporting commitments related to the Paris Agreement. Fourth, a significant set of pre-existing legislation on these matters has been incorporated into the proposed governance regulation,¹⁵ a shift which is in line with the

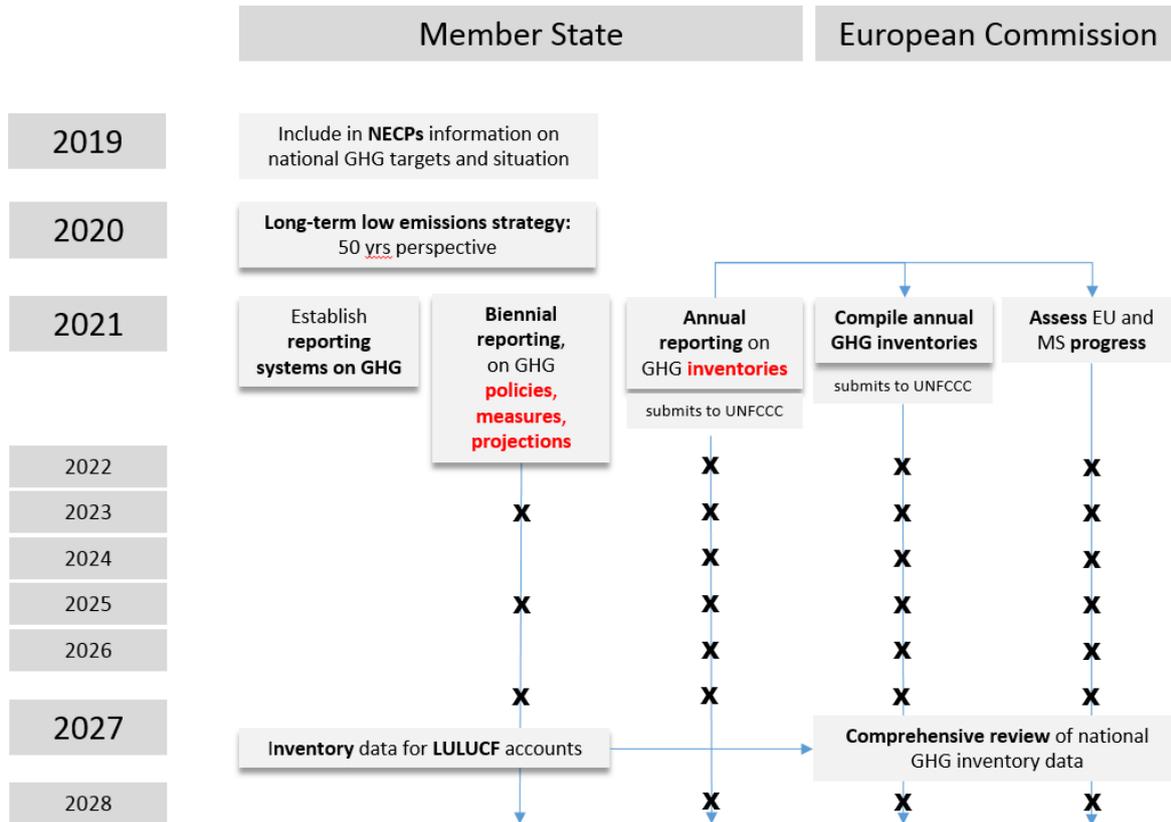
¹⁴ The binding commitment at the Union level is to reduce economy-wide greenhouse gas emissions by 40% by the year 2030 compared to 1990 levels. In order to put this into practice, efforts are made through both the ETS and the non-ETS sector. It is in this latter sector that nationally binding targets are set according to a formula related to per capita GDP in each member state. The economic effort of reaching the EU-wide emissions reduction target is thereby shared among member states according to their respective national situations.

¹⁵ For the 2020 greenhouse gas emissions reduction target, the related ‘governance’, or monitoring and reporting, was determined by an Effort Sharing Decision (European Parliament & Council of the European Union, 2009a) and the Climate Monitoring Mechanism Regulation (MMR) (European Parliament & Council of the European Union, 2013). In the execution of the Energy Union strategy, and the transition to the 2030 targets, the Commission proposed in July 2016 a new Effort Sharing Regulation (ESR) (European Commission, 2016i), which amends the MMR. November 2016’s proposed Governance regulation, then, fully integrates the MMR, and repeals it from 1 January 2021 on (while retaining some transitional clauses).

regulation’s goals of streamlining and integrating existing regulation as well as integrating the energy and climate fields.

Whereas almost all of the member states’ reporting requirements in the governance proposal are biennial, reporting on GHG emissions has both an annual and a biennial component. This is represented graphically in the figure below:

Figure 3 GHG emissions planning and reporting



A) Planning

In terms of *planning*, the NECPs integrate required information on national GHG targets, LULUCF¹⁶ commitments, and the current situation for GHG emissions and removals. In addition, in 2020 (and every ten years thereafter), member states are to report to the Commission their *long-term low emissions strategies with a 50 years perspective*¹⁷ and make them available to the public. The timing of this delivery mirrors a Paris Agreement provision, which invites parties to the agreement to communicate their mid-century long-term GHG emission development strategies by the same year (2020).

The long-term emissions strategies were previously outlined in the Climate Monitoring Mechanism Regulation (MMR), and are related to the EU’s goal of cutting its emissions to 80-95% below 1990

¹⁶ Land Use, Land-Use Change and Forestry

¹⁷ These cover GHG reductions and the enhancement of removals by sinks and in individual sectors, expected progress on transitioning to a low GHG emissions economy, and links to other national long-term planning. They must also be consistent with the countries’ NECPs.

levels by 2050. Sartor, Donat & Umpfenbach (2017), however, find that in the current governance proposal, the level of detail on the strategies is weak – both regarding their required content and process. Moreover, they signal that given their 50 years perspective, these strategies, which would be written in 2020, would in fact extend until 2070 – a time horizon which makes it difficult to create credible objectives relevant to current policy. They also remark that the utility of the plans would drop significantly if they are published in 2020, as planned, two years *after* the draft NECPs. However, the virtue of *long-term strategies* is that they can provide insights and guidance for *short-term policy* setting and strategies.

