Streamlining Climate and Energy Planning and Reporting

Understanding the options, risks and opportunities
Contents

Executive Summary

Chapter 1: Clarifying the drivers of the governance debate

1 Political Context ........................................................................................................... 8
2 Letter of DG Energy dated 22 May 2015 ..................................................................... 9
2.1 Proposals for post-2020 planning ......................................................................... 9
2.2 Proposals for post-2020 reporting ................................................................. 10

Chapter 2: Lessons from 2020 planning and reporting that should inform the design of the 2030 regime

1 Renewables ................................................................................................................... 13
1.1 Accountability under the RED ................................................................................. 14
1.1.1 Traditional Enforcement Tools ................................................................................. 14
1.1.2 Commission use of complimentary accountability tools ......................................... 15
2 Energy Efficiency ......................................................................................................... 17
3 Climate .......................................................................................................................... 19

Chapter 3: Analysis of the options, risks and opportunities presented by the possible legal forms of the future planning and reporting regime

1 The case for binding planning and reporting ................................................................. 22
2 Options for binding post-2020 planning and reporting ................................................. 25
2.1 Opportunities from one integrated plan and one integrated reporting structure ............ 26
2.2 Risks from one integrated plan and one integrated report ........................................... 27
2.3 Option 1: Revised RED, EED, ESD ......................................................................... 28
2.3.1 Opportunities of Option 1 ......................................................................................... 29
2.3.2 Risks of Option 1 ..................................................................................................... 29
2.4 Option 2: Merged RED/EED with ESD separate ......................................................... 30
2.4.1 Opportunities of Option 2 ......................................................................................... 30
2.4.2 Risks of Option 2 ..................................................................................................... 30
2.5 Option 3: MMR as a 2030 planning and reporting instrument .................................... 31
Chapter 4: Recommendations for designing 2030 planning and reporting

1 Timing .................................................................................................................. 36
2 Planning and reporting requirements ................................................................. 37
Executive Summary

In January 2014, the Commission invited Member States (MS) and stakeholders to consider the question of governance as part of the 2030 climate and energy debate. A focus on governance presents an opportunity to strengthen the mechanisms for ensuring delivery of the 2030, and longer term, climate and energy objectives. However, the governance agenda as presented thus far by the Commission also contains inherent risks of weakening MS accountability.

The attention on governance in the 2030 debate is driven by several factors:

1. MS are asserting flexibility over the national energy mix, leading to a shift away from nationally binding energy targets.

2. The move away from binding national targets has consequently increased the pressure to ensure MS accountability on climate and energy objectives in another part of the governance process. The planning and reporting systems are the subject of this pressure, which in part explains why the Commission has focused on governance. However, the focus on governance in this way carries with it an inherent risk that the argument for greater flexibility at national level will be used to weaken EU accountability controls.

3. There is an increased focus on 'streamlining' and 'better regulation' at EU level, mainly in response to growing eurosceptic rhetoric. While there could be merit in streamlining, it creates a big risk that it will be a cover for the introduction of weaker controls on MS.

4. As the energy transition enters a new phase, more integrated energy planning and reporting is required, though this also encompasses climate planning and reporting - having a bearing on how streamlining might occur.

The above drivers of the governance debate lead to the danger that the term 'governance' in the 2030 debate will be used solely to streamline the planning and reporting processes already in place. Streamlining is not necessarily a danger in itself, where it simply reduces administrative burdens or enhances transparency. However, if excessive or poorly designed, streamlining could weaken monitoring and accountability and thus compromise the EU's ability to ensure delivery of EU climate and energy targets and Energy Union objectives. In addition the term 'governance' could be used to facilitate national flexibility through removing the planning and reporting regime from the legal domain, thus reducing MS accountability for the achievement of targets and objectives.

The current 2020 climate and energy legislation contains various types of 'reporting' or information exchanges between MS and the Commission. Some examples of reports are: reports on transposition of directives; reports on specific measures and reports on progress towards targets. In addition the 'planning' processes embedded into 2020 legislation are many and varied with each instrument containing its own distinctive planning processes.

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2 See the Timmermans Better Regulation agenda at: http://ec.europa.eu/smart-regulation/index_en.htm
As planning and reporting processes are critical to good governance, any planning and reporting regime must conform to the core principles of **good governance**, namely: transparency, effectiveness, accountability, legitimacy, flexibility, certainty and policy integration. In the October 2014 Conclusions, the European Council stated that post-2020 governance should as a minimum be reliable, transparent and predictable. In addition, the European Council mandated the post-2020 governance regime should 'build on the existing building blocks', essentially a call to maintain conformity to the core principles of good governance that underpinned the 2020 regime. Any governance system developed by the Commission will now need to ensure compatibility with these principles and conformity with good governance principles can only be assured where there are binding planning and reporting arrangements.

If structured on the basis of the principles of good governance, planning and reporting can function as key tools of accountability, effectiveness and transparency. Without effective and binding planning, targets become harder to achieve and without effective and binding reporting it is impossible for the Commission to monitor the energy transition across the EU. At a minimum a focus on planning and reporting can present an opportunity to shine a light on the current quality of 2030 planning and reporting processes. However, it is essential that the 2030 framework does not result in an excessively streamlined and flexible planning and reporting regime, which inherently undermines good governance of the EU's climate and energy targets and objectives.

In contrast to the necessity for post-2020 planning and reporting to be binding, the Commission has indicated that non-binding processes for both planning and reporting are being thoroughly considered. If non-binding planning and reporting does emerge as the foundation of the 2030 governance regime, the Commission will be forced to intervene at a later date to ensure binding measures are put in place. However, the climate crisis does not allow for the time to experiment with a weak governance regime. Post-2020 planning and reporting must be binding if it is to conform to the principles of good governance and to achieve the 2030 targets.

This paper looks specifically at the planning and reporting experience in the Renewable Energy Directive (RED) and outlines the experience in the Energy Efficiency Directive (EED). In addition, the experiences under the Effort Sharing Decision (ESD) and the Monitoring Mechanism Regulation (MMR) are analysed as key climate instruments where planning and reporting provisions could be streamlined.

The analysis leads to the conclusion that the planning and reporting provisions, including the associated accountability controls, are strongest under the RED. The RED contains a number of 'non-traditional' accountability controls that should be replicated in post-2020 planning and reporting. The EED is characterised by weaker planning and reporting arrangements but more fundamentally a lack of compliance by the MS with those arrangements. The ESD is significantly weaker again, lacking important planning requirements, though the process of streamlining its reporting functions has already begun by integration with the MMR.

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3 For a full consideration of these principles in relation to EU Climate and Energy 2020 Governance see, ClientEarth, EU Climate & Energy Governance Health Check: Looking back to 2020 and forward towards 2030.
7 Regulation (EU) No 525/2013 of the European Parliament and of the Council on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change.
Planning and reporting both perform critical functions in supporting the effectiveness, transparency and accountability of the EU’s climate and energy governance regime. The process of streamlining must be approached by considering what information currently contained in the planning and reporting processes is critical to supporting the Commission’s proposed indicators, as a minimum on sustainability, but also on the security and competitiveness side, which has become ever more important in the climate and energy debate. This paper assess the options, risks and opportunities of different legal forms for getting that information. The four options assessed are:

1. Revised RED, EED, ESD
2. Merged RED/EED and ESD separate
3. MMR as a streamlined planning and reporting instrument
4. A new governance instrument

More fundamentally the paper also looks at the opportunities and risks created by integrating all planning and reporting lines into one document. There are many opportunities and risks created by all the options and it is difficult to say with any certainty which option is best. However, what can be concluded is that retaining instruments dedicated solely to particular sectors (e.g. renewables and energy efficiency) has a high value. Integrating all planning and reporting obligations into the MMR presents the most streamlined option as international planning and reporting lines can be integrated with those of a national and EU level. Further, due to the very strong streamlining and better regulation agenda, it is unlikely that the MS would be satisfied with a proposal that contains additional legislation (i.e. a new instrument dedicated solely to governance).

The key recommendations, having considered lessons from 2020 and legislative options, are that:

- the Commission must maximise the opportunity to use non-traditional accountability tools,
- the Commission must utilise its discretionary enforcement powers fully,
- planning and reporting arrangements must be binding (especially via a binding template if possible) and
- the transparency of planning and reporting arrangements must be strengthened.

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8 These indicators include: energy price differentials between EU and major trading partners, building on the report on energy prices and costs; diversification of energy imports and the share of indigenous sources of energy consumption over the period up to 2030; deployment of smart grids and interconnections between Member States; intra-EU coupling of energy markets, building on liberalisation achieved by EU legislation; competition and market concentration on energy markets at national level and in regions with functioning coupling at the wholesale level; and technological innovation.
Chapter 1: Clarifying the drivers of the governance debate

The Lisbon Treaty fundamentally changed the constitutional context for negotiating the next phase of how the European climate transition will be governed. The Lisbon Treaty conferred important new powers on the EU to act on energy issues but also enshrined the right of MS to decide their national energy mix. MS have used this constitutional freedom to reject the post-2020 extension of binding national targets on renewable energy and energy efficiency.

Binding national energy targets (at least for renewable energy) were a key governance tool in the 2020 climate and energy package. Their absence from the EED was widely considered as a major weakness of this critical instrument and of the 2020 governance framework. The European Council decided to extend the EU's 2020 climate and energy targets out to 2030 but to remove the possibility of disaggregating EU targets into binding national targets for renewables or energy efficiency. The lack of nationally binding targets has led to an intensified focus on the design and quality of the other major governance levers, specifically planning and reporting, to ensure the delivery of the 2030 targets.

Against a far more difficult political background than that which shaped the adoption of the 2020 regime, the Commission is developing proposals for the 2030 climate and energy governance system. Thus far, the policy development has straddled two different Commissions:

1. The first proposals came from the Barosso Commission in a January 2014 Communication. The Commission is developing proposals for the 2030 climate and energy governance system. Thus far, the policy development has straddled two different Commissions:

2. The European Council then considered the 2030 governance system and provided guidance in the October 2014 European Council Conclusions.

3. The current Juncker Commission then incorporated the governance proposals into the strategy and work programme for building an Energy Union with a Forward-Looking Climate Change Policy.

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4. The Commission services have been developing concrete proposals to accord with the policy directions given above, especially with a view to discussion with the MS.

