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## FOUR KEY MESSAGES FOR THE GOVERNANCE OF EUROPEAN CLIMATE AND ENERGY POLICIES AFTER 2020

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The European Council has called on the European Commission to present initiatives before the end of the year on the governance of EU climate and energy policies after 2020. This is a unique opportunity to improve the current policy framework, provided that the EU institutions are ambitious enough to take up the challenge.

Over the last twelve months, the European Commission and EU Member States have presented their respective visions for European energy and climate policies after 2020. In October 2014 the Heads of States and Governments found a compromise position regarding greenhouse gas emission reductions, the share of renewable energy in the energy mix and energy efficiency improvements to be reached by 2030. So far, these targets are only included in the European Council's conclusions and are therefore not definitive: the European co-legislators have not had yet the opportunity to turn them into law, which should happen in the coming months, with the revision of existing directives. The European Commission also enlarged the debate by presenting its vision for an Energy Union (an open-ended process that extends beyond 2030). These new elements of the policy framework represent a challenge for policymakers: the 2030 energy targets will not be nationally binding while the Energy Union, although rightly ambitious, lacks substantive plans to deliver its vision<sup>5</sup>.

How can Europe ensure investor certainty through better-integrated more streamlined governance while fulfilling the European Council's mandate to establish a credible and reliable post-2020 governance regime that builds on the building blocks of existing governance? This is

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<sup>5</sup> E3G, **EU Energy Union good on vision but deeply confused on delivery**



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precisely the question the Commission is now trying to address by discussing the governance of European climate and energy policies after 2020<sup>6</sup>.

At the very least, getting governance right means committing to more robust governance of the internal energy market, adopting sufficiently ambitious 2030 targets and establishing binding planning and reporting regimes to ensure the delivery of the target trajectories and to improve investor certainty while allowing for course corrections. In the current situation, the Energy Union framework indicates the existence of a strong commitment to strengthening the already binding IEM framework through the rigorous enforcement of the Commission's obligations, the revision of ACER and ENTSO's regulatory powers and better alignment of the IEM framework to the low-carbon agenda. This commitment should be equally strong when defining what post-2020 governance should look like.

Four key messages should resonate at the heart of this debate:

1. ***Getting the governance arrangements right is critical***: a credible governance framework is key to meeting the 2030 targets and delivering the Energy Union because it would reinforce investor confidence and energy security and enable citizens to take ownership of the transition
2. ***Governance reform should reinforce the 2020 acquis*** as the existing elements are the cornerstones for the Energy Union as well as the climate and energy targets
3. To be credible, and to fulfil the European Council's mandate to 'build on the building blocks', ***post-2020 governance must be designed to strengthen the European Union's conformity with the European Commission's core principles of 'good governance'***
4. The door should be open for ***wider institutional and procedural innovation*** as this would mean combining existing legal tools with other innovative approaches to improve good governance

## Putting post-2020 governance in context

### Getting the governance arrangements right is critical

Turning the Energy Union from vision into reality will depend on delivering the transition to a fully functioning and sustainable energy market that puts energy efficiency first and optimises the deployment of renewable and decentralised energy. 'Governance' is the critical mechanism for ensuring delivery of agreed outcomes, and Europe's ability to make the transition to a fully integrated and sustainable energy system will depend fundamentally on the quality of the governance arrangements put in place to ensure delivery of these objectives. Good governance will operate to unlock the core conditions for making an orderly, timely and fair energy transition because it:

- > **Reinforces investor confidence** in the European Union's commitment to the IEM completion and in realising the 'Energy Efficiency First' objective and thereby unlocking

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<sup>6</sup> Governance is the framework of institutional and procedural arrangements put in place to allocate responsibility for achieving the transition to a sustainable energy system which puts energy efficiency first, ensures increased use of decentralised and renewable energy, and delivers Europe's longer-term climate objectives.



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investment in the necessary infrastructure and technology. It also increases investors' confidence to make capital-intensive investments in renewable energy sources.

- > **Greater energy security, solidarity and trust**, first by ensuring that Member States are held to account for delivering the 2030 targets and by completing the IEM, second by weakening political incentives for Member States to behave as 'free riders' (relying on other Member States to shoulder responsibility for delivering unanimously agreed outcomes) and finally by optimising the capacity of renewable energy sources and energy efficiency to reduce import dependence and import bills.
- > **Enables citizens to take ownership of the transition** by having more opportunities to engage in the transition and to participate in the energy system and by having greater protection of their rights to own and manage energy infrastructure and production.

### **Governance reform should reinforce the 2020 *acquis***

The post-2020 governance agenda should, as a minimum requirement, encourage maintaining and improving the European Union's conformity with the core principles of good governance and facilitating necessary governance innovation for the post-2020 period. Existing instruments, in particular the Renewable Energy Directive, the Energy Efficiency Directive and the Effort Sharing Decision, contain the building blocks of robust governance of the 2020 targets. Fulfilling the European Council's mandate to create a 'credible' post-2020 governance means that Europe must maintain and improve the 2020 governance building blocks.

