

The EU's New Energy and Climate Policy Framework for 2030

Implications for the German Energy Transition

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In October 2014, the leaders of the 28 EU Member States in the European Council agreed upon the outline of a common strategy for energy and climate policy to 2030. Until the very end of negotiations, the agreement was subject to Poland's consent. The strategy includes quantified targets for the EU in three areas: emissions mitigation, renewable energy, and energy efficiency. At the same time, the European Council emphasized the role of national strategies in energy policy and made decisions on climate policy conditional to intergovernmental agreement. In addition, the summit extended extensive financial transfers to and exemptions for Central and Eastern European Member States. This new EU framework poses challenges for Germany's "Energiewende", the objectives of which will find considerably less support in the structures of the EU's energy and climate policy.

Since the March 2007 decision of the European Council to establish an "integrated energy and climate policy", the EU has become a relevant actor in this policy field. The focus at that time was on mandatory targets for emissions reduction and the expansion of renewable energies, as well as an indicative target for energy efficiency. Under the headline "20-20-20 by 2020", a governance structure was created that was meant to initiate an EU-wide transformation of energy systems. An important point of reference for the EU decisions of 2007 was the UN climate negotiations.

The disappointing results of the Copenhagen summit in 2009, the impact of the

economic and financial crisis, and the increasing political emancipation of the new Central and Eastern European member states in EU politics, initiated a shift in priority towards competitiveness and supply security in the following years. The guiding rationale of low-carbon transformation gradually lost support.

Against this background, the European Commission's January 2014 proposals on the EU 2030 framework followed a pragmatic approach taking new circumstances into account. An emission reduction target of 40 percent compared to 1990 was accompanied by a target for the share of renewable energy in the range of 27 percent for

2030. However, this time the renewables target was not supposed to be translated into national binding targets as in the 2020 framework, but it would rather be binding at EU level. A new governance mechanism was proposed to guarantee that the national plans and the overall EU strategy correspond with one another. Only in July 2014 did the Commission propose a new energy efficiency target in the range of 30 percent by 2030. The designated European Commission President Jean-Claude Juncker was explicitly pushing for it.

Polish domestic politics as driver of EU climate policy

Since the decision on long-term goals for energy and climate policy is a fundamental question for the strategic development of the policy field, the 2030 framework debate was shifted to the level of the heads of state and government. It is important to note that the principle of consensus is the rule for decision-making in the European Council (Article 15 TEU). This essentially means that there's a unanimity requirement with a veto option for every single government. In 2007 and 2008, the 2020 framework and essential parts of its implementation were agreed upon under the conditions of this decision-making procedure.

In the last couple of years, there has been a trend towards polarization on most energy and climate related topics in the EU with two camps facing off against one other. On the one hand, there's the environmentally progressive Member States with Germany and Denmark at the front. They back the continuation of the existing structures with ambitious targets for 2030. According to them, the EU should continue to set three binding targets to advance the transformation of the European energy system and guide the national energy strategies. On the other hand, the Visegrád states (Poland, Slovakia, Czech Republic, Hungary), as well as Bulgaria and Romania, emphasize the national sovereignty on their energy mix (Article 194 TFEU). The

role of the EU, they argue, should be limited to formulating a single greenhouse gas reduction target. This target in turn should be closely linked to the results of the UN climate negotiations and prevent over-ambitious unilateral progress of the part of the EU. During the negotiations, the Polish government turned out to be the representative of the interests of the Central and Eastern European countries. The proposal to establish an "Energy Union" by the then-Polish Prime Minister Donald Tusk made him the spokesmen of those forces in the negotiations who wanted to see more emphasis on security of supply in EU energy policies.

Between the two camps were states such as the UK and the Netherlands; while advocating for an ambitious climate target, they wanted to prevent the EU from expanding its powers in the fields of energy efficiency and initiating another round of binding targets for renewable energies.

In view of the consensus rule in the European Council and the Polish government's public announcement to be ready to prevent adverse decisions by using its veto, it became clear that an outcome of the summit would very much depend on Warsaw's willingness to compromise. Thus in the end, it was Poland's domestic politics that defined the scope for the EU 2030 framework's negotiation.

For the Polish negotiators, however, three factors turned out to be crucial: First, a skeptical attitude in many parts of the Polish political class towards a Brussels-led change in the Polish energy system – an attitude shared by most of Poland's unions, businesses and opposition parties. Second, the transfer of power from Donald Tusk to the new prime minister Ewa Kopacz played a role, mainly because her first steps in EU politics were watched by the media and the public in Poland with great attention. These two factors obstructed a compromise. A third factor, however, had a positive impact on the decision-making process around the energy and climate policy framework of the EU. If the negotiations had been inconclu-

sive – and thus postponed – it would have landed them in the run-up to the Polish parliamentary elections in spring of 2015. A discussion on these issues during the election campaign would not have been in the Polish government's interest.