1 Political Context

The Energy Union debate is now driving EU climate and energy policy. While the governance agenda pre-dates the emergence of the Energy Union concept, it has more latterly been subsumed into this wider framework and is now being shaped in relation to the Energy Union objectives. However, no clear or detailed proposals for reformed planning and reporting have emerged from the Commission or European Council. The proposals to date are at best described as vague and ill-defined.

Meanwhile, the new post-2020 planning process has started with the production of country fiches by the Commission and a high profile 'Energy Union tour' led at Vice President level. The country fiches are essentially fact sheets of a country's energy system, produced by the Commission and used as a basis of discussion with the particular MS during the Energy Union tour. The country fiches are not public and NGOs have requested them to be made public but this has been refused. In addition to this lack of transparency, the country fiches that have been leaked show a lack of forward planning or vision for the low-carbon transition. These two fundamental defects in the country fiches are especially important as DG Energy has indicated that the country fiches could form the foundation of the post-2020 planning regime.

A reporting process has already begun with the introduction of the 'State of the Energy Union' concept in the Energy Union Communication. There has been no clear explanation of what this reporting will entail other than it will be from the Commission to the European Parliament and Council on 'key issues' and to 'steer the policy debate'. It is anticipated to begin on an annual basis from November 2015.

Therefore questions arise as to how the new governance regime will interact and overlap with the existing 2020 planning and reporting regime, especially as the Commission is already rolling out initiatives that may become the new governance regime. Presumably the Commission is attempting to get the MS ready for the post-2020 transition but overlapping the two planning and reporting regimes in this manner, especially where one may potentially lack a binding legal framework, means any risks created by the new framework are at risk of being embedded before they are properly considered.

Against the Energy Union backdrop, the MS are forming their positions on 2030 and Energy Union governance. The differing MS positions can be defined by the clash between the UK and Germany. Both countries have issued 'non-papers' setting out their positions on the climate and energy governance debate. The UK paper outlines its desire for a new governance system to 'be light touch and non-legislative so as to respect MS flexibility' and further to 'reduce the administrative burden.' In addition the UK emphasised EU collective accountability - essentially calling for less focus on individual MS delivery. However, not all MS agree and the UK position is best contrasted with that of Germany which stated that a:

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'robust and reliable governance structure ... is the minimum needed for creating the necessary investment security that enables a cost-efficient deployment of renewables and increase of energy efficiency in line with agreed EU targets. To us, it seems clear that it would not satisfy the implementation of the 2030 Council conclusions, if the new Energy Union governance was merely a soft law process.'

Germany also called for a clear differentiation between the Energy Union governance and the specific 2030 governance for achieving EU targets.

As outlined above, the 'new' post-2020 governance process has been subsumed into the Energy Union. However, there has been no clear explanation of whether there will be two governance systems or how they would interact. Against this unclear context, even Germany has emphasised that any governance system 'must respect MS energy mix competence and necessary flexibility.' The call for flexibility from Germany highlights the importance of the changed constitutional context. The Commission must now navigate this difficult political and constitutional landscape to propose a governance system that attempts to satisfy all MS.

### 2 Letter of DG Energy dated 22 May 2015

The Commission is clearly advancing its internal work on the development of the post-2020 governance regime. The first product of this process has come from a leaked letter from DG Energy setting out concrete proposals on how to streamline the planning and reporting regimes dated 22 May. The letter is addressed to the cabinet of Commissioner Miguel Arias Cañete, the Commissioner for Climate Action and Energy. The leaking of this letter could indicate tension within the Commission about which part of the Commission is leading and controlling the internal work on climate and energy governance. The letter contains two Annexes - one on planning and one on reporting - clearly indicating DG Energy is considering of a separation of these two governance processes in terms of their legal status.

#### 2.1 Proposals for post-2020 planning

The Annex setting out DG Energy's planning proposals re-iterate much of what was contained in the earlier Commission Communications and European Council Conclusions - including the call for MS flexibility and streamlining. In addition, it appears to reflect agreement that there will be a single merged governance regime for the 2030 and Energy Union frameworks.

The main thrusts of its proposals on the new planning system are:

1. MS would develop (as soon as possible) draft post-2020 plans to harmonise energy security, market integration, energy infrastructure and research and innovation, but incorporating the EU's 2050 climate goals.

2. DG Energy indicates that it 'could' provide more detailed guidance or a template for the national plans.
3. Post-2020 planning would be harmonised into a single EU climate and energy plan.

4. There is no mention of whether the proposed plans would be legally binding. The implication (from the January 2014 Commission Communication) is that post-2020 climate and energy planning would be a non-binding process.

As stated above, the mobilisation of post-2020 planning has already begun with the country fiche process. Moving ahead of political agreement on the nature of post-2020 planning and reporting, and indeed ahead of agreement on the level of ambition of the EU’s 2030 targets raises a number of serious concerns:

1. Climate planning is not the centre of the country fiches. However, climate planning must be the core of the post-2020 planning regime, it should not be added as an afterthought.

2. The country fiches are not public. The importance of climate planning does not allow for the system to be developed behind closed doors without stakeholder input.

3. The most that DG Energy appears willing to commit to in providing a template (even a non-binding template) is that it ‘could’ do so at a later date if necessary. The absence of templates represents a threat to consistent, harmonised national energy planning.

4. The only accountability control proposed by DG Energy on the post-2020 planning regime is the power for the Commission to issue recommendations. Recommendations are described in the Treaties as non-binding. The sole utilisation non-binding recommendations for post-2020 planning accountability would amount to a major weakening of the current accountability controls on the MS.

2.2 Proposals for post-2020 reporting

Annex 2 of the DG Energy Letter sets out the Commission’s thinking on how to streamline energy and climate reporting obligations in the context of the Energy Union. The Annex sets out four key options that the Commission is considering for streamlining reporting:

1. **Soft guidance to MS on reporting** (no legislation and from 2016 MS to begin synthesising all reporting obligations into a single occasion in August/September so as to feed into the State of the Energy Union Report - DG Energy signals that this is their preferred option, at least initially);

2. **Legislative coordination of reporting obligations** (Following the MMR - requiring a legislative instrument to coordinate existing reporting obligations with uniform templates however the Commission explicitly states the full streamlining potential would not be achieved under this option);

3. **Streamlining and reduced administrative burden in the context of the already foreseen reviews of sectorial legislation** (DG Energy don’t state their opinion of this option but point
out that it would change reporting obligations in a significant way but only in the context of the renewal process of the RED, EED, etc);

4. **Single new legislative act on energy and climate reporting** (DG Energy state that this option would fully streamline all reporting obligations - considerably reducing administrative burden for both MS and the Commission).

DG Energy’s paper separates the discussion of planning and reporting and therefore also separates the discussion of the potential legal status of post-2020 planning and post-2020 reporting. DG Energy makes no attempt to discuss the value of, or options for, binding post-2020 planning, potentially indicating that it will be non-binding. In contrast, DG Energy sets out options for streamlined post-2020 reporting which evaluate binding and non-binding approaches. The extensive discussion of non-binding proposals are alarming given the political shift away from binding national renewable energy targets and the consequent loss in accountability.

The DG Energy paper is however explicit that their preferred option for post-2020 reporting is ‘soft guidance’, not entailing any legislative process, at least initially. Unfortunately DG Energy do not provide details on how long they intend this initial phase to last nor what the next stage will consist of. Nevertheless DG Energy acknowledges that optimum streamlining would be achieved through the revising of the existing legislative vehicles or a single new legislative act on energy and climate reporting. Therefore it is not clear that reporting will necessary be proposed in binding form. The lack of clarity on the legislative status of post-2020 planning and reporting is undoubtedly the product of deep seated political divisions concerning the EU’s mandate to determine the means by which Europe delivers the energy transition - indicating the Commission may be presenting options to test MS reaction before making a final decision.

The internal struggle of the Commission to understand what options are available for post-2020 governance has resulted in the discussion of these varied options. The options are highly constrained by the interaction between the ‘better regulation’ agenda and the political divide between the MS. But the DG Energy letter also makes clear the need for a robust understanding of the risks of weakened post-2020 governance. It also illustrates that a more full discussion of the range of viable options for balancing the drivers of flexibility and streamlining with credible post-2020 governance is needed.
Chapter 2: Lessons from 2020 planning and reporting that should inform the design of the 2030 regime

Understanding the options, risks and opportunities for climate and energy planning and reporting in the 2030 phase requires an understanding of how and why planning and reporting plays such an important role in the current EU climate and energy framework.

There are numerous planning and reporting processes in the 2020 legislation - all of which play different roles, from reporting on implementation or transposition to reporting on specific measures or targets. This section will detail the planning and reporting experience in the RED and outline the experience in the EED (for a more detailed look at the planning and reporting obligations under the EED see ClientEarth's paper on this question: Planning and reporting obligations of the EED after 2020). In addition, this section will look at the ESD (and MMR) experience as the key climate instrument where planning and reporting provisions could be streamlined.

While this section will draw out the lessons from 2020 planning and reporting, the key point is that if planning and reporting procedures (especially for renewables and energy efficiency) lose their binding status under EU law, monitoring of legally binding obligations (EU-binding renewables and nationally binding GHG targets) could become less credible. The Commission will have less effective legal tools to ensure delivery of targets. This in turn risks increasing policy uncertainty and threatening investor confidence. It is very likely that the Commission will be unable to scrutinise and assess Member State performance, and to guarantee that national plans place the EU on a trajectory to meet its 2030 objectives if such plans are non-binding.

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1 Renewables

The EU has a well-developed governance experience in optimising the regulatory and investment conditions to expedite and increase the deployment of renewables. The current RED is the second renewable energy directive at EU level, the first dates from 2001. Lessons about the optimum arrangements for planning and reporting can be extracted from the evolution from the first to second directive. The nature of the target has changed: in the 2001 Directive the MS targets were non-binding but in the 2009 Directive the target was made binding. In both the 2001 and 2009 Directives there were binding planning and reporting arrangements. However, the 2009 Directive contains a binding template for planning (though a non-binding template for reporting), while the 2001 Directive did not have any templates for planning or reporting.