B) Reporting and Monitoring

Reporting systems are expected to be ready by 2021, which is when member states commence reporting *annually* on GHG *inventories* for the previous year.¹⁸ Both member states and the Commission¹⁹ report to the UNFCCC on these GHG inventories, and the Commission uses the information to assess whether the Union and its member states have made sufficient progress (towards the Paris Agreement and UNFCCC's overarching goals,²⁰ the ESR, LULUCF provisions, and the relevant objectives of the NECP). Finally, member states also report *biennially* on GHG emissions – in this case, they report on the *policies, measures and projections* rather than on inventories.²¹

As discussed in the beginning of this section, the GHG target for 2030 differs from the others in that it has remained binding at the national level. What kind of *actions*, then, can be taken *in case the member states do not reach their targets*? This is laid out mainly in the proposed Effort Sharing Regulation (ESR): if the Commission finds that a member state is not making sufficient progress, a member state must first lay out an *action plan* to remedy the situation. The Commission can then (a) submit *opinions* on the Member State's proposed action plan to remedy the situation, and (b) issue *recommendations* to the member states.

Additional corrective measures are available in 2027 and 2032: in these years, member states are to provide inventory data prepared for their LULUCF accounts, and the Commission carries out a comprehensive review of national GHG inventory data. This is also the moment for the five-yearly *compliance check*²² on whether member states' GHG emissions exceed their annual emission allocations for any of the five years in the period. If they do, the Commission can: (a) add tons of CO₂ to the member states' emission figure of the following year according to a set formula and (b) temporarily prohibit member states from transferring their annual emissions allowances. (c) Finally, if a member state's emissions over a five-year period exceed its removals, that excess amount will be deducted from its annual emissions allocations.²³

¹⁸ The reporting is on approximated numbers in 2021 and 2022, and final numbers from 2023 on.

¹⁹ The Commission compiles approximated GHG inventories (in 2021 and 2022) and final GHG inventory reports (from 2023 on), which are also sent to the UNFCCC Secretariat

²⁰ For the Paris Agreement (2015), this is: holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels; increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development; and making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development. For the UNFCCC (United Nations, 1992), the chief aim is to “protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities”.

²¹ The information to be submitted in this case is on national *policies* and *measures* regarding GHG emissions and on *projections* of GHG emissions by sources and removal by sinks (as opposed to the *inventories*, which member states report on annually). In addition, this information – as well as any relevant assessment of the costs and effects of the policies and measures described above – is made available to the public.

²² This provision is housed under the proposed ESR.

²³ These measures are set out in ESR Art. 9(1)(a) and 9(2) (European Commission, 2016i).

The governance of the third 2030 target, on GHG emissions, thus has slightly more bite to it. On the one hand, remedial action plans, opinions and recommendations go one step further than simple recommendations, and require active member state participation without the time lag explained in the previous section. In 2027 and 2032, in addition, much clearer, corrective measures are available. It can thus be concluded, though more so via the ESR than through the proposed governance regulation, that the Commission does have more “sanctioning” power for the 2030 GHG target.

2.4 State of the Energy Union Reports

Based on the GHG reporting and the biennial progress reports (among other sources of information), the Commission publishes a yearly State of the Energy Union (SoEU) Report, of which two editions have already been produced. This report – which the Commission is to submit to the Parliament by October 31 of every year starting in 2021 – reflects the Commission’s assessment of the progress towards the overarching goals of (a) the Energy Union and 2030 framework; (b) the UNFCCC and the Paris Agreement; and (c) annual emission levels for the period from 2021 to 2030 (Effort Sharing Regulation) and the LULUCF regulation.²⁴

These public reports provide an opportunity for scrutiny of member state and EU progress on climate and energy matters, which could open the door for ‘naming and shaming’-type processes. However, the content of the reports will largely be determined by the absence or presence of consensus among member states, and this will ultimately determine their usefulness (Egenhofer, Marcu, Nuñez-Ferrer, Genoese & Elkerbout, 2015). In other words, the SoEU reports *may* complement the measures described in the previous section, by providing an extra, informal, pressure mechanism to advance the Union’s energy and climate targets.

2.5 Linkages with the European Semester and the Paris Agreement

For the 2020 targets, country progress on the renewables and energy efficiency targets was monitored in the *European Semester* (as described in part 2) and by the Vice Presidency on Economic Affairs. For 2030, the role of the European Semester changes and almost fades: the European Semester will switch²⁵ to focusing on macro-economic and structural reform issues, while the governance regulation will address energy and climate-specific issues. The governance of the Energy Union and the European Semester are, then, clearly separate, though they are of course complementary (and safeguards are proposed to ensure consistency). The Commission can make recommendations under both systems.²⁶

The proposed governance mechanism bears some resemblance to the governance of the Paris Agreement, and the institutional design of both was indeed developed around the same time (Sartor, Colombier & Spencer, 2015). Similarly to what happens in the Paris process, European member states voluntarily report their intended commitments and the tools they plan to use to achieve them to the

²⁴ The report’s required content is outlined in detail in Article 29(2) of the proposed governance regulation.

²⁵ This is already somewhat underway, and Green Budget Europe (Adolf & Nix, 2016) has, in this respect, drawn attention an emerging ‘governance gap’ between 2015 and 2020, since climate and energy-specific recommendations are being omitted from the European Semester from 2015 on and the new governance will not kick in until 2020. They point out that the only available governance options, then, lie in “full-blown legal action under Directives/Regulations.”

