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THE ENERGY UNION GOVERNANCE

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Regulation (EU) 2018/1999 of 11 December 2018 shapes the architecture of the Energy Union's¹ governance by outlining its regulatory framework on the basis of two guidelines: on the one hand, the simplification and integration of planning obligations, communication and monitoring in energy and climate² sectors; on the other hand, the construction of a framework of rules for the comparison between Member States and the European Commission, with the involvement of other European institutions, aimed at ensuring the constant pursuit of objectives of the Energy Union as well as the long-term goals relating to greenhouse gas emissions, in line with the Paris Agreement³.

¹ On the issue of the Energy Union governance there are numerous essays relating its elaboration phase. Among them: L. Ammannati, *The Governance of the Energy Union: An 'Intricate System' for the European Union Common Goals*, at www.ogel.org; Id. *Una nuova governance per la transizione energetica dell'Unione europea. Soluzioni ambigue in un contesto conflittuale*, in Id. (a cured di) *La transizione energetica*, Torino, 2018, 3 ss.; M. Vandendriessche – A. Saz-Carranza – J.M. Glachant, *The Governance of the EU's Energy Union: Bridging the Gap?*, *EUI Working Paper RSCAS 2017/51*; M. Duwe – N. Meyer-Ohlendorf – K. Umpfenbach, *Governance of the Energy Union. Assessment of the Commission Proposal for a Governance Regulation*, in *Ecologic Institute*, 2 February 2017; M. Ringel – M. Knodt, *The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016*, in *Energy Policy*, 2018, 209 ss.; K. Szulecki – S. Fischer – A.T. Gullberg - O.M. Keay – O. Sartor, *Shaping the 'Energy Union': between national positions and governance innovation in EU energy and climate policy*, in *Climate Policy*, 2016, 548 ss.; D. Buchan, *Europe's Energy Union: a problem of governance*, in *The Oxford Institute For Energy Studies*, November 2015.

² Already with the Communication of 25 February 2015 COM (2015) 80 final, the Commission indicated the need for an integrated governance mechanism to ensure that actions related to energy - at EU, regional, national and local level - all contributed to the achievement of the Energy Union objectives thus extending to all the five dimensions that characterize the scope of governance, beyond the 2030 framework for climate and energy.

³ The literature on the Paris Agreement is vast. Noteworthy, without any pretense of completeness: Z. Savaşan, *Paris Climate Agreement: A Deal for Better Compliance?*, cit., 2019; D. Klein – M.P. Carazo – M. Doelle – J.B. Andrew (Eds) *The Paris Agreement on Climate Change: Analysis and Commentary*, Oxford, 2017; M. Montini, *Riflessioni critiche sull'Accordo di Parigi sui cambiamenti climatici*, in *Rivista di diritto internazionale*, 3/2017, 719 ss.; L. Aristei, *L'Accordo di Parigi: obiettivi e disciplina*, in *RQDA* n. 3/2017; J. Vinuales, *The Paris Agreement on Climate Change: Less is More*, in *German Yearbook of International Law*, 2017; A.L. Garín, *Novedades del Sistema de Protección Internacional de Cambio Climático: el Acuerdo de París*, in *Estudios Internacionales*, 2017, 137 ss.; M. Gervasi, *Rilievi critici sull'accordo di Parigi: le sue potenzialità e il suo ruolo nell'evoluzione dell'azione internazionale di contrasto al cambiamento climatico*, in *La comunità internazionale*, 2016, 21 ss.; F. Romanin Jacur, *L'accordo di Parigi e i passi avanti della cooperazione multilaterale sul clima*, in *sidiblog.org*, 13 January 2016; R. Falkner, *The Paris Agreement and the New Logic of International Climate Politics*, in *International Affairs*, 92(5), September 2016, 1107 ss.; D. Bodansky, *The Legal Character of the Paris Agreement*, in *Review of European, Comparative and International Environmental Law*, vol. 25, July 2016, 142 ss.; D. Bodansky, *The Paris Climate Change Agreement: A New Hope?*, in *The American Journal of International Law*, vol. 110, 2016, 288 ss.; V. Voigt, *The Compliance and Implementation Mechanism of the Paris Agreement*, in *Review of European, Comparative and International Environmental Law*, vol. 25, luglio 2016, 161 ss.; H. van Asselt, *International Climate Change Law in a Bottom-Up World*, in *Questions of International Law*, vol. 26, 2016, 5 ss.; E. Burlison, *Paris Agreement and Consensus to Address Climate Challenge*, in www.asil.org, 29 March 2016; S. NESPOR, *La lunga marcia per un accordo globale sul clima: dal Protocollo di Kyoto all'Accordo di Parigi*, in *Rivista trimestrale di diritto pubblico*, 2016, 81 ss.; A. Savaresi, *The Paris Agreement: A New Beginning*, *Edinburgh School of Law Research Paper No 2016/08*, in papers.ssrn.com and F. Scalia, *L'Accordo di Parigi e i «paradossi»*

As highlighted in the document that accompanied the proposal, the main objective of governance is to ensure that «*policies and measures at various levels are coherent, complementary and sufficiently ambitious*»⁴.

