Redesign the electricity market. The governance of renewable energies

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Abstract

The confluence of energy and climate policies has led to a tense situation where the traditional liberalization process is being progressively combined with the interventions and measures towards a low carbon economy. This new framework reveals the shift from a regulatory programme targeted at opening the energy market put in place in a decade of “energy packages” to a priority task of decarbonisation. At the same time it reveals that the liberalisation policy pursued by the Commission is in conflict with a stark increase in national policies and measures largely aimed at achieving climate change mitigation goals through the implementation of new technologies such as renewables.

A turning point in designing the relations between the EU Commission and the Member States is article 194 of the Lisbon Treaty. Tension between the idea of a common Union approach and a national approach based on the interests of individual states emerges. Hence MS are allowed to retain strong rights in energy. Their ‘sovereignty’ over their resources and national energy mix is acknowledged.

In literature often energy is seen as an area of shared competences as stated under article 4 of the TFEU and detailed in the specific article on energy. However both the interpretation of article 194 and the written text of the same seem to evoke a different allocation of the competences at EU and national level.

Therefore this paper argues that the competences in energy are allocated according to an ‘intersecting’ structure where they are to be put together like pieces of a puzzle. The need for a ‘box’ where the objectives promoted by the Commission and the MSs’ divergent interests can meet is behind the proposal of an Energy Union which arose, rather unexpectedly, when the 2014 crisis of Russia’s annexation of Crimea pushed energy concerns to the top of the list of priorities. The strategy of the Energy Union is an attempt to reconcile divergent goals: on the one side, the EU’s more than ten-year policy of liberalisation for a fully integrated energy market and, on the other, the new imperative to achieve specific outcomes of emission reduction thanks to interventions in the energy market.

While the liberalisation process has been implemented on a common track to remove state monopolies for a more open and integrated market, the decarbonisation policies are undertaken by national governments with sole regard to their own needs. Such a counter-trend can result in a sort of re-nationalisation of the energy market and in deep distortions of the internal market.

The proposal for a revised Renewable Energy Directive, providing for a framework to achieve the 2030 renewable target, aims at integrating renewable energies in the market and ensuring “utmost coherence” of the policy proposals.

Even though in the Energy Union the Commission is pushing towards a higher level of integration, the effective convergence of national policies would require a different structure of article 194 TFEU and centralized competences in the Commission’s hands.
On these premises, the ‘Winter Package’ reframes energy policies and the regulatory system and represents a compromise between instruments steering the market and decentralized initiatives. In fact the lack of a project of governance was “the hole” in the heart of the Energy Union plan. The paper will point out that this project is an attempt to coordinate the institutional design for decarbonisation with the well-established regulatory scheme. Therefore this model of governance outlines new modes of dialogue between the Commission and MS based on direct relationships where the Commission is at the centre collecting initiatives towards common outcomes. Such a coordinating structure seems to refer to the “hub and spoke” model. Its advantageous feature is that all the entities may cooperate, even if with different roles. The reframing of the relationships in the decarbonising policies is developing, on the regulatory side, thanks to the ongoing presence of national regulators cooperating within Acer as confirmed in the proposal of regulation recast.

1.Setting the scene

The confluence of energy and climate policies has led to a tense situation where the traditional liberalization process is being progressively combined with the interventions and measures towards a low carbon economy\(^1\).

This new framework reveals the shift from a regulatory programme targeted at opening the energy market put in place in a decade of “energy packages” to a priority task of decarbonisation. At the same time it reveals that the liberalisation policy pursued by the Commission is in conflict with a stark increase in national policies and measures largely aimed at achieving climate change mitigation goals through the implementation of new technologies such as renewables.

The wide range of support schemes that emerged at national level gave operators and consumers a lot of help to increase significantly the production of electricity from renewable sources. The transition in the energy market towards a low carbon system calls for state economic interventions in order to promote investments in energy production and supply stabilization.

Not unlike what occurred in the ‘liberalization age’ when in the EU public aids for the energy sector did not play a less important role. As for the case of the ‘first transition’ launched by the first directive aimed at opening the electricity market, Member States (MS) had been allowed to compensate the incumbents for the “stranded costs”\(^2\). This kind of measure had been justified due to the need to open the market to new operators.

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2 Communication from the EU Commission relating to the methodology for analysing State aid linked to stranded costs (26.7.2001).
Moreover the current legislation on climate change (such as on renewables and energy efficiency) suggests a design of the relation between EU and national level different from that of the liberalization decades when the Commission defined the rules and the goals which MS had to implement (a sort of top-down model).

The institutional design arising out of the first waves of legislation on climate change seems to be a sort of labyrinth. In fact the mechanisms shaped to define the reciprocal relations of MS and EU Commission are highly uneven given the divergent modes to allocate objectives, standards and targets at the two levels.

Notwithstanding the lack of coherence, the European Union can enjoy the results achieved so far in reducing greenhouse gases and decarbonising its energy system. However energy has been a scarcely ‘European’ sector. MS have benefited from consistent autonomy especially in the climate-related areas.

As for the conflict between uniform policy and centrifugal pressures it is evident how the coexistence of numerous facets of the energy issue has sharpened the fragmentation. As for the lack of cohesion and coordination of MS policies the ongoing gap between national conditions and interests is highly influential.

A turning point in designing the relations between the EU Commission and the other co-legislators and Member States is the Lisbon Treaty.

Energy did not feature in any of the EU’s treaties (except for the Coal and Steel Community and the Euratom Treaty). In the Lisbon Treaty it was stated (TFEU, art. 194, 1) that Union policy on energy “in the spirit of solidarity between member states” would promote the onward creation of the internal energy market (“the functioning of the energy market”; “the interconnection of energy networks”) as well as energy efficiency and “the development of new and renewable forms of energy” and to “ensure security of energy supply”. However, even if the European legislators are invited to take the needed measures to achieve such objectives, those measures must “not affect a Member State’s right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply”

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3 Dir. 2009/28/EC, on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC; Dir. 2012/27/EU, on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC; Dir. 2009/29/EC, Revision of the EU Emission Trading System (EU ETS); EU Commission Decision 406/2009/EC, on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020; Dir. 2009/31/EC, on the geological storage of carbon dioxide.
(TFEU, 194,2). Tension between the idea of a common Union approach and a national approach based on the interests of individual states emerges. Hence MS are allowed to retain strong rights in energy. Their ‘sovereignty’ over their resources and national energy mix is acknowledged⁴.

Generally, in literature energy is seen as an area of shared competences as stated under article 4 of the TFEU and detailed in the specific article on energy⁵.

