



*European Economic and Social Committee*

**TEN/617**  
**Energy Union Governance**

## **OPINION**

European Economic and Social Committee

**Proposal for a regulation of the European Parliament and of the Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013**  
[COM(2016) 759 final - 2016/0375/(COD)]

Rapporteur: **Brian CURTIS**

Consultation	European Parliament, 16/01/2017 Council of the European Union, 20/01/2017
Legal basis	Articles 191, 192 and 194 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	11/04/2017
Adopted at plenary	26/04/2017
Plenary session No	525
Outcome of vote (for/against/abstentions)	103/0/1

## 1. **Conclusions and recommendations**

- 1.1 The Governance Regulation is intended to provide not only the entire framework through which the numerous aspects of the Energy Union will operate but also to set out clear reporting responsibilities and a process for achieving all the climate and energy targets of the EU for the foreseeable future. It is a complex, far-reaching and vitally important piece of legislation.
- 1.2 Without a strong governance process it is no exaggeration to say that the Energy Union will fall apart and the chances of the EU meeting its own commitments and those under the Paris Agreement will be greatly reduced. Essential to the success of this process is the involvement and engagement of civil society, the cooperation and support of Member States and the agreement and commitment of the social partners. In particular it must be clear that the Regulation facilitates a just energy transition, especially in terms of jobs and the costs of energy for households and business.
- 1.3 The EESC supports the proposed Governance Regulation. It elaborates a framework enabling Member States to make the least-cost choices for their own national energy and climate plans and mitigates the risks of stranded infrastructure assets. However, this is unlikely to happen unless changes are made to the Regulation. Associated supporting measures must be provided which will enable the building of social consensus at national, regional and local level concerning how best to address the socio-economic and technical implications of achieving a just energy transition.
- 1.4 Energy solidarity and security is vitally important and although it is one of the five main reporting and assessment areas in the regulation, particular attention needs to be paid to establishing a clear and shared energy diplomacy and policy towards third countries.
- 1.5 Unless the proposed Governance Regulation is strengthened the whole Energy Union concept is under threat by weakening the legitimacy of the EU's mandate to lead the energy transition. There is also a grave risk that unless tangible measures are taken to engage citizens and require accountability the perception of the EU as a remote and technocratic entity will be compounded.
- 1.6 Further terms should be clarified in the "Definitions" article of the Regulation, including: "objectives", "targets", "national contribution", "consultation", "energy poverty" and "regional".
- 1.7 The Regulation should clearly state that it is looking beyond 2030 and include the explicit EU commitment to its 2050 GHG target and ideally to its new international commitment to net-zero GHG emissions by 2050.
- 1.8 The Annex to the Regulation should contain indicative 2030 reference values (Commission best estimates) for Member States' national contributions on renewable energy and energy efficiency.
- 1.9 The Regulation should require Member States to enshrine their agreed 2030 contributions in national law.

- 1.10 The Regulation should clearly state that it is the responsibility of individual Member States to contribute to the overall EU targets in a way that is both adequate and proportional.
- 1.11 It should be emphasised that data provided by Member States must be relevant to the reporting period and up-to-date and that adequate resources and support systems are in place to ensure this is the case.
- 1.12 The national plans for 2030 should be developed based on insights and guidance from the long-term strategies in order to yield the most benefits (for instance, short-term choices would be more cost-efficient if they were made in line with the long-term strategy).
- 1.13 The Regulation should include a "ratchet" provision as a mechanism to contribute to the Paris Agreement aspirational goal of not exceeding 1.5°C warming above pre-industrial levels.
- 1.14 A "reference definition" for energy poverty should be contained in the Annex to enable comparable and consistent analysis of data.
- 1.15 The Regulation should make it clear that it is mandatory for Member States to publish draft NECPs at the earliest possible stage and that all subsequent iterations of the evolving plan, including comments and responses from the Commission, regional partners and Member States, will be in the public domain.
- 1.16 Greater detail should be provided on the assessment of compensating financial contributions and the nature of the "financial platform" and whether this can be used to leverage additional finance. The scope of application of funds should be widened to include energy efficiency measures.
- 1.17 The definition of "regional" cooperation should not be confined to geographic proximity but include groupings of states with complementary energy resources, including non-Member States.
- 1.18 The Annex should contain specific provisions concerning the nature, extent and resourcing of public consultation to ensure consistent and informed citizen awareness and engagement across the EU.
- 1.19 The formation of a dedicated European Energy Information Unit within the EEA should be considered.
- 1.20 A "Brexit" scenario alongside the "28" scenario should be developed and both scenarios discussed in parallel as national contributions are assessed.

