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Summary of the Position Paper

Governance for the European Energy Union

Options for coordinating EU climate and energy policy up to 2030

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Only with a common strategy on climate and energy policy can the EU contribute towards implementing the Paris Agreement. A Governance Regulation is intended to oversee European climate and energy policy. However, in view of its limited legislative competence in energy policy, how can the EU create a carbon-neutral energy system in Europe? The Position Paper comes to the conclusion that only if the EU Commission and EU legislature, as well as a vanguard of ambitious Member States, effectively utilise the scope of the Regulation, it will be possible to make European energy supplies both climate-friendly and secure. Among its key conclusions are:

- All Member States must draw up **Energy and Climate Plans** setting out clear targets, strategies and measures. To increase their effectiveness, these should be anchored in **domestic law.** In addition, the **public as well as federal state and local authorities** should be closely involved in drawing up these plans from an early stage.
- **Financial incentives** can motivate the Member States to designate instruments for effectively reducing emissions. By linking the Governance Regulation more closely with the EU's structural policy, greater support could be given to regions that are especially affected by structural change, for example.
- **Sanctions** are needed that can be imposed if Member States do not set sufficient climate targets or fail to meet them. Conceivable sanctions would be, for example, **withholding financial support** from the EU Structural Funds or granting **environmental organisations** the **right to bring legal action** at national level.
- **Leadership alliances** between ambitious countries could help to plan and implement climate initiatives for which there is currently no majority in the EU – such as the **phasing out of coal or a carbon pricing system.**

The Governance System of the Energy Union

Since 2014, the EU has been pursuing the concept of a European Energy Union. This is intended to bring together the various fields of action within the sphere of climate and energy policy and balance the divergent interests of the Member States. The EU Commission has identified **five dimensions** of the EU's Energy Union strategy: securing energy supplies, fully integrating the European energy market, improving energy efficiency, reducing CO_2 emissions as well as promoting research, innovation and competitiveness. The legislative framework presented in 2016 under the title ***Clean Energy for all Europeans*** (aka "Winter Package") turns these dimensions into specific regulations and directives.

At the heart of the Winter Package is the **Regulation on the Governance of the Energy Union and Climate Action,** which combines all five dimensions. It is based on **integrated National Energy and Climate Plans (NECPs)** drawn up by the Member States, which include short-term reporting and monitoring obligations as well as long-term strategies for reducing emissions.

All Member States must regularly update their NECPs, define national strategies and measures, describe the current situation and set out prognoses and impact assessments. They each set their own national targets for renewables and energy efficiency.

Should these targets or the measures designed to achieve them be insufficient, the Commission may recommend additional measures (called a **gap-filling mechanism)**. If an **insufficient level of ambition** is identified **in the Plans (an ambition gap)**, the Commission may make non-binding recommendations, take measures at European level that fall within its competence, or propose the tightening of climate and energy policy regulations and directives. These proposals can only be implemented, however, if the necessary majorities exist in the Council and the European Parliament. In order to identify an ambition gap in the setting of renewable energy targets, a non-binding formula has been introduced that makes it possible to calculate each Member State's contribution. In the event of **insufficient implementation** of the NECP **(a delivery gap)**, the Member States must adopt suitable measures to achieve three reference values. These include, for example, increasing the use of renewables in the heating, cooling and transport sectors or voluntary payment into a new funding mechanism for renewable energy projects. For the other targets relating to energy efficiency or the trans-European electricity network, no national specifications have been established. In the event of delivery gaps, the Commission may also make recommendations to the Member States, propose measures and exercise its competences. It has not yet been legally clarified whether failure to achieve reference values can be ascertained in infringement proceedings at the European Court of Justice (ECJ). In order to be able to evaluate the implementation of the NECPs, the Governance Regulation stipulates that the Member States should submit regular **progress reports.**

Opportunities and risks associated with the Governance Regulation

The Governance Regulation will, for the first time, combine both climate and energy policy within the framework of a legal act, and so it is an important step on the way to establishing a European Energy Union. However, it is based on voluntary commitments by the Member States and is subject to mostly non-binding monitoring and supervision by the European Commission. Divergent national interests are not resolved by it; on the contrary, the weakened reporting obligations under the Regulation will make it more difficult to compare the climate strategies of the Member States. Therefore, more specific supplementary measures are required in order to meet the EU's climate protection commitments under international law.

Possible solutions for European climate and energy policy

The EU plans to achieve greenhouse-gas emissions neutrality by 2050. At European level, an EU-wide Emissions Trading System (EU-ETS) extending to all economic sectors would be conducive to reaching that goal. Since its systematic development, in particular the inclusion of all greenhouse-gas relevant sectors, does not command the required political majorities, the Position Paper cites options that would be legally enforceable within the framework of European and national regulations and would also be politically feasible in the short to medium term. The aim of the proposed options is for the Governance Regulation to be effectively **implemented** at national level, additional measures by the Member States to be **funded,** non-compliance with the Regulation to be **sanctioned** and for it to be **backed up** by leadership alliances.

Effective implementation of the Governance Regulation

When drawing up the NECPs, Member States should use the various options that exist within the Governance Regulation in a targeted way:

- To ensure that the plans are effective, they should be **anchored in the domestic legal order.** Germany could integrate its NECP **into the forthcoming Federal Climate Protection Act,** where it could constitute a **core instrument.** There are various ways of doing this: The Bundestag could pass the NECP as a law or, alternatively, the federal government could enact it as a statutory instrument. A third option would be for the plan to be included as a legally binding annex to the Federal Climate Protection Act. This would create an overarching framework within which existing climate protection laws at federal-state level could and should remain in force.
- Germany **should integrate the national strategy for phasing out coal into the NECP.**
- When drawing up and implementing the plans and long-term strategies, the Member States should **involve municipalities, local authorities and the federal states.** It would be useful, for example, to set out criteria for the "multilevel energy dialogue" envisaged in the Governance Regulation. Already established EU participation formats such as the "Covenant of Mayors" could serve as a model.
- Non-binding guidelines issued by the Commission for the **public participation procedures** in the Member States would be powerful political signals and could have a unifying effect. In the Federal Climate Protection Act specific requirements could be stipulated as binding.