²⁶ Even though energy and climate issues are to fall under the Energy Union’s Governance Regulation, “where energy and climate specific policy issues are relevant for macroeconomic or structural reforms, they could still be addressed by the Country Specific Recommendations in the European Semester process” (European Commission 2016f). In addition, member states are to take the country-specific recommendations of the *European Semester* into account when preparing their *NECPs* and updates. The Commission is asked to take these same recommendations into account when assessing progress towards the Energy Union. It should also ensure any recommendations issued under the Governance proposal are *complementary* to the recommendations issued in the context of the European Semester.

Commission, and the expectation is that their intentions and actions will add up to the collective result necessary to achieve primarily Union-level goals – particularly on renewables and energy efficiency. Unlike the Paris Agreement however, the Commission has set out a clear, detailed and extensive template for the initial reporting requirements in its governance proposal; it also has more tools at its disposal to address gaps and inconsistencies.

In terms of their chronology, the *Paris Agreement* (PA) is also clearly interlinked with the governance proposal, logically so given the climate-energy integration that the Commission is striving for in the Energy Union architecture. First, in *planning*, the Paris process includes a facilitative stocktaking moment in 2018 to review collective efforts towards the long-term PA goal. In the governance proposal, the deadline for draft NECPs notably falls in the same year. In addition, member states are meant to finalize their NECPs by 2019 – just on time for submitting new or updated NDCs to the Paris Agreement (in 2020), which they could potentially adapt based on their interpretation of the outcomes of 2018 Paris facilitative stocktaking moment. The same occurs with the updating cycle for NECPs, which takes place in 2023-2024 – one year before the Paris Agreement timing for new or updated NDCs (2025).²⁷

Second, the parties to the Paris Agreement are invited to communicate their mid-century *long-term GHG emission development strategies* by 2020. The Commission calls for member states to publish their long-term emissions strategies with a fifty-year perspective by 1 January 2020. However, as pointed out above, the latter plans will reach to 2070 rather than 2050, possibly affecting their level of concreteness and their effectiveness as a policy-planning tool.

Third, regarding *reporting*, the Energy Union's GHG inventory reporting provisions in particular are geared towards UNFCCC requirements. Member states' reporting to the UNFCCC is integrated into the reporting for the governance proposal. In 2027, for example, the Commission comprehensively reviews national GHG inventory data, just on time to inform the PA's global stocktake in 2028. Finally, in its *monitoring*, the Commission consistently checks progress against the UNFCCC and PA's overarching goals.

3. Key Political Issues & Positioning of States

The proposed governance regulation and the Winter Package it is part of are now beginning to make their way through the legislative process and past the European Parliament and Council. This process may yet lead to substantial modifications.

The new 2030 energy and climate framework, adopted in 2014, was already the product of a political bargaining process. Claude Turmes (2017, pp.204-7) in fact argues that the European Council overstepped its mandate when deciding on this framework, by deciding on concrete numbers and bindingness for the 2030 targets in this organ (where unanimity rules, and countries therefore have de facto vetoes) rather than in the Council of Ministers (where the qualified majority rule could have overruled some member state preferences).

While member states such as Germany, France, Italy and the Scandinavian countries were in favor of maintaining nationally binding targets of the 2020 framework, others were against, including the UK and many Eastern European states. Those against argued that policies would be much more cost-effective without the strict corset of nationally binding targets (Delbeke et al., 2015, p.87). The UK, for example, sought flexibility in achieving the EU's energy and climate targets and found that nationally binding targets were a barrier. In Germany, on the other hand, the *Energiewende* was in full swing, and the push towards renewables strong. Meanwhile, the critical COP21 climate change

²⁷ Duwe et al. (2017, p.12) argue that the timing for the NECP updates is not well aligned. A global stocktake is to take place under the Paris process in 2023, and the authors argue that the draft NECP updates should therefore be due *after* the stocktake (i.e., in 2024) in order to be able to incorporate the Paris process stocktake information.

negotiations were approaching rapidly, and France's presidency of the UNFCCC conference presented an opportunity for both Paris and Brussels to shine in one of the EU's favored international areas, climate change. To ensure its credibility, however, the EU needed to present an ambitious package at home prior to the conference.

In the end, the 2030 target for greenhouse gas emissions remained nationally binding. For renewables and energy efficiency, however, the targets were shifted up a level: goals were set at the EU level, with the execution left up to the member states through their voluntary plans and actions. Member states who had fought for nationally binding targets and lost consequently sought a robust and reliable governance system to compensate for their loss. Governance was to be critical to bridge the gap between the Union-level targets and national execution, and the governance regulation in the Winter Package reveals the proposed blueprint for that bridge. Its strength will now ultimately be defined by the outcome of the upcoming political and legislative discussions – and some member state representatives interviewed for this paper have already signaled that the governance proposal may well be the most discussed in the entire Winter Package.

In the Council, talks have commenced on the Winter Package under the Maltese presidency, which has stated it is particularly focused on getting a deal on energy efficiency. Malta is also aware of the concerns on the tight timelines for the package negotiations, and is attempting to take those worries on board. Meanwhile, in the European Parliament's ITRE (Industry, Research and Energy) Committee, an experienced rapporteur from the Greens (C. Turmes) has been chosen to head up discussions on the governance portion of the package.

A first point is that there is member state *pushback on timing*. On the one hand, and for the full package, the Commission has stated its ambition for 2017 to be the year of implementation for the Energy Union.²⁸ However, February's meeting of the Transport, Telecommunications and Energy Council revealed doubts among a large number of member states (including the Czech Republic, Poland, Latvia, France, the Netherlands and others) on whether it would be possible to approve all of the legislative and non-legislative measures in the package by the end of the year. The Parliament, meanwhile, has committed to finalizing its positions by November 2017 (Council of the European Union, 2017c). Given the size of the package, it is likely that the deadline for approving all of its elements may be pushed back somewhat.