## 2. **Introduction**

- 2.1 Europe currently faces many challenges; whether political, economic, or technical they affect the individual citizen and consequently shape the nature, and the future, of our democracy. For many years energy has been an arena in which powerful political, technical and economic forces

have been at work. The Energy Union, with its vision for the future and cohesive strategy, is the EU's main vehicle to ensure that Europe's energy is secure, affordable and climate-friendly.

- 2.2 Effective governance of the Energy Union is not only about building consumer and investor confidence so maximum benefit can be delivered at the lowest cost – it is critical in demonstrating the Union's commitment to implementing the Paris Agreement and setting the EU on a path to exceed the 2050 energy and climate targets. Getting the Governance Regulation right therefore offers Europe a vital opportunity to demonstrate its value to citizens, Member States and the world. It is particularly vital as it transcends the divide between the Emissions Trading System and the Effort Sharing Regulation in terms of getting Member States to plan for whole economy decarbonisation.
- 2.3 In April 2015 the EESC adopted an exploratory Opinion requested by the European Commission on *The development of the governance system proposed in the context of the 2030 climate and energy framework*<sup>1</sup>. The intervening period has certainly seen the need for action on energy and climate become more urgent and the need to embrace a longer-term perspective on governance of the low carbon transition. This proposed Regulation now sets out the requirements for integrated National Energy and Climate Plans (NECPs) and a streamlined process to establish and oversee them. However, in the last two years citizen confidence in political and institutional leadership and political cohesiveness across the EU in general has weakened, making the challenge of governance simultaneously more necessary and more difficult.
- 2.4 In addition, the December 2015 Paris Agreement provided a global level accord signed jointly and severally by the EU and its Member States committing to Nationally Determined Contributions (NDCs), which can be regarded as coterminous with those in this Regulation. Furthermore, it agreed to pursue efforts to limit the global temperature increase to 1.5 °C above pre-industrial levels – an aspiration requiring long-term planning and demanding targets likely to be more ambitious than those so far agreed for 2050 by the EU.
- 2.5 In its 2015 Opinion the EESC anticipated these trends and took a pragmatic approach, seeing the necessity for deep and extensive citizen education, information and engagement as a precursor to any successful governance proposal. There are few signs that this has taken place. Governance – with its implications for binding requirements on national sovereign action – is a sensitive area, not least in energy where Member States' circumstances differ widely. In addition, any process needs to be complemented by non-legislative measures and action to guarantee success.
- 2.6 In 2001 the European Commission adopted a White Paper on governance<sup>2</sup>. It sets out five principles of good governance that are still valid (but not always implemented):

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<sup>1</sup> [OJ C 291, 4.9.2015, p. 8.](#)

<sup>2</sup> COM(2001) 428 final.

- Openness
- Participation
- Accountability
- Effectiveness
- Coherence

They reflect the principles and values the EESC supports but we would add a further principle of "just transition" in the context of the proposed Regulation.

- 2.7 The governance system must also allow for the on-going expression of views, preferences, perceptions and values to continuously inform decisions and fine-tune policy. Governance must be about ensuring robust and legitimate processes for decision making but also enabling those choices to be tailored to national circumstances and to adapt to unforeseen events over time. This does not mean frequent changes of direction. On the contrary it means the overall direction of travel is protected via the commitment to near and long-term targets consistent with climate science and a stable process for decision making concerning how to deliver those targets – in effect, more consistency and inclusive dynamics.