However both the interpretation of article 194 and the written text of the same seem to evoke a different allocation of the competences at EU and national level.

Therefore this chapter argues that the competences in energy are allocated according to an ‘intersecting’ structure where they are to be put together like pieces of a puzzle. In fact the divergent interests of the different players must interface and combine in order to ensure strong intersection that is the frame of every policy such as renewables, energy efficiency or energy security.

The need for a ‘box’ where the objectives promoted by the Commission and the MSs’ divergent interests can meet is behind the proposal of an Energy Union which arose, rather unexpectedly, when the 2014 crisis of Russia’s annexation of Crimea pushed energy concerns to the top of the list of priorities⁶.

The strategy of the Energy Union is an attempt to reconcile divergent goals: on the one side, the EU’s more than ten-year policy of liberalisation for a fully integrated energy market and, on the other, the new imperative to achieve specific outcomes of emission reduction thanks to interventions in the energy market. The “way forward” entails “five mutually-reinforcing and closely interrelated dimensions designed to bring greater energy security, sustainability and competitiveness” (energy security, solidarity and trust; a fully integrated European energy market; energy efficiency contributing to

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⁵ See Articles 4 and 194 Tfeu. And, among others, K. Talus and P. Aalto, *Competences in EU energy policy*, cit., 18.

⁶ At that time Donald Tusk, then Poland’s prime minister, called for an energy union facing the external threat that was Russia, and proposed that the EU could jointly negotiate its gas contracts with Russia. This was particularly relevant for those eastern member states that import around 90% of their gas from Russia, such as Bulgaria and Slovakia (see M. Vandendriessche, A. Saz-Carranza and J-M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, FSR, RSCAS 2017/51, 4).
While the liberalisation process has been implemented on a common track to remove state monopolies for a more open and integrated market, the decarbonisation policies are undertaken by national governments with sole regard to their own needs. Such a counter-trend can result in a sort of re-nationalisation of the energy market and in deep distortions of the internal market. Therefore, for the Commission promoting the Energy Union is also the way to reach a “convergence of national support schemes leading to more cross border opening through in-depth discussions with Member States”.

The proposal of “a dynamic governance process” for the Energy Union is addressed to “bring together” conflicting energy and climate actions, “leading to more and longer-term policy coherence”.

As stated in the Explanatory memorandum of the proposal for a regulation on ACER (recast), the success of the rules of the Third Energy Package in developing the internal electricity market remains limited in a certain number of fields, both in the wholesale and the retail market. Moreover it is worth highlighting that the framework designed in the Third Energy Package has been challenged by a set of new issues, such as the fast and steady increase of renewable sources, the recent state interventions in the electricity markets for security of supply, and the relevant changes on the technological side. All these elements have led to significant changes in market functioning and underlined the need for a new market design.

Two other elements have shaped the development of the renewable sources. On the one hand, the financial and economic crisis produced a general decline in energy demand

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8 Energy Union Package, cit., 15.

9 EU Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast), COM(2016) 863 final of 30.11.2016, 13: “At the level of wholesale markets, barriers to cross-border trade persist and interconnector capacities are rarely fully exploited. These originate, amongst other things, from insufficient cooperation between national grid operators and regulators on the shared use of interconnectors. With regards to retail markets, competition performance could be significantly improved. Electricity prices still vary significantly from Member State to Member State for non-market reasons, and prices have risen steadily for households as a result of significant increases in non-contestable charges in recent years”.
and the resulting collapse of prices of fossil sources that has had a strong impact on investments in renewables\textsuperscript{10}. On the other, in the recent years some governments have put in place retrospective cuts of incentive programmes for investments in this sector and sometimes abolished subsidies to new installations\textsuperscript{11}. These changes in policies for renewables and in the support schemes have undermined investor confidence and produced progressive uncertainty so that investments have dropped around 60% compared to 2011.

The proposal for a revised Renewable Energy Directive, providing for a framework to achieve the 2030 renewable target, aims at integrating renewable energies in the market and ensuring “utmost coherence” of the policy proposals.

Even though in the Energy Union the Commission is pushing towards a higher level of integration, the effective convergence of national policies would require a different structure of article 194 TFEU and centralized competences in the Commission’s hands.

On these premises, the so called ‘Winter Package’ (WP)\textsuperscript{12} reframes energy policies and the regulatory system and represents a compromise between instruments steering the market and (bottom-up) decentralized initiatives. In fact the lack of a project of governance was “the hole” in the heart of the Energy Union plan\textsuperscript{13}.

Overcoming ongoing conflicting trends in the EU energy policy was an impelling imperative. The proposal “on the Governance of the Energy Union” is moving along this path and seeks to build a framework where all stakeholders, mainly EU institutions and national governments, interact according to common rules.

\textsuperscript{10} See in particular the Study for the ITRE Committee, Renewable Energy Directive target, January 2018.


\textsuperscript{12} An introduction to the proposals is in Communication of the EU Commission, Clean Energy For All Europeans, COM(2016) 860 final of 30.11.2016.

This chapter will point out that this project is an attempt to coordinate the institutional design for decarbonisation with the well-established regulatory scheme. Therefore this model of governance outlines new modes of dialogue between the Commission and MS based on direct relationships where the Commission is at the centre collecting initiatives towards common outcomes. Such a coordinating structure seems to refer to the “hub and spoke” model. Its advantageous feature is that all the entities may cooperate, even if with different roles. The reframing of the relationships in the decarbonising policies is developing, on the regulatory side, thanks to the ongoing presence of national regulators cooperating within Acer as confirmed in the proposal of regulation recast.

2. The state of the art: renewable energies in the context of the Winter Package
2.1. The goal: the transition towards a low carbon economy

The EU Commission believes the WP\textsuperscript{14} should be the engine to lead the transition towards clean energy (“Clean energy for all Europeans”) and launches the key word “Energy Efficiency first”. Anyhow it is worth recalling that the transition towards clean energy and increasing decarbonisation relies mainly on technological, cultural, and behavioural changes\textsuperscript{15}. One of the cutting-edge novelties is that the interventions for energy efficiency are embedded in a wider context aimed at reshuffling the energy sector completely.