On the other hand, in its governance proposal, the Commission set a January 1, 2018 deadline for member states to submit their draft NECPs, and established January 1, 2019 as the deadline for the finalized plans. The Commission itself has noted that it will be difficult to meet these targets, and member states reiterated this at the February 2017 Energy Council meeting.²⁹ More importantly, there may be resistance not just to the *timeline* for the *NECPs*, but to the *substance* and *level of detail* they require.

Keay & Buchan, for example, pointed out that there was a risk of revolt related to these plans and the Commission's drive for them. Writing in November 2015, they explained that two-thirds of the member states had no long-term plans of this sort. The one-third that did, they added, already had sophisticated planning procedures of their own, and no appetite for additional and differently defined requirements from Brussels in this matter (pp.4-5).³⁰ Given the complexity of the NECPs, a number of

²⁸ This ambition that was repeated by the three presidents (of the European Parliament, Council and Commission) in their joint declaration on the legislative priorities for 2017 (European Commission, 2016e).

²⁹ Many member states point out that the Energy Council conclusions of November 2015 (European Council, 2015) called for the NECPs to be finalized by the *end* of 2019 rather than the beginning of the year.

³⁰ The impact assessment (European Commission, 2016d) carried out in the context of the proposed governance regulation revealed that 52% of stakeholders that replied to the consultation were in favor of maintaining a high level of detail in future planning instruments; however four member states openly expressed their preference for short strategic planning documents with a high level of aggregation (15 member states contributed to the public consultation, which took place

member states have already requested technical support in preparing the NECPs, which the Commission appears prepared to supply. Both the deadlines and the templates for the NECPs, therefore, stand to face discussion.

Another critical point may be a provision which is tucked away in the governance proposal in a seemingly innocuous fashion: in 2020 (and every ten years thereafter), member states are to report to the Commission their *long-term low emissions strategies with a 50 years perspective*, which they must then make available to the public. However, writing and publishing these strategies in 2020 may force member states to reveal discrepancies between their mid-term (the NECPs for 2021-2030, submitted in 2018-9) and long-term (50-years perspective) strategies (Fischer, 2017). Hence, certain member states may attempt to modify this provision or at least push its delivery back. Postponing the publication of the long-term strategy would moreover allow member states to keep the window of opportunity for investments in certain energy technologies open longer. Postponing it would, however, also break the synchronization with the Paris Agreement's requirements and possibly endanger progress towards the long-term decarbonization goal.

At the February 2017 Transport, Telecommunications and Energy Council, a number of member states including Croatia and Slovakia requested more clarity from the Commission on the *financing platform* that is proposed as a gap-filling measure if (a) the EU is not on track to meet its collective 27% renewables goal or (b) a member state falls below its renewables baseline (which is set at the level of its 2020 target). As mentioned above, there is indeed very little detail in the proposal on how this financing platform (which was, according to Claude Turmes (2017, p.161), proposed by France and Germany in the spring of 2016) would function – and as one member state representative has said, “it’s all about the *what if*.” Some (Fischer, 2017, p.3) have suggested that this platform may be “the Commission’s attempt to create the nucleus of its own EU renewables support scheme”, and logically, member states may be eager for more information on this measure in order to evaluate their support for it.³¹

It is important to note the many *connections* between the governance proposal and other components of the Winter Package and the Energy Union legislation. At the February 2017 Council meeting, member states commented that “the examination of the [governance] proposal should be coordinated with the examination of the rest of the package, due to its many links with the other proposals of the Clean Energy package” (Council of the European Union 2017a). Indeed, in the course of the research for this paper, interviewees indicated that member states were likely to use issue linkages across various components of the full package in order to play to their own interests.

On the whole, and returning to the initial divergence between member states on the 2030 framework, the dividing lines on governance will probably mimic the map of positions in 2014.³² Germany is likely to support the proposals for the most part, along with the Scandinavian countries and perhaps France³³ or Italy as well. Countries such as Poland and the rest of the Visegrád 4 will struggle against many provisions, and extra incentives may be necessary to shift their positions closer to those in the package and its governance section.

(Contd.) _____

from January to April 2016: Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, The Netherlands, Poland, Slovakia and Sweden).

³¹ Slovakia, for example, explained at the Energy Council that it had reservations on creating new sources of financing at EU level and current form in which it was proposed.

³² In other elements of the Winter Package, this has already become clear: the proposed changes to the 2030 energy efficiency target (shifting it from 27% to 30% and making it binding rather than indicative at the EU level), for example, caused a stir in the first Council meeting on the package, with states such as the Czech Republic, Latvia and Hungary arguing against the shift (Council of the European Union 2017, 2017b)

³³ France notably mirrored the UK during the February 2017 Energy Council in saying the Energy Union governance must not become a straightjacket, but should ensure flexibility (Council of the European Union, 2017b).

The level of eastern European support – particularly from Warsaw – may be in part determined by what assurances are provided on energy security (which was the main focus of Tusk’s original Energy Union proposal), particularly in relation to Russia. Measures on energy poverty may also be linked into the discussions in order to make headway. These incentives may, for example, take the shape of “some extra financial grease”, i.e. extra help for coal and carbon-intensive industrial regions (Buchan & Keay, 2016a, p.9).

The Visegrád 4 indeed spoke in unison at the first Council meeting on the Winter Package, with a joint statement. However, it is important to remark that the four may not be perfectly aligned on all matters: Poland and Hungary are more vocal in their disagreement than the more progressive Czech Republic and Slovakia; Czech Republic and Hungary are better positioned for a low-carbon transition; and all four differ in terms of energy poverty and CO₂ emissions (Dufour, 2017).