The choice of the Commission on the legislative instrument of the regulation - mandatory in all its elements and directly applicable⁵ - is indicative of the desire to govern the implementation process within legal systems of Member States of these union legislative measures on energy and climate, favoring the collaboration between countries and the coherence of interventions according to the achievement of European targets⁶. Moreover, this choice is functional to ensuring governance that allows uniforming the model of drafting national plans⁷, so as to make them comparable and indicate common procedures and timing, in order to achieve the objectives of the Union⁸.

The legal basis of the Regulation is Article 194 TFEU⁹, marked by a close interrelation of competences between the Union and Member States, such as imposing a model of allocation of these competences that guarantees the pursuit of European objectives while fully respecting the freedom of Member States to establish their own energy mix. However, this freedom - again on the basis of article 194, par. 2 TFEU, which recalls article 192, par. 2, lett. c), on environmental matters - must be compatible with the achievement of European climate and energy objectives and with the gradual transition to a low-carbon sustainable economy¹⁰.

The Regulation establishes a governance mechanism functional to implement strategies and measures aimed at achieving objectives and goals of the Energy Union and the long-term objectives related to greenhouse gas emissions; encouraging cooperation between Member States, including at regional level, to achieve these goals; ensuring the timeliness, transparency, accuracy, consistency, comparability and completeness of the information communicated by the Union and Member States to the Secretariat of the UNFCCC Convention and of the Paris Agreement¹¹ and to ensure greater regulatory certainty for investors and to

delle politiche dell'Europa su clima ed energia, in Rivista di diritto e giurisprudenza agraria, alimentare e dell'ambiente n. 6-2016 www.rivistadga.it. Inoltre, per un'analisi di diversi possibili scenari sulla base degli INDCs proposti dalle Parti, si veda H.L. van Soest – H.S. de Boer – M. Roelfsema – M.G.J. den Elzen – A. Admiraal – D.P. van Vuuren – A.F. Hof – M. van den Berg – M.J.H.M. Hamsen – D.E.H.J. Gernaat – N. Forsell, Early action on Paris Agreement allows for more time to change energy systems, in Springer International Publishing, 2017.

⁴ Cfr. COM(2016) 759 final del 30 novembre 2016.

⁵ Article. 288, par. 2, TFUE.

⁶ In particular, the objectives of the 2030 framework for climate and energy, in greenhouse gas emissions reduction, renewable energy sources and energy efficiency, objectives that cannot be separated, none of which can be considered secondary to others (see Recital (18) Regulation (EU) 2018/1999).

⁷ On this point, see the Communication from the Commission, State of the Energy Union - Annex 2 Guidelines for Member States on national energy and climate plans in the context of the Energy Union governance, (COM (2015) 572 final), 2.

⁸ This need for uniformity was underlined by the report that accompanied the proposed regulation (COM (2016) 759 final of 30 November 2016), which defines the regulation dedicated to governance «a toolbox», which allows «optimization, to simplify and increase the coherence of the various policies, giving homogeneity to the relations between the different levels of government. On this point, see L. Ammannati, Una nuova governance per la transizione energetica dell'Unione europea. Soluzioni ambigue in un contesto conflittuale, cit., 11 ss

⁹ In relation with articles 191 and 192 TFEU concerning environment.

¹⁰ See the Recital (18) of the regulation, which indicates as limits to the national policies flexibility, beyond the objectives mentioned, also the further integration of the market and the intensification of competition.

¹¹ M. Vandendriessche - A. Saz-Carranza - J.M. Glachant, The Governance of the EU's Energy Union: Bridging the Gap?, cit., 14-15, highlight how, on the one hand, the chronology of the obligations of Member States established by the Regulation is functional to the respect of terms prescribed to the Parties by the Paris Agreement, on the other hand, «the Energy Union's GHG inventory reporting provisions specifically geared towards UNFCCC requirements».

take full advantage of opportunities for economic development, investment promotion, job creation and social cohesion¹².