Traditionally indeed the legislative package climate – energy, set up according to an incremental approach from 2007 onwards, did not include energy efficiency. This is in particular witnessed by the different nature, binding or not binding, of the European

\textsuperscript{14} The WP is composed of many proposals amending energy and climate change legislation. First, there are measures aimed to redefine the market design: a new directive amending and repealing Directive 2009/72 (E-Directive); a new regulation on the internal electricity market, amending and repealing Regulation 714/2009 (E-Regulation); and a new regulation repealing Regulation 713/2009 on the ACER (ACER Regulation). Second, there are measures aimed at better integrating climate change legislation into the new market design: a fully revised Renewables Directive 2009/28 (RED) and a fully revised Energy Efficiency Directive 2012/27 (EED). Third, a proposed regulation on Governance of the Energy Union (the Governance Regulation) and the proposal for a new regulation on risk-preparedness in the electricity sector (the Risk Regulation).

\textsuperscript{15} The meaning of this passage becomes clear in the words of Maroš Šefčovič - Vice-President for Energy Union: “Today’s package will boost the clean energy transition by modernising our economy. Having led global climate action in recent years, Europe is now showing example by creating the conditions for sustainable jobs, growth and investment”) as well as in those of Miguel Arias Cañete, Commissioner for climate and energy (“Our proposals provide a strong market pull for new technologies, set the right conditions for investors, empower consumers, make energy markets work better and help us meet our climate targets”).
and national targets and the different relations between EU Commission and MS. However the energy efficiency policies are threaded onto a string of measures with relevant spill-overs on the national orders and on the governance and regulation as well. Legislations (especially in the climate change area) issued at different times and according to uneven perspectives and goals have caused this kind of normative ‘labyrinth’ characterized by “certain redundancy, incoherence, and overlaps and lacking integration between energy and climate areas”.

Consequently the Winter Package recommends adopting a regulation on the “Governance of the Energy Union” envisaged as a ‘toolbox’ that “will align frequency and timing of obligations, significantly enhance transparency and cooperation”. All in all the regulation needs to increase the coherence of the different policies and to reshuffle the relations between the governmental levels\(^{16}\).

The extension of the programming time to 2030\(^{17}\) is justified not only in the light of the EU institutions’ commitment to comply with the international obligations set for that date and beyond, but also due to the need to align all due dates of the climate and energy policies. In addition, and this alignment is one of the main reasons which we will get back to, the extension of the programming time enables investors to trust regulatory stability and investment certainty in a long term perspective. This will positively impact on the expected time for investment return.

With regard to such a complex set of measures the Commission has launched an ambitious plan to renew the EU electricity market. It is undeniable that the transition to a low carbon economy by 2050 can be developed only by means of a gradual shift to electricity not only as source of light but also for heating and cooling and in particular for transport as stated in the proposal of the new Directive on renewable energy\(^{18}\). Briefly, renewable energies (including solar and wind as intermittent sources as well as


hydro, biomass, and biofuels) are emerging as the drivers in decarbonising the environment and reinforcing energy security\textsuperscript{19}.

\section*{2.2. Tools to achieve the EU target}

The current 2020 framework sets a EU 20\% target of reduction for energy consumption which relies on legally binding national targets until 2020. The Directive 2009/28/EC on the promotion of the use of energy from renewable sources has favoured the rapid increase in the share of renewables from 10.4\% in 2007 to 17\% in 2015. In 2014\textsuperscript{20} the EU strategy in renewable energies was redefined and the new framework sets out the EU target of at least 27\% for the share in 2030. While the target is binding at EU level, MS will fulfil it through individual contributions addressed to a collective goal.

This target is taken on in the recast of the renewable energy directive and assumed as binding while there is a shift from national legally binding targets to a situation granting MS large discretion on their national measures. This assumption relies on the fact that the recast takes article 194, 2 as the legal basis for measures in energy.

Referring to national measures as the sole instrument to reach the EU common target can lead to an insufficient deployment of renewables and fall short of the agreed threshold. A coordination under the proposed governance mechanisms would not sufficiently guarantee meeting the target in a cost-efficient manner and reducing energy market segmentation.

Considering that the proposal for a new directive on renewables is to be read jointly with that on the governance of the Energy Union, an action at EU level should create a stable framework that is needed to achieve the EU target without being binding on MS individually.

\textsuperscript{19} As for the progress made through the implementation of the renewable directive of 2009 in the MS, see A. Hassel et al., Fulfilment of National Objectives under the Renewable Energy Directive. State of play and projections, CEPS, Policy Insights, No 2017/04.

\textsuperscript{20} Communication from the Commission, Energy Efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy, COM(2014) 520 final of 23.7.2014. The atmosphere in the Council where EU heads of state and governments agreed on the broad orientations of the 2030 Climate and Energy Package is described by Turmes who recalls that the the awareness of the need to combat climate change was scarcely at stake, because only emerging from the economic crisis mattered (C. Turmes, Energy transformation. An opportunity for Europe, London, 2017, 140).
Briefly, with regard to the share of at least 27% in 2030 that must be ensured collectively, each MS has to set its contribution and to notify it to the Commission as part of its Integrated National Energy and Climate Plan. A relevant limit of the national discretion is that the share of energy from renewable sources in the final consumption of each MS must not be lower than the national target set for 2020 as “minimum contribution” to the 2030 framework\(^{21}\).

The target defined in the proposal has been immediately challenged by EU Parliament which recently adopted some important amendments to the new draft of the directive setting the stage for tough talks with reluctant EU MS in the coming months. Among them, first of all, the Parliament proposed to set a binding EU-wide target of at least 35% share. Moreover it affirmed the Union objectives should be collectively achieved by the MS through national targets taking into account the obligations arising from the Paris Agreement on Climate Change. In the case that a MS is not on track to meet its foreseen target due to exceptional circumstances, it could remain lower but not by more than 10%\(^{22}\).

The EU Parliament’s conclusions are grounded on the analyses recently carried out for the Industry, Research and Energy Committee. The final recommendations of one of these studies point out that, from a cost-efficient perspective, a more ambitious RES target (30% - 35%) appears to be a feasible objective for 2030 considering the positive impacts of a higher share of renewables\(^{23}\). It is evident that, given higher renewable

\(^{21}\) Proposal for a Regulation on the Governance of the Energy Union, cit., article 3.

\(^{22}\) See the Blanco-Lopez/ Eickhout report that is increasing the EU renewable target to at least 35% (binding) by 2030, which is a significant move from the much weaker 27% proposed by the Commission and the Council. However this EU wide target does yet not translate into national binding targets and entails a flexibility mechanism allowing Member States to deviate by 10% from their target under "exceptional and duly justified circumstances" (information available at http://energyblog.claudeturmes.lu - Press briefing ahead of the plenary vote, 12.1.2018).

