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Governance of the Energy Union

Impact Assessment (SWD (2016) 394, SWD (2016)395(summary)) of a Commission proposal for a Regulation of the European Parliament and the Council on the Governance of the Energy Union (COM (2016) 759), 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.

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above proposal, submitted on 30 November 2016 and referred to Parliament's Committee for Industry, Energy and Research on 16 January 2017.

In November 2015, the European Council agreed that a reliable and transparent governance system should be developed for the energy union. In December 2015, the Parliament called for this governance framework in its own [initiative report](#).¹ The aim of the Commission's [proposal](#) is to provide the legislative basis for such a system of governance.

For the Commission, this proposal is seen as a step to ensure and improve policy coordination between Member States in implementing the goals of the energy union, including the 2030 climate and energy framework (established in 2014), which outlines the targets for renewables, energy efficiency and greenhouse gas emissions. The proposed regulation is intended to apply in the 2021-2030 period. The underlying assumption is that improved governance will help the EU deliver on climate and energy objectives, including international commitments set out in the Paris Climate Change Agreement. In this regard, it complements other proposals of the clean energy package, which also includes revisions to the Energy Efficiency Directive, the Energy Performance of Buildings Directive, and the Renewable Energy Directive. Whereas these legislative acts (as well as all the climate-related legislation) currently have their own planning, monitoring and reporting requirements, the aim of the proposed governance regulation is to streamline and integrate all these requirements into national plans for the energy union. In other words, the Commission proposes that the monitoring, reporting and planning requirements be removed from the individual directives and subsumed in the proposed governance regulation.² In preparation for the impact assessment, the Commission conducted a [fitness check](#) of the existing legislation in the energy field as a regulatory fitness and performance programme (REFIT) exercise.

There are two main elements, or 'pillars' to the proposed legislative framework, namely the rules concerning planning, reporting and monitoring of national plans, and the rules concerning the parameters of the continual, or 'iterative process' of interaction between the Commission and Member States with regard to those plans.

¹ European Parliament resolution of 15 December 2015, 'towards a European energy union' (2015/2113(INI)).

² For analysis of the proposal, see Alex Wilson, [Governance of the Energy Union](#), Briefing, EPRS, December 2016.

Problem definition

The IA report describes the problem by pointing out the existing shortcomings of planning, reporting and coordination mechanisms in the energy and climate policy area. Importantly, some existing building blocks are already in place, such as national inventory systems for estimating emissions and removals, as well as national systems for reporting on policies and measures regarding greenhouse gas emissions and removals. However, the IA claims there is a lack of 'longer term planning frameworks' on the part of Member States (IA, p.11). The IA also states that Member States 'often do not look beyond their borders, which can lead to conflicting energy policies with their neighbours and the non-achievement of EU targets' (IA, p.11). Finally, the existing reporting obligations are said to be 'often not coordinated', which applies both to Member States and the Commission (IA, p.11).

While the lack of coordination and planning as such may not be sufficient to justify an EU-level legislative action, it is the extent of the problem and potential implications that in the Commission's view calls for new legislation. In this regard, the IA identifies several concrete implications, including the fact that some existing reporting obligations are mandatory in terms of submission, while others are not (difference in stringency); the co-existence of 'partly overlapping, too-extensive, and heterogeneous' obligations resulting in unnecessary administrative costs; and the need for reporting obligations to be synchronised 'as far as possible' with the review cycle of the Paris Climate Agreement. In other words, by improving the legislative mechanism of governance, the IA report argues, it should be possible to reduce administrative costs as well as provide 'broader economic, social, and environmental benefits for the Member States and stakeholders' (IA, p.16).

The problem statement section of the IA report seems rather repetitive. Furthermore, not enough reference is made to the results of the fitness check (REFIT) exercise, which played a central part in the process of preparation of the IA and the proposal itself. The Commission also admits that it was able to provide quantitative assessment 'only partially' due to 'limited availability of reliable data' (explanatory memorandum, p.6).