In 2006, after five years of the 2001 Directive, the Commission admitted 'a policy failure' on renewables. The key additional governance tool the Commission inserted into the revised 2009 RED was the disaggregation of the EU renewables target into binding national renewables targets. This has led to the (probable) achievement of the 2020 renewables target. The Commission and European Council have now indicated that any post-2020 directive will not contain targets binding on the MS - a major loosening of a key governance tool. However, the Commission and European Council have agreed that the renewables target should be binding on the EU as a whole. However, it is impossible to enforce an EU target (unlike a binding national target which is highly enforceable before national and European courts by the Commission and third parties). Thus an EU target can only be rendered binding if the planning and reporting regime to support its achievement is itself legally binding and designed to ensure MS can be held to account for contributing to the achievement of the EU renewables target. However, the opposite appears to be developing with the Commission proposals for moving post-2020 planning and reporting to non-binding processes.

The 2009 RED set a target of 20% renewable energy penetration for the EU as a whole by 2020. This was then broken down into nationally binding targets for each MS. In addition, the Directive has rigorously controlled planning and reporting processes to drive transposition and implementation of measures and ultimate delivery of the target:

- The MS must draw up a National Renewable Energy Action Plans (NREAP) based on a binding template.
- However, the NREAPs are only drawn up once by the MS, thus they can become out of date quite quickly, limiting their usefulness.
- The Directive requires MS to report their progress every two years. There is a non-binding template the MS can use to report but there is a binding list of information in the Directive on what the report must contain, whether the MS use the template or not.
- While the reporting template is non-binding, all MS reported using the template in their 2013 reports.

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15 Renewable Energy Road Map, COM(2006) 848; the projection for renewables penetration in the EU was 10% by 2010, short of the 12% target set in the 2001 Directive.
Thus, the NREAPs and biannual reporting are binding and enforceable (though the use of the template is non-binding for reporting) serving to ensure conformity with key good governance principles of accountability and effectiveness.

1.1 Accountability under the RED

The RED provides the Commission with a number of powerful accountability tools. In addition to the traditional enforcement mechanisms that can be used to enforce binding targets, a number of innovative governance tools were included. However, the analysis below shows that while the Commission has fully utilised its enforcement jurisdiction with regard to the transposition of the RED, it has not taken full advantage of the other accountability tools provided. The following analysis first outlines the possibilities and experience of traditional enforcement tools under the RED and then goes on to look at the more innovative accountability tools.

1.1.1 Traditional Enforcement Tools

1. Enforcement of legislative transposition obligation: The Commission issued reasoned opinions - the first step in the long EU enforcement process - against Belgium, Bulgaria, Estonia, Austria, Cyprus, Czech Republic, Finland, Hungary, Ireland, Poland, Slovenia, Latvia, Luxembourg, Malta, Greece, France and the Netherlands for failing to transpose the RED and/or for not informing the Commission about the full transposition of the RED.

   a. However, there is a lack of transparency at Commission level, leading to an incomplete picture of enforcement. For example, the Commission issued a reasoned opinion on the non-compliance of the Netherlands with the RED in January 2013. The Netherlands then had two months to reply or the Commission was enabled to refer the Netherlands to the Court of Justice of the EU (CJEU). It can be assumed that the Commission has not referred the Netherlands to the CJEU as no case has been entered in the CJEU list. But the reason why the Netherlands was not pursued is not given by the Commission. It could be due to compliance on the part of the Netherlands or perhaps a decision of the Commission not to exercise its discretion to bring a case against a MS for failing to comply with EU law.

   b. Of the other countries against whom the Commission issued reasoned opinions, the Commission only initiated proceedings against Poland for failure to transpose (though these proceedings were withdrawn later when Poland took remedial action and the Commission assessed Poland to then be in compliance). The fact that no other proceedings were issued against the countries receiving reasoned opinions could lead to the conclusion that all the other countries came into compliance, however this information is not provided. Compounding this problem is the fact that reasoned opinions are not publicly available so it is impossible to scrutinise exactly how seriously MS failed to take action to ensure full and timely transposition.
2. **Enforcement of implementation**: The Commission began infringement proceedings against Spain\(^{16}\), Poland\(^{17}\) and Ireland\(^{18}\) for failing to properly apply the substantive provisions of the RED - i.e. where the MS had not just failed to integrate the RED into their national legal system but rather had integrated it into their national legal system in a way that the Commission held to be in contravention of the Directive.

3. **Obligation to prepare an NREAP**: All MS complied, therefore no enforcement was required. Unfortunately information is not available on the compliance with the planning obligations in the 2001 RED to compare to the level of compliance with the 2009 RED.

4. **Obligation to prepare a NREAP in the format of the binding template**: All MS complied.

This analysis shows that even though it seems there is a high degree of divergence on the obligation to transpose the Directive into the national legal systems, there was a high degree of compliance with the planning obligation. It is difficult to know why this is and without access to the Commission's information on how MS are out of compliance, it is impossible to assess the reasons for the defects in transposition and how that would relate to planning.

### 1.1.2 Commission use of complimentary accountability tools

1. **Issue recommendations (non-binding) on the content of NREAPs**: It appears no recommendations have been issued - at least none are available on the Commission website.

2. **Enforcement of target trajectory via requirement to update the NREAP**:

   a. **Traditional enforcement**: The RED provided for interim indicative targets for the MS on the path to their binding 2020 target. Article 3(2) of the Directive requires that MS 'take appropriate steps' to encourage renewable energy 'in conformity with the national indicative targets' with an additional requirement that the steps 'must be proportionate' to attain the objective. A close reading of the Directive indicates that this wording would allow the Commission to take enforcement action against a MS taking no action prior to the 2020 deadline. However, where a MS is taking action but that action is deemed inadequate by the Commission the RED does not provide a legal basis for enforcement action by the Commission.

   i. ClientEarth has information which was received from a partner organisation but is not publicly available, that the Commission was investigating Latvia for not complying with the interim targets, however, the Commission did not move forward with any formal investigation.

   b. **Revision of the NREAPs**: However, while the interim targets may not provide traction for traditional enforcement, the interim targets are the basis for an innovative governance tool: **MS who are below the biannual milestones of the indicative**

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\(^{16}\) With regard to biofuel policy: http://ec.europa.eu/energy/node/2331

\(^{17}\) With regard to biofuel policy: http://ec.europa.eu/energy/node/2509

\(^{18}\) With regard to the national 10% target for renewables in transport, the streamlining of administrative procedures, the management of grid access for electricity from renewable sources, and to sustainability criteria for biofuels and bioliquids: http://ec.europa.eu/energy/sites/ener/files/documents/IP-14-44_EN.pdf
trajectory have to submit an amended NREAP the following year. The amended NREAP must set out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory. The Commission can use its discretion to release MS from their obligation to submit an amended NREAP depending on the margin by which they missed their target, though the limits of that margin are not specified.

i. The Commission notes in its 2015 Progress Report\(^{19}\) that 2 MS (France and the Netherlands) missed their indicative targets. But the Commission does not follow this with a request to those MS to update their plans. Nor does the Commission indicate why it does not make such a request to those MS. The possibility of requesting the MS to update their plans is simply not discussed.

3. **Report on Progress:** The Commission must provide a biannual report on the basis of the MS reports to the Parliament and Council. This is a key accountability tool for the Commission. Regrettably the reports do not probe very much beyond a superficial overall picture. The reports available thus far avoid comment on anything that is likely to be politically sensitive. The reports thereby fail to probe the impact of ‘free riders’ on energy solidarity and trust, nor the possibility of the EU’s capacity to exceed EU targets if all the MS complied with their agreed obligations.

a. Additionally, the report is much more backward looking than forward looking - due to the fact that it is politically driven rather than shaped by an independent expert advisory process. While reporting of efforts to date is important, it should also include an analysis of the implications of the quality of those efforts for the state of the renewables transition, and energy transition more generally, leading to an assessment of the need for future action. The biannual report therefore seems more like a box ticking exercise on the part of the Commission rather than being used as a key opportunity to provide robust policy signposts to the MS.

4. **Follow-through (implementation) by MS on what they say they will do:** It is important to note that while MS must develop a NREAP and that it must conform to the binding template, delivery of the actual elements of the plan are not directly binding on the MS. If, for example, a MS commits to adopting a specific support measure for renewables in its NREAP but does not implement that measure in practice, the Commission cannot force the MS to implement the measure. However, MS are to report on the measures they describe in their NREAPs in their biannual reports, thus giving the Commission an important mechanism for naming and shaming where MS do not follow through on measures described in their NREAPs. The gap between measures described and implemented in the MS was mentioned as an issue in the 2013 and 2015 Renewables Progress Reports produced by the Commission.\(^{20}\) However, as stated above, the report only provides a high level overview of this gap and does little to spur the MS to implement the promised renewables supports.

5. **Changes to measures that MS put in place:** However, it could be said that the potential for the Commission to request an updated NREAP from a MS where they are not meeting their indicative target is a counter balance to this. If a MS was failing to put in place the elements of its plan it would presumably ultimately fail to meet its indicative target, allowing the


Commission to request an updated plan. Essentially this is a flexibility measure, allowing the MS to change its plan on how to achieve its target. But the target itself must be achieved.

6. **Transparency:** an innovative governance mechanism was included in the RED - an online Transparency Platform to make public information relevant to the implementation of the Directive, including the NREAPs and the Commission's progress report. However the Commission has implemented the Transparency Platform, not as a separate entity but rather simply by including all the information that should be part of the Transparency Platform on the general Commission website. The creation of a separate Transparency Platform would have greatly aided transparency as it would have placed a specific onus on the Commission to ensure all information was transparent. The analysis above on the use of traditional enforcement mechanisms shows a significant lack of transparency on the Commission's part in the utilisation of its accountability tools, the maintenance of a dedicated Transparency Platform could have forced the Commission to confront this lack of transparency.

This analysis makes clear the Commission has been willing to utilise its accountability tools in the traditional sense, i.e. take enforcement action, at least with regard to defects in transposition. But the Commission has made much less use of the non-traditional accountability tools within the RED. However, it must be noted that as the latest report on renewables across the EU shows only two MS are not meeting their interim target and on the whole the EU is probably going to meet its 2020 target, the Commission may not have perceived a need to use these non-traditional mechanisms. If the EU 2030 renewables target is to be 'made binding' it will be very important for the Commission to demonstrate a willingness to rely much more heavily on these alternative tools and to ensure that they are retained within 2030 planning and reporting design.