We cannot state with any certainty what position France, one of the original architects and defenders of the governance system, will take at this point. The new government and parliament that are to take office after the elections this spring will be decisive in this respect. Spain, meanwhile, has underscored its need for energy interconnections with the rest of the continent, and also called for additional flexibility due to its situation as an energy island. Finally, Brexit may change the map of positions somewhat: the UK’s traditional push for a light-touch governance system may lose some impact, with the country set to leave the EU before the governance provisions come into force.

Lastly, while the UK itself may not be a central actor in the legislative debate regarding this package, Brexit will impact the European energy landscape and probably the negotiations on the Energy Union’s governance. For one, the UK’s contribution to the EU budget may be sorely missed in case extra incentives are needed to pass this package, particularly in Poland. As Pye, Mathieu & Deane (2017) explain in their stocktaking of research on the climate and energy effects of Brexit, there are a number of other possible effects of London’s withdrawal. First, Brexit will leave a hole in the EU ETS, and may further harm the system. Second, despite its recent push to remove the nationally binding renewable targets for 2030, the UK has traditionally been considered a forerunner in both climate policy and the liberalization of energy markets – the push London has provided in these matters may be missed in Brussels. Finally, there are doubts on whether the EU can meet its third 2030 GHG target (of reducing its emissions by 40%) without the UK, whose progress in mitigation has been higher than EU average and whose departure would leave the 27 remaining member states to pick up the extra burden.

4. Conclusions

The unique and idiosyncratic governance of the Energy Union is, to a large degree, a response to the 2030 renewables and energy efficiency targets which are not nationally binding. Member states who had fought for nationally binding targets and lost – Germany, France, Italy and the Scandinavian countries – now seek a robust and reliable governance system to bridge the gap between the Union-level targets and their national execution.

In this way, the proposed governance model resembles the design of the Paris Agreement mechanisms to some degree: in a bottom-up process, member states are to submit their national energy and climate plans, and the sum of these must then add up to the collective goal. A key difference with Paris is that the Energy Union governance will require states to report on their plans through detailed templates, and that the Commission can take measures (some stronger than others) in case it sees the collective goal will not be met.

Another divergence with the Paris Agreement is that the Energy Union governance model does not foresee any ratcheting up of targets. There are some safeguards against *backsliding* on ambition – if member states choose to update their NECPs, they can only do this to reflect *increased*

ambition; and for renewables, the 2020 targets are established as the baseline or floor – but no particular provisions for *ratcheting up* targets.³⁴

The EU's long-standing experience in monitoring and accounting of greenhouse gas emissions – both its Union-wide target and national targets – has shown the importance of solid monitoring and reporting systems for policymaking cycles. This two-level experience – and that of member states such as Germany, which also have mature systems in this regard – will be helpful in furthering the Energy Union governance.

Despite some clear corrective measures for the greenhouse gas emissions target, many of the Commission's tools to address gaps remain in the realm of soft governance, which relies, to a large degree, on reputational mechanisms. It remains to be seen whether the additional transparency proposed in the governance proposal and the created potential for naming and shaming will be effective. Given that there are very few coercive measures foreseen in the proposal, the goodwill of the member states will be necessary for quite a number of the provisions to work.

More clarity is needed regarding some aspects of the system. How precisely should member states execute regional consultations when elaborating their NECPs? What would happen if a member state repeatedly fails to implement its plans and address the Commission's recommendations? (There is currently no backstop in this case.) What shape might the new financing platform for renewables take, and how would member states contributions to it be calculated? What kind of additional Union-level measures might the Commission adopt if the EU as a whole is not delivering?

Weakening of the proposed governance system may come mainly in the shape of member states pushing back on timing. First, many doubt it is possible to approve all of the legislative and non-legislative measures in the Winter Package by the end of 2017. Second, reservations are also widespread that member states will submit their draft and finalized NECPs by the January 1, 2018 and the January 1, 2019 deadlines, respectively. Third, certain member states may push back against reporting on their long-term low emissions strategies by 2020, as doing so may force them to reveal discrepancies between their short-term (NECPs) and long-term strategies.

Additionally, the planning templates stand to face discussion. Given the level of detail required in the NECPs, a number of member states have already requested technical support in when preparing them. The Commission appears prepared to supply this assistance.

The governance proposal is an inextricable part of the broader Winter Package, and issue linkages during the legislative process are likely. Member states have indicated the importance of the governance proposal and signaled it would be hotly debated; they are likely to link to issues in other parts of the Energy Union legislation in doing so.

Based on this initial assessment of a seemingly technical but in fact highly political regulation, **it will be critical to follow the evolution of this novel proposal through the legislative procedure.**

³⁴ See also Duwe et al. 2017.