The Governance covers all five dimensions of the Energy Union, namely energy security, internal energy market, energy efficiency, decarbonisation, research, innovation and competitiveness¹³, to be considered as closely related¹⁴. These dimensions represent, in fact, objectives that are inseparable from each other, of equal importance and find in the sectoral legislation the specific methods of implementation, improvement and monitoring. Member States should have the flexibility to choose internal policies in compliance with national preferences and their energy mix, providing - as already highlighted - that such flexibility is compatible with market integration, intensification of competition and the transition to a low-carbon economy.

The governance structure is a complex mechanism of planning, communication and monitoring, based on two pillars: the first is the national integrated plan for energy and climate, the biennial communication on state of implementation and monitoring of progress; the second is a set of communication and monitoring forecasts linked to projections of greenhouse gas emissions¹⁵.

Indeed, the most significant innovation - in line with the Paris Agreement¹⁶ - seems to be the requirement for Member States to define their commitments, in terms of objectives and measures, in the national and integrated plans for energy and climate with a medium-long term perspective. This determines the overcoming of sectorial planning on the subject, resulting from distinct normative acts adopted at different times, which have led to redundancy, overlaps and an insufficient consideration of synergies and interactions between various sectors of intervention and, above all, the failure of integration between energy and climate policies¹⁷.

¹² See Article 1, paragraph 1 of the Regulation.

¹³ In line with the five dimensions of energy that the Union aims to pursue, in addition to the Regulation on governance, the EU has developed an entire “Clean Energy Package”, with interventions in the field of renewable sources, energy efficiency (in particular in the buildings) and electricity markets, addressing, among others, the issue of energy poverty and promoting fair competition in the internal market. Already in the Communication on a framework strategy for a resilient Energy Union, accompanied by a forward-looking climate change policy of 25 February 2015, the Commission referred to the need for an integrated governance mechanism to ensure that related actions to energy - at Union, regional, national and local level - they all contribute to achieving the objectives of the Energy Union, thus extending to all the five dimensions that characterize the scope of governance, beyond the 2030 framework for climate and energy.

¹⁴ Already the Communication on the Energy Union - COM (2015) 80 final - defined the five dimensions “closely interconnected and mutually reinforcing, aimed at improving the security, sustainability and competitiveness of energy supply”.

¹⁵ Thus L. Ammannati *Una nuova governance per la transizione energetica dell’Unione europea. Soluzioni ambigue in un contesto conflittuale*, cit., 13.

¹⁶ M. Vandendriessche - A. Saz-Carranza - J.M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, cit., 7, observe that the integrated energy and climate plans « [i]n a way, they are comparable to the (Intended) Nationally Determined Contribution ((I) NDCs) in the UNFCCC’s Paris process, in that they are plans designed and submitted by individual member states in fulfillment of a collective goal, in a bottom-up type process. However, the NECPs differ from the (I)NDCs in that they cover far more policy ground and in that the requirements in terms of their content and the procedure to develop them are more precisely defined».

¹⁷ See recital (24). The Communication COM (2019) 570 final, which accompanied the proposal, highlighted how «[g] the current obligations of planning and communication (both for the Commission and for Member States) in the energy and climate sectors offer advantages in terms of detailed information on specific areas of intervention and encourage the implementation of sectoral legislation. However, these obligations are contained in a wide range of distinct legislative acts adopted at different times, which has given rise to redundancy, inconsistency and overlap, as well as the lack of integration between energy and climate policies. Furthermore, some of the current obligations have been defined in consideration of the achievement of the corresponding objectives set for 2020 and therefore do not lend themselves to favoring

The “integrated national energy and climate plans” are ten-year planning documents, detailed in their structure by article 3 and by annex 1 of the Regulation¹⁸ to guarantee the uniformity. They must provide a picture of the current¹⁹ energy system and planning framework, with projections in the decade under current legislation, establishing national objectives for each of the five dimensions of the Energy Union²⁰ as well as policies and measures aimed at achieving them, respecting their mutual interrelations and the principle “energy efficiency first”²¹. They also describe the impact of measures envisaged, for the duration of the plan, on the development of the energy system, of greenhouse gas emissions and of absorption, from a macroeconomic point of view and, to the extent possible for health and environment²². The plans also provide a general overview of the investments needed to achieve the set goals, as well as an assessment of sources of such investments. Plans should pay particular attention to energy poverty²³, taking into account all relevant policies and the level of household energy services needed to guarantee a basic standard of living in the respective national context²⁴.

the realization of the 2030 framework for energy and climate, nor are they synchronized with the obligations regarding planning and communication required by the Paris agreement”.