## 2 Energy Efficiency

The governance arrangements in the EED and the RED differ substantially in terms of targets and planning and reporting provisions. The EED set an overall EU target and created the obligation for each MS to set an indicative national target. However, the EED contains a binding obligation on the MS to achieve at least a 1.5% energy saving annually. The EED requires MS to prepare annual reports and national energy efficiency plans (NEEAPs) every three years.

Under both directives the legal quality of the rules governing planning is different. Although MS are required by both directives to produce a national plan, the template for MS to create their NREAPs is binding but the NEEAP has a non-binding template. Though the use of the template is non-binding, the EED does contain a binding list of minimum information that must be included in the NEEAP. However, the lack of a binding template has led to the expected consequence of inconsistent and weak NEEAPs. An independent analysis of compliance by the Coalition for Energy Savings with EED reporting and planning is not encouraging. The Coalition assessed the NEEAPs as weak and incomplete. The Coalition found that a large number of plans were either incomplete, not assessable, or very low quality. The Coalition outline a range of shortcomings, including incorrect calculation of the national 1.5% energy savings target, double counting of the same savings resulting from different measures, and the use of non-

eligible measures for achieving savings. Overall, the Coalition stated that just three out of 27 countries - Croatia, Denmark and Ireland - had produced credible plans to deliver the 1.5% annual savings target from 2014 to 2020. However, the Coalition reports some improvements in implementation over time. In addition, the Coalition attributes several of the implementation problems to inconsistencies and ambiguities in the text of the EED.

Under the EED, MS must provide information on how they are meeting the national indicative targets in the annual reporting cycle, though the NEEAPs also require the MS to plan towards their target. However, unlike the RED where MS could be asked to update their national plans if the MS is not on track to meet its indicative target, there is no such accountability link between the plans and the target under the EED.

There is a significantly different approach to the updating and review of NREAPs in comparison with the NEEAPS. The RED planning requires NREAPs to be produced once and only updated if the MS is not meeting its indicative trajectory and the Commission requests that MS to update the plan. In the mid-term evaluation of the RED it was emphasised that the usefulness of the NREAPs is hampered by their lack of updating - they become outdated quickly. In contrast, the looser legal target arrangements within the EED are matched with a much more intensified process of review and updating of NEEAPs. NEEAPs must be updated every three years. The continual updating of plans is a crucial governance tool that forces the MS to consider national planning for energy efficiency every three years and pushes them to do so in consideration of their indicative target. Thus updating NEEAPs every three years allows the Commission an important means for ensuring accountability for delivery.

Similar to the differences in legal planning and reporting arrangements, the actual accountability provisions under the two directives have marked differences:

1. As is the case with RED, legal transposition of the EED has been very poor. The 2014 Energy Efficiency Communication pointed out that 'implementation of the EU legislative framework is still lagging behind' thereby hampering effective monitoring of MS measures. The deadline for transposition expired on 5 June 2014, and the Commission, similar to the experience under the RED, has been active in utilising its enforcement jurisdiction on transposition defects:
   - 27 MS (all except Malta) have received a letter of formal notice for failing to fully transpose the Directive by June 2014;
   - 8 MS have since received reasoned opinions for their failure to transpose the Directive: Austria, Portugal, Bulgaria, Croatia, Ireland, Romania, Latvia and Germany;
   - 2 MS have been referred to court for failing to transpose: Hungary and Greece.

2. However, whereas the Commission has not had to use its enforcement powers to drive planning and reporting under the RED due to high compliance, the EED context reveals a lack of compliance with the reporting obligations. All the NEEAPs are available on the Commission website but the annual reports are missing for nine MS. However, there is no information provided on whether the Commission is pursuing those MS for

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23 http://eur-lex.europa.eu/resource.html?uri=cellar:f0db7509-13e5-11e4-933d-01aa75ed71a1.0003.03/DOC_1&format=PDF
compliance with the obligation. This is potentially because the reporting obligation under the EED is fragmented in that MS are allowed to do their annual reporting (but not their NEEAPs) under their National Reform Programmes (part of the Semester System). Therefore the missing reports might be made as part of the National Reform Programmes but this is not stated on the Commission website.

3. In addition, like under the RED, the Commission has an obligation to report to the Council and Parliament on the basis of the MS reports but in the EED there is no date/frequency by which this must be done (whereas under the RED this obligation is clearly stated to fall biannually on the Commission). Though it could be presumed as the MS must report annually, that the Commission should assess them on an annual basis. However, it seems it has never been done as no such report can be found on the Commission website. Thus it is questionable whether the poor quality of the NEEAPs is due to the lack of a binding national target or whether it could instead be ascribed to the Commission failing to use its soft powers to ensure high quality planning and reporting under the EED. In addition, the distinctive difference in legal quality of the national targets between the RED and EED must have an impact on MS incentive to comply with EED planning and reporting requirements.

In the Commission's 2030 Energy Efficiency Communication the Commission emphasises that 'energy efficiency should become an integral part of the governance framework proposed in the "2030" communication'. However, in contrast to this, the Commission and MS have decided to continue without binding energy efficiency targets either at national or EU level (though it is likely that the 1.5% reduction target will continue beyond 2020). The question then becomes how the Commission and MS can ensure that energy efficiency really becomes fully integral to climate and energy governance without a binding target - it is clear that the proposals to move planning and reporting, including for energy efficiency, onto a non-binding footing will not assist in energy efficiency becoming an effective part of the governance framework.

3 Climate

The Commission has stated that the integrated planning process would include climate as well as energy. It is not clear which parts of the climate acquis the Commission is considering including as part of the streamlining process but it can be assumed that it is planning for the sectors governed by the ESD to be included, but not those of the Emissions Trading System (ETS). In contrast to the signalled loosening or continuation of non-binding targets for renewables and EE, it is clear that the MS greenhouse gas (GHG) targets will remain binding. The focus on integrating climate and energy planning and reporting is an opportunity to enhance the value and usefulness of reporting and monitoring under the ESD.

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28 The planning for the ETS sector has already gone through several redesigns which have essentially removed the planning obligations from the MS and centralised them in the Commission. In addition, the Commission and the MS have often emphasised that the ETS is the flagship climate policy of the EU. While there are serious concerns over the ability of the ETS to live up to that name, the Commission's proposals for the post-2020 ETS do not radically alter its structure - indicating that reversing the process of moving planning from the MS to the Commission centrally does not form part of the post-2020 planning regime. For this reason this paper will not consider the inclusion of the ETS sector in the options for streamlining post-2020 planning and reporting.
In contrast to the RED and EED, the current ESD does not contain any obligation for MS to plan how they will meet their national ESD target. The lack of a planning obligation under the current ESD - even while binding targets exist - is a function of the fact that the ESD provides the MS with enough flexibility options (purchase/carryover of European and international credits) that meeting the targets is almost assured for the MS.

However, because planning and reporting requirements under the ESD and MMR have been streamlined, some requirements have been introduced to meet international planning obligations. The MS must produce 'low-carbon development strategies' under the MMR and separate detailed reports on implementation and effects of policies and measures (national and EU) - distinguishing between ETS and ESD sectors. Both these obligations began only in 2015 (though the ESD dates from 2009) and neither the strategies nor reports are available yet, thus it is impossible to assess the effects of these requirements. However, it can be said from a scrutiny of the requirements for both in the MMR, that both are more in the nature of 'reports' rather than a 'plan', i.e. it is unlikely they will push MS to develop a convincing narrative on how they will meet their GHG targets.

The ESD has an annual reporting requirement for MS to report on their GHG emissions, use of credits, progress towards meeting their ESD target and on policies and measures designed to meet that target. However, the ESD annual reporting has already been streamlined by being placed within the MMR. Any further streamlining of the ESD/MMR requirements can only be achieved to the extent that it does not subtract from any of the international obligations (contained in the MMR). Or where a new agreement on reporting is reached internationally, the EU could attempt to streamline ESD/MMR requirements as the new international agreement was incorporated into EU law.

The ESD also contains a consequent obligation upon the Commission to report to the Council and Parliament on the basis of MS reports to assess whether the MS are fulfilling their obligations under the ESD. However, as with the experience under the RED, these reports fail to draw together the key governance signposts for the years to come. The report provides specific guidance only to a handful of MS. In addition, the report fails to critically examine the Commission's own role in the carbon transition. Finally the report is much more backward looking than forward looking. While analysis of efforts to date is important, that analysis must be marshalled into a coherent story of necessary future action. This annual report therefore seems, as with the reports on renewables, more like a box ticking exercise on the part of the Commission rather than being used as a key opportunity to provide robust guidance to the MS.

It should be noted that the ESD is a decision, rather than a directive and so does not require transposition by the MS. Therefore there can be no enforcement on the basis of non-transpositions in the MS. In addition, the ESD does not contain any of the innovative governance arrangements similar to those in the RED, i.e. obligations to update plans on the basis of an indicative trajectory, leaving the Commission with fewer enforcement tools.

Indeed, a number of MS are far from the GHG reductions they should already have achieved under the ESD. It appears that the Commission has not issued any infringement proceedings (or started to prepare for the same) under the ESD for any reason. The lack of enforcement to date is a reflection of the fact that the ESD has very loose compliance requirements and it is generally acknowledged that even those MS that are far from their ESD targets will simply be able to buy or trade allowances to satisfy the Decision's requirements. If the 2030 process changes the ESD to require MS to achieve much more ambitious targets using only domestic
measures (as the European Council Conclusions indicate), then planning will become essential - which the Commission has arguably recognised by the proposed including of climate as well as energy in the post-2020 integrated planning and reporting regime.
Chapter 3: Analysis of the options, risks and opportunities presented by the possible legal forms of the future planning and reporting regime

Having outlined the broad drivers for the focus on 2030 governance in Chapter 1 together with an overview of the policy debate thus far, this chapter will focus on the two main drivers - increased MS flexibility over national energy mix and streamlining - as driving the design of the 2030 planning and reporting regime and thus on possible legislative vehicles. This section will therefore address the following:

1. The case for binding planning and reporting as the pre-requisite for unlocking conditions for achieving the EU's 2030 targets and Energy Union objectives.