### 3. **Gist of the Commission's proposal**

- 3.1 The proposed Governance Regulation, which seeks to ensure that the policies and measures comprising the Energy Union are coherent, complementary and sufficiently ambitious, is based on two cohesive strands. The first seeks to streamline and better integrate the planning, reporting and monitoring obligations in NECPs and 2050 plan making and the subsequent progress reports, with a layer of integrated Commission monitoring at EU level; the second suggests a political governance process between the Commission and Member States on the establishment and implementation of national plans. If the proposal is agreed as outlined (a new legislative measure and revisions of existing secondary legislation) it would represent a new cooperation mechanism between Member States and the Commission.
- 3.2 In total, the proposed Regulation offers a legislative foundation in which more than 50 existing individual planning, reporting and monitoring obligations of the energy and climate acquis are integrated (31) or repealed (23). It applies to five dimensions of the Energy Union: energy solidarity and security, energy market, energy efficiency, decarbonisation and research, innovation and competitiveness. It defines in some detail the content of the integrated NECPs which, from January 2019 and every ten years thereafter, are required from each Member State covering these five dimensions. Public consultation and regional cooperation are required, together with a five-yearly update of the first, and subsequent plans. The key outcomes are national contributions in renewable energy and energy efficiency and the production of 2050 plans for economic decarbonisation.
- 3.3 Provision is made for the Commission to assess the plans, their updates and consequent action by Member States following recommendations by the Commission. A detailed biennial reporting structure to be observed by Member States is set out with detailed requirements on greenhouse gas policies, measures and projections, national adaptation actions, financial and technology support provided to developing countries, auctioning revenue, renewable energy,

energy efficiency, energy security, the internal energy market and research, innovation and competitiveness. An "e-reporting platform" for these reports is proposed.

- 3.4 The Regulation contains detailed clauses on assessment, follow-up and a recommendation and response mechanism where it is deemed there is insufficient ambition or progress. The provision of an extensive, mandatory framework for NECPs helps to ensure comparability and consistency. There is a requirement for a Member State to make a financial contribution to a financial platform covering any shortfall on agreed renewable energy baseline targets. The annual State of the Energy Union report shall contain comprehensive reports on these areas. The European Environment Agency is given a specific and far-reaching role in assisting the Commission.
- 3.5 The Regulation is complementary to and consistent with the European Semester, and where energy and climate specific policy issues are relevant for macroeconomic or structural reforms, they can still be addressed by the country specific recommendations in the European Semester process.

#### 4. **General and specific comments**

##### 4.1 Objectives, Targets and Contributions

- 4.1.1 The Governance Regulation provides a detailed framework for NECPs and a subsequent reporting, assessment and adjustment process. It revolves around setting objectives, monitoring targets and achieving contributions. However, explanations of these terms are not to be found in Article 2 – Definitions, an omission which should be remedied.
- 4.1.2 The EESC supports and endorses the detailed frameworks provided in Annex 1 for the mandatory NECP. These replace separate plans for energy efficiency and renewables. Particularly vital is the obligation for each Member State to set national contributions in these areas, which, when aggregated should achieve, at a minimum, the overall targets agreed at EU level.
- 4.1.3 The EESC in its previous Opinions has firmly and consistently argued for binding national targets.<sup>3</sup> It has done this because of the many failures in past energy policies due to weak implementation. If rigorously applied, adjusted and enforced the NECP contributions could achieve an equivalent outcome to binding targets. However, for this to become a reality a number of weaknesses in the present proposal need to be dealt with.
- 4.1.4 The baseline for national contributions on energy efficiency and renewable energy is the agreed commitments already indicated by Member States to be achieved by 2020. However, the Regulation would be strengthened if it included indicative 2030 reference values for Member States' contributions. These will have to be determined in any event as a basis for the adjustment dialogue and will speed up the iterative process which is envisaged if tabled and made public at an early stage.

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<sup>3</sup> [OJ C 424, 26.11.2014, p. 39](#) and [OJ C 75, 10.3.2017, p. 103](#).

4.1.5 Some countries have established their 2020 energy targets in national law. The EESC believes that the Regulation should require Member States to enshrine their agreed 2030 contributions in national law to give weight to the targets through a legislative imperative. However, experience shows that even legal obligations cannot necessarily guarantee delivery which is why we emphasise the importance of good governance as a stable process to ensure progress and later in this Opinion we particularly emphasise the importance of much stronger provisions to enable and guarantee stakeholder engagement in governance.

4.1.6 To further strengthen the importance of national "contributions" the Regulation, for both energy efficiency and renewables, should clarify that it is the responsibility of individual Member States to contribute to the overall EU targets in a way that is adequate and proportional. At present this obligation is a collective responsibility.