Reformed governance provisions should be introduced into the 2020 *acquis* by being embedded within the revised directives, or by means of a new dedicated planning and reporting directive that would support revised directives.

### **Leaving the door open for policy innovations**

Reinforcing the *acquis* does not mean being locked in existing policy design. Thus far the governance debate has focused exclusively on the need to revise planning and reporting processes. Although these processes are critical tools of governance, they are part of a much wider regime – all of which must function effectively if Europe is to establish a governance regime that is capable of driving the complex, long-term changes required to deliver the transition to a sustainable energy system.

Governance reform should address not only the planning and reporting regime but also other important gaps and weaknesses in the wider institutional and procedural arrangements for post-2020 governance such as the lack of systematic risk analysis<sup>7</sup>. In addition, the reform process should address the quality of governance delivered by both Member States and the European institutions themselves<sup>8</sup>.

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<sup>7</sup> E3G, **The Energy Union needs a new approach to policy-making** and ClientEarth, **EU Climate & Energy Governance Health Check**

<sup>8</sup> Climate Action Network Europe, Greenpeace and WWF, **Effective governance for the EU 2030 renewable energy target**



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## Credible governance must be ‘good governance’

In order to be credible, proposals for post-2020 governance must ensure conformity with the fundamental principles of ‘good governance’, namely: effectiveness, transparency, accountability, legitimacy, policy coherence and subsidiarity<sup>9</sup>. These principles were adopted by the European Commission in 2001<sup>10</sup> and should underpin all European policies. Any proposal for post-2020 governance must be judged by whether and how well it achieves conformity with these principles.

Conformity with good governance principles is not a barrier to achieving more streamlined and better-integrated post-2020 governance – if anything, good governance encourages the achievement of both objectives. In addition, the good governance principles provide a robust framework within which to balance Member State rights to flexibility over their energy mix with the European Union’s mandate to take action to ensure energy security, sustainability and competitiveness in Europe.

### Effectiveness and accountability

Conformity with the principles of effectiveness and accountability are the foundations of credible governance. In this context, effective governance requires the adoption of sufficiently ambitious 2030 targets, enshrined in law and supported by a binding, dynamic and long-term planning and reporting regime designed to ensure the delivery of these targets.

Sufficiently ambitious targets are necessary to avoid high carbon lock-in and drive investment in the transition to a sustainable energy system. Binding governance responds to the reality that the European Union has no track record of delivering complex change on the scale required for energy transition without binding rules. Binding governance is not a guarantee of compliance, but it sends the strongest possible signal of intent to investors, Member States and global partners.

In addition to underpinning a stable, credible and investable pathway for achieving the 2030 targets, binding governance also ensures conformity with the principle of accountability. Naming and shaming and peer pressure can play a role in supporting accountability but are not a substitute for legal accountability, which is essential to ensuring Member States make the hard decisions that will be necessary for Europe to deliver its 2030 targets and achieve the transition to a sustainable energy system.

Conformity with the principles of effectiveness and accountability also require that binding governance is not concentrated on the 2030 GHG reduction target, with only “light-touch” governance of the energy efficiency and renewable targets. The 2030 targets for renewable energy and energy efficiency cannot be viewed only as instruments for achieving the GHG target. The targets play a critical role in delivering the least-cost route to energy security and competitiveness. There is clear evidence that a post-2020 governance regime that ensures

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<sup>9</sup> ClientEarth, [EU Climate & Energy Governance Health Check](#)

<sup>10</sup> European Commission, [European Governance – A White Paper](#)



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legal accountability only for the GHG target risks capping energy efficiency and renewables deployment instead of reinforcing all targets and potentially helping to over-achieve the GHG target, an outcome fully compatible with the GHG target of 'at least' 40%.

Ensuring post-2020 conformity with the principles of effectiveness and accountability requires that the following core elements of the governance regime be enshrined in law:

1. **Sufficiently ambitious 2030 targets** for greenhouse gases, renewable energy and energy efficiency.
2. **Mandatory processes of National Energy and Climate Plans (NECPs)** for the achievement of the European Union's 2030 targets and **reporting on progress based on a binding and consistent EU-wide template.**<sup>11</sup>

The NECPs should more specifically:

- > Be **iterative**, including with neighbouring countries, but ultimately require Member States to commit to action on the key issues that will allow the Commission and other stakeholders to monitor progress;
- > Be designed to enable the Commission to **hold Member States to account** for delivering the 2030 targets – most fundamentally through enforcement proceedings;<sup>12</sup>
- > Require Member States to **design NECPs to relate to the relevant indicators** necessary for effective monitoring of energy system resilience and IEM completion;
- > Be **sufficiently dynamic and long-term** to facilitate active forward planning and to allow for course correction to achieve the 2050 objective.

These are not the only elements of the post-2020 governance regime that require a legislative basis but are the absolute minimum to ensure effective and accountable governance.