2. The opportunities and risks posed by the four key design options for post-2020 planning and reporting.

1 The case for binding planning and reporting

In order to meet the German, and indeed European Council, call for credible post-2020 governance, the new planning and reporting regime must comply with the core principles of good governance, namely: transparency, effectiveness, accountability, legitimacy,
flexibility, certainty and policy integration.\textsuperscript{29} The Commission itself set out these principles of good governance in its 2001 White Paper on European Governance.\textsuperscript{30} The European Council is driving the governance debate forward with a focus on what could be considered as some fundamental principles of good governance. In its October 2014 Conclusions, the European Council stated that post-2020 governance should as a minimum be: reliable, transparent and predictable. In addition, the European Council mandated the post-2020 governance regime to ‘build on the existing building blocks’, essentially a call to maintain conformity to the core principles of good governance that underpinned the 2020 regime. Any governance system developed by the Commission will now need to ensure compatibility with these principles. Conformity with good governance can only be assured where there is binding planning and reporting arrangements because:

1. Effective governance depends critically on robust accountability. In response to the Commission’s proposal to transform post-2020 energy targets and planning and reporting into a non-binding process, ClientEarth explored the impact of intergovernmental approaches (commonly referred to as Open Methods of Co-ordination or OMC) on governance.\textsuperscript{31} ClientEarth concluded that OMC is not only a weak form of governance but more specifically will be incapable of providing a credible framework for ensuring change on the scale required for the delivery of the 2030 targets. This is essentially because the key criterion of accountability is missing under an intergovernmental/OMC approach.

2. Effective governance and credible accountability requires planning and reporting based on the rule of law. The European Council has decided not to adopt nationally binding energy targets after 2020 but has agreed to adopt a ‘binding EU target’ for renewables and a ‘non-binding EU’ energy efficiency target. If the EU renewables target is to be credibly rendered ‘binding’ it is essential that the 2030 EU target be articulated in law along with a planning and reporting regime necessary to support its achievement. It is impossible to enforce an EU target. Thus an EU target can only be rendered binding if the planning and reporting regime to support its achievement is itself legally binding and designed to ensure MS can be legally held to account for contributing to the achievement of the EU renewables target.

3. It is clear that the Commission would be forced to intervene to propose binding governance, including binding planning and reporting if non-binding arrangements were initially put in place. This is undoubtedly one of the key lessons learnt from the 2020 experience. The urgency of the climate threat is clear; therefore there is no time to repeat an experiment in weak governance.

\textsuperscript{29} For a full consideration of these principles in relation to EU Climate and Energy 2020 Governance see, ClientEarth, EU Climate & Energy Governance Health Check: Looking back to 2020 and forward towards 2030.

\textsuperscript{30} European Governance: A White Paper COM(2001)428. The Commission White Paper also sets out seven principles, however those principles are slightly different from the principles identified by ClientEarth as essential to good climate and energy governance (transparency, effectiveness, accountability, legitimacy, flexibility, certainty and policy integration). ‘Certainty’ was not included in the Commission White Paper as that paper was a general one, not dealing with the specific climate and energy governance context. Similarly, the Commission White Paper included ‘participation’ as a standalone principle, whereas ClientEarth incorporated that principle under the broader term ‘legitimacy’. Finally, the Commission White Paper also included ‘proportionality and subsidiarity’ as standalone principles. ClientEarth incorporated consideration of those principles as part of a wider discussion of the principle of ‘flexibility’, which includes those concepts but also raises specific issues relevant to the climate and energy context.

4. Binding rules may not be a guarantee of compliance but they send the clearest possible signal to investors concerning the seriousness of the EU’s commitment to meeting the objectives. Building investor confidence has been a central concern of both the Commission and European Council. It is universally recognised that an investable pathway is one that is stable, predictable and has an enforceable regulatory framework. Thus binding rules are fundamentally important.

5. Binding planning and reporting creates an effective deterrent to ‘free-riding’, incentivises compliance and promotes energy solidarity. Binding planning and reporting, especially where based on binding templates, ensure all MS are including the same essential bottom lines and core data in their plans and reports. Thus binding rules will ensure easy comparability and therefore identification of one or more MS who may be underperforming.

6. Binding planning and reporting will create a stable framework for achieving more cohesive, integrated governance. The Commission has consistently emphasised the need for more integrated climate and energy governance. A binding planning and reporting regime is needed to move MS beyond plans that are simply lists of activities and to develop a long-term analysis of how each country will contribute to resource sharing, IEM completion, target contribution, etc. Binding planning and reporting will also be necessary to enable regions to peer review and collaborate on plans. An absence of binding planning and reporting will lead to inconsistencies and a lack of coherence across the EU.

7. Binding planning and reporting is not inconsistent with energy flexibility. As described in Chapter 1, there is little doubt that the principle of flexibility with regard to the national energy mix is now a central driver in shaping EU 2030 climate and energy governance - with both the UK and Germany emphasising this issue. However, binding planning and reporting is not inconsistent with MS right to flexibility over their national energy mix. While MS can undoubtedly lay strong claim to a right to flexibility over the national energy mix, this does not allow them to deviate from the EU’s climate objectives or to prevent the EU from exercising its clear Treaty mandate to take action to secure European energy security, sustainability and competitiveness and to combat climate change. Meeting the EU’s 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 legal boundaries of national energy flexibility and the EU’s mandate to act on climate and energy and promote renewable energy sources and energy efficiency. Provided the EU’s action is proportionate, Member States’ right to energy flexibility does not empower them to lawfully undermine the EU’s capacity to meet its 2030 targets or ignore their collective obligation to meet those targets. In effect, MS right to flexibility is not inconsistent with the adoption of binding post-2020 planning and reporting, which is an essential pre-condition to the achievement of the EU’s climate and energy mandate.

32 For a detailed discussion of the flexibility provided by the Treaties on the energy mix in contrast to the coherence required under the environment chapter of the Treaties, see ClientEarth’s consideration of this, available at: http://www.clientearth.org/climate-energy/climate-energy-publications/legal-framework-governing-eu-law-a-policy-making-for-2030-climate-a-energy-process-2648
In contrast to this necessity for binding planning and reporting, the Commission is clearly considering at least a certain period of non-binding planning and reporting (if not non-binding planning and reporting for the entire next phase of the climate transition). In addition, the non-binding processes are already being actioned in the form of the development of the country fiches and the Energy Union tour. As DG Energy notes in the letter detailed in chapter 1 of this paper, it is appropriate, to some extent, for MS to prepare for the post-2020 regime well ahead of the expiry of the 2020 arrangements. However, the informality of the current process and the lack of clarity about the ultimate design of the planning and reporting regime raises serious concerns about the quality of planning and reporting that the current process will produce. Coupled with the fact that the current process is already showing serious signs of lacking in transparency, the extent to which stakeholders will be able to scrutinise the process is seriously in doubt. The lack of transparency could also make it hard for civil society to understand the factors informing the Commission and MS evaluation of what is a fair contribution to the EU’s climate and energy targets. The result may be a reduction in the incentives for MS to credibly pledge contribution to those targets. Thus the Commission must commit to a transparent, binding planning and reporting process immediately and use this as the guiding principle to orientate any intermediary actions on planning and reporting.

2 Options for binding post-2020 planning and reporting

The MS have agreed to retain the three target approach to climate and energy governance but with a key change in the legal nature of the targets. The GHG target (both in ETS and ESD sectors) will remain legally binding and enforceable at national and EU level. However, it has been agreed by the MS that the post-2020 energy targets will be adopted as EU targets but not disaggregated into nationally binding targets.

Although EU targets are legally unenforceable against the MS or the EU itself, the MS have agreed that the EU renewables target should be ‘binding at EU level’. The exact vehicle for achieving this legal outcome remains unclear. In contrast, the MS have decided that the post-2020 energy efficiency target would remain ‘indicative’ at the EU level. There is increased emphasis on an interconnection target in the 2030 discussions but that too is non-binding. The ETS is being reformed to ensure it functions more effectively and thereby carries more of the weight of driving renewables and energy efficiency deployment but the outcome of this reform is unclear. Meanwhile the Energy Union debate has pushed the overlaps between the climate debate and energy security, especially within the context of the internal energy market (IEM), to the fore. The options discussed in this paper nevertheless focus on the streamlining of the traditional climate and energy areas e.g. greenhouse gases, renewables and energy efficiency as the core of the climate and energy acquis and the core of the integration and streamlining agendas.

Despite this significant deterioration in the legal status of the renewable energy target and the refusal to give the energy efficiency target a meaningful legal quality (despite the emphasis on bringing energy efficiency within the heart of the governance regime in the Energy Efficiency Communication), and the uncertain outcomes of ETS and ESD reform, the Commission is suggesting a move to non-binding planning and reporting. As analysed above, planning and reporting must be enshrined in law and made binding. Therefore the options for streamlining are shaped by the need for a legislative vehicle.
This section will consider the opportunities and risks from the creation of one single integrated national plan and one single integrated reporting structure. Following that, this section will consider the options for placing such integrated planning and reporting within the 2030 acquis.

2.1 Opportunities from one integrated plan and one integrated reporting structure

The renewables target is binding on the EU and the EU will need to create arrangements to achieve this target. Where renewables planning and reporting is merged with energy efficiency planning and reporting, the arrangements to ensure the achievement of the renewables target should assist in achieving the energy efficiency target. The creation of an 'EU binding' renewables target essentially places the obligation to achieve that target on the EU institutions (even without the possibility of enforcement for the target against the institutions). The governance arrangements necessary to achieve the target must be created e.g. binding planning and reporting obligations for renewables, binding planning and reporting templates and the requirement for MS to commit to specific contributions. The merging of renewables and energy efficiency reporting specifically creates the opportunity to improve energy efficiency reporting.

The GHG targets are nationally binding on the MS. Therefore the planning and reporting arrangements will have to reflect the need for achievement of the binding GHG targets. Where the planning and reporting arrangements for energy efficiency, renewables and GHG are all in one instrument it could mean the same arrangements designed to ensure the achievement of the binding GHG targets also operate with regard to renewables and energy efficiency, making achievement of those targets much more probable.

The development of one integrated national plan could provide a real opportunity for MS to move beyond simple lists of measures towards deeper analysis of the national road map to contributing to 2030 targets and Energy Union objectives. Though this carries the corresponding risk (detailed below) on loss of detail and production of massive and anodyne documents. Therefore this risk must be balanced by ensuring that at least the minimum necessary for each national plan is set out in binding legislation to ensure key content is captured.

