

# Energy Union: Delivery still pending

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# Energy Union: Delivery still pending

Electricity market design, renewable energies, energy efficiency – the EU Commission’s recent “Winter Package” touches upon some of the core themes of the envisioned “Energy Union”. Five aspects deserve closer attention.

By Severin Fischer

After more than two years of preparatory talk and analysis, one of the EU’s most important policy projects – the “Energy Union” – has been given clearer shape by the Commission. The long expected proposals for a reform to the governance of energy and climate policies between the EU and its member states, new rules for electricity market, renewable energies and energy efficiency complement what has been proposed so far on climate policy and security of natural gas supplies. Although impressive in size (13 legislative proposals and legal acts, 75 documents, more than 3,000 pages), the general approach of the package is rather evolutionary than revolutionary. The Commission’s cautious attempt is not only the result of member state governments’ struggles to find common ground on energy and climate issues, but also takes into account that harmonization of policies is a difficult theme in the present political environment ahead of many national elections in 2017. Although the overall theme of the package seems to be one of many small steps for improvement, five important aspects will likely be worth following more closely in the coming months.

## Governance: Filling the gap?

If there is one single real policy innovation to the EU’s energy and climate policy, it can be found in the proposal for a “Governance Regulation of the Energy Union”. If accepted by Council and Parliament, the governance regulation would, for the first time, organize the in-

teraction between national policies and the overall EU strategy. From 2021 onwards, a new governance mechanism would oblige member states to draft integrated energy and climate plans in which they describe their present and future action on a wide range of different themes, covering all topics of the “Energy Union”. These plans would then be consulted with neighboring states and finally checked by the Commission, which would be asked to give advice and recommendations. During this process, the Commission hopes to prevent the creation of gaps between EU level objectives and member state actions.

Although it might look like a promising way of dealing with the growing heterogeneity of national energy visions, this new system was certainly not the Commis-

## KEY POINTS

- The EU Commission has presented proposals on the most crucial design elements of the “Energy Union”
- The “Winter Package” offers a cautious approach to reforming the EU’s energy and climate policy, being more evolutionary than revolutionary
- In negotiations between European Parliament and national governments in the Council, questions of competencies and ambition will be essential
- Due to size and complexity, early agreement cannot be expected

sion's most favored option of dealing with diversity. It rather has to be seen as an inevitable way out of a dilemma: The existence of EU-wide policy targets in the areas of renewable energies and energy efficiency, agreed by the European Council, without corresponding binding national targets and the lack of control over the process driving the "Energy Union" on the side of the Commission in general. What is to be expected from this, is therefore rather less promising: In a very optimistic scenario, member states will follow the Commission's requests and modestly change their policies in accordance with the direction received from Brussels. In a more realistic scenario, however, member states will just see this as a formalized exercise and keep following what their domestic stakeholders and electorates are asking for, since sanctions or infringements are not foreseen. There have been comparably ineffective processes in the past in other policy fields, looking at the Maastricht convergence criteria or the open method of coordination in the EU's less successful social policy.

Despite this, two details of the proposal deserve special attention and will be critical in the negotiation process: The first is the obligation for member states to draft comprehensive "long-term low emissions strategies" for the next fifty years, covering national emissions pathways for all sectors, such as electricity, transport or industry. This could turn out to be a delicate task for member states, since governments would either be forced to admit inconsistencies between expectations for mitigation policies and their proposed action, or they would have to confront domestic sectors with tough messages on their future emission ceilings. Both scenarios have great conflict potential for national governments.

The second aspect that is likely to create resistance in some capitals is the balance of reporting duties among the five dimensions of the "Energy Union". While policy planning on renewable energies and energy efficiency is elaborated in great detail and even with some fulfilment obligation, comparatively little is said on energy security and the development of the natural gas market. Especially in Central and Eastern Europe, governments might ask for either more detail on energy solidarity or less detail on the decarbonization aspects in the governance proposal.

### **Renewable energies: Losing grip**

Although the general aim to increase the share of renewables in the EU's energy mix is constantly referred to as being a crucial element of the Commission's policy strategy in the context of the "Energy Union", the new proposal for a revised "Renewable Energies Directive" turns out to be quite the opposite: Weak on a general level, optimistic on details.

So far, the EU's renewable energies policy was dominated by a concept of binding national deployment targets that forced individual member state governments to take action. Due to growing resistance against this kind of overregulation, the concept of national targets was

scrapped by the European Council in 2014 already and substituted by an EU wide target of 27% by 2030. Its enforcement should be guaranteed in the iterative process of the governance regulation, described above.

