



# CAN EUROPE POSITION ON THE REGULATION ON THE GOVERNANCE OF THE ENERGY UNION

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*Climate Action Network (CAN) Europe is Europe's largest coalition working on climate and energy issues. With over 130 member organisations in more than 30 European countries - representing over 44 million citizens - CAN Europe works to prevent dangerous climate change and promote sustainable climate and energy policy in Europe.*

## INTRODUCTION

The European Commission's legislative proposals included in the 'Clean Energy for All' package published end November 2016 are as a whole **not consistent with the Paris Agreement**, which requires an immediate overhaul of EU climate and energy policies.

The October 2014<sup>1</sup> and March 2015<sup>2</sup> European Councils clearly called for a 'reliable and transparent' governance system ensuring the achievement of the 2030 climate and energy targets. The Commission proposal for a Regulation on the Governance of the Energy Union contains some positive elements. But in the absence of binding national targets for energy efficiency and renewable energy, the Commission proposal **does not provide incentives for Members States to make appropriately ambitious pledges regarding their national contributions on renewable energy and energy efficiency. It also does not convincingly define what happens if the national contributions do not add up to the EU targets.**

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<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/145397.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf).

<sup>2</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/03/20-conclusions-european-council/>.

In summary, CAN Europe calls on the European Parliament and Council to improve the proposed legislation by taking into account the following key political demands:

- Strengthen the provisions on setting and assessing the national contributions for renewable energy and energy efficiency to ensure that the EU targets will be met
- Maintain the requirement for Member States to include in their NECPs *linear* trajectories between 2021-2030 for the renewable energy and energy efficiency national contributions
- Require that these linear trajectories are to be used by the Commission to check whether Member States and the EU as a whole are on track, both for the renewable energy and the energy efficiency targets
- Maintain the provision that Member States shall only modify their targets, objectives and contributions upwards, to reflect an increased ambition
- Integrate the long-term strategies *within* the NECPs, rather than having those strategies as an ‘*add-on*’ document
- Use the 2050 milestone – i.e. the timeline foreseen for countries’ mid-century strategies as agreed in Paris in 2015 - as horizon for the long-term strategies developed as part of the governance regulation
- Improve the binding template for the national energy and climate plans (NECPs) by including policies and measures related to a smart retirement process of polluting power production sources, policies and measures to phase-out fuel fossil-fuel subsidies, and a clearer references to 2050 climate targets
- Add a binding *reporting* template and key ex-post reporting indicators in the Annexes of the Regulation proposal
- Include provisions to adjust the EU's 2030 policy framework as a result of the UNFCCC's facilitative dialogue in 2018 and following the submission of the EU's revised Nationally Determined Contribution (NDC) under the Paris Agreement, to ensure that targets and measures reflect the progression contained in the revised NDC

## KEY POLITICAL DEMANDS

### 1. National Energy and Climate Plans

The governance mechanism will be based on integrated national energy and climate plans (NECPs) that need to be developed by Member States and cover ten-year periods starting from 2021 to 2030, corresponding progress reports by the Member States and monitoring by the European Commission.

Annex I to the proposal for a Regulation on the Governance of the Energy Union includes a detailed template for the NECPs. **CAN Europe fully supports the fact that this template for preparing the NECPs is binding**, which is essential for comparability.

We believe that **the template for the NECPs has to be further improved** to include at the very least the following three elements that would greatly enhance the environmental integrity and transparency of the plans:

- **Policies and measures related to a smart retirement process of polluting power production sources**, in order to avoid fossil fuel dependency and to provide space for renewable energy (in particular in power markets with over-capacity);
- **Policies and measures to phase-out fuel fossil-fuel subsidies**;
- **Clearer references to Paris-compatible 2050 climate targets**, which would namely reduce the risk of stranded assets.

#### Positive elements included in the Commission proposal

Article 11 foresees that MS shall, well before submitting their draft integrated NECPs to the Commission, consult neighboring Member States and other Member States expressing an interest, which CAN Europe views as positive.