Maximise political opportunity: Integrating planning and reporting into one document (i.e. one plan and one report) would enhance the communication opportunity provided by the planning and reporting process. With one plan or report from each MS and one synthesis report from the Commission, it will be easier to involve the media and therefore gain maximum political traction. In addition, if the streamlining involves the extraction of key messages from the plans/reports then it will be easier to get high-level politicians to look at the recommendations - where there are too many recommendations or the recommendations which are too broad ranging, it would be harder to get the key messages to penetrate the highest political levels.

Maximum policy coherence: There are policy coherence gains by merging renewables and energy efficiency planning and reporting. Adding climate to energy planning and reporting could add to this policy coherence. MS have notoriously light-touch regulations of GHGs from agriculture, while energy sector regulation is much more intensive. Forcing MS to provide economy wide plans should highlight this divergence in the quality of GHG governance across...
sectors, potentially leading to improved traction on GHGs in light-touch sectors. In addition, it will
force MS and the Commission to focus more clearly on the interlinks between the target
approach, i.e. what level of renewable energy and energy savings are necessary for attaining
the required GHG reduction. It should create a more robust process behind the targets (and
potential national level target setting) and ensure MS think more coherently about sustainable
energy solutions.

2.2 Risks from one integrated plan and one integrated report

**MS feel their flexibility over national energy mix reduced**: As discussed thoroughly in this
paper, MS are pushing for increased flexibility over their national energy mix. In this scenario MS
would have to deliver a single integrated national energy and climate plan and potentially then
have to enter into an iterative process with the Commission to discuss that plan or report
(including on the level of ambition). The iterative process could arguably be seen by the MS as a
form of waiting for approval by the Commission of their entire national energy policy. Some MS
may see this as an unwarranted intrusion by the Commission and could only be remedied (while
keeping the one single plan/report approach) by severely reducing the level of detail so that the
interference of the Commission (from a MS point of view) is reduced.

**The energy efficiency target is not binding on the EU while the renewables target is
binding, thus the planning and reporting arrangements created to achieve the energy
efficiency target could be weaker than those created for renewables.** Where the planning
and reporting for both energy efficiency and renewables is merged, it is also possible, that the
planning and reporting arrangements would reflect the status of a non-binding target rather than
the binding targets (GHG and EU level renewables). This is even more so as the Commission is
considering non-binding planning and reporting. However, if the requirement for an annual 1.5%
energy savings target is repeated post-2020, the need to achieve such a target could assist in
ensuring the necessary planning and reporting arrangements are created.

**Reduced clarity and detail, increased risk of administrative delay**: Integrating all climate
and energy planning and reporting into a single plan and a single report would produce a huge
document. This could ultimately reduce the level of clarity and detail currently provided by MS
and thereby render it impossible for third parties to understand the nature and scale of the plans,
hence reducing transparency, legitimacy and investor confidence. In addition, where MS are
required to report on all climate and energy issues in one report, the possibility that the reports
will not be finalised on time due to one issue that is politically sensitive nationally, or for which
gathering the necessary data is difficult, will increase.

**Tension between detail and comprehensiveness**: integrating all planning and reporting
requirements into one document would create tension between detail and comprehensiveness,
potentially leading to very broad-ranging plans lacking in the nuances necessary to fully
understand the energy transition in each MS.

**Difficult to differentiate between targets with different requirements**: where the integration
agenda concludes with all planning and reporting in one document, it will be difficult to
differentiate between the ‘bindingness’ of the EU’s targets. Where all targets are to be planned
for and reported on together, this could potentially reduce the focus on achieving the binding
targets (GHG and EU level renewables). Similarly it could be appropriate to differentiate between the level of detail needed for planning and reporting between 2030 and Energy Union objectives. The Energy Union objectives are more high level and not necessarily requiring the same detail and scrutiny as the 2030 targets. In addition, some of the Energy Union objectives may be outside the EU’s traditional areas of competence on climate and energy. Planning for 2050 is necessary to ensure short and medium term planning stays on the correct ultimate trajectory but this may not need the same level of detail as plans orientated to 2030.

**Destruction of rationale for RED, EED and ESD as separate instruments:** where planning and reporting obligations are removed from the RED, EED and ESD, this may create the possibility for some MS to question the need for separate instruments on renewables, energy efficiency and the non-ETS sectors. The opportunities under option 1 below explain the rationale for keeping separate and individual instruments. ClientEarth has previously looked at the EED to answer the question of whether this instrument contains enough substantive measures to survive if all the planning and reporting obligations are stripped out and concluded that while planning and reporting arrangements are clearly critical, there are many substantive measures in the EED which would more than justify the retention of that instrument in the post-2020 regime, even without planning and reporting provisions. Similarly a report prepared for Heinrich-Böll-Stiftung on the governance of renewables post-2020 concluded that there are a number of substantive (i.e. non planning and reporting related) provisions of the RED, or new substantive provisions that should be placed in a revised RED post-2020, that more than justify the retention of an instrument solely dedicated to the promotion of renewable energy. However, regardless of these conclusions on the importance of retaining dedicated renewables and energy efficiency instruments, some MS do not wish these instruments to continue and will see the removal of planning and reporting from those instruments as reason enough to call for their abolition.

### 2.3 Option 1: Revised RED, EED, ESD

This option maintains the architecture of the current governance arrangements - RED, EED and ESD as separate instruments with separate planning and reporting obligations. However, the planning and reporting obligations could be streamlined and integrated by:

(a) ensuring that all non-essential reporting lines in the Directives are removed;

(b) synchronising the planning and reporting timelines in the different instruments e.g. all reporting could move to an annual basis and planning could be done on a triennial basis (alignment of timing for planning and reporting obligations has been suggested in the DG Energy letter detailed in chapter 1 of this paper); and

(c) this option could also accommodate the development of one integrated energy and climate plan and one integrated reporting structure. Such an integrated plan and reporting structure could be created by ensuring each instrument cross references each other so that each MS produces one annual document on renewables, energy efficiency and climate reporting and one triennial document on energy efficiency and renewables and climate planning. Essentially ensuring the merging of plans and reports but the keeping the legal instruments separate.

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However, drafting such an extensively cross-referenced network of planning and reporting provisions could add to complexity which might be counterproductive (see risks below).

2.3.1 Opportunities of Option 1

There is powerful symbolic and practical value in retaining planning and reporting within the current instruments: The existing instruments (RED, EED and ESD) contain the building blocks of robust governance of the 2020 targets. Europe’s ability to meet the 2020 targets, its ability to ensure investor certainty, public confidence in EU governance and its standing as a global leader in governance of the low carbon transition are largely based on the fact that these instruments ensure conformity with the principles of good governance. Fulfilling the European Council’s mandate to create a ‘credible’ post-2020 governance regime to ‘build on the existing building blocks’ of 2020 governance means that Europe must maintain and improve the governance building blocks enshrined within these instruments for the post-2020 period. The binding planning and reporting requirements in these instruments are without doubt a critical building block of the existing regime.

Retaining planning and reporting within a revised RED, EED and ESD would be consistent with EU’s stated commitment to energy efficiency first, being world leader in renewables and building energy security solidarity and trust. Renewables and energy efficiency are critical to the Energy Union strategy. Thus having strong tailored instruments sends a strong signal to investors, MS and wider stakeholders.

Retaining the current instrument set up would allow for the retention of maximum institutional memory in the Commission and MS. The more closely the post-2020 instrument design matches the 2020 design, the easier it will be for the EU and MS administrations to navigate.

Retaining separate instruments could allow maximum political opportunity to increase ambition. Revising current instruments (as opposed to drafting a new instrument from scratch) would put pressure on the legislators to retain a maximum of the ambition, measures and good governance arrangements that currently exist in those instruments. It will be more politically difficult for the Commission and MS to delete key existing provisions in revising the current instruments than to design a new instrument(s) from scratch without those key provisions. For the Commission to delete much from the existing acquis in a revision of an existing instrument the proposal would have to include multiple lines stating the exact provisions to be deleted. As part of the legislative process documents would be drawn up to compare the proposal to the current instrument so that it would be clear exactly what would be deleted. It would prove easier for members of the European Parliament and progressive MS to retain those provisions by introducing amendments to cancel the deletions, compared to having to introduce entirely new provisions into an entirely new instrument. The political consensus generally tends towards the status quo in EU policy making and in the end the proposal from the Commission is often adopted with minimal amendments. The easier it is for policy makers to introduce amendments retaining key current provisions, the more likely that they will make it into the final legislation.

2.3.2 Risks of Option 1

MS are not satisfied with this level of streamlining: If minimum streamlining is carried out, the MS could see this as a failure to respond to the strength of the drive towards streamlining and the push to reduce administrative burden. DG Energy’s paper stated that a single instrument
for reporting yields the most streamlined option and the MS will be interested to see such proposed. In contrast if the Commission proposes that planning and reporting remains within 3 dedicated instruments, and MS are not satisfied with the level of streamlining, it could result in MS radically altering the proposals for revised instruments during the legislative process, potentially stripping out key reporting or planning obligations to ensure satisfactory streamlining is achieved. In addition, this option does not incorporate planning or reporting for Energy Union goals (or only minimally). The MS may wish to see a more integrated planning and reporting regime, as the Commission has indicated in the country fiches (which are heavily Energy Union-orientated), in which case they might reject this option. At a minimum, if the MS are unhappy with the Commission proposal it will slow down the legislative process and create pressure on the Commission and European Parliament to agree to weaker provisions across climate and energy legislation generally.

### 2.4 Option 2: Merged RED/EED with ESD separate

This option would merge the RED and EED into one instrument with the corresponding planning and reporting merged into one plan and one report cycle per MS. The ESD would continue as a separate instrument with a separate planning and reporting cycle.

#### 2.4.1 Opportunities of Option 2

**Targets that are similarly non-binding at national level grouped together:** The renewables and energy efficiency targets will not be binding on MS post-2020. As such, the reasons for different quality planning and reporting arrangements fall away to allow planning and reporting to be integrated. Further, as outlined above, the renewables target is binding on the EU as a whole, whereas the energy efficiency target is not, this could provide traction for improving energy efficiency governance.