Objectives of the legislative proposal

The *general* objectives of the legislative proposal are defined as follows (IA, p.17):

- to ensure a coordinated and coherent implementation of the energy union strategy, as well as achievement of the energy union objectives through a combination of EU and national measures,
- to set up a functional (dynamic, reliable and transparent) governance process between the Commission and Member States,
- to minimise the administrative burden and achieve simplified and integrated planning, reporting, and monitoring obligations for Member States and the Commission,
- to ensure the EU's compliance with its international climate obligations, especially the Paris Agreement.

The *specific* objectives stated in the IA report follow largely from the general objectives and include the following provisions (IA, p.17):

- timely implementation and monitoring of the energy union objectives,
- to streamline the existing obligations in line with the better regulation principles of effectiveness, efficiency, EU added value, relevance, and coherence,

- to specify the governance process in terms of the content and adequate periodicity of national plans, progress reports, and monitoring by the Commission.

The IA report does not contain *operational* objectives for the mix of preferred options, despite the requirements of the Commission's own better regulation guidelines in this respect.

Range of options considered

The IA presents separate options for the two pillars of the governance framework, namely the rules concerning planning, reporting and monitoring of national plans, and the rules concerning the parameters of political interaction between the Commission and Member States with regard to these national plans. These are: options for the streamlining, reporting, and monitoring obligations (S); options for the periodicity of national plans (NP); options for the periodicity of progress reports (PR); options for Commission' monitoring (M); options for the 'iterative', or continual process of Commission' interaction with Member States (IP); and finally, options for consultation of Member States on national plans (C).

As regards streamlining, the IA considers six options (S1 to S6), ranging from 'soft guidance' to Member States (S1) – non-binding guidance by the Commission which compliments the existing guidance and which would be undertaken by Member States on a strictly voluntary basis – to regulating obligations through a single legislative act which would replace all existing legislation in the energy field or the relevant parts of existing legislation only (S4, S5, S6).

The options for the periodicity of national plans include five options (NP1 to NP5), ranging from no update of national plans in the period from 2021 to 2030 (NP1), to updates of national plans every five years (NP 5). All the options require that the national plans cover the plans' objectives, policies, measures and projections. In addition, with all the options, the timing and content of the national plans would have to be consistent with the timing and content of progress reports. For the progress reports, the IA proposes three options (PR1-3) with the difference being the periodicity of reports, ranging from annual (PR1), to biannual (PR2), and biannual comprehensive progress reports and limited progress reports every two years (PR 3). The comprehensive progress reports would include updates of policies and measures and updated projections, and the limited reports could contain updates in case of substantial changes occurring in comparison to the information presented in comprehensive reports.

With regard to periodicity of commission monitoring or collective progress, the IA assessed two options – annual monitoring reports (M1), and biannual monitoring reports (M2). The progress reports would be based on the reports prepared by Member States and would contain key energy indicators as well as country-specific assessments.

For the process of interaction with Member States, the IA compares eight options (IP1-IP8) ranging from the 'soft option' whereby the Commission issues country-specific recommendations on Member States' draft national plans, to the option in which the Commission could propose additional measures at EU level or request further additional measures from Member States (IP 4). The IP4 to IP8 options set out the binding degree of Commission' recommendations, from recommendations not set in legislation (IP 5), to Commission decisions which are legally binding (IP8).

Lastly, the final element of the governance framework, consultations of Member States on national plans, is dealt with in the IA report in four options (C1 to C4), that range from voluntary consultations on draft and final national plans (C1), to mandatory consultations (C4).

Overall, the IA presents a wide range of options which are defined with the baseline scenario (no change) as the starting point. The baseline scenario is also used in assessing the options' impacts. However, it is difficult to see how the options are linked to the baseline scenario, as this is not explicitly stated in their description.