When it comes to giving direction with regards to content and quality of national policy measures, the Commission has learned from the past: One important message is, that member states are not allowed to take retroactive policy measures on renewables support systems anymore. Cuts on support schemes in Spain and the Czech Republic have been prime examples on how to destroy investors' trust on a large scale. At the same time, the idea of creating a common rulebook on how to design renewable support policies has been deleted after internal Commission power struggles between the General Directorate for Energy and the General Directorate for Competition during the last week before the proposal deadline. As a consequence, general aspects to the design of support schemes will most likely not be part of the legislation, but rather be determined on a national scale and by the more market-oriented Commission state aid guidelines. Here, the Commission's competition authorities didn't want to give up their autonomous competency to ordinary legislation.

The most interesting exercise in the renewables legislation will be the proposed obligation to open renewables support schemes to cross-border participation. So far, only Germany and Denmark with a pilot project and Norway and Sweden with a joint support system have gathered experience here. Whether other member states will be ready to financially support auctions for projects in other countries is not clear. A whole set of implementation questions remain open in any case.

A completely new approach has been chosen on the side of the Commission to tackle the little progress made on introducing renewable energies in the heating and cooling sector. So far, this was a completely national domain. Beginning in 2021, governments would be asked to increase the share of renewables in this sector by 1% per year, having the free choice of policy instruments on how to implement it. This would imply massive policy change in a majority of member states and is therefore unlikely to happen. So far, only a few Scandinavian countries have seriously started to tackle this issue.

While enforcement of renewables support in the heating and cooling sector would constitute a new policy measure on EU level, the Commission is taking a risky bet on reducing oil addiction in the transport sector. In the existing legislation, a 10% minimum target for fuels from biomass or from green electricity applied for every member state by 2020. Instead of building on this achievement and putting more advanced biofuels and electric mobility on top of it, the Commission developed a complicated method of substituting shares of conventional biofuels with new fuels, giving no incentives to keep the progress as achieved by today. As a consequence, most member states will be happy to scrap their EU-induced past biofuels policy, how-

ever, not necessarily investing in new technologies at an early development stage. This could result in a disruptive policy change for the sector and a loss of renewables shares in total.

When comparing the Commission's new proposal for 2030 with the existing EU renewable energies policy up to 2020, most aspects indicate a repatriation of responsibilities to the national level. However, there are also small signs of a greater harmonization of policies. Surprisingly, arguments for both – repatriation and harmonization – can be found in the Governance Regulation and not in the Renewables Directive. In Art. 27(4) of the former, one can identify the Commission's attempt to create the nucleus of its own EU renewables support scheme. If the EU is not on track to achieve its collective 27% goal for 2030 or even fall back behind their 2020 status, member states can choose between different instruments to compensate, one of them being the support for a EU financing instrument for renewables. If it is on track, the EU has little to say. Looking at the proposal in that way, member state failure could in the end create the first real EU renewables support scheme.

#### Active consumers: The Commission's new target group

Designing a new and successful policy strategy usually requires a new narrative – a reason why the concept is needed and why it should be developed further. In the case of the “Energy Union”, the Commission has obviously decided to put “consumers at the center” in order to win political support for its project. The “Winter Package” is meant to serve as an example of what the Commission means by this. It is not by accident, that “Clean Energy for All Europeans” is the official title of the legislative package, directed at the individual, putting “energy citizens” at the center of the Commission's approach and creating the impression, that Brussels is the place to seek protection of their interests.

While the Commission has regarded itself rightfully as watchdog for consumer rights over the course of many years – mainly by enabling competitive pricing and a switch of suppliers – the consumer was generally seen as a purely price-sensitive *Homo economicus*. Liberation from the detainment of national monopolies was a major success in this context. In the new electricity market proposals and in the new renewable energy directive, the Commission has now widened this perspective significantly. The new consumer has turned out to be an active market participant who is not limited to choosing from different electricity suppliers, but who is actively taking part in demand side management, in the production of clean electricity and is gathering with other “prosumers” in en-

ergy communities. All this would be protected and supported by EU legislation in the future.