**Energy policy coherence:** each policy impacts upon the other, not least because the more energy efficient a MS is, thereby cutting its energy demand, the easier it will be for that MS to achieve its renewables target. In addition as MS design and implement energy measures, the integration of energy plans could assist MS in considering where the limited MS administrative capacity and budget could provide the most traction e.g. by implementing energy efficiency first.

**Responding to the Council’s request to streamline:** This option responds to the European Council mandate to streamline the planning and reporting arrangements. However, this option does not require all planning and reporting obligations to be streamlined together - this could prove useful if integrating the planning and reporting provisions from the ESD/MMR along with those of the RED/EED would prove too complicated.

#### 2.4.2 Risks of Option 2

**Reduced effectiveness of individual measures:** The deployment of increased renewables and energy efficiency will require more dedicated and detailed instruments as the penetration of both increases in the energy system. Where renewables and energy efficiency are merged into one instrument and planning and reporting requirements for both merged within that one instrument, there may be pressure on that instrument to provide only measures which contribute
to both renewables and energy efficiency simultaneously. Therefore planning and reporting lines will also come under pressure to contribute to both renewables and energy efficiency. The consideration of individual planning and reporting lines necessary for renewables separately to those necessary for energy efficiency could suffer considerably. Ultimately the effectiveness of MS deployment of renewables and energy efficiency measures could be reduced and planning and reporting provisions diminished to the lowest common denominator.

**MS not satisfied with this level of integration:** this option streamlines and integrates energy planning and reporting but not climate - the Commission and Council have repeatedly indicated that climate planning and reporting would also form part of the integration agenda. The corresponding risks to the legislative process outlined above in option 1 then follow where the MS are not satisfied.

**Incomplete policy coherence:** while designing renewables and energy efficiency policy together could lead to greater policy coherence, there is additional policy coherence that could be gained from including climate with energy. The ESD already covers sectors where renewables and energy efficiency are key drivers of decarbonisation, e.g. transport and buildings so that there is value in MS planning for these sectors on the basis of renewables and energy efficiency together.

**No ESD planning created:** currently there is no planning obligation on the MS under the ESD. If, as proposed, MS targets become harder to achieve under the ESD national planning will become essential. Under the current streamlining agenda it could be difficult for the Commission to even propose the creation of an additional planning requirement for MS as all the pressure is towards having less planning and reporting requirements, rather than creating new ones. Therefore merging climate with energy planning might be the greatest opportunity for ensuring that MS plan policies and measures for sectors covered by the ESD.

### 2.5 Option 3: MMR as a 2030 planning and reporting instrument

The MMR represents a model for ensuring timeliness and quality control for MS reporting on national commitments under the ESD and also the international level. DG Energy recognised the importance of the MMR as a comprehensive reporting document in the options for reformating reporting as detailed in the context chapter of this paper. The DG Energy option suggests the creation of a “legislative instrument which coordinates existing reporting obligations.” The Commission does not explicitly suggest the MMR as that legislative instrument but rather hints at the creation of a new instrument. This differs from the option presented in the current paper as we suggest this option could include planning as well as reporting and the explicit use of the MMR as the coordinating instrument (the creation of a new instrument is discussed in option 4). The dedicated instruments (RED, EED, ESD) would then be kept intact and would cross reference to the substantive planning and reporting obligations in the MMR.

#### 2.5.1 Opportunities of Option 3

**Maximum integration:** The Commission has suggested the integration of climate and energy planning and reporting at an EU level but it has not been suggested that international planning and reporting should also be part of the integration agenda - thus the merging of EU and
international planning and reporting obligations would even go beyond the drivers of the integration debate and remove the risk of MS considering the integration was insufficient. Regardless of the streamlining carried out on EU obligations, MS will still need to produce a plan (which has potential to function as a plan for the ESD sectors) as per their international obligations - potentially on a different cycle to the EU plan - therefore maximum integration must include international obligations as well pure EU obligations.

Building on existing streamlining: The MMR has already streamlined a certain amount of climate and energy reporting into the international reporting obligations. For example, the ESD and ETS are linked to the annual reports Member States are required to produce under the MMR. This streamlined base can be built upon by the inclusion of renewables and energy efficiency planning and reporting under the MMR. In addition, the MMR incorporates ETS reporting as part of its integrated reporting, the other options don’t incorporate ETS reporting, creating a more holistic climate reporting landscape. This option therefore maximises the opportunities for minimising duplication.

Higher probability of binding planning and reporting: The MMR already has binding planning and reporting obligations that the MS must comply with and is contained in a binding instrument: a Regulation. As the obligations are linked to international commitments the MS have made, they must remain binding because the EU and the MS have committed internationally to these planning and reporting lines and cannot unilaterally change or reduce their international commitments. It is unlikely that where additional planning and reporting lines are included to provide for streamlined plans and reports, that there would be a separate, non-binding arrangement for those parts that are not international obligations. Thus in all probability all planning and reporting provisions would be binding if merged within the MMR.

2.5.2 Risks of Option 3

Captured by international process: the MMR was initially created to provide a vehicle for the MS to comply with their obligations from the UNFCC process. Thus streamlining EU obligations into the international obligations will require that the EU obligations always, at a minimum, meet the international obligations. This could restrict the amount of streamlining that can be done. In addition it would require the MS to plan and report to the international timetable rather than develop a planning and reporting cycle that would best suit the MS and EU. If the international obligations are changed in nature or timetable then the entire planning and reporting structure for the EU level may also have to change. We do not yet know what post-2020 international reporting will look like and currently there is a lack of reporting requirements in the INDCs (Intended Nationally Determined Contributions - the key documents outlining countries’ international climate commitments).

Excessive streamlining: Fundamentally planning and reporting must yield the information necessary to enable the Commission to monitor the energy transition. Where planning and reporting obligations are streamlined for inclusion in the MMR, the processes could be reduced to solely those that are required internationally - which are currently more limited and high level than those at EU level. However, planning and reporting for the 2030 targets will require a level of detail not currently provided at international level. Losing that detail could endanger achievement of the 2030 targets. The MS will see the international obligations as a baseline and potentially not be willing to agree to any obligations over and above such a baseline.
2.6 Option 4: A new governance instrument

An entirely new instrument could be created to contain the streamlined and integrated planning and reporting arrangements. The DG Energy paper signalled that this was an option considered for reporting and while the paper also discussed streamlining all planning obligations into one, it did not indicate thinking on whether this would be included in the revision of one of the current instruments or whether it would be in a newly created instrument.

2.6.1 Opportunities of Option 4

This option could result in the creation of a more fully developed legislative ‘home’ for wider governance innovation which is necessary for good EU climate and energy governance. Thus far the 2030 and Energy Union governance debate has focused almost exclusively on planning and reporting, however, this is also a key opportunity to address wider gaps and weaknesses in the EU's governance regime, in particular:

1. **Imbalance between EU and MS compliance with Aarhus Convention Information Disclosure Standards**: EU law must be amended to end the disparity that currently exists between the (extensive) information disclosure rules applied to MS and the (much more limited) rules imposed on EU institutions. Although the EU signed the Aarhus Convention (leading international treaty on public access to environmental information\(^{35}\)) and introduced binding rules requiring MS to comply fully with its information disclosure standards, the EU has thus far refused to apply the same standards to EU institutions with damaging consequences for the credibility and legitimacy of EU level climate and energy governance.\(^{36}\)

2. **Transforming the State of the Energy Union Report into a binding obligation for the Commission**: The Commission's political 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 EU's 2030 targets and how the Commission 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.

3. **Creation of an independent expert body to support more effective energy and climate risk management**: Though the Commission has multiple obligations to report on the progress by the MS towards the EU's climate and energy goals, its reports seem more like a

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\(^{35}\) Convention on access to information, public participation in decision-making and access to justice in environmental matters.

'box ticking' exercise on the part of the Commission rather than being used as a key opportunity to provide robust policy signposts to the MS. The participation of independent experts to assist the Commission would give political cover for stating the politically sensitive as required to drive the policy debate forward. The participation of independent experts requires the creation of a new EU body (European Energy and Climate Risk Observatory37) tasked to identify systemic risks and to advise the Commission on the appropriate policy response required. Its reports should be published and the Commission should be required to justify departure from its recommendations. This body should play a key role in supporting and evaluating national plans and reports. This would also add to policy coherence between the climate side and the security side of the energy debate as the Risk Observatory could provide a risk management function that could provide a bridge across the separate but related policies.

The resolution of the above outlined wider gaps in EU climate and energy governance could potentially also be incorporated into any of the other 3 options described here. However, it is more likely that significant amendments to the governance regime would be included in an instrument that is expressly dedicated to governance.

MS desire for streamlined EU planning and reporting is satisfied: the creation of a single instrument for EU planning and reporting should create the maximum streamlining option as signalled by DG Energy. The creation of a single instrument, but with the planning and reporting provisions therein being binding, could be the political compromise between MS pushing for light touch and non-binding governance (e.g. UK) and MS calling for a binding governance process (e.g. Germany). In other words, optimised EU streamlining and integration is achieved but within a binding instrument.

Could complement planning and reporting in the revised instruments: There are various possibilities for the design of a new instrument, indeed the creation of an entirely new instrument would allow for the design of new and optimal governance arrangements. One approach would be to design a new governance instrument that sits in complement to the revised 2030 RED, EED and ESD which continue to contain more specific provisions on planning and reporting for each sector and the MMR could continue to contain international planning and reporting provisions. This would allow the assurance that all necessary reporting lines for specific policy instruments e.g. renewables and energy efficiency, continue to be included in the specific instruments to which they are linked (as currently) but with a separate reporting instrument for more overall and long-term objectives connected to the Energy Union. For example, MS would report on their progress in increasing renewable energy via an obligation in the (updated) RED but report on how that renewable deployment orientates the MS appropriately towards 2050 in a separate instrument. The main purpose of the new instrument would be to ensure that while MS provide the technical information and data necessary to plan their national decarbonisation pathway, the overall economy-wide plan, orientated to 2050 is also provided, bringing long term certainty and promoting policy coherence. The creation of a high-level layer of reporting for Energy Union and 2050 objectives would be better in a new instrument rather than a revision of the existing framework because there is currently no overarching instrument under which the more short term (the 2020 objectives) sit. The creation of an overarching instrument would lend itself to long term planning and reporting out to 2050.