Designing a binding planning and reporting regime that meets the criteria outlined above is not inconsistent with the Member State's right to flexibility as energy flexibility is not an absolute. The European Union has a clear Treaty mandate to take action to secure energy security, sustainability and competitiveness and to combat climate change as well as to promote renewable energy sources and energy efficiency. Meeting the 2030 targets is a fundamental pre-requisite to unlocking the most cost-effective route to these objectives. Given these outcomes cannot be achieved by individual Member States acting alone, the principle of subsidiarity provides the appropriate conceptual framework for determining the boundaries of national energy flexibility and the European Union's mandate to act on climate and energy and promote renewable energy sources and energy efficiency. Provided the European Union's action is proportionate, Member States' right to energy flexibility does not

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<sup>11</sup> Reform should not be limited to creating new planning and reporting rules – it should also require the Commission to be more accountable for how it exercises its discretionary powers to take enforcement action, potentially via the new State of the Energy Union reporting process.

<sup>12</sup> For concrete examples, see Climate Action Network Europe, Greenpeace and WWF, [Effective governance for the EU 2030 renewable energy target](#)



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empower them to lawfully undermine the European Union's capacity to meet its 2030 targets or ignore their collective obligation to meet 2030 targets.

### Transparency

The principle of transparency requires a governance regime that is sufficiently open to allow for effective public scrutiny as the basis of decision making. Translating this principle into the post-2020 framework requires the following three changes.

European law must be amended to end the disparity that currently exists between the (extensive) information disclosure rules applied to Member States and the (much more limited) rules imposed on European institutions so that energy and climate policy making at European level is similarly transparent to the national policy context. Although the European Union signed the Aarhus Convention (leading international treaty on public access to environmental information<sup>13</sup>) and introduced binding rules requiring Member States to comply fully with its information disclosure standards, the European Union has thus far refused to apply the same standards to European institutions with damaging consequences for the credibility and legitimacy of European level climate and energy governance.

The Commission's commitment to deliver an annual State of the Energy Union report represents an important strengthening of the transparency of post-2020 governance. However, in order to ensure it fulfils its potential as a tool of good governance, the Commission's commitment to make an annual State of the Energy Union report should be translated into a legally binding obligation so that it becomes a mandatory part of the post-2020 planning and reporting cycle. The Commission should be required to 'report' on specific aspects concerning the quality of progress towards the Energy Union - in particular progress in meeting the European Union's 2030 target and how it has exercised its enforcement powers to unblock barriers to energy market completion and 2030 target achievement. In addition, the State of the Energy Union report should be required to include proposals for policy course correction measures where monitoring of the indicators highlights insufficient progress towards making the transition to a sustainable energy system in particular and the low-carbon transition more generally.

The mandatory 2030 planning and reporting process shall be designed to ensure that the 'plan making' and reporting processes guarantee sufficient levels of transparency to ensure effective scrutiny by the public and stakeholders – as is also underlined by the 'Better Regulation' package put forward by the Commission.

### Legitimacy

The principle of legitimacy requires governance arrangements that ensure the meaningful participation of those affected by decision making and arrangements to ensure decisions are based on independent expert advice. Both processes are universally viewed as leading to

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<sup>13</sup> [Convention on access to information, public participation in decision-making and access to justice in environmental matters](#)



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better quality and more credible decision making and ultimately as underpinning public support for decision making.

The participation of independent experts requires the creation of a new European body (European Energy and Climate Risk Observatory) tasked to identify systemic risks and to advise the Commission on the appropriate policy response required<sup>14</sup>. Its reports should be published and ideally the Commission should be required to justify departure from its recommendations. This body could potentially have a role in supporting and evaluating NECPs.

The participation of the public broadly defined requires reinforced legal rights through European legislation for citizens and communities to participate in the energy system and to own and manage energy infrastructure and production. Furthermore, participation entails enhanced formal mechanisms to strengthen the effective participation of cities and regions, both of which have a major stake in governance of the low carbon transition.

### Policy coherence

Conformity with the principle of policy coherence requires:

- > A comprehensive and economy-wide approach to GHG reductions that includes planning for substantial GHG reductions by all sectors of the economy.
- > The emissions sinks linked to Land Use, Land Use Change and Forestry must not be embedded into the 2030 regime in a manner that functions as a loophole that weakens the European Union's GHG target.
- > Planning and reporting processes should require NECPs to ensure that the opportunities for energy demand reduction have been properly factored by Member States *before* new supply infrastructure is planned or financed.
- > An approach towards completion of the internal energy market that sufficiently integrates protection of the environment and sustainability, which necessarily includes reinforced roles for European institutions and national market actors to facilitate the energy transition, and creates a level playing field so that new and smaller entrants can compete in the retail energy market.

## Conclusions

Governance will define how the Energy Union and 2030 targets are translated into action. It is therefore at the heart of the debate of the European energy and climate policy. The Council had to ask the Commission to put forward proposals because a clear way forward was lacking until now. The Commission's vision should be substantial: the importance of governance should not be underestimated and the proposal, built on the existing building blocks of the 2020 *acquis* should leave the door open for policy innovations, should be assessed against the principles of good governance already adopted by the European Commission.

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<sup>14</sup> E3G, [The Energy Union needs a new approach to policy-making](#)