From a political perspective, this is an interesting but logical shift. It is interesting, because it deviates from the market-centered perspective of former Commission proposals, in which all suppliers of electricity should be treated equally, no matter whether they are individuals, energy communities or big utilities. Granting special rights to “prosumers” is not fully consistent with that view. More important, however, is the fact that the Commission is desperately searching for political support to its “Energy Union” ideas. Since member state governments remained rather reserved on many aspects of this meta-strategy so far, receiving the support from a small but very vocal group like local energy communities and the political representation of cities and municipalities on EU level could at least give the impression that, despite all criticism of the past, the Commission acts in the interest of the broader public against the status quo interests of national governments. A majority of member state governments will most likely explain to the Commission that dealing with small-scale producers is a good example for subsidiarity and keep the file closed.

#### Europeanization below the surface

In the past, the Commission's electricity (and gas) market packages usually included big regulatory projects and a broad policy controversy. Among these were: Liberalizing the energy market, creating independent Transmission System Operators (TSOs) or strengthening national regulatory authorities (NRAs) and their institutions for cooperation on EU level, the Agency for the Cooperation of Energy Regulators (ACER). In all cases, the Commission

#### FURTHER READING

**Clean Energy for All Europeans** *European Commission 2016* (<http://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>)

On this website, the EU Commission offers links to all documents of the “Winter Package” and provides further explanatory summaries.

**EU energy policy – 4<sup>th</sup> time lucky** *David Buchan and Malcolm Keay (Oxford Institute for Energy Studies 2016)*

The authors explain the background to the Commission's proposals for the electricity market and provide a profound explanation for the way, the EU is dealing with its energy policy.

**Searching for an Energy Union** *Severin Fischer (Center for Security Studies, ETH Zürich 2015)*

This piece offers an explanation to the emergence of the “Energy Union” concept and explains some of the difficulties for its implementation.

achieved significant progress towards breaking national control over the sector. One could argue that the functionalist theory of European integration worked quite well here.

This time, the electricity market part of the “Winter Package” doesn’t have the single big project and is clearly not the once-in-a-decade-step towards Europeanizing the still largely fragmented energy system on the continent. In the present political environment, the Commission did not even attempt to present a great shift of competencies from the capitals towards Brussels. This doesn’t mean, however, that everything will stay as it is, if the package were accepted. This time, it is more about delegating powers to new institutions that do not yet follow Brussels’ orders, but might do so one day.

The most obvious innovation in this context is the creation of a new organization format: the Regional Operational Centers (ROCs). These new centers should be set up by national transmission system operators (TSOs) and perform a whole set of new tasks, such as coordinated capacity calculation, security analysis and crisis simulations. ROCs would also be able to adopt decisions directed at national TSOs, interfering in the relationship between national regulators and national TSOs.

Another important aspect is the strengthening of the already existing Agency for the Cooperation of Energy Regulators (ACER), which will be given a greater say with respect to the creation and re-organization of bidding zones. A highly political topic, if one thinks about the proposed split of the German–Austrian bidding zone most recently.

Finally, the Commission has identified a whole set of rather technical issues that should not be decided in the proposals, but transferred in the comitology procedure. With the reform of comitology in the Lisbon treaty of 2009, the Commission’s power in the process of policy-making in these so called “delegated acts” has been remarkably increased. This means that little will be decided in the new electricity market design itself, but a great room for maneuver for the Commission opens in the coming years to move “technical decisions” into comitology committees and find solutions in a process, where member states can only say yes or no, but not change the content of proposals. However, what is “technical” and what is “political” remains an issue for interpretation.

### A long way to go until delivery

As described in the beginning, by pure volume, the “Winter Package” is the largest of its kind in the history of EU energy and climate policy. At the same time, it is more about work on detail than about the great picture in total. The Commission has followed the conclusions of the October 2014 European Council with only very little deviation. The only remarkable change, a correction of the energy efficiency target from a non-binding 27% by 2030 towards a binding 30% proposal, can be seen as a slight signal of self-consciousness on the part of the Commission and as an opportunity created by the opposing UK government leaving the EU soon. On most other aspects, the Commission did not create big surprises and did rather update existing software.

It will be up to the Council and European Parliament to find common grounds on all the different parts of this legislative package. And this will be the challenging part of the process, keeping institutions busy over the next two years. It seems quite clear from today’s point of view, that national governments will pick different topics to fight for or against: It is not in the interest of Central and Eastern European member states to introduce emission limits to power plants in capacity markets, while Germany will focus on more commitments when it comes to fulfill the EU’s renewable energies target.

Finding an agreement on all different dossiers, including the proposals on climate policy presented earlier in 2016, will strongly depend on actors’ ability to create cross-sectoral package deals and identify ways of dealing with disagreement. During the big election year 2017 in the Netherlands, Italy, France and Germany and the beginning of Brexit negotiations, it is hard to imagine how progress could be fast.

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