See some other amendments from the Text adopted by Parliament by 492 votes to 88 (with 107 abstentions) such as : common general principles for support schemes; MS may provide for exemptions benefiting small-scale installations of less than 500 Kw; financial stability in order to enhance legal certainty; MS shall publish a long-term schedule in relation to the expected allocation of support; consumer involvement in the energy transition (2016/0382(COD) – 17.1.2018).


\(^{23}\) See, for example, Renewable Energy Directive Target (Study for the ITRE Committee), cit., where it is stated: (1) the impacts of a higher RES share on GDP and employment and health are projected to be positive, even though limited, according to most studies analysed; (2) imports of fossil fuels and GHG emissions are projected to decrease (assuming that emission levels are not constrained by an overall
targets, system adequacy in the electricity sector needs to be closely monitored and targets for greenhouse gas emissions, renewables and energy efficiency need to be coordinated\textsuperscript{24}.

The prices of technology for the generation from renewable sources are decreasing, as recently stated in the so called Commission “non-paper” which is an update of the analyses of November 2016\textsuperscript{25}. The document contains updated policy scenarios based on revised assumptions of renewable energy technology costs (including wind and solar). Lower costs make the achievement of the 27\% renewable energy target by 2030 significantly cheaper\textsuperscript{26}. The next months will show whether the Commission has switched gear on renewable energy\textsuperscript{27}.

Nonetheless investments needed in the sector are relevant and MS may be pushed to apply support schemes. In this perspective MS have to ensure that investors will be granted with “sufficient predictability for the planned support for energy from emission cap); (3) some studies project low or no increase in overall energy system costs, while one recent study even reports cost reductions.

\textsuperscript{24} A higher renewable target in terms of final energy consumption (FEC) leads to a substantial share of variable renewables in the electricity sector. While 100\% renewables is technically feasible, the system might need time and additional flexibility to adjust to higher RES shares.

A significant increase in the RES target without adapting the GHG target can decrease efforts in energy efficiency and other investments in decarbonisation. Thus, if adjusting the RES target, the other targets should also be reassessed.

\textsuperscript{25} Some information about this “non-paper” are in Leaked EU analysis makes case for higher renewables, energy savings goals (February 2018) (available at https://www.euractiv.com/)

\textsuperscript{26} As affirmed in the above mentioned document, “lower technology costs make the achievement of 27\% renewable energy target by 2030 (coupled with 40\% GHG emission reductions and 30\% energy efficiency) cheaper by 2.9 billion euro per year in the period 2021-30 and by 6.9 billion euro per year for the period 2021-50”. So “instead of investing 394 billion euro over the 2021-30 period, only 380 billion euro is necessary to reach a similar renewable energy target” and “this, in turn, translates into renewable energy supporting costs passed onto final electricity consumers and electricity prices are lower by respectively 4\% and 0.5\%”.

\textsuperscript{27} Although the non-paper does not alter the Commission’s official proposal, it will help informal discussions between co-legislators according to a completely changed context. Also the EU Commissioner for Energy and Climate Action, Canete, seems now to openly campaign to raise the EU’s level of ambition of renewables ans energy efficiency to 34\% by 2030 as affirmed during the launch af a report by the International Renewable Energy Agency (IRENA) on 20 February 2018.
renewable sources”\textsuperscript{28}. However such support schemes must be designed so as to avoid distortions and fragmentation of the electricity market\textsuperscript{29}.

Given that the overarching objective for the Commission is the full functioning of the internal market, the proposal\textsuperscript{30} introduces the mandatory opening of national support schemes to installations located in other MS even if gradually over the decade to 2030. Different mechanisms of opening the schemes to cross-border cooperation are made available to MS. The allocation of renewables benefiting from national contributions are subject to a cooperation agreement on the rule for the cross-border disbursement of funding.

Introducing such an obligation to increasing cross-border cooperation might be controversial and might require further harmonisation measures\textsuperscript{31}, but it seems to be the only instrument to implement the different modes of voluntary cooperation already foreseen in directive 28 and to reduce the risk of national market fragmentation.

2.3. Tools to ensure energy security

As above mentioned, building the internal energy market according to the Commission’s model is strongly challenged by the structure of article 194 Teuf referring not only to climate change policies but also to the security of energy supply. Energy security is an issue prevailingly tackled at national level as reaffirmed many times by the Commission\textsuperscript{32}. The key to improve energy security is seen in a stronger

\textsuperscript{28}Proposal for a Directive on \textit{the promotion of the use of energy from renewable sources} (recast), cit., articles 6 and 15,3.


\textsuperscript{30}Proposal for a Directive on \textit{the promotion of the use of energy from renewable sources}, article 5.2 (MS must ensure that support for at least 10% of the newly-supported capacity annually between 2021 and 2025, and at least 15% for the period 2026-2030) is open to installations located in other MS). And article 5.3 lists different kind of cooperation that can be put in place.


\textsuperscript{32}Communication from the Commission, \textit{European Energy Security Strategy} (COM(2014) 330 final of 28.5.2014): “Energy security of supply concerns every Member State, even if some are more vulnerable than others. This is valid in particular for less integrated and connected regions such as the Baltic and
cooperation at regional and European level by means of infrastructure development, increased interconnections, and a more coherent external and neighbourhood policy.\textsuperscript{33}

The lowered reliability of the energy system following the market liberalisation and sharpened by regulation and support schemes for renewables has strengthened MS fears regarding supply security. This concern has been recalled in the EU documents many times. The Commission indeed launched a public consultation to redefine the energy market design looking upon its evolution to decentralized generation and an increasing amount of market operators\textsuperscript{34}.

Although most MS had already introduced or had planned to introduce various kinds of capacity mechanisms to remunerate electricity generators, the Commission asked them to observe how the objective of security could be guaranteed through arrangements less distorting for the market logic such as market coupling, improvement of cross-border flows, strengthening infra-day exchange, and the demand side\textsuperscript{35}.

The Final Report of the Sector Inquiry on Capacity Mechanisms\textsuperscript{36}, published on the same day as the Winter Package, presents the results of the first sector inquiry in 11 countries and the points of view of the Commission in relation to state aid rules.

Stating that in the aftermath of the crisis the EU as a whole has always been in a situation of overcapacity doesn’t prevent some countries from facing security of supply seriously as there are some power plants that will be phased out in a few years, some others approaching the end of their lifespans being unfit to meet new emission standards\textsuperscript{37}.

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\textsuperscript{33} On the need of cross-border integration including Energy Community countries, see Ch. Egenhofer and C. Stroia, \textit{Is security of energy supply possible without deeper cross-border market integration? Lessons from the cold spell in South-Eastern Europe}, CEPS, Policy Insights, No 2017/45, December 2017 (available at \url{www.ceps.eu}).