¹⁸ According to the article. 3, par. 2, the plans must contain: an overview of the procedure followed for their adoption, with a summary and a description of the public consultation and involvement of stakeholders and their results, and of regional cooperation with other Member States in preparing the plan; a general overview of the investment needed to meet the corresponding objectives, targets and contributions; a description of the current situation of the five dimensions of the Energy Union, including with regard to the energy system and greenhouse gas emissions and removals as well as projections with regard to the objectives with already existing policies and measures; an assessment of the impacts of the planned policies and measures to meet the objectives referred to in point (b), including their consistency with the long-term greenhouse gas emission reduction objectives under the Paris Agreement and the long-term strategies as referred to in Article 15,

as well as a general assessment of the impacts of the planned policies and measures on competitiveness linked to the five dimensions of the Energy Union; an annex defining the methodologies and measures to be applied by the Member State to achieve the expected energy saving obligations, drafted in compliance with the requirements set out in Annex III of the Regulation.

¹⁹ Article. 8 states that Member States shall describe the current situation for each of the five dimensions of the Energy Union

²⁰ Consistent with the objectives set by European legislation: for the «decarbonisation» dimension the regulations (EU) 841 and 842 of 2018; for “renewable energy”, the binding target of the EU at 2030 of at least 32% of its share in the energy mix set by Directive (EU) 2018/2001; for “energy efficiency”, the equally binding target of the EU at 2030 of at least 32.5% set by Directive 2018/2002/EU and the objectives for long-term restructuring of the national residential buildings and non-residential, public and private, set by directive 2018/844/EU; for “energy security”, the objective of increasing the diversification of energy sources of the related supplies from third countries, with a view to reducing dependence on energy imports, increasing the flexibility of the national energy system and addressing limitations or interruptions supply, with a view to increasing the resilience of regional and national energy systems; for the “internal energy market”, the minimum goal of 15% interconnection by 2030; increasing the flexibility of the system, integration and coupling of markets, in order to increase the exchangeable capacity of existing interconnections, smart grids, aggregation, demand management, storage, distributed generation, the dispatching, redispatching and production reduction mechanisms, as well as real-time price signals; for the “research, innovation and competitiveness” dimension.

²¹The definition of the principle of energy efficiency first is given by Article 2 “Definitions” of the Regulation: “means taking utmost account in energy planning, and in policy and investment decisions, of alternative cost-efficient energy efficiency measures to make energy demand and energy supply more efficient, in particular by means of cost-effective end-use energy savings, demand response initiatives and more efficient conversion, transmission and distribution of energy, whilst still achieving the objectives of those decisions “.

²² This is foreseen in Article 8, paragraph 2 of the Regulation.

²³ According to the Climate Action Tracker between 50 and 125 million of European citizens are in conditions of energy poverty. See, Scaling up climate action European Union of 6 December 2018 at

Each Member State notifies the Commission of its integrated national energy and climate plan by 31 December 2019, subsequently by 1 January 2029 and always to follow every ten years²⁵. Since this is a program that affects environmental protection, the regulation requires public consultation²⁶ on the proposal and making available to the public the plan presented to the Commission²⁷, in compliance with Directive 2001/42/EC, concerning the assessment of effects on plans and environmental programs, and the Århus Convention²⁸.

Regional cooperation between Member States for the drafting of integrated national energy and climate plans²⁹ implies the consultation (at least)³⁰ between neighboring States and may involve, on a voluntary basis, the joint definition of parts of the integrated national plans, for aspects of common interest to several States³¹. But States should, in drafting their plans, also consider existing regional³² cooperation forums and cooperate with signatories to the Energy Community, with third countries that are members of the European Economic Area and, as appropriate, with other relevant third countries.

<https://climateactiontracker.org>. More generally on energy poverty, see A. Maestroni, *Povert  energetica e strumenti di tutela: solidariet  e fratellanza*, in E. Bruti Liberati – M. De Focatiis – A. Travi, *Esperienze regolatorie europee a confronto nel settore dell’energia – Atti del convegno AIDEN Milano, 3 dicembre 2015*, Milanofiori Assago, 2017. The author, criticizing the recent habit of the Italian Legislator to use the English language to adequately describe phenomena (and sometimes better) definable with the Italian language, distinguishes in the category of energy poverty or fuel poverty (both expressions used to indicate energy poverty, although in English law they identify different situations, the second referring to the lack of fuel for heating) the “energy poverty”, as a flaw of means to be allocated to heating or electric costs, and the “energy misery”, defined as above. Well, according to a study conducted in 2015 for the Bank of Italy, in Italy there would be 2,065,063 families in conditions of energy poverty: connected to the network, but in conditions of being eligible to access the social bonus as “vulnerable customers”.