In her inaugural address, in-coming Prime Minister Kopacz made it clear that in Brussels she would step up for the interests of Polish electricity customers and prevent additional cost burden resulting from EU decisions. Polish government officials stressed that a Polish veto was likely if Western governments insisted on their positions. Thus it was clear to the negotiating parties that a result could only be achieved if the Polish government would be enabled to hail it as a political victory at home.

Elements of the 2030 compromise

Although the President of the European Council, Herman Van Rompuy, had been mandated to explore possible pathways for a compromise concerning the EU 2030 framework already in spring 2014, by the beginning of the European Council meeting on 23 October 2014 only a few components of the package were in place. Despite Van Rompuy's numerous bilateral meetings in European capitals, the Visegrád states led by Poland appeared just as unsatisfied with the state of negotiations as other Member States who wanted to see their individual interests reflected in the conclusions. For example, a group including Spain, Portugal and the Baltic states, wanted to link their electricity market more closely with the rest of Europe and asked for a binding interconnection target. But they met with strong opposition from France, which wanted to avoid an obligation to link the Iberian Peninsula to its electricity market. Therefore, not only the overarching target architecture, but also satisfying individual interests played a role in finding a compromise for the whole framework.

In the end, three classical mechanisms of compromise-building in the European

Council were responsible for the outcome: a high degree of ambiguity in the formulation of the conclusions; the assurance of being able to change conclusions only through consensual intergovernmental decisions; as well as extensive financial transfers and exemptions for the blocking states.

Ambiguity

The drafting of compromise formulas in the European Council is characterized by the principle that all participants have to be able to save face at the end of the negotiations. This can often be achieved only through a high degree of ambiguity in formulations that can allow for different interpretations.

For a majority of the Northern and Western European Member States holding onto the target triad of emission reduction, expansion of renewable energies, and increasing energy efficiency was of great importance in terms of the reception of their respective national publics. In the European Council conclusions, all three areas were treated with quantified targets (40 percent; 27 percent; 27 percent) and an "at least" formula, which opens the floor for raising the target at a later date. For energy efficiency, there was even the notice of a possible change to 30 percent after an assessment in the coming years. At the same time, the conclusions also reflect the demands of the Central and Eastern European Member States as well as the United Kingdom because neither the renewable energy target nor the energy efficiency formula will directly influence national decisions on energy mix and national energy strategies. Thus no direct implementation on member-state level is foreseen. Also, the ambition of the two targets is at the lower end of the spectrum of negotiating positions – another concession to the Central and Eastern European Member States.

Similarly ambiguous is the text on the extent to which decisions can be revised. The conclusions include a review of the decisions of the European Council after

the climate conference in Paris in December 2015 (COP 21). In North-Western member states, this clause was mostly interpreted as opening the way to increase the minimum target of a 40 percent reduction in greenhouse gases. In contrast, the Central and Eastern Europeans underscored their belief that the emissions mitigations agenda will in the future be more closely linked to the successes of international climate negotiations. If these turn out to be unsatisfactory, the level of EU ambitions would be lowered.

Therefore the conclusions of the European Council will not end the debate on the energy policy framework for 2030. Instead, calls for renewed engagement on the dossier that is expected in coming months, and particularly after the Paris Conference. This situation implies a high degree of uncertainty about the actual commitments that the EU is willing to make.

Intergovernmentalism

The major differences in Member States' perspectives with respect to structure and content of EU energy and climate policy after 2020 on the one hand, and government concerns about a broad interpretation of the negotiation results by EU level institutions on the other hand, are the reasons why the compromise was secured under the condition of the need for intergovernmental agreement to change certain provisions. The most telling evidence for the increase of unanimity conditions can be found in a formulation saying that all the elements of the policy framework will be reviewed by the European Council. Explicitly, the heads of state and government reserved the right to address the development of the emissions trading scheme, decisions about national commitments to reduce emissions in the sectors not covered by the ETS, and commitments for the development of interconnectors and energy efficiency to themselves. This way Poland (which wanted to reserve this caveat mainly for climate policy), France (interconnectors)

and Great Britain (energy efficiency) could be assured that the central parameters of the agreed framework would not be adjusted without their consent.

The European Council's conclusions on the 2030 framework for energy and climate policy represent a new quality in an ongoing intergovernmentalisation process in EU politics. Although in the treaties such a transfer of competence is not foreseen and the European Council cannot formally act as a legislative body, the result is still that these decisions are politically binding. In the coming years, it will be crucial to see how the "ordinary legislative procedure" under Article 294 TFEU (with the Commission as an initiative organ and equal participation of the European Parliament and the Council) competes with the political influence of the European Council in this area. However, it seems difficult to imagine in this context that in the future a majority decision is taken by the relevant Council formations without a prior decision of the heads of state and government. Already in recent years, many climate policy decisions had to be delayed because of the lack of consensus among Member States until an informal agreement was reached at the level of the heads of state and government.