## 4.2 Reporting Process

4.2.1 The EESC welcomes the reporting process required from Member States and the analytical/critical role on such reports given to the Commission in conjunction with the European Environment Agency. Accurate, firm and fearless analysis will be essential if the consequent recommendations and opinions of the Commission are to have effect. It is also essential that data must be relevant to the reporting period and up-to-date as highlighted in the EESC's Opinion on the State of the Energy Union 2015.<sup>4</sup>

4.2.2 Although the data required from the reporting process is aligned with that needed under the Paris Agreement on climate change the NECP updates happen prior to the completion of the five-yearly global stocktake of the Paris Agreement which would significantly delay response to any upgrade in the EU Nationally Determined Contribution. This is an unacceptable undermining of aligned governance given the EU has now signed the Paris Agreement. The opportunity should be taken to ensure appropriate sequencing of the UN and EU NDC reviews.

4.2.3 Associated with this the Regulation should include a "ratchet" provision as a mechanism to contribute to the aspirational goal of 1.5°C warming above pre-industrial levels. This could be via a process of adopting carbon budgets in 5-10 stages in which the EU commits to getting to net-zero GHG emissions by 2050.

4.2.4 The Regulation requires the NECP to contain, *inter alia*, an impact assessment on social issues and specifically national objectives on energy poverty and an action programme. The EESC has been particularly concerned with this issue and welcomes this inclusion. However, NECPs are free to determine their own definition of energy poverty which will make comparison of data across Member States impossible, thus undermining the EU's chances of making a just transition and the likelihood of public opposition to the transition itself. Therefore, we recommend that the Regulation should include a simple reference definition. This would not be binding for Member States to adopt for internal purposes but would establish a criterion against which NECPs would be required to report. An example of such a definition would be "energy

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[OJ C 264, 20.7.2016, p. 117.](#)



poverty exists when a household spends more than 10% of disposable income on energy for heating and cooling to an adequate level." Such a definition has enabled some countries to assess progress – or otherwise – in tackling energy poverty but the multi-factorial nature of the problem may require a definition including other elements.

#### 4.3 Transparency, accountability and enforcement

4.3.1 The Committee notes that much previous energy-related legislation has suffered from delay or inaccuracy in transposition and enforcement. Member States must therefore make a maximum effort, in a spirit of solidarity and commitment, to apply political will, and administrative resources to the effective implementation of the Regulation. There is an exceptionally demanding timetable. Draft NECPs – which have previously been subject to an effective consultation process and regional dialogue, need to be given to the Commission on 1 January 2018. This implies that NECPs and the associated dialogues with stakeholders and regional partners are already under development. The EESC appreciates that the demands of a new framework and targets for the 2020-2030 period are driving this process but is concerned that without essential citizen understanding and engagement, the legitimacy of EU energy policy may be undermined, particularly amongst consumers facing rising energy costs.

4.3.2 The envisaged governance process contains little in the way of overt sanction for under ambition or non-compliance. Transparency and accountability are essential if stakeholders, particularly the citizens, are to exercise influence. The EESC therefore suggests that an independent stakeholder body is established to ensure effective stakeholder representation and consultation in each Member State and that such a body publishes its own annual report on the governance process and accompanying dialogue. (See 4.6)

4.3.3 Transparency is mentioned frequently in the Regulation but the EESC is concerned that it is not made clear whether early publication and public access to each stage of the development of the NECP is mandatory. Reference is made in the preamble – but not in the Articles of the Regulation – to the Aarhus Convention but the Committee regards this as inadequate. The Regulation should make it clear that it is mandatory for Member States to publish draft NECPs at the earliest possible stage and that all subsequent iterations of the evolving plan, including comments and responses from the Commission, regional partners and Member States, will be in the public domain.

4.3.4 Given the vital role of the transition to renewable energy greater clarity is required on the nature and functioning of the "financing platform" (Article 27) and how a financial value will be put on any shortfall in the provision of renewable energy. For example, is it envisaged that such a platform will leverage private sector money based on Member States "contributions"? It is suggested that resources accumulated in such a platform could be applied to energy efficiency measures as well as the provision of renewable energy.

4.3.5 There remains some uncertainty as to how the recommendations from the Commission, subsequent to the annual reporting process, will be enforced if not promptly acted on by Member States. If this will be through the usual infringement procedure then surely this will be far too slow to be effective within the timeframe?