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37 E3G, The Energy Union needs a new approach to policy-making, available at: http://e3g.org/docs/The_Energy_Union_needs_a_new_approach_to_policy_making.pdf
2.6.2 Risks of Option 4

Destruction of rationale for RED, EED and ESD as separate instruments: the same risk as outlined under the creation of one integrated plan/report would be created but could potentially be stronger where the instrument containing all the planning and reporting provisions contains other substantive provisions that could otherwise be in the dedicated separate instruments. For example, the State of the Energy Union is essentially a revision of the obligation under the current instruments for the Commission to produce reports synthesising the reports created by the MS. The State of the Energy Union may replace these reports, as otherwise the Commission may not be satisfied with the level of streamlining of its own obligations. Similarly the increased push for transparency in a single governance instrument could remove the rationale for the creation of 'Transparency Platforms' in the separate instruments. Both these examples would further reduce the content of the dedicated instruments and further decrease the likelihood of their continued existence.

MS oppose the measure to block wider EU governance innovation: The streamlining agenda is a clear push towards less, not more EU governance of MS action on climate and energy. Where a new governance instrument emerges covering not only planning and reporting (as foreseen by DG Energy) but also increased transparency provisions for the EU institutions, a binding requirement for an annual State of the Energy Union report and the creation of an independent expert body, it is not clear the MS would accept this - creating the risks of legislative delay or rejection mentioned above. In addition, as stated in the introduction, part of the push towards streamlining is a response to rising euroscepticism - MS that are concerned about the rising anti-EU tide will not agree to the creation of a new EU body.

MS are not satisfied with this level of streamlining: If a new governance instrument is created alongside the existing instruments (RED, EED, ESD), the MS may not consider this as streamlining. Even where planning and reporting lines are thoroughly streamlined within the new governance instrument, the creation of an additional instrument may be seen as an expansion of the EU climate and energy acquis and therefore fundamentally at odds with the streamlining agenda.
Chapter 4: Recommendations for designing 2030 planning and reporting

1 Timing

It is unclear how the planning and reporting regime will be designed post-2020 and how it will sit with other climate and energy legislation. In an Annex to the Energy Union Communication the Commission set out its timetable for revision and initiation of legislation or communications key to achieving the Energy Union. The instruments that formed the 2020 climate and energy package (RED, EED, ESD, ETS) and specific initiatives on the IEM are included and to be revised 2016-2017. There is no specific initiative mentioned on the 'new' governance, the MMR, nor specifically on planning and reporting.

Therefore the question of timing is crucial. If the planning and reporting provisions are to be integrated into one instrument, it would need to be done simultaneously with the revision of the 2020 acquis. If it is not done simultaneously, the revised acquis/planning and reporting regime could be incomplete. Agreeing measures but agreeing the planning and reporting associated with those measures at a later date is unlikely to produce an optimal result. Similarly, agreeing planning and reporting provisions before the associated measures are agreed might result in the design of a planning and reporting regime where necessary information is not required to be reported. Political consensus can change quickly, especially in climate and energy. A change in political consensus could mean that certain measures agreed in the initial revision could be left without corresponding planning and/or reporting obligations where that measure has already fallen out of political favour.

The possibility of the change in political favour injuring the creation of binding planning and reporting processes was considered in the previous chapter. However, it is difficult to say with any certainty which options would best protect against weakening of the planning and reporting regime. What can be concluded is that retaining instruments dedicated solely to particular sectors (e.g. renewables and energy efficiency) has a high value. Further, due to the very strong streamlining and better regulation agenda, it is unlikely that the MS would be satisfied with a

proposal that contains additional legislation (i.e. a new instrument dedicated solely to governance). Further, integrating all planning and reporting obligations into the MMR presents the most streamlined option as international planning and reporting lines can be integrated with those of a national level.

However, the Commission is already moving forward on planning and reporting, illustrating the pressure the Commission is under to move quickly. The Commission could use the State of the Energy Union report promised for this Autumn to set out the fundamental principles of the planning and reporting regime, specifically transparency, effectiveness, accountability, legitimacy, flexibility, certainty and policy integration and then manage the reform of planning and reporting as part of a co-ordinated legislative review of the climate and energy package.

2 Planning and reporting requirements

The analysis in chapter 2 has pointed out the difference in quality of the planning and reporting arrangements in key parts of the 2020 acquis. There is no consistent emphasis on plan making across the three instruments: RED planning is good via a binding template but is only done once and thus becomes obsolete quickly; EED planning is better in being required every three years but is lacking in a binding template to ensure consistency; meanwhile the ESD is the weakest element of planning with extremely weak (diffusion into reporting) planning requirements beginning only in 2015. In the absence of binding targets, plans are a key means by which MS can be held to account for what they will contribute to the 2030 targets and wider Energy Union objectives. The Commission and MS must seize this opportunity to ensure that planning (and reporting) becomes more consistent and of higher quality post-2020.

The Commission and European Council have suggested that the national targets on renewable energy and energy efficiency will not be binding. Thus the difference in the quality of the national targets between renewables and energy efficiency in the 2020 acquis will no longer exist, i.e. neither will be binding on the MS. The rationale for having different quality planning and reporting therefore also changes. If neither target is to be binding, then the NEEAP system of frequent (triennial) MS planning should be repeated for both renewables and energy efficiency. It has been shown that a single one-off plan which is not updated reduces the usefulness of that plan significantly. In addition to ensuring the usefulness of the plan, synchronising the production of the plans to every three years for both renewables and energy efficiency would allow for both sets of planning to be streamlined into one planning process. As the ESD does not contain an appropriate planning obligation at present, the inclusion of those sectors in a triennial planning obligation would not even require the streamlining of existing arrangements but rather they could be created from scratch - there is no reason therefore that ESD planning could not fall under the same triennial planning cycle.

Similarly, the annual reporting could be included in all instruments and the timetable for reporting synchronised - annual reporting already exists in the EED and the ESD and the biannual reporting under the RED could be changed to an annual basis. This would allow for the creation of one reporting stream, meeting the MS request for streamlining. Reporting should be annual to ensure that MS ‘free riding’ can be seen as soon as possible. In addition, the ESD reporting requirements are linked to the international requirements and the international requirements include annual reporting. The streamlining between the ESD and MMR suggests that
streamlining renewables and energy efficiency planning and reporting into the single home of the MMR might be the option that provides the most integration and streamlining while also meeting international reporting obligations.

The renewable energy target has been labelled as 'EU-binding' but the EU target on energy efficiency is simply indicative. The achievement of the renewables target is nevertheless a binding (if unenforceable) obligation on the Commission, Parliament and Council (not to mention the wider EU agencies such as the EEA, JRC, ACER, ENTSO-E/G, EIB, etc.). That said, the obligation to achieve the renewables target could potentially enhance the Commission's ability to ensure MS accountability for their part of the target and place an obligation on the Commission to improve accountability for the Commission's own actions. Taking the lessons above, the Commission should use their obligation to achieve the renewables target as a hook to push for the creation of a truly independent body to assist in the critical examination and production of annual reports. An independent body would not shy away from saying the political unpalatable and would provide the Commission with political cover to do so. In addition, where renewables and energy efficiency planning and reporting are integrated together, the value of an independent body of experts providing guidance to the MS and EU institutions would be enhanced, even more so where climate is also added.

Under a revised ESD, the GHG emission reduction target will increase substantially compared to that required by the 2020 national targets and be legally binding at both national and EU level. In light of these strengthened commitments, MS must be held accountable for making progress in the ESD sectors. In particular, planning, reporting, monitoring and compliance under the ESD must be strengthened consistent with good governance. The governance system must ensure accountability for target achievement and facilitate effective monitoring and review of MS and EU progress in a transparent fashion, and ensure sufficient progress towards the 2030 target, through course correction if necessary.

Thus it is important that, for binding or non-binding EU or national targets, the design of climate and energy planning and reporting must include at a minimum the following to ensure accountability for target (over-)achievement:

1. **Commission power to enforce transposition where MS do not transpose the 2030 climate and energy package or where they transpose the package incorrectly**;

2. **Commission power to enforce in relation to MS failure to deliver practical compliance with substantive provisions in the instruments** e.g. enforcement of grid access for renewables. The lesson from the 2020 arrangements is that the Commission is actively interested in ensuring the basic duty of the MS to transpose the directives but simultaneously is very cautious about using their discretionary power to enforce the substantive provisions of the instruments;

3. **Mandatory planning requirements**: plan making is the forward looking element of governance which is critical for making EU targets 'binding', to ensure investor confidence, and more fundamentally supports accountability, transparency and effectiveness;

4. **Mandatory reporting requirements**: reporting is the retrospective and monitoring dimension of governance. It is essential for accountability and effective governance - not
simply to ensure progress toward targets can be appropriately monitored but also to track the effect of substantive measures and especially to allow the MS and Commission to gather enough information to understand whether there are risks to the progress of the energy transition;

5. **The mandatory planning and reporting requirements should be via binding templates** - otherwise it is impossible to ensure an accurate understanding of the quality of national plans and reports and therefore the quality of the progress towards the 2030 and Energy Union objectives. However, where binding templates cannot be agreed a voluntary template should at least be provided as experience under the RED has shown that MS will use the template to report regardless of whether it is binding or not;

6. **Binding frequency of planning and reporting** e.g. planning triennially and reporting annually. The Commission indicated in the January 2014 Communication that national plans would only be updated once in their 10 year lifetime, if at all. This must be reconsidered;

7. **Ability of the Commission to issue recommendations on the MS plans** - this tool has not been used in relation to the RED to date therefore it is difficult to gauge the impact it would have upon MS behaviour but it could prove a powerful course correction tool;

8. **Requirement for MS to update plans where they are not meeting their potential** (potentially via an indicative trajectory for energy and climate);

9. **Requirement for the Commission to produce reports that truly provide the necessary policy guidance to the MS** - ideally based on independent expert advice - rather than the reporting obligation being nothing more than a 'box-ticking' exercise;

10. **Requirement for a Transparency Platform** - this must be separate from the Commission's website and be continually kept up-to-date with all relevant information, including on enforcement. The Commission must explicitly state whether a MS is in compliance, whether the Commission is following up on non-compliance and where the Commission has used its discretion to not enforce obligations. In addition, where any MS was ever in non-compliance, that information should remain even once the MS enters compliance - along with updated information on how the MS entered compliance.
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