Funding the achievement of the targets: European Structural and Investment Funds

By 2030, the EU is committed to reducing greenhouse gas emissions by 40 percent, increasing the share of renewables in energy consumption to at least 32 percent, and to improving energy efficiency by 32.5 percent. A **funding platform for renewable energy** projects envisaged in the Governance Regulation is intended to help close gaps if the targets that the Member States have set themselves are collectively insufficient to achieve the overall European targets, or if the national targets are not implemented sufficiently. However, since this instrument is explicitly designed to be voluntary, doubts exist as to its effectiveness. Linking the Governance Regulation to the **European Structural and Investment Funds (ESI Funds)** would create an additional instrument for funding climate-friendly energy policy. The following measures are possible:

- **Specific funding objectives** such as the promotion of energy efficiency could be included in the future regulation of the European Regional Development Fund (ERDF).
- In addition, **regional partnerships** – an important objective of the Governance Regulation – could be specifically funded, for example by supporting cooperation programmes under the ERDF priority area "The low-carbon economy" in combination with the programmes to promote "European Territorial Cooperation".
- In order to meet cross-border challenges such as **structural change in coal-mining areas,** it would be possible to launch **special-purpose cooperation projects** and provide financial support for the affected regions.

Sanctioning non-compliance with the Governance Regulation

The Governance Regulation hardly provides for any direct sanction mechanisms in the event that Member States do not sufficiently contribute towards achieving the energy and climate targets. The European legislature can, however, supplement effective enforcement measures in other statutory instruments:

- **By linking it with structural policy,** for example, the EU can use a sanctioning mechanism that is already employed in European budgetary and economic policy (the so-called European Semester). In this way, the European Commission could limit or refuse to grant financial assistance from the Structural Funds to a Member State that had failed to sufficiently implement its recommendations. **Suitable evaluation criteria** would need to be developed in order to be able to identify the prerequisites for funding cuts.
- The binding nature of the national targets can also be enhanced by introducing **the right for associations to bring legal action** in order to monitor an ambitious energy policy in accordance with EU regulations. Environmental organisations could be granted the right to bring legal action if Member States fail to draw up an NECP or do not achieve the targets set out in it, if national plans are not sufficiently ambitious, or if procedural irregularities occur, such as failure to involve the public.

Backing up the Governance Regulation by leadership alliances

Leadership alliances between EU Member States and, where relevant, third-party states, make it possible to **avoid political blockages** and initiate developments towards decarbonisation of the energy system that would otherwise not be possible owing to the absence of competences or majorities. It is conceivable that such alliances could be established for fields of action such as carbon pricing and the phasing out of coal, since some states are prepared to go beyond the targets set by the EU. An essential prerequisite is that in each case it should be done in **coordination with existing schemes,** in particular the EU-ETS, so as to avoid the mere shifting of emissions within the EU.

Establishing a carbon pricing coalition
Several states already have instruments for setting a national carbon price, such as the UK, France and Sweden. These and other countries are also part of an initiative launched by France's President Macron for a coalition to introduce and promote a common system of carbon pricing. Options for this include:

- a "sliding" tax on CO_2 emissions on the basis of the EU-ETS allowance price, modelled on the British *Carbon Price Floor,*
- a national carbon price in the form of a tax or levy that also covers sectors not included in the EU-ETS.

Through stronger carbon pricing in the participating states, financial incentives can be created for low emissions technologies and energy efficiency. In **Germany** the direct taxation of CO_2 emissions would only be feasible after a constitutional amendment. The **taxing of primary energy sources** on the basis of their carbon and energy content would be useful in environmental terms and would also be constitutionally permissible, but would require **comprehensive reform of the energy tax legislation.**

Phasing out coal-fired electricity generation
The more states participate in a "coal phase-out alliance" and the more coherently the joint plan is formulated, the more cost-effectively the phase-out can be conducted. If the German federal government were to join such an alliance, it could send out a political signal for other European countries which have a high share of coal in their energy mix. In any case, it would be advisable for the federal government to **coordinate the phasing out of coal in Germany more closely with its neighbours** and at European level.

There are **two conceivable options** for the phasing out of coal-fired electricity generation in Germany:

- It would be sensible to **allocate fixed CO_2 budgets or set residual current volumes per power station on the basis of these,** since what is decisive from a climate protection point of view is the overall volume of CO_2 that is released within a particular reference period.
- **A law on the phasing out of coal,** in which dates are specified for the shutting down of power plants, as has already been done with regard to nuclear reactors, would also be possible: the plants would be shut down after amortisation and reasonable profit generation, since otherwise it would be necessary to compensate the operating companies.
- **The reuse of existing infrastructure** could be further developed, for example by converting coal-fired power plants into thermal energy storage plants.

The Academies' Project "Energy Systems of the Future"

The Position Paper *Governance for the European Energy Union* evolved within the framework of the Academies' Project "Energy Systems of the Future". In interdisciplinary working groups, about 100 experts are working on different courses of action for the pathway to an environmentally sustainable, safe and affordable energy supply.

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