- 4.4 We fully support the provisions for mandatory regional cooperation between Member States in improving the effectiveness and efficiency of measures and in fostering market integration and energy security. However we suggest that the term "regional" needs to be covered in Article 2, Definitions, to enable the Commission to suggest and enforce engagement where it is not taking place. At present there is the possibility that "regional" is understood as intra-state rather than inter-state or that a "region" is defined geographically as opposed to a grouping of states with complementary energy resources.
- 4.5 In particular we are extremely disappointed to note that Article 10 on Public Consultation is non-specific and inadequate and falls far short of the EESC proposal for a far-reaching European Energy Dialogue (EED) – something that would reach citizens/consumer directly and consistently and offer grassroots education and engagement in what, in many Member States will be a difficult package to sell. Such a dialogue is too important to be dealt with, if at all, under the heading of "non-legislative measures" and should be given substance through an additional clause to Article 10. This article also fails to meet the standards of the Strategic Environmental Assessment Directive which sets the standards for transparent and participative environmental governance of which energy and climate planning are a critical part.
- 4.6 Therefore, we reiterate that it is the view of the EESC that the governance process as set out in this Regulation will not be capable of delivering NDCs without the involvement and support of civil society across Europe. To win the trust and engagement of citizens such a dialogue should be independent of government and the NECP process. It should offer a focus for informing consumers, help energy suppliers to engage and build trust and provide a channel for the many concerns of different groups about energy security, affordability and sustainability. The EESC has stated its willingness to play a part in this process which it has termed the EED by arranging and participating in some aspects of organised national consultations. However, the scope of such a dialogue needs to draw on wider resources and extensive national commitment. In summary, the following steps would be necessary:
- A mechanism will be put in place for establishing an independent and non-biased funding pool drawn primarily from stakeholders throughout the energy production and supply chain, supplemented by appropriate EU and MS government support. Overall the EED will be a highly cost effective way of engaging consumers of all types in energy modulation and recognising and stimulating the contribution of prosumers.
  - In parallel with the guidance on the structure of the national plans, the EED, in consultation with the Commission and all key stakeholders, will develop guidelines on establishing national energy dialogues.
  - A fully independent coordinating EED structure will be established to encourage action and implementation in each MS. This structure should contribute, inter alia, to the necessary review by the Commission of the content and ambition of national plans as well as their implementation. This will emphasise the contribution that stakeholders can make to policy formation and fulfil the requirement for effective consultation contained in the Regulation.

- National plan debate and regional discussions with neighbouring national EED groups will take place. EU level discussions between all energy dialogue groups will follow. These discussions, channelled through the independent coordinating structure, should have advisory status with EU institutions and enhance the cost-effectiveness of the policies of the EU and MS.
- 4.7 The EESC suggests that a dedicated European Energy Information Unit is established within the EEA to take responsibility for the data assembly and evaluation processes involved with the governance regulation. It should work in close conjunction with the proposed Energy Poverty Observatory and provide information services to the European Energy Dialogue at national level.
- 4.8 Energy security is one of the five main reporting and assessment areas in the Regulation and this area, in particular, will require extensive regional dialogue. The Committee has already noted that the EU needs clear and shared energy diplomacy and policy towards third countries<sup>5</sup>. Energy security and solidarity is indicated by the Commission as the first pillar of a common Energy Union, but without strong agreements and partnerships with the major world players and without a common energy policy no such result can be achieved.
- 4.9 The EESC is concerned about the impact of Brexit on the governance process. Firstly, the process envisaged by the Regulation currently assumes UK membership and NDCs will be assessed on this basis. Final NECPs will be determined before the UK formally leaves the EU but at this point major adjustments may need to take place to allow for the withdrawal of the UK's NDCs from the overall EU contribution. We suggest that the Commission develops a Brexit scenario alongside the "28" scenario and that both scenarios are discussed in parallel. Secondly, the withdrawal of the UK could have a major impact on the political balance and diplomatic strategy relevant to each of the five categories of the Regulation's scope – in particular to energy security.

Brussels, 26 April 2017

George DASSIS  
The president of the European Economic and Social Committee

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<sup>5</sup> [OJ C 264, 20.7.2016, p. 117.](#)