The NECPs proposal also requires Member States to report on financing measures taken at national level in various areas such as energy and connectivity, including EU support and the use of EU funds. This provision is crucial to align investment needs of specific targets with financing commitments, also when it comes to the external dimension of the Energy Union. The targeted use of EU funds to deliver on these targets will thus increase the European added value of EU financial support on national level.

#### **Binding templates for reporting are necessary**

The current Renewable Energy and Energy Efficiency Directives and the experience of long-term strategies under the Monitoring Mechanism Regulation (MMR) showed the importance of providing a detailed template for *both* planning and reporting on national efforts. The standardised reporting facilitated the monitoring of Member State actions and increased transparency for investors.

Unfortunately, there is no binding template included for the reporting and monitoring (the Commission will later develop a reporting template through implementing acts and with the help of an 'Energy Union Committee' (article 37)). CAN Europe believes that such **a binding reporting template is best included in the Annexes of the governance Regulation. Key ex-post reporting indicators also have to be made explicit and included in the Annexes.**

#### **Stronger language needed to safeguard that climate and energy targets are reached**

According to article 3 of the Regulation proposal, Member States have to submit their draft NECPs by 1 January 2018 and their final NECPs by 1 January 2019, and every 10 years thereafter. Article 13 foresees that draft updated plans and final updated plans have to be submitted by 2023 and 2024, respectively, and every 10 years thereafter.

CAN Europe welcomes the fact that **Member States shall only be allowed modify their targets, objectives and contributions upwards, to reflect an increased ambition** (article 13(3)).

CAN Europe also welcomes the Commission's involvement in the preparation of the plans at an early stage. But **the proposed soft "iterative process"** for preparing the NECPs foreseen by article 9 (the Commission 'may issue' recommendations on the draft plans and Member States 'shall take utmost account' of these to finalise their plans) **is rather weak and does not ensure that Member States improve their plans, in case it is necessary.**

The fact that Member States have to justify why they have not taken into account the Commission's recommendations in their final NECPs is positive. **But this provision should be made stronger to ensure that Member States act on these recommendations.** CAN Europe argues that the Commission has to be given an explicit mandate to look into and comment on the technical part of the plans and the modeling used. Furthermore, Member states have to be required to include in their plans the assumptions used and ensure that the analysis regarding the development of their energy system is not only focusing on supply-side options, but equally takes into account energy efficiency solutions. Finally, the guidance provided by the Commission on the technical part of the plan has to be made mandatory for Member States to implement.

#### **Public participation should be streamlined**

**The approach taken in article 10 on public consultation leaves considerable legal uncertainty** and entails a very real risk of highly divergent approaches on public participation emerging between Member States in the making and reviewing of NECPs. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment – including the minimum time requirements for public participation/consultation included therein – **has to apply by default** (the Commission proposal more or less lets governments decide whether Directive 2001/42/EC applies or not).

#### **NECPs must not conflict with wider EU objectives to protect the environment**

Throughout articles 3 to 13, there is a concerning lack of sufficient consideration for how NECPs align with wider EU objectives, particularly with commitments to protect habitats and species, and halt biodiversity loss. It would be unfortunate if energy legislation worked against environmental legislation. Coherence between

the NECPs and the Nature Directives via the use of strategic spatial mapping to inform NECPs would help to avoid this.

### **The European Parliament should be involved**

Finally, the European Parliament should have a role in the process. This role should be more than just a consultation when the NECPs and the recommendations will be made publicly available. **The European Parliament should have a clear role regarding the fulfillment of the overall targets and corrective action if the EU as a whole is not on track.**

## **2. Gap-avoider**

The 'gap-avoider' issue relates to what happens if Member States' contributions do not add up the overall EU target when they submit their NECPs.