The mix of preferred options mentioned in the IA includes S5 and S4 for streamlining, NP5 for national plans, M1 for annual monitoring reports, PR3 for periodic reports, IP4 and IP6 for the iterative process. This means a single legislative act that replaces the relevant parts of the energy *acquis*, and requires Member States to update their national energy and climate plans twice during 2021 and 2030, as well as reporting biannually on their implementation through comprehensive progress reports. The Commission would monitor collective progress annually, through the 'state of the energy union' report. The Commission would issue recommendations on national plans (executive summary of the IA).

Scope of the impact assessment

The IA assesses the options for their economic, social, and environmental impacts. The most relevant economic impacts are considered in terms of associated administrative costs and benefits. Social impacts are considered in terms of 'better informing citizens about the energy union implementation by means of streamlined and thus more transparent planning, reporting and monitoring obligations for Member States and Commission' (IA, p.30). Environmental impacts are considered as relevant by the IA in terms of increasing the EU's performance in the field of climate change including its international climate commitments. Overall, the economic aspects dominate social and environmental features in impact assessment.

The report makes use of a 'multi-criteria analysis based on quantitative information where possible and qualitative analysis for other impacts as well as for options on the governance process'. The logic that is used consistently in assessing impacts is that the 'harder' the options are, the higher the administrative burden could be, but at the same time 'softer' options would lead to other losses, e.g. failure to provide stakeholders with up-to-date information, or failure to achieve environmental benefits and EU climate and energy targets (IA, p.42). In the words of the Commission, 'the preferred option is expected to have positive environmental impacts and to increase the EU's performance regarding climate action' (executive summary of the IA).

Subsidiarity/proportionality

The legal bases for the proposal are the Articles 191, 192, and 194 of the Treaty on the Functioning of the European Union (TFEU), the latter provides the EU with an explicit competence in the energy field. The IA also refers to Article 192 when it assesses options for the Commission to provide recommendations to Member States. The IA states that the 'general division of responsibilities between the EU and Member States will not be affected by the proposal 'compared to the current situation'. However, this is not further explained in the IA, and seems rather counterintuitive with regard to the objectives of the proposal, i.e. to improve the process of interaction between the Member States and the Commission. The subsidiarity deadline for the Member States' national parliaments is 7 March 2017.

As regards proportionality, the IA provides three explanations for the need for EU action in the form of a regulation. The EU action is needed 'to ensure the attainment' of the energy union strategy objectives as 'the majority of these cannot be met through uncoordinated national action' (IA, p.16), the cross-border relevance of the energy union dimension needs 'enhanced cooperation among Member States', and finally, the administrative burden on Member States and the Commission can only be reduced by means of amending existing EU legislation in the energy *acquis* through a new legislative proposal (IA, p.16).

Budgetary or public finance implications

The IA and explanatory memorandum provide mostly qualitative assumptions to the effect that the administrative costs will be reduced once the proposal is in place. For example, according to the explanatory memorandum, the proposed regulation will enhance the role of e-reporting, which is expected to further reduce the administrative burden (explanatory memorandum, p.6). The IA presents more concrete total cumulative estimates of the budgetary expenses for the Member States for the preferred options for streamlining – S4 and S5 (the same figure), amounting to €219.3 million during 2021-2030. This includes both a one-time implementation cost and an annual cost, and imply estimated cost savings of €3.4 million compared to the baseline scenario.

SME test/Competitiveness

The Commission explains that the proposal does not include any exemptions with regard to micro enterprises, nor does it include any dedicated approach to SMEs, as such entities are not impacted by the initiative (explanatory memorandum, p. 6). The initiative will not affect the nature of information obligations nor introduce new ones on businesses. According to the explanatory memorandum, 'the private sector will benefit from more transparent national regulatory frameworks as basis for investment decisions in the energy and climate fields' (explanatory memorandum, p.5). The executive summary of the IA report mentions that 'positive impacts on businesses in general and SMEs in particular are expected through enhanced investor certainty and transparency'.

Simplification and other regulatory implications

As the main objective of the proposal is to integrate several planning, monitoring, and reporting mechanisms under one legislative act, it is expected that the simplification effect will be significant. According to the explanatory memorandum, Member States will 'benefit from a streamlined and simplified planning and reporting framework'.