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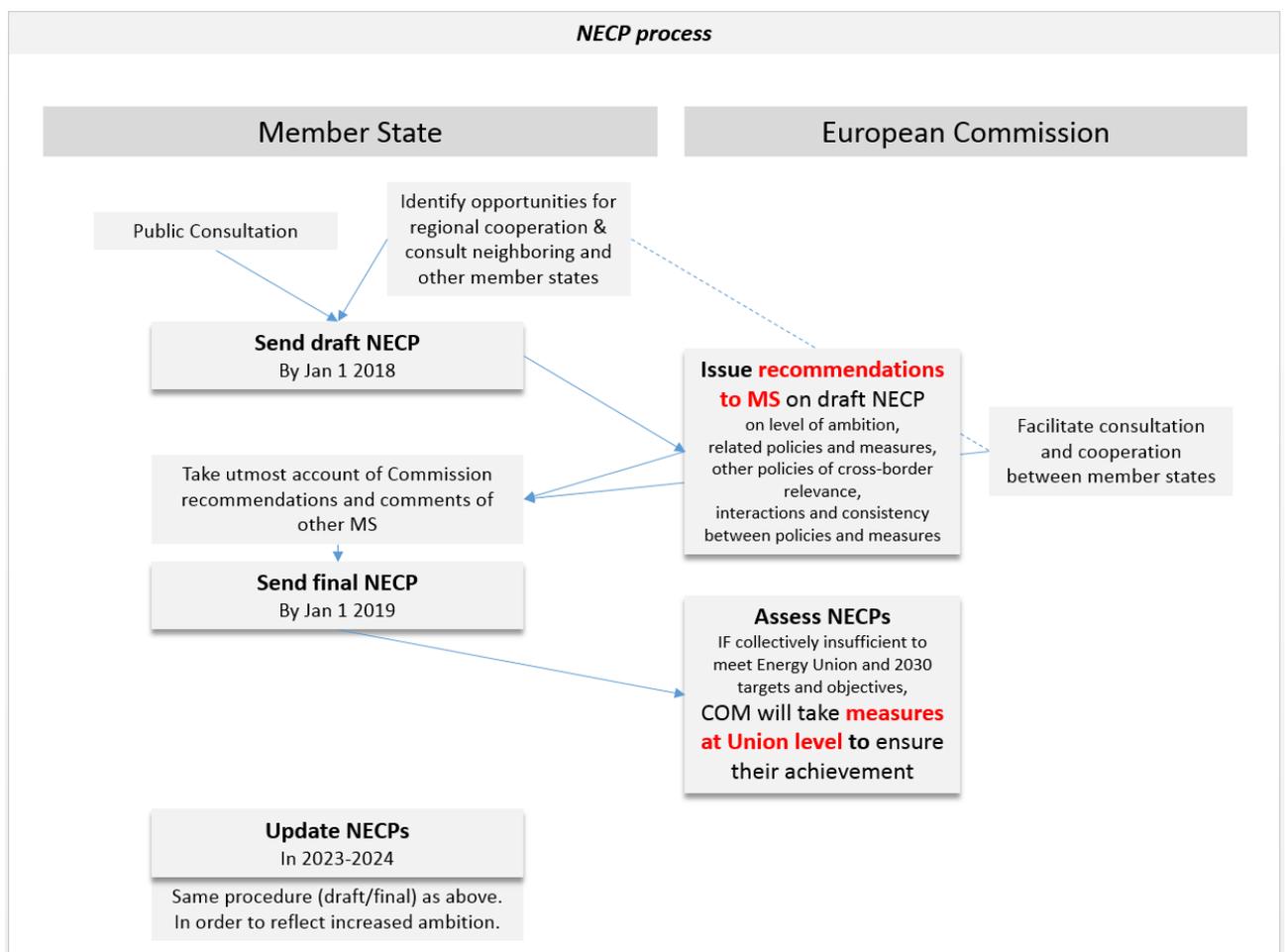
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Annex 1. The NECP Drafting Process

The National Climate and Energy Plans (NECPs) are to be drawn up every ten years, with the first draft NCEP due on January 1, 2018 for all member states [Art. 9(1)]. In formulating the draft NECPs, the Commission stipulates that Member States shall ensure early and effective opportunities for the public to participate in the preparation [Art. 10]. In keeping with a line that appears in other parts of the Winter Package, the Commission also specifies that member states should engage with other member states, particularly neighbors. Member states should (a) identify opportunities for regional cooperation in the draft plan, and (b) consult neighboring and other member states well before submitting the draft (including, where applicable, how their comments have been taken into account) [Art. 11(2)]. The Commission also commits to facilitating this process of consulting and cooperation between member states, in the transition from draft to final plans [Art. 11(3)].

Below is a graphic representation of the drafting process for the NECPs:

Figure 4 NECP drafting process



As is shown, once the draft NECP is submitted to the Commission, the Commission may issue recommendations to the member state, regarding (a) the level of ambition of the objectives (in view of the collective EU 2030 targets and particularly those related to renewables and energy efficiency), (b) the policies and measures related to this ambition and other policies of cross-border relevance, and (c) interactions and consistency between policies and measures (both existing and planned) [Art. 9(2)]. The member state then must take the “utmost account” of these Commission recommendations when

finalizing its NECP [Art. 9(3), 28(2a)], while also taking into consideration the comments of other member states [Art. 11(4)] (and explaining in its final NECP how it did so).

When the final NECPs have been submitted, in 2019, the Commission assesses the plans [Art. 12]. If it finds that the member states' targets, objectives and contributions will be collectively insufficient to meet the Energy Union and 2030 objectives, the Commission will take "measures at Union level" to ensure their achievement [Art. 27(1)].

In 2023-2024, member states may choose to update their NECPs, but – importantly – they can only modify them to reflect increased ambition [Art. 13(1)].³⁵ The update process works similarly to the original draft and final NECP process [Art. 13(6)], and includes regional cooperation/consultation and a process of Commission recommendations on the draft and final updates (but not, explicitly at least, public consultation on the draft update).³⁶ Here again, if the Commission finds that the targets and contributions in the final NECP updates will not add up to enough to meet the collective Energy Union objectives and 2030 targets, it will take measures at the Union level [Art. 27(1)].

Annex 2. Biennial Progress Reports and the Iterative Process

A) Biennial Progress Reports

Every two years, starting on March 15, 2021, member states are to submit a report to the Commission on the state of implementation of the NECPs [Art. 15]. These 'integrated national energy and climate progress reports' must include a detailed set of information on progress toward, or the state of, (a) the five dimensions of the Energy Union, (b) projections of GHG emissions by source and removals by sinks and related policies and measures, (c) national adaptation planning and actions in the context of climate change, and (d) a set of other data [Art. 16-22].³⁷

Over the course of the subsequent eight months (by October 31, 2021 and every two years thereafter), the Commission comprehensively monitors the Progress Reports and other statistics in order to assess (a) the progress made toward the Energy Union and 2030 targets and objectives, (b) the member states' progress toward what they set out in their NECPs, and (c) the overall impact of aviation on the global climate [Art. 25(1)]. This assessment also includes specific monitoring of renewables and energy efficiency targets [Art. 25(2-3)].