Article 4 foresees that NECPs shall include the Members States' 'contributions' to the overall EU-level energy efficiency and renewable energy targets. **CAN Europe argues that only strong and binding targets, underpinned by binding policies and measures ensure commitment and accountability.**

The current provisions on setting and assessing the national contributions for renewable energy and energy efficiency are not sufficient to guarantee that MS will do their share to deliver the EU targets. **The Regulation must ensure that appropriate national targets for Member States are set and included in the NECPs.**

For renewable energy, the provisions to avoid a gap right from the start (article 5) are very weak, with the Commission basically placing all responsibility on Member States: *'Member States shall collectively ensure that the sum of their contributions add up to at least 27% from renewable energy sources in gross final energy consumption at Union level by 2030'*. This provision formulates a collective duty, but remains silent on individual obligations of Member States. To enhance Member State accountability, **the Regulation has to establish an individual obligation for Member States to contribute to the EU target in an adequate, proportionate and fair manner.** A basis for setting the level of those Member States targets can be found in table 14, page 172 of the Impact Assessment accompanying the proposal for a revised Renewable Energy Directive (RED). Member States should only be allowed to include in their NECPs a contribution to the overall renewable energy target that is **at least equal to their fair share provided in the aforementioned table.** To further strengthen the contributions of Member States, the Regulation has to require Member States to enshrine these contributions in national law.

For energy efficiency, the Commission proposal only requires Member States to set national indicative contributions for 2030. **CAN Europe believes that as for renewable energy, binding national energy efficiency targets should be set right from the start.** At the very least, a safeguard that allows binding national targets to be introduced at a later stage should be included in the proposal for a Regulation on the Governance of the Energy Union.

At the same time, CAN Europe welcomes the fact that the Regulation proposal contains a requirement for Member States to include **linear trajectories between 2021-2030 in their NECPs for the renewable energy and energy efficiency national contributions.** CAN Europe further welcomes the fact that, as far as renewable energy is concerned, trajectories per sector and by renewable energy technology have to be included (article 4(a)(2)).

However, if Member States' contributions do not add up to the EU-level target, the proposed Regulation only provides that the Commission *"shall take measures at Union level in order to ensure the collective achievement of those objectives and targets"* to avoid the gap. In addition to the rather vague and uncertain timing of when such measures should be taken, one crucial question relates to what these additional measures would be. **Providing clarity regarding what specific measures the Commission would have to take is necessary. A clear deadline should also be included in article 27(1), for when the Commission has to publicly present its assessment.**

Overall, the Regulation proposal should deal in a coherent manner with setting of targets, planning and reporting of measures, monitoring of compliance and corrective action if there is not sufficient progress to achieve the targets.

### 3. Gap-filler

The 'gap-filler' issue relates to what happens if the assessment of the implementation of the NECPs shows that progress is not enough to achieve the overall EU targets.

Regarding the assessment of whether Member States are on track to achieve the EU targets, **CAN Europe calls for more specific language that requires the Commission to use the linear trajectories up to 2030 that Member States have included in their NECPs for their national contributions to check whether MS and the EU as a whole are on track. This should apply for both the renewable energy and the energy efficiency targets.**

Article 27(2) indicates that if the Commission concludes that insufficient progress is made by a Member State towards meeting the targets, objectives and contributions or towards implementing planned policies and measures, it shall issue '*recommendations*' to the Member State concerned. Again, the language is rather weak and does not suggest a regime with any real teeth.

Article 27(3) details Commission action to be taken if its assessment shows that the Union's overall energy and climate targets are 'at risk' of not being met. The term '*at risk*' is vague, making the timing of Commission intervention unclear. If progress is insufficient, the proposal suggests that the Commission '*may issue recommendations*' to all Member States and '*shall, as appropriate*' take measures at Union level in addition to these recommendations. Article 28 goes on to say that the Commission '*shall as appropriate issue recommendations*' to Member States to ensure the achievement of the objectives of the Energy Union. Again, the Member State concerned '*shall take utmost account*' of the recommendation. The term '*utmost account*' seems to signal that the recommendations will have significant influence, but the wording does not remedy the underlying reality that recommendations are by definition non-binding. As in the case of the recommendations for the planning phase, the proposal does not spell out what happens if a Member State does not comply with the Commission's recommendations. Hence, **the wording has to be made much stronger throughout article 27.**

**CAN Europe fully supports the fact that the existing 2020 national renewable energy targets should be seen as a minimum 'baseline', below which Member States cannot go from 2021 onwards** (article 3(3) of the proposal for a revised RED). To make this provision meaningful in the case that Member States do not maintain this baseline share, the option for Member States to make a financial contribution to a fund managed by the Commission to cover the gap (article 27(4) of the proposed governance Regulation), should be amended to become a real incentive to comply and a way to sanction underperforming MS.