Quality of data, research and analysis

The IA report draws on two external studies, which were conducted on behalf of the Commission during the first half of 2016 (p.71 of IA) and the fitness check conducted by the Commission as a REFIT exercise. While the IA makes references to the two external studies when assessing the impacts and comparing options, it does not provide direct references to the results of the fitness check. It should be pointed out that the two external studies were used for the fitness check, which may suggest that the range of expertise used for the impact assessment is rather limited. In addition, the IA also draws on the findings of the Technical Working Group on National Energy and Climate Plans, which included the Commission as a chair and Member States as participants. No analytical models are indicated to have been used to support this impact assessment.

Stakeholder consultation

The IA report describes the public consultation launched by the Commission for 12 weeks, between 11 January 2016 and 22 April 2016, in detail. The online survey received over 103 responses (Annex 1, p.68). Private companies submitted most contributions (46 %), with public authorities and NGO contributing 18 % and 14 % respectively. Responses were received from 15 Member States (Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Slovakia and Sweden) and Norway. The IA explains that the stakeholders were consulted on the concrete options, however the information could have been provided in more detail. As the IA report presents, 31 % of the respondents supported the option of a single new legislative act, which, although a significant number, can hardly be

considered a 'vast majority' as is mentioned in the IA. In another instance, the report presents 51 % of stakeholders who 'saw several benefits deriving from the adoption of a new legislative act' as being an 'absolute majority', which might perhaps be rather called a 'narrow majority' (IA, p.35).

Monitoring and evaluation

The monitoring and evaluation mechanisms represent the core of the proposal and, according to the IA report, 'provide the tools to track progress towards implementing the energy union' (IA, p.63). The IA sets out the evaluation process whereby the Commission (with the assistance of the European Environment Agency) will assess Member States' progress reports. The IA provides a list of indicators to be used in monitoring. The majority of the indicators are qualitative (e.g. coherence and consistency of obligations within the energy and climate *acquis*, extent to which Member States apply a common methodology compared to the existing situation).

The IA report mentions that, if in place, the first evaluation of the new governance framework should be done by the mid-2020s as the Member States' progress reports would be submitted from the early 2020s onwards only (IA, p. 66).

Commission Regulatory Scrutiny Board

On 14 September 2016, the impact assessment report received a positive [opinion](#) from the Commission's Regulatory Scrutiny Board (RSB) 'on the understanding that the report shall be adjusted in order to integrate the Board's recommendations'. The Board recommended the IA report clarify the scope and ambition of the proposal, in particular concerning its political dimension (i.e. coordination of Member States' policies). The RSB pointed out that the report should improve consideration of concrete mechanisms and the organisational set-up of the proposed governance framework, as well as the involvement of stakeholders. The Board also recommended that the report 'clarifies, explains, and gives a firmer idea' about several requirements for progress reports and anticipated positive impacts of the new governance framework proposed.

The IA seems to take these recommendations on board, although it is difficult to assess how thoroughly it follows them in the final report, submitted around two months after the RSB's assessment. Some elements, for example 'neighbour's check', for which the RSB required further explanation, cannot be found in the final version of the IA report.

Coherence between the Commission's legislative proposal and IA

The proposal largely follows the recommendations of the IA report.

Conclusions

Overall, the IA presents a comprehensive description and explanation of the problem, and options to resolve it by means of an EU-wide legislative action integrating planning, reporting and monitoring requirements of a range of existing legislation into a single regulation. The lack of quantitative evidence, and the fact that the economic, social and environmental impacts are not assessed to an equal degree, is perhaps understandable, given the nature of the action proposed, which is focused strictly on governance aspects of the energy union, i.e. the obligations of Member States and the monitoring activities of the Commission.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Industry, Energy and Research, analyses whether the principal criteria laid down in the Commission's own better regulation guidelines, as well as

additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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