\textsuperscript{34} Communication from the Commission, \textit{Launching the public consultation process on a new energy market design} (COM(2015) 340 final of 15.7.2015).

\textsuperscript{35} Ivi, paragraph 4.


\textsuperscript{37} \textit{Final Report of the Sector Inquiry on Capacity Mechanisms}, cit., 3.
Undoubtedly declining demand and lower prices have undermined the profitability of conventional, fossil-fuelled generation. However more flexible conventional technologies are needed to compensate intermittent, renewable-based generation. As illustrated in the sector inquiry, investors may not be keen on building new capacity because of a low expected profitability. Consequently investors could threaten security of supply. As affirmed by the DG Competition in the survey, “market and regulatory failures prevent the price signals necessary to maintain appropriate levels of security supply”.

Considering such a perspective, the Commission points out that the goal of security can be achieved thanks to a reform of the electricity market and to measures more compliant with the market such as, among others, market coupling, promoting regional cooperation, improving cross-border flows, and the demand side (demand response)\(^38\). In principle, only when all these measures do not meet the objective of securing electricity supply, MS could turn to capacity mechanisms. However a rigorous national assessment should reduce the risk of overestimating the need of capacity and help to limit the potential distortions of competition.

In fact, in the attempt to redesign the market, the Commission promoted a “European dimension” of supply security with regard to the gaps among countries in building regulation of capacity adequacy. In this perspective it recommended “further EU harmonisation of adequacy assessments”\(^39\) and a common framework to streamline adequate cross-border participation in capacity mechanisms which could refer to a common single model\(^40\).

\(^38\) Ivi, 17. Electricity market reforms are indispensable since they help to address concerns about inadequate security of supply. However, most Member States have yet to implement appropriate reforms. The Commission’s Market Design Initiative therefore proposes a number of reforms to improve the functioning of EU electricity markets and the Commission will require Member States to implement reforms to accompany the planned introduction of any capacity mechanism.

\(^39\) Ivi, 8: “The approaches and practices to calculate resource adequacy vary widely between Member States. Since Member States use different methodologies, metrics and assumptions, and since these are not clearly communicated, it is difficult to ensure that the results are reliable and comparable. Respondents to the sector inquiry have made a strong case for making adequacy assessments more comparable, verifiable and objective. To address these concerns, the Commission’s Market Design Initiative proposes to introduce a coordinated European resource adequacy assessment based on a harmonised method”.

\(^40\) Ivi, 18: “Seventh, market wide capacity mechanisms must be open to explicit cross-border participation in order to minimise distortions to cross-border competition and trade, ensure incentives for continued investment in interconnection and reduce the long-term costs of European security of supply”.

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In this sequence the last step is the proposed Regulation on the internal market for electricity where a general methodology to assess the European resource adequacy is defined and represents the base for MS to put in place capacity mechanisms.\textsuperscript{41}

As in the case of national support schemes that must be gradually opened also for capacity mechanisms a cross-border participation is requested in order to avoid distortions of competition in the internal market and closing of national subsidized markets.

The modernization process of state aid regime which started in 2012 has impacted on these two fundamental elements of the renewable energy policy and shaped the Commission’s assessments of compatibility requirements. In fact the adoption of the Environmental and Energy Aid Guidelines (EEAG) in 2014 extended state aid scrutiny to capacity mechanisms.\textsuperscript{42}

Unlike the case of the simultaneous new General Block Exemption Regulation (GBER)\textsuperscript{43} which allows some defined categories of aid to be exempted from the notification to the Commission, complying with the compatibility parameters listed in the Guidelines does not let them elude the scrutiny by the powerful DG Competition. In fact in the Guidelines context the EU Commission takes for granted that the compatibility control must be carried out according to the state aid regime regardless of the specific design features of a certain national capacity mechanism.\textsuperscript{44} This approach is witnessed in the scrutiny procedures concerning capacity mechanisms of some European countries and in the Interim Report\textsuperscript{45}. Considering the DG Competition assessment of the UK regime, it is evident that any capacity regime entails state aid since it grants capacity providers “any economic benefit which an undertaking would

\textsuperscript{41} See articles 18-23 of the Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) (COM(2016) 861 final/2 of 23.2.2017) and especially article 19 on the obligation for MS to open capacity mechanisms to direct cross-border participation.

\textsuperscript{42} Guidelines on State aid for environmental protection and energy, cit., § 3.9, 38-39.

\textsuperscript{43} Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.


not have obtained under normal market conditions, i.e. in the absence of State intervention”\(^46\).

From a different point of view, other interesting criticisms are addressed to the reasoning of the DG Competition which approved the French capacity market\(^47\) for a period of ten years granting public support to fossil fuels. However, at the same time, on a different table, it affirmed (article 4 of the proposal) that support schemes need to be regularly updated to better match market developments so that MS are forced to review support schemes every four years. Nonetheless, this justification has been used to shrink the provisions of article 4 to a few general principles as detailed rules on support measures in the directive “will hinder adaptations in rapidly evolving markets”\(^48\).

All in all, at this point, a crucial question is why the Commission has given up developing common rules on support schemes, as suggested by key stakeholders such as national regulators, and how the approach used in the revision of the Directive can match the provisions emphasizing investors’ certainty\(^49\).

### 3. Shaping a governance model

The ‘intersecting structure’ of article 194 Tfeu, as recalled in paragraph 1, is leading the EU executive and the other EU institutions to a steady search for a more certain allocation of competences between the Union and national level strongly required by a sort of ‘overlapping competence’ in energy\(^50\).

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\(^{49}\) See the conclusions of the 31st European Electricity Regulatory Forum | Florence (13th and 14th June 2016) focused on the EC’s *Proposals to redesign the EU electricity market* (available at [https://ec.europa.eu/energy/en/previous-editions-florence-forum](https://ec.europa.eu/energy/en/previous-editions-florence-forum)).

\(^{50}\) The article 194 Tfeu is as usual the legal basis of the regulation along with article 191 and 192 on environmental provisions.
The Energy Union package launched the proposal to build a complex system of interconnections between the different institutional levels generally referred to as governance. Such a model of “integrated Governance and monitoring process” is taken for the sole efficient mechanism which makes sure “that energy-related actions at Union, regional, national and local level all contribute to the Energy Union’s objectives”\textsuperscript{51}.

The framework where the interactions between EU and MS are performed in order to define, monitor and assess the expected measures is the proposal of the regulation on the “Governance of the Energy Union”.