While there's a trend towards intergovernmental decision-making on climate policy, there's also a stronger emphasis on the national planning of energy policies. Thus, not only those governments that are generally skeptical of new EU targets in the area of renewable energy and energy efficiency policies wanted a confirmation in the conclusion text that they are allowed to determine their own energy mix on the basis of Article 194 TFEU, but also the environmentally more progressive states were granted a provision that their more ambitious national measures in the field of renewable energy and energy efficiency will not violate EU law. Given the growing difficulties in the foreseeable future for the EU to take common decisions, all of this is likely to result in a re-nationalization of energy policies in the EU. The design of the new

governance mechanism will have to address this challenge.

Fragmentation

Just as with the implementation of the 2020 package, the consent of Central and Eastern European Member States was ensured only by conceding substantial financial compensation and exemptions to them. From 2021 onwards, emission certificates in the range of 12 percent of the total annual EU output will be distributed to Member States with a lower than average gross domestic product and can be sold by them. Member States are largely free to dispose of the proceeds as they choose. In addition, the Central and Eastern European Member States may keep on allocating 40 percent of their allowances in the electricity sector for free.

A consequence of these extensive concessions to the governments of Central and Eastern Europe is likely to be a regional fragmentation of the transformation to a low-carbon energy system in Europe. Through free allocation, the resulting costs of the EU emissions trading system for coal-based power can be significantly reduced. Even if there were increasing costs, they could be compensated directly or indirectly through additional revenue from auctioning. These provisions in combination with the increased flexibility in the design of the energy mix will reduce the EU's influence on the energy sector in Central and Eastern to a minimum. As a result, the EU is on track towards a transformation of two speeds: one for the east, one for the west.

Implementing the new framework

In the coming months, the Commission will be asked to give the political compromises forged by the European Council a legal form, to submit legislative proposals, and to address outstanding issues. This will also be a first practical test for the new Commission of Jean-Claude Juncker. In the future, the Spanish Climate Action and

Energy Commissioner, Miguel Arias Cañete, will be in charge of preparing the content for this process. Maroš Šefčovič, as vice president, will be responsible for the coherence of the Energy Union program.

Three dossiers will be at the centre of the implementation process on EU level – every single one of which has significant potential for conflict.

Reform of the EU Emissions Trading Scheme

As a key instrument of EU climate policy, the emissions trading system (ETS) has been in need of reform for quite some time. Although it still fulfills its function as a volume control instrument to limit EU-wide greenhouse gas emissions caused by industry and electricity generation, due to the oversupply of emission certificates, the system currently doesn't send shortage signals to the market, which would spur investments in low-carbon technologies and energy efficiency. Still under EU Climate Action Commissioner Connie Hedegaard, therefore, a legislative proposal was presented that called for the introduction of a Market Stability Reserve (MSR) from 2021 on.

In response to this proposal, the European Council agreed on introducing "an instrument to stabilise the market in line with the Commission proposal". The central point of conflict in the coming months will not be the question of "if" but rather of "when" the MSR will be set up. Germany, Britain and France want it up as early as 2017, while Poland insists on the Commission proposal for 2021, having the backing of European Council conclusions. It will also depend on the date of the MSR's introduction whether the 900 million allowances that were taken out of the market through the so-called "backloading mechanism", should be reintroduced into the market or flow directly into the MSR.

The question of the introduction of the MSR and how to deal with the backloading certificates can also be seen in connection with the restructuring of the EU ETS from

2021 onwards, which was broadly outlined by the European Council. The Central and Eastern European governments are expected therefore to advocate a review of the entire package and try to prevent splitting it up into different individual packages. In this context, the consequences of the European Council's engagement with detailed questions of EU climate policy will most likely be seen for the first time.

Effort-sharing in sectors not covered by the emissions trading system

About half of the EU-wide emissions are covered by the EU-wide harmonized ETS (electricity generation and industry). For the remaining sectors (mainly transport, buildings, agriculture), Member States have in the past agreed upon a differentiated effort-sharing based on individual national commitments. Between 2005 and 2020, emission reductions of 21 percent were directed through the ETS; 10 percent through national targets in the other sectors. For 2030 this structure will be maintained, the targets however will be increased to a 43 percent reduction through emissions trading and to 30 percent through national measures in the non-ETS sectors. The European Council has now formulated two criteria by which the national targets for reaching the 30 percent target shall be defined in the non-ETS sectors: First, the range of national commitments should be between 0 and 40 percent emission reduction compared to 2005. Second, it should be distributed equally according to economic performance (using GDP per capita) as well as with respect to the difficulties of wealthier member states to find cost-effective mitigation potentials. Given that each Member State will find arguments for reducing its own commitment, the distribution of the overall target is likely to create a major conflict in which the Central and Eastern European governments once again appeal for more solidarity from the Northern and Western European countries. Also on this point, the fact that the European

Council is bound to the principle of unanimity will make it complicated to find a compromise in the coming months.