B) Measures in Case of Inconsistencies or Insufficient Progress

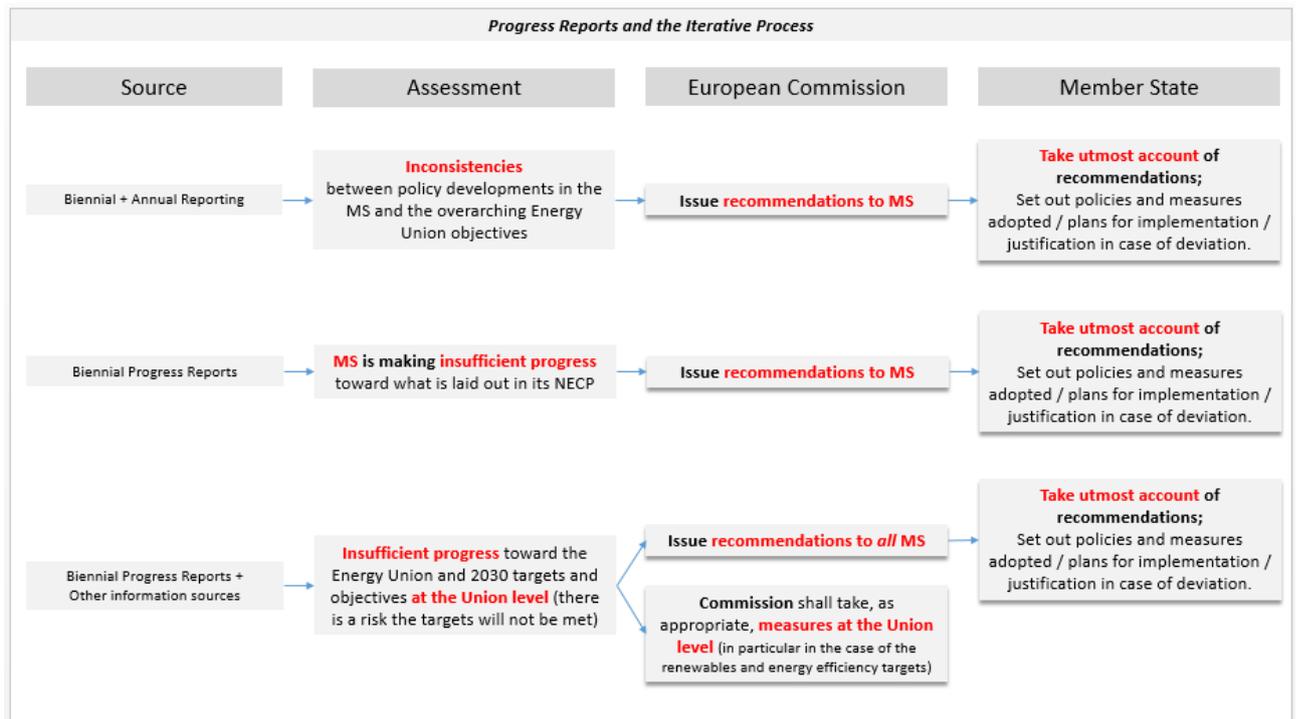
In case the Commission detects inconsistencies or insufficient progress at member state or Union level, it has a number of options, depicted graphically below.

³⁵ Some stakeholders have questioned the fact that NECPs can only be updated for increased ambition: they worry that other circumstances might also warrant an update, for example if the cost of the policies outlined in the NECP unexpectedly balloons out of control.

³⁶ The NECP update procedure also provides for mitigation of potential adverse environmental effects of the policies that are being carried out: "Member States shall make efforts to mitigate in the updated plan any adverse environmental impacts that become apparent as part of the integrated reporting pursuant to Articles 15 to 22." [Art. 13(4)].

³⁷ Specifically, this last category includes: copies of biennial reports and national communications submitted to the UNFCCC secretariat; as appropriate, estimates on improved air quality and emission reductions of air pollutants and other benefits of specific energy efficiency; and the annual reporting requirements contained in the package, which include: data on support to developing countries in the context of climate change, the use of revenues by auctioning greenhouse gas emissions allowances, greenhouse gas inventories, the state of emergency crude oil stocks (as per Article 6(2) of Directive 2009/119/EC), and data on offshore oil and gas operations (as per Annex IX, point 3, of Directive 2013/30/EU).

Figure 5 The Commission's toolbox in case of inconsistencies or insufficient progress (detailed)



The procedures are the following:

- If, in its assessment of member states' biennial or annual reporting, the Commission identifies *inconsistencies* between policy developments in the member state and the overarching Energy Union objectives, the Commission shall issue *recommendations to that member state*. [Art. 26(1)]
- If, based on the biennial progress reports, a *member state* is making *insufficient progress* toward what it laid out in its NECP, the Commission shall issue *recommendations to that member state*. [Art. 27(2)]
- If, based on the biennial progress reports and other information sources, the Commission detects that there is *insufficient progress towards* Energy Union and 2030 objectives and *targets at Union level* – i.e. if it finds that there is a risk that these targets will not be met, (a) the Commission may issue *recommendations to all member states* to mitigate this risk; and (b) in addition, the Commission shall take, as appropriate, *measures at the Union level*, in particular in the case of the renewables and energy efficiency targets. [Art. 27(3)]

In all cases where a member state receives a recommendation, the member state shall (a) take utmost account of these recommendations [Art 28(2a)], and (b) in its next Progress Report, it shall set out the policies and measures adopted, or the plans for implementation, with a detailed timetable, and justifications if it deviates from the recommendation [Art. 28(2b)].