Briefly, the overarching goal, as affirmed by the Commission, is to ensure that “policies and measures at various levels are coherent, complementary and sufficiently ambitious”. Furthermore an additional goal is to reduce criticism in the climate and energy policies resulting in particular from a lack of coherence and integration among normative rules and “to bring together the existing scattered planning and reporting obligations from the main pieces of EU legislation”\textsuperscript{52}.

According to this project, the model of governance is based on defined procedures (“a structured, iterative process”) intertwining in particular at EU and national level. Reshaping and harmonising the roles of the two levels has made it necessary to align the status of the targets set up both in the renewable sector and in energy efficiency. Therefore, on the one hand, the EU target for energy efficiency is defined as binding as in the case of renewable energy (no more as indicative as in the Dir. 27 of 2012)\textsuperscript{53}. On the other, there are no pre-defined (binding) national targets. For the MS, the governance should ensure flexibility, based on national specificities and preferences, whilst being aimed at reaching Union-level goals.

\textsuperscript{51} Communication from the Commission, State of the Energy Union - ANNEX 2 Guidance to member states on national energy and climate plans as part of the energy union governance (COM(2015) 572 final), 2.
\textsuperscript{52} EU Commission, Proposal for a Regulation on the Governance of the Energy Union (COM(2016) 759 final/2 of 23.2.2017),
\textsuperscript{53} The WP contains a shift to an EU binding energy efficiency target of 30% by 2030 from the original indicative target of 27%.
The governance mechanism is structured on “an intricate system” of planning, reporting and assessments built with two main pillars: on the one side, the integrated national energy and climate plans (NECPs), which are at the core of this governance system, and the reporting (the biennial progress reports) and monitoring linked to them; on the other, a kit of specific reporting and monitoring provisions for greenhouse gas emissions inventories. As affirmed in the State of the Energy Union of November 2015, if the governance is, from 2020 on, to be based on the “building blocks” such as national climate, renewable and energy efficiency programmes, the EU Commission is considering to standardise such building blocks in the hope they can help build “a Lego-like Energy Union”. In this perspective MS have to follow a complex matrix of “trajectories” and “indicators” in designing their NECPs, even if none of these are binding. It is evident that, facing the Energy Union governance challenge, the Commission ended up by resorting to a highly bureaucratic approach to shape national planning as required. However such a mechanism has not been able to bridge the gap between most countries without long term national energy plans that are still at an initial stage for developing their NECP and few countries provided with energy planning procedures that are advanced as regards the development of a NECP.

As for the procedure concerning NECPs, once every ten years MS elaborate a draft according to a fixed template, stating their objectives and policies for the next ten-year period. In the proposal the Commission established a 1 January 2018 deadline for MS to submit their drafts and 1 January 2019 for the finalized plans. As a more general project of the Commission is to promote cooperation at a regional level, MS, before submitting their drafts of NECPs, have to consult with neighbouring countries and to


55 Proposal for a regulation on the Governance of the Energy Union, esp. article 3, 2 which indicates the main sections of the NECPs. Moreover MS shall take into consideration in their NECPs the dimensions outlined in the Energy Union, e.g. decarbonisation, renewable energy, energy efficiency, energy security, internal energy market, and research, innovation and competitiveness (article 4).


57 Ibidem.


59 No doubt it has been and it will be difficult to meet these deadlines.
open public consultation possibly taking the results into account. The Commission issues recommendations on the draft plans which MS have to take into “utmost account” in their final NECPs (articles 9 - 11).

In the first year of implementation of the NECPs and every two years thereafter MS submit progress reports, according to strict content of guidelines. And the Commission evaluates, firstly, the progress at EU level towards the Energy Union objectives, considering in particular the 2030 targets for renewable energy and energy efficiency; secondly, MS progress towards meeting their NECPs assessing whether MS progress shows that the Union as a whole is on track towards the level of energy consumption in 2030; and, thirdly, the overall impact of aviation on the global climate (article 25).

The Commission’s assessment might result in a series of measures in the case that policy developments in a MS show “inconsistencies with overarching objectives of the Energy Union” or “the targets, objectives and contributions of the national plans or their updates are insufficient for the collective achievement”.

First, the Commission may issue recommendations to MS, which have to be taken into “utmost account”.

Second, on the base of the final NECPs and their updates, the Commission can evaluate that the collective effort is insufficient to meet the Union’s 2030 targets (especially for renewable energy and energy efficiency). Therefore it may “take measures at Union level”. The proposal does not give any description of such measures therefore the Commission may choose from a wide range of policy options. If the assessment demonstrates that progress by a MS is insufficient, the Commission “shall issue recommendations” to the MS (articles 25,1 and 27, 1-2).

Third, the Commission can provide further comments when MS submit a draft update, if necessary, of their NECPs in 2023-2024. Moreover MS can modify the plans notified by 2024 only if they call for more ambitious targets (article 13,3).

A main step of this ‘procedural governance’ is the biennial progress report which MS must submit by 15 March 2021 and every two years thereafter. This report has to describe the status of implementation of the NECPs considering the five dimensions of the Energy Union.

In the process of planning, reporting and monitoring the integrated national plans this passage provides the Commission with an other opportunity to influence and to push
MS to improve their policies. In fact the reports are used by the Commission as an instrument to monitor both the MS progress to achieve their own objectives and the collective progress towards the EU goals. By this means the Commission can try to limit and overcome the potential gap between the EU-wide targets and the efforts established in the NECPs (article 15).

At this point it is worth looking at how the dialogue between the Commission and national governments on the content and the implementation of NECPs is developing with regard especially to the 2030 renewables and energy efficiency targets. As mentioned above, in the case of inconsistencies between policies adopted in the MS and the overarching objectives of the Energy Union or of insufficient progress in implementing the NECP in a MS, the Commission issues recommendations on the plan to the MS concerned.

Furthermore, when the Commission evaluates the MS integrated national progress reports as a whole and remarks that the Union is at risk of not meeting the foreseen targets for 2030, it can address MS in two different ways. First, “it may issue recommendations to all member States” and, second, “shall, as appropriate, take measures at Union level in addition to the recommendations” (art. 27,3).

Looking thoroughly at the tools available for the Commission to open the dialogue with MS in the area of renewable energy, the proposal describes two detailed options. On the one hand, the Commission can observe that in 2023 the trajectory regarding the share of energy from renewable sources in the Union’s gross final consumption is not “collectively” met. Consequently it can require MS to cover the gap “by additional measures” such as adjusting the share in the heating and cooling sector, in transport, or making a financial contribution “to a financing platform set up at Union level contributing to renewable energy projects and managed directly or indirectly by the Commission”. On the other, if the Commission finds, assessing the biennial progress report, that a MS does not maintain its own baseline share of renewables in its gross final consumption of energy, the MS has to “ensure that any gap to the baseline share is covered by making a financial contribution to the financing platform (article 27,4).