Finally, in several instances, the proposed Regulation explicitly establishes different language for renewable energy and efficiency. **As both targets are binding at EU level, more coherence mainly regarding checking progress towards achieving the targets will help ensure that the Union level objectives are not put at risk.**

### 4. Long-term perspective

Article 14 foresees that Member States shall prepare and report to the Commission by 1 January 2020 and every 10 years thereafter their long-term strategies with a 50-year perspective. CAN Europe believes that **a long-term perspective, including investment plans, is indeed vital to unlock investments needed in all sectors to ensure that the 2030 targets are met and increase the likelihood of delivering the goals of the Paris Agreement.**

In the energy sector, for instance, it is crucial to ensure that elements with an extended life span, particularly electricity transmission and distribution infrastructure, are appropriately designed to allow increasing volumes of (variable) renewable energy in the system.

CAN Europe believes that **this strategy has to be built on appropriate projections of energy demand, which fully take into account the implementation of energy efficiency policies in the long term** and their effect regarding the sizing of infrastructure, especially for gas.

**A crucial point for CAN Europe is that the horizon foreseen in the Regulation proposal - 2070 - is far too distant a date and risks leading to very vague aspirational strategies which bear little relation to the nearer term.** Most analysis globally to date has been and is likely to remain focused on 2050, which is also the timeline foreseen for countries' mid-century long-term strategies as agreed in Paris in 2015. Member States are of course free to include a longer-term perspective, but the 2050 date should retain its current prominence as a major international milestone.

**For CAN Europe, such a long-term perspective should be part of the NECPs, and not an 'add-on' document produced afterwards.** Including a Paris-compatible longer term perspective in the NECPs, based on a revised EU roadmap, will help to put in place the 'enabling conditions' that allow for deeper structural changes in the economy and energy system that are needed to reach ambitious and fair climate objectives, in line with the goals of the Paris Agreement. Clearly, the level of policy detail in a Member State's plan will be much higher for the period up to 2030, but the point is to write the long term strategy and the shorter term plan together –so that the two are consistent and so that Member States avoid investing in things that become stranded assets. Some Member States already do their planning in this way and these good practices should be followed.

Integrating the long-term perspective into the NECPs would also resolve another problem, which is that **the Regulation proposal lacks guidance on the content of the long-term strategies and does not foresee a process for assessing them or for monitoring their implementation.** As it stands, the procedure will inevitably produce strategies of strongly varied quality, while the European Union's credibility in international negotiations depends heavily on its capacity to make a coherent contribution. Moreover, the obligation for the Commission to develop such a long-term strategy for the EU as a whole is missing.

**CAN Europe calls for these long-term strategies, as for NECPs, to be updated by 2023/2024 (and every 10 years thereafter), to make sure they are aligned with the timing foreseen by the Paris Agreement stocktakes.**

As for NECPs, CAN Europe calls for **public participation** in the long-term strategies to be ensured (the Commission proposal only states that MS shall make the plans and any updates publicly available).

As with the NECPs, which take a nearer-term focus, CAN Europe believes that **the long-term strategy must adequately take into account interlinkages with wider EU objectives concerning environmental protection,** to ensure an energy system of optimal sustainability is able to be identified and progressed.

**Last, but certainly not least, the Regulation proposal contains no real provision for 'ratcheting-up' of ambition, which would be instrumental to implement the progression requirements under the Paris Agreement.** For CAN Europe, it is of paramount importance that **revision provisions are introduced in all legislative files of the 2030 climate and energy framework.** The revision clauses has to foresee the need for adjusting the EU's 2030 policy framework as a result of the UNFCCC's facilitative dialogue in 2018 and following the submission of the EU's revised Nationally Determined Contribution (NDC) under the Paris Agreement, ensuring that the target(s) and measures reflect the progression contained in the revised NDC.

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