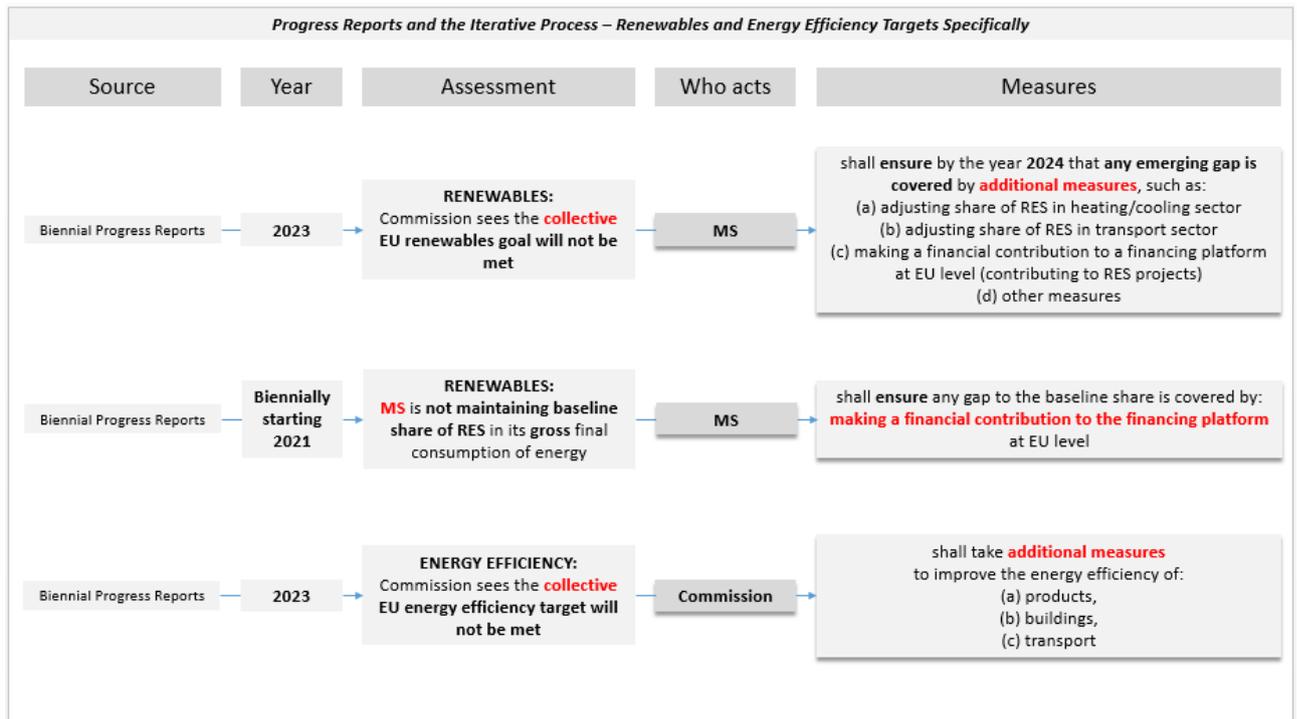
C) Specific Measures Related to Renewables and Energy Efficiency

For *renewables*, it is important to note that the proposed directive on the promotion of the use of energy from renewable sources (European Commission, 2016h) – another element of the Winter Package, which recasts Directive 2009/28/EC (European Parliament & Council of the European Union, 2009b) – sets a clear baseline for the member states' 2030 renewables target. The proposed article 3(3) establishes the member states' (then-nationally binding) 2020 renewables targets as a

baseline. In other words, member states *cannot go below* their national 2020 targets from 2021 onwards.

For both the renewables and efficiency target, there is clearly a special focus in monitoring (described in Annex 1). In addition, in the year 2023-2024 (the same year in which member states can submit an update to their NECPs if they aim to increase their ambition), a number of specific measures are foreseen for renewables and energy efficiency. These are represented graphically below:

Figure 6 The Commission’s specific toolbox for the renewables and energy efficiency targets(detailed)



The procedures are the following:

- If, in the year 2023 and based on the biennial progress reports, the Commission assesses that the collective EU renewables target is likely not to be met, the member states shall ensure by the year 2024 that any emerging gap is covered by additional measures, such as: adjusting the share of renewables in the sectors of (a) heating and cooling and (b) transport, (c) making a financial contribution (for which member states may use their revenues from annual emission allowances) to a financing platform set up at Union level, contributing to renewable energy projects and managed directly or indirectly by the Commission, or (d) other measures. [Art. 27(4)]
- If, in the year 2023 and based on the biennial progress reports, the Commission assesses that the collective EU energy efficiency target is likely not to be met, the Commission will take additional measures by the year 2024, to improve the energy efficiency of (a) products, (b) buildings or (c) transport. [Art. 27(5)]
- In addition, and starting in 2021, if the Commission finds based on the biennial progress reports that a member state is not maintaining its baseline share of renewables³⁸ in its gross final consumption of energy, that member state shall ensure any gap is covered by making a financial

³⁸ i.e., the share described in its 2020 target, see above.

contribution to the financing platform mentioned above. Again, it can use its revenues from annual emissions allowances to do so. [Art. 27(4)]

Author contacts:

Esade, Center for Global Economy and Geopolitics
Calle Mateo Inurria, 25-27, 28036
Madrid

Email: Marie.Vandendriessche@esade.edu

Angel Saz-Carranza

Esade, Center for Global Economy and Geopolitics
Calle Mateo Inurria, 25-27, 28036
Madrid

Email: angel.saz@esade.edu

Jean-Michel Glachant

Florence School of Regulation
RSCAS, European University Institute
Casale, Via Boccaccio, 121
I-50133 Florence
Italy

Email: Jean-Michel.Glachant@eui.eu