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60 Also with regard to energy efficiency, see articles 25,3 and 27,1 and 5.

61 As stated in article 3 of the proposal on the promotion of the use of energy from renewable sources, the share of energy from renewable sources in the final consumption of each MS must not be lower than the national target set for 2020 (then binding) as “minimum contribution” from 2021 onwards.
The governance model designed in this proposal of regulation is based on a fundamental innovation, i.e. the adoption of the mandatory and comprehensive National Energy and Climate Plans which are aimed at replacing existing separate plans for renewables and energy efficiency and helping to streamline a range of related obligations for planning and reporting. As MS are no longer provided with a binding target as in the previous regime for renewables, they are obliged to ensure contributions to achieve the EU target (as well as in the energy efficiency area). In this context the Commission plays a role of assessing, on the one hand, MS progress towards implementing NECPs and, on the other, whether MS contributions are sufficient and the EU as a whole is on track to achieve its own objectives.

An open question remains about the main tools in the Commission’s hands to approach MS at the various steps of the procedure towards a correct implementation of NECPs. First of all, Union-level measures, available in case of insufficient ambition or insufficient progress, are not defined. There would be however room for the Commission to shape them to its liking, even if these measures could face political limitations as they would presumably require the ordinary legislative procedure and, hence, MS consent. In this case such measures would not be a “flexible tool” to adjust non-standardized situations.

Secondly, the most common tools are recommendations which, as already described, can be used at various moments. However recommendations are not-binding acts even if MS are obliged to respond to individual recommendations, have to take “utmost account” of recommendations from the Commission and have to explain how they have implemented them (articles 15.5; 28.2 and 9.3). It is evident that there is no sufficiently stringent follow-up process and the proposal does not clarify what the consequences if a MS does not comply with recommendations issued according to article 28 are. Although recommendations can be seen as flexible tools appropriate to manage different national situations, there is a high risk of a low compliance rate as in

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the case of the European Semester that should have been a sort of model for the Energy Union framework\textsuperscript{64}.

“Gap-filling” measures in the area of renewable energy seem to require more concrete responses from MS such as adjusting their renewables share in specific sectors or making a contribution towards a financing platform (article 27,4). Nonetheless there is no detailed information on this platform, its duties, and its organisation.

4. Some final remarks

The Energy Union governance, as designed in the Commission’s project, is at present being submitted to the scrutiny of the EU institutions. The legislative process might end up with substantial modifications of the proposed regulation. The debates in Parliament and the approved amendments are witnessing the will to open tough talks with the other co-legislators. The deadlines foreseen in the WP and for its approval have been shifted. Final outcomes are dubious in their content.

Going back to the draft in question, one of the key reasons for this intricate design is to find a new mechanism to connect the Union level, i.e. the Commission, and the MS in a flexible way. In fact replacing a sort of top – down relation characterized by national obligations with 2030 not nationally binding targets in renewables and energy efficiency made it necessary to imagine a comprehensive governance system to bridge the gap between the EU targets and their national implementation\textsuperscript{65}.

The result is a sort of cooperative structure where MS are to submit their national plans the sum of which must add up to the collective goal. The idea that “Member States shall collectively ensure that the sum of their contributions add up to at least 27% from renewable energy sources in gross final energy consumption at Union level by 2030”


\textsuperscript{65}On the points of view of the MS see the summing up in Vandendriessche, A. Saz-Carranza and J-M. Glachant, \textit{The Governance of the EU’s Energy Union}, cit., 15 : “While member states such as Germany, France, Italy and the Scandinavian countries were in favor of maintaining nationally binding targets of the 2020 framework, others were against, including the UK and many Eastern European states. Those against argued that policies would be much more cost-effective without the strict corset of nationally binding targets. The UK, for example, sought flexibility in achieving the EU’s energy and climate targets and found that nationally binding targets were a barrier. In Germany, on the other hand, the Energiewende was in full swing, and the push towards renewables strong”. More in detail on the positions of UK and Poland, see C. Turmes, \textit{Energy transformation}, cit., 145 ff.
reveals a high degree of confidence in their promptness to cooperate, like in the case of the consultations with neighbouring countries before submitting the draft of NECPs. Considering the potential reluctance of MS to cooperate for the achievement of the collective goals, the governance design introduces an obligation for MS to report on their plans through detailed templates. Then the Commission can take measures when it believes the collective goals will not be met.

While the MS, or most of them, can show little will to cooperate altogether but push to claim their own interests, the Commission’s role seems twofold. On the one side, it establishes direct relations through the national plan with each country collecting the individual initiatives and seeking to promote the compliance with the Union-level goals. On the other, at the reporting and monitoring steps the Commission tries to gain a ‘steering role’ but the tools at its disposal in the governance framework are too weak without any enforcement power.

Undoubtedly most of these tools, in particular in the renewable sector, have to be referred to as soft regulation which, even if based on the ‘play or explain’ principle, is not equipped with coercive and sanction measures. Relationships among the members, as in the institutional network model, are structured on reputational mechanisms and their functioning depends on the attitude of the MS only.

Furthermore the proposal leaves negotiations and adjustments of national plans to bilateral talks only. This direct dialogue between the Commission and each MS at the submission and assessment step does not foster cooperation among all MS. The lesson learned from the European Semester process and from the system of “multilateral surveillance” on economic policies, could suggest that discussions on NECPs should take place in a “forum” of all countries to strengthen their accountability with regard to contributing more adequately and fairly to collective goals.

At a first glance the proposed governance regulation appears to be a highly technical system which seeks to lead the “building blocks” of climate change, renewables and

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66 M. Duwe – N. Meyer-Ohlendorf – K. Umpfenbach, Governance of the Energy Union. Assessment of the Commission Proposal for a Governance Regulation, cit., where it is recommended the engagement of the Council (as in the European Semester process) but mostly of EU Parliament which presently has no formal role in the Commission’s proposal but can represents an opportunity to comment on draft plans. In addition according to article 121 Tfeu, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.
energy efficiency towards an integrated approach. Although the draft seems to recognise that the energy policy needs to be tackled in a holistic manner, the approach to build it up from national plans will give little help in developing a coherent policy. Going back to the ‘battle’ among the countries and their groupings it is evident that the project follows a political logic and is the result of a compromise between different interests especially concerning an accelerated decarbonisation and supply security.