Energy Union and governance mechanism

While most of the framework conditions for the climate policy decisions were already formulated by the European Council, the Commission will have to be very creative in developing its proposals on the Energy Union and the governance mechanism. The leeway provided by the European Council for the structuring of both processes initially appears narrow since the Commission must leave the energy mix of the Member States untouched. The Energy Union will have to be built on the basis of existing instruments; ultimately, in terms of content, it will be a continuation of the internal energy market agenda with a likely extension of measures for security of gas supply. Thus the project's impact could have merely a symbolic effect and act as a surrogate for an increasingly renationalized energy policy.

The design of the governance structure will probably be structured along the lines of the well-known instrument of the European Semester. But even the definition of relevant indicators for evaluating national energy plans will, politically, be a highly sensitive undertaking. If it were really possible to reach an agreement, the question of the impact of the Commission's recommendations would be another open flank. As long as it remains mere recommendations, the process is unlikely to prove effective.

The elaboration of the two projects and the subsequent political decision-making process will develop into a field in which the Commission and the European Parliament will wrestle with national governments over the impending loss of responsibility for energy and climate issues.

In the context of the three dossiers, there will not only be the question of how, but also in which sequence the relevant decisions are made. In particular, for the

climate policy-related aspects of the implementation package the December 2015 climate summit in Paris will be an important milestone. Depending on how they assess the probability of success in Paris, some Member State governments are likely to push for a fast implementation of the decisions of October 2014, while others will try to delay them. The design of the review clause in the conclusions, the unanimity requirement in climate policy, and the historical experiences with the troubles around adjusting a EU climate targets leads one to assume that no actor will succeed in forcing a shift from the 40 percent target for the reduction of emissions 2030 in either direction.

Implications for Germany's Energy Transition

The results of the negotiations on a new framework for the EU energy and climate policy clearly show increasing divergences between the goals and the speed of the transformation process in Germany and in the EU. While the German "Energiewende" as decided in 2011 was broadly consistent with the EU 2020 framework – only the nuclear-power phase-out decision was somehow special to the German case – the flexibility granted to Member States and the non-binding nature of the objectives in the 2030 framework might lead to greater differences in the coming years. In addition, the fact that the 80 to 95 percent emissions reduction target by 2050 was not mentioned in the European Council conclusions could mean that another important focal point turns out to be less important on EU level in the medium-term.

Two different interpretations of this process of multi-level policy drifting apart seem to be plausible. In a positive interpretation, one could view the increasing flexibility at the EU level as a signal for more freedom in implementing the German "Energiewende". The safeguarding of the national transformation path against interventions by the European Commis-

sion, like recently in the discussions about the German Renewable Energy Sources Act (EEG), can be booked as a success from this perspective. In a more negative interpretation, the re-nationalization of energy policies might constitute a problem for the German "Energiewende" because the compatible legal structure on EU level is being dissolved and the German government may need to handle more bilateral conflicts without being safeguarded by a supportive EU framework.

Regardless of which of these two perspectives is closer to reality, four themes will be central to the German "Energiewende" policy towards the EU in the coming years:

First, the focus will be more on bilateral and multilateral dialogues with neighbouring countries. Compared to a top-down control from Brussels, this seems to be a more promising way to politically deal with "Energiewende"-induced challenges on the markets (e.g., loop flows through neighbouring countries) and to promote a common European transition path.

Second, those policy areas with a remaining high level of EU-wide harmonization, such as the emissions trading scheme and the electricity and gas market, should be strengthened in the future. Additional regulatory interventions by Germany in these areas pose the risk of accelerating the re-nationalization process in energy and climate policies. Against this background, the debate about the national climate target as well as the introduction of a national capacity market should be conducted taking into consideration their EU-wide impact and their consequences for EU policies.

Third, it is necessary to develop new instruments at the EU level in order to increase the attractiveness of the German "Energiewende" as a transformation model. In particular, a renewable energy policy rethink is required in order to put greater emphasis on EU-wide incentives instead of obligations on the part of the Member States. The latter proved to be too dependent on political and economic conjunctures.

Fourth, a reboot of EU energy policy will only succeed if Germany provides impetus for joint approaches beyond topics such as renewable energy and energy efficiency policy. Especially in the field of natural gas supply and grid development there could be direct added value on a European scale. If Germany appears only capable of speaking about topics directly related to its “Energiewende”, it might find itself missing relevant conversation partners quite soon.

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ISSN 1861-1761

Translation by Paul Hockenos

(English version of SWP-Aktuell 73/2014)