BRIEFING ASSESSMENT - Second compromise text on the proposed "Governance of the Energy Union"

If the Governance legislation is done right, the framework can significantly contribute to implementing the EU's fair share to achieve the long term objectives of the Paris Agreement. It can also help unlocking investor confidence and reduce transition costs while reducing the risks of stranded assets across the European economy.

On 21 September the Estonian presidency presented a second compromise text on the Commission's proposal for the Governance of the Energy Union. Improvements have been made to the climate-related parts, but these need to be further strengthened. At the same time, other parts **have unfortunately been substantially weakened** because of negative inputs from member states. These need to be urgently corrected for. This briefing assessment suggests how.

The draft compromise text on the bright side:

Reiterates that the title of the regulation should be "Governance of the Energy Union **and Climate Action**". This sends a good signal to Member States and all stakeholders that this regulation aims at governing the transition to a zero carbon economy as a whole.

Strengthens the language in Article 1 that the governance mechanism shall be based on national long-term low emission strategies in addition to the integrated national energy and climate plans (NECPs). This change is essential, as the Commission's proposal was giving disproportionate attention to short term planning compared to long term planning, which risk making efforts both harder and more costly over a longer period.

- **Article 1 should nonetheless be strengthened further by**: 1. Clarifying that this Regulation establishes a Governance mechanism to implement strategies and measures designed to meet the objectives and targets of the Energy Union *and the longer-term objectives of the Paris Agreement.* A Paris compatible long term target should also be included.

Changes the time frame in Article 14 for when long term strategies should be developed, from "with a 50 year perspective" to a "30 year perspective". This implies that long term strategies should be developed towards 2050, which brings the provision in line with the Paris Agreement requirements for long term planning. The new text further **strengthens the language in Article 14** on the need for the long term strategies and the NECPs to be consistent with each other.

- **Article 14 should nonetheless be strengthened further by**: 1. Exchanging the 2050 target of -80 to -95% (set before the Paris Agreement was struck) with a target compliant with EU's commitment to pursue efforts to limit temperature rise to 1.5°C; 2. Including further details on what the long term strategies should contain, preferably through the addition of a new binding Annex (similar to those suggested in the European Parliament).

Requires in Article 37 both an energy union committee and climate change committee to be overseeing the regulation. This underlines the importance of both the climate and energy parts of the governance proposal to be treated equally and is most welcomed.

- **Article 37 should nonetheless be strengthened further by**: Clarifying what the role the climate change committee would be in the future. Paragraph 2 refers to MMR and the monitoring mechanism under the Kyoto Protocol, but it should be clarified that at least ESR, ETS and LULUCF are still within the remit of the climate change committee.

Clarifies in Article 22 that objectives to phase out energy subsidies should prioritise *especially those with an adverse effect on climate policy*

- **The provision to phase out fossil fuel subsidies should nonetheless be strengthened further by**: anchoring the provision in Article 3 by adding "*a description of the policies, timelines and measures planned to phase out fossil fuel subsidies";* in Annex 1 (NECPs) by adding "*national objectives with regard to phasing out fossil fuel subsidies"* as well as Article 29 by adding *"progress towards phasing out fossil fuel subsidies".*

The draft compromise text on the down side:

Weakens the language in Article 3 to make the application less binding. **This is unacceptable**. The European Court of Auditors recently published a landscape review of the state of play of EU climate and energy policy and they concluded that the lack of a coherent and robust climate and energy system is the main challenge Europe is currently facing in implementing its policy obligations. A binding template for Annex 1 (NECPs) is absolutely key in addressing this issue as it is the only way to ensure comparability and ability to track progress. It is also crucial to ensure investor certainty.

- **Should be corrected for by:** re-introducing the original text to safeguard that Annex 1 remains binding.

Suggests that Member States only have to take "due account" of COM recommendations, instead of "utmost" account as originally proposed. The term 'utmost account' signals that the recommendations will have significant influence, but even this wording does not remedy the underlying reality that recommendations are by definition non-binding and brings uncertainty to all involved with regards to how Member States will have to act on recommendations. A further weakening of this language brings more uncertainty and in-transparency and creates an insecure investor climate. The weakening of the language in Article 9 (from recommendations "shall" address to "may") further dilutes the iterative process which is necessary for the functioning of the Governance system.

Weakens the provisions in Article 4 on how to ensure the 2030 targets will be collectively met, by changing "linear" trajectories to "indicative" and setting only one milestones in 2025 towards which the Commission will be able to check progress. This weakening gives the Commission next to no chance to suggest corrective measures if the EU target is at risk. Further, it opens up for Member States to get away with not contributing enough to the EU targets. This would create an unfair, unbalanced regulation which is unable to track if MS fulfil its obligations.

- **Should be corrected for by:** re-introduce linear trajectories and clarify that the Commission is required to use the linear trajectories to check whether MS and the EU as a whole are on track. As a second best option, include *binding biannual milestones* for the Commission to use to track progress.

Changes the date in Article 15 for the first progress report from 2021 to 2023. Having the first progress report in 2023 is much too late, as this would mean that between 2020 and 2023 member states would not report anything. It also means that the regulation would ask Member states for a draft update of their NECPs only a few months after their first proper progress report. The commission will thereby not be able to undertake a proper assessment of the progress reports beforehand. This is a lose-lose for the member states, which will not be able to seek support from the Commission for the update of their plans.

- **Should be corrected for by:** changing the year back to 2021 as originally proposed.

Waters down one of the key provisions in Article 27, which is the requirement for member states to pay into a financial platform should they not deliver enough towards the overall 2030 renewables target, by making this provision voluntary. Keeping the provision mandatory is key if it is to be real incentive to comply, and the member states should request the Commission to come up with more details.

- **Should be corrected for by:** requiring that contributing to a financial platform to be mandatory should member states fall below their 2020 target

The compromise text further:

Shifts the timeline for draft and final plans to 31 December 2018 and 2019 respectively. This should be seen as an opportunity to ensure that the NECPs and the long term strategies are developed together, namely by agreeing to *develop long term strategies by end 2019.*

Strengthens the language in Article 38 by emphasising the need to report on the 2030 target progress and the long-term objectives of the Paris Agreement. A useful addition, but with the report coming only in 2026 it is detached entirely from any process to review the 2030 target and enhance ambition under a revised NDC, to be submitted in 2020 and every five years thereafter. *A full review needs to take place the latest 6 months after each global stocktake, and need to take into account any increase of ambition enshrined in new EU NDCs.*

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