



The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016



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ABSTRACT

The new governance mechanisms of the European energy policy proposed by the European Commission in its "Winter Package" will redefine European energy and climate governance. This contribution reviews the proposal, its supporting documents and overall stakeholder positions according to the criteria of the efficiency, effectiveness and acceptance of governance to assess its ability to support European energy and climate goals. We find that the proposed governance amounts to a densely meshed coordination of policies between the European level and Member States. Compared to the present governance system, the enhanced mechanism can draw on significant synergies and reduce administrative costs. Our review of stakeholder positions reveals strong acceptance of enhanced coordination. Nonetheless, our review identifies some potential flaws in terms of governance effectiveness. The proposed structures surpass the method of open coordination; they could also be seen as a case of "harder" soft governance in conflict with article 194(2) TFEU. Finally, the local level is excluded.

1. Introduction

Over the past 10 years European energy policy has faced a confrontation between the Central and Eastern European (CEEC)¹ and the Northern and Western EU Member States, which has prevented the European Union (EU) from swiftly advancing its decarbonisation and CO₂ reduction strategy. On the one side, Member States such as Germany and Denmark lead a group of environmentally and climate friendly governments within the EU and have pushed for the Commission's decarbonisation strategy. On the other side, the Visegrád states (Poland, Slovakia, Czech Republic and Hungary) and Bulgaria in particular, as well as Romania, under the leadership of the Polish government opposed the new targets and insisted on national sovereignty over decisions on their national energy mix, a limited role for the EU and prioritising the goal of energy supply security (Fischer, 2014; Knodt, 2016, 2017 forthcoming).

After his election in 2014, the president of the European

Commission (hereinafter the EC or Commission), Jean-Claude Juncker, launched the idea of an Energy Union and made it one of its 10 Commission priorities for 2015–19. He gave a work order to Vice-Commissioner Maroš Šefčovič (responsible for the Energy Union) and Commissioner for Climate Action and Energy Miguel Arias Cañete to draft a framework for the Energy Union (Fischer and Geden, 2015).² Obviously, the Commission and Juncker are pushing the project to work towards broader mutual consent on all three aims – security of energy supply, sustainability and competitiveness – within the Energy Union and reduce the conflict between the two Member State blocks mentioned above. Already in February 2015, the Commission composed a communication called the "Energy Union Package. A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy" (EC, 2015). In the communication, the Commission presents its vision for a European energy system, which unites all three of the existing frames – being secure, sustainable, and competitive – while also producing affordable energy. The Commission

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¹ We use the term CEEC to identify the group of states that entered the EU during the eastern enlargement process of 2004–2013 (not including Malta and Cyprus, which do not belong to the group of post-communist countries). We are aware of the fact that this group shares the aim of energy security as its main aim in EU energy policy but is otherwise that a rather heterogeneous group (Mišik, 2015, 2016 and 2017).

² He drew on a concept, the then Polish Prime Minister and now president of the European Council, Donald Tusk, had launched to ensure energy security for his country. Tusk revisited an old idea of Jacques Delors and then-president of the European Parliament Jerzy Buzek from 2010, who pleaded unsuccessfully for a European Energy Community to integrate the Central and Eastern European member states into a system of common energy security. Nevertheless, the concept of Juncker (more akin to the Delors/Buzek idea) and the Tusk proposal for an Energy Union comprise totally different concepts (see Szulecki et al., 2016).

makes explicit that ‘achieving this goal will require a fundamental transformation of Europe's energy system’ (EC, 2015) away from the 28 different national regulatory frameworks towards one common European framework. The Commission's strategy contains 5 dimensions that were adopted by the European Council in March 2015: (1) energy security, solidarity and trust; (2) a fully integrated European energy market; (3) energy efficiency contributing to moderation of demand; (4) decarbonizing the economy; and (5) research, innovation and competitiveness (European Council, 2015; see e.g. Leal-Arcas/Alemanys Rios, 2015). According to article 194 TFEU of the Lisbon Treaty, the EU lacks specific energy competences with respect to the national policy mix. Nevertheless, the EC sought to bridge this gap with its most recent relevant legislation act, “Clean and Secure Energy for All Europeans” or the so-called “winter package” of November 2016, to work towards its goals of decarbonisation and the Europeanisation of climate and energy policy. The EU is attempting to overcome the dilemma that the European Council was able only to adopt EU-wide policy targets in the areas of renewable energies and energy efficiency that are not accompanied by binding national targets; this leaves the EC without the power to control the process. Thus, the package is designed to establish goals for the coming decades and find a governance mode to nevertheless push Member States in the direction of more ambitious and better-coordinated climate and energy policies.