An alternative to a cooperative mechanism of all MS seems to be the proposal of regional cooperation as part of the governance system of the Energy Union. In the proposed regulation on governance the Commission has transferred an idea that looks favourably at regional energy initiatives when progress at the whole Union level is blocked. Already in the Energy Union regional cooperation was seen as a goal to develop interconnections and as a step towards full EU-wide market integration67.

Furthermore the WP recalls the issue of cross-border cooperation many times as in the draft regulations on the internal market for electricity and on the recast of ACER68.

In the new market design the Commission aims at ensuring a more coordinated regional approach to transmission system operations with the creation of Regional Operational Centres (ROCs) which have been given a good number of tasks and are entitled to adopt decisions that are binding on the member of the Transmission System Operators69. In the perspective of the new regulation ROCs are established also to complement the role of TSOs by performing “functions of regional relevance”. However in the longer term ROCs can make national system operations “increasingly redundant and may even take over decisions on grid investment”70. The regulatory supervision of these new market

67 Existing arrangements such as the Pentalateral Energy Forum or the Baltic Energy Market Interconnection Plan (BEMIP) are initiatives on which to build further. Successes in these regions should act as a catalyst for other regions. The Commission will ensure that all regional initiatives evolve in a coherent way and lead towards a fully integrated Single Energy Market.


69 Proposal for a Regulation on the internal market for electricity (recast) (COM(2016) 861 final/2), articles 32, 34, 38 and 43 on monitoring and reporting.

subjects will be carried out at EU level by Acer in cooperation with national regulators\textsuperscript{71}.

No doubt strengthening regional cooperation (also by means of the ROCs) is for the Commission an option to improve a model of voluntary cooperation promoted by many MS and is, to a large extent, successful. Although regional cooperation is seen by the Commission as a successful model which is generally preferred by MS, the risk is that it could harm the project of a full functioning internal market instead of improving it as in the Commission’s purpose.

The result of these initiatives is seen from different points of view. On the one hand, a negative could be “balkanisation” rather than integration\textsuperscript{72}. On the other, following the model of previous approaches in the case of voluntary regional cooperation\textsuperscript{73}, the Commission could consider some current experiments aiming at extending positive experiences of interest.

One of the most-advanced operational structures is the Pentalateral Energy Forum\textsuperscript{74}, whose activities have grown in recent years especially as drivers to a further integration of electricity markets and an increase of the security supply. In fact the so called ‘Pentalateral Forum’ could act as a “laboratory” for market design since it is a leading format for cooperation in Europe on energy issues. Even if the early years were marked by a

\textsuperscript{71} Proposal for a Regulation establishing a European Union Agency for the Cooperation of Energy Regulators, cit., articles 2 and 8.

\textsuperscript{72} M. Keay – D. Buchan, Europe’s Energy Union, cit., 5.

\textsuperscript{73} With regard to the use of a sort of ‘experimentalist’ methodology in the case of other voluntary regional initiatives such as those compared for some years by the ERGEG concerning a target model for congestion management voluntarily agreed in 2009 in the informal ‘Florence Forum’ and the formalised through Commission Regulation (EU) 2015/1222, see B. Rangoni, Regulation after agencification. Hierarchy and uncertainty in the case of energy, TARN Working Paper 9/2017, 11-12.

\textsuperscript{74} “Since the European Commission launched the Regional Initiatives facilitating electricity trade and setting fair rules for cross-border exchanges almost fifteen years ago, the stakeholders of the electricity sector have increasingly engaged in important dialogues to build a common market. […]. The need for closer links between the Benelux, French and German electricity markets was concretely expressed by a voluntary association of the national Transmission System Operators in 2005 (called the ‘Pentalateral Energy Forum’), who were joined by Austria and Switzerland two years later. […]. One of the most recent achievements of the Pentalateral Energy Forum is the signing, last June, of an agreement for the management of the power sector in case of a crisis. […]. Results are also notable in the field of security of supply. The main step towards this was the publication of the Pentalateral Generation Adequacy Assessment in March 2015. […] two further generation adequacy assessments are planned, one for the period 2018-2019 and one for 2023-2024”. (R. Haas, The Pentalateral Energy Forum: Inter-connector of European powers, Nouvelle Europe [on line], Saturday 2 December 2017(available at http://www.nouvelle-europe.eu/node/2005). On the same topic, also J. DE JONG & CH. EGENHOFER, Exploring a Regional Approach to EU Energy Policies, Brussels, CEPS Special Report, No. 84, 2014.
governmental structure, the decision making has evolved in an “intricate and highly nuanced” procedure which, indeed, facilitates the conclusion of agreements. Moreover, the step towards a broader cooperation is that in 2015 the adoption of the Joint Declaration for Regional Cooperation on Security of Electricity Supply was signed by 12 electricity neighbours.

Regional cooperation, in particular in the case of the creation of ROCs, calls for a reinforced role of ACER. In addition with the introduction of an EU-wide coordinated adequacy assessment ACER is given new power for the approval of its methodology while MS have to establish capacity remuneration mechanisms75.

The WP has preserved the main role of Acer as a coordinator of the action of national regulators but has assigned limited additional competences in areas “where fragmented national decision-making on issues with cross-border relevance would lead to problems or inconsistencies for the internal market”76.

Nonetheless the option to centralise regulatory powers in the hands of ACER was not favourably accepted by stakeholders during the public consultation. Even if the option to transform the Agency to a sort of “pan-European regulator” or closer to the shape of Authorities on the financial markets was not taken into consideration77, ACER will have an important role also in the decarbonising policies. Given that regional initiatives and cross-border cooperation are fundamental elements of the proposed new governance, regulatory cooperation among national regulators within ACER is seen as a further tool to achieve the EU goals of the energy and climate policies. While in the design of governance for decarbonising policies MS can act not only coordinating their efforts but also supporting divergent forces, ACER could play a centripetal role as a coordinator of the action of national regulators in this context “safeguarding the EU-interest”.

75 Proposal for a Regulation establishing a European Union Agency for the Cooperation of Energy Regulators, cit., article 10.

76 Ivi, Explanatory Memorandum, 11.

77 About the differences between the two models, the one of ACER and the other of financial market Authorities (ESMA, EBA, and EIOPA), see V. Cerulli Irelli, Dalle Agenzie europee alle Autorità europee di vigilanza, in M. P. Chiti – A. Natalini (eds.), Lo Spazio Amministrativo europeo, Bologna, 2012, 137 – 163.