As the winter package is relatively new, there is little related literature, which is limited to policy briefs or short comments (e.g., Fischer, 2017; Buchan and Keay, 2016). These works also focus attention on the governance aspects and details of the Energy Union. Thus, this literature focuses more on the procedural aspects of EU energy governance, as was the case in the first wave of work on the Energy Union, which focused much more on explaining the introduction of the Energy Union (Szulecki et al., 2016; Szulecki, 2016) and the concept itself (Szulecki et al., 2015). As the governance proposal focuses more on the decarbonisation aspects and less on the energy security part of the Energy Union, energy security considerations are not central to the present contribution (for the energy security aspects of the Energy Union see, e.g., Austvik, 2016; Ellenbeck et al., 2015; Siddi, 2016a, 2016b; Mišák, 2017). Furthermore, the consequences of the Energy Union for EU external energy policy (Andersen et al., 2017) are not addressed here. This contribution will shed light on the newest development of the Energy Union in analysing the draft for the regulation on the “Governance of the Energy Union” proposed by the Commission as part of its winter package and asks whether this proposal will be accepted by the actors involved, as well as economically efficient and provide effective governance.

Thus, we begin with an overview of the governance of the EU's energy policy in general with special emphasis on the soft mode of governance that is predominantly used in the energy policy of the EU (Section 2). After brief remarks on our methodology and an overview of our data (Section 3), we turn to the governance of the Energy Union (Section 4). To understand the Commission's current legislative proposals, we present the precursor governance models in energy and climate policies as the National Energy Efficiency Action Plans (NEEAPs) from 2006, the National Renewable Energy Action Plans (NREAPs) and their subsequent refinements as well as the “European Semester” (Section 4.1). The “winter package” is analysed in its formal structure with respect to the proposed governance mode in Section 4.2. We present the main instruments, the strategic energy and climate policy planning and short-term reporting by the Member States and the progress assessment and follow-up of the EC. Following our analysis, we then present a first tentative evaluation of the governance regulation in terms of our three criteria: (i) economic efficiency; (ii) governance effectiveness; and (iii) acceptance by the actors (Section 5). The contribution ends with a summary of the findings and some policy recommendations in Section 6.

2. Background: governance of European Union energy policy

The European Union is considered a “*sui generis*” organisation in terms of how it is governed. The term refers to the unique mix of different modes of governance referring to the broad categories of hierarchy, network and markets. Ultimately, governance can be described as comprising interactive arrangements, which rest on “horizontal forms of interaction between actors who have conflicting objectives, but who are sufficiently independent of each other so that neither can impose a solution on the other and yet sufficiently interdependent so that both would lose if no solution were found” (Schmitter, 2002). In those governance arrangements, different types of actors, non-state and supranational actors, cooperate. These forms of liberal governance arrangements have as their goal “solving societal problems or creating societal opportunities” (Kooiman, 2002; Müller et al., 2015). The range of governance modes reaches from supranational hierarchical governance, as in ordinary legislation that allows for the adoption of legally binding decisions, up to forms of soft governance that are intended to steer behaviour without legally binding action. The mode of governance is very much determined by the distribution of competences within a given policy field.

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

In addition, a distinctive feature of energy policy is its ‘nexus quality’: Energy as a policy field is an almost classical cross-cutting issue, standing in close connection to climate policies in particular but also to development cooperation, research and innovation policies, trade policies, and foreign and security policies (Müller et al., 2015). Thus, the governance of energy policy can also be carried out, e.g., referring to the competences of the EU in the policy field of climate change (referring to articles 191 and 192 TFEU). However, this nexus quality, as well as its consequences and challenges, had not previously been systematically taken into account in the context of energy policy.

A limited transfer of competences, the lack of competences for the policy mix and its cross-cutting nature let the EU apply different modes of governance in energy policy. While decisions are made according to the ordinary legislative process for issues such as the internal energy market, any decision having an effect on the national energy mix has to employ soft governance.

The most prominent example of a soft mode of governance is the Open Method of Coordination (OMC), which was introduced as a new mode of governance in 2000 within the Lisbon Strategy (European Council, 2000). It rests on the principles of voluntarism, participation and convergence and works with the mechanisms of iteration, standard setting and learning processes. It uses instruments such as benchmarking, peer-review and best practise. Thus, the OMC rests on a system of coordination through central goal setting and decentralised implementation responsibilities (Schmid and Kull, 2005). It varies from harder (e.g., the Stability and Growth Pact) to softer (e.g., education policy) open modes of coordination (Linsenmann and Meyer, 2002).

The OMC was criticised for not provoking profound learning, converging and integration effects (Hartlapp, 2009) but instead limited and selected learning (Linsenmann and Meyer, 2002). Generally, the

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