²⁴ Member States, as foreseen in Article 3, paragraph 3, if they encounter the presence of a high number of families in energy poverty, outline in their integrated national plans for energy and climate policies and appropriate measures to address it.

²⁵ Paragraph 1 of Article 3 of the Regulation clarifies that “the first plan shall cover the period from 2021 to 2030, taking into account the longer term perspective. The subsequent plans shall cover the ten-year period immediately following the end of the period covered by the previous plan”.

²⁶ According to the art. 11 of the Regulation, Member States establish a permanent multi-level dialogue on energy that brings together local authorities, civil society organizations, entrepreneurs and all other interested parties; this dialogue is at the basis of the elaboration of the individual integrated national energy and climate plans.

²⁷ Member States must attach to the integrated national plans notified to the Commission a summary of the comments from the public or of the provisional observations and that guarantee the periodic information to the public, so that it participates in and expresses its views, as provided for in Article 10.

²⁸ Convention of the United Nations Economic Commission for Europe (UNECE) on access to information, public participation in decision-making processes and access to justice in environmental matters.

²⁹ Provided by Article 12, which says that Member States cooperate with each other, taking into account all existing and potential forms of regional cooperation, to effectively achieve the objectives, goals and contributions defined in their respective plans. Article 42, on the other hand, governs cooperation between Member States and the Union.

³⁰ If the Member State issuing the plan considers it appropriate, it may also consult other Member States or third countries that have expressed an interest.

³¹ At the request of two or more Member States, the Commission facilitates this exercise, pursuant to Article 12 (3).

³² Such as: the Baltic energy market interconnection plan (BEMIP), the interconnection in central and south-eastern Europe (CESEC), the energy market of the central western region (CWREM), the offshore network initiative of the countries of the seas of north (NSCOGI), the Pentalateral Energy Forum, interconnections for south-western Europe and the Euro-Mediterranean partnership).

The process of drafting integrated national plans is long and complex to the point that, the Regulation imposes to member States to send the draft versions by the end of the year 2019 preceding that of their adoption³³.

The Commission receives the proposals for integrated national plans from Member States, evaluates them and if necessary - within six months of the deadline for their presentation in the final version - makes recommendations concerning, in particular, the level of ambition of objectives, goals and contributions aimed at the collective achievement of objectives of the Energy Union, policies and measures in relation to objectives both at the level of each State and of the Union and other policies and measures of cross-border importance, any additional policies and measures that may prove to be necessary in the national plans and, finally, interactions and the coherence between the policies and measures in force and those foreseen included in the national integrated plan for energy and climate within a single dimension and among different dimensions of the Union of energy³⁴. Member States must take account of Commission' recommendations in the final version of their integrated national energy and climate plans, to such an extent that if they decide to deviate from them they are obliged to justify their decision by publishing the motivation³⁵.

The integrated plans, due to their ten-year perspective, are subject to updating procedures within a defined time frame³⁶. The updating of plans must represent an increase in ambition compared to what has already been defined³⁷ in analogy with the ratcheting mechanism outlined by the Paris Agreement³⁸.

³³ Article 9 par. 1: "By 31 December 2018, and subsequently by 1 January 2028 and every ten years thereafter, each Member State shall prepare and submit to the Commission a draft of the integrated national energy and climate plan in accordance with Article 3(1) and Annex I."

³⁴ Article 9, par. 2. The rule is difficult to coordinate with the following article. 31, which states that if, on the basis of its assessment of the draft integrated national energy and climate plans or assessment of the draft updates of the final plans as part of the iterative process, the Commission concludes that the objectives, targets and contributions of the Member States are insufficient for the collective achievement of the Energy Union objectives and in particular, for the first ten-year period, for the Union's binding 2030 target for renewable energy and the Union's 2030 target for energy efficiency, it shall — as regards the Union's target for renewable energy — and may — as regards the other Energy Union objectives — issue recommendations to Member States whose contributions it deems insufficient to increase their ambition in order to ensure a sufficient level of collective ambition. It must be assumed that the mere faculty to formulate recommendations for objectives other than that relating to renewable energy concerns exclusively the proposals for updating the plans, applying the most rigorous provision of the article 9 for the proposed plan. And in any case, is useful to highlight the unfortunate formulation of the article 31, according to the letter of which, only the EU 2030 objective in the field of renewable energy, not even that related to energy efficiency, would be binding.

³⁵ Article. 9, par. 4.

³⁶ Pursuant to Article 14, paragraph 1 of the Regulation, By 30 June 2023, and subsequently by 1 January 2033 and every 10 years thereafter, each Member State shall submit to the Commission a draft update of the latest notified integrated national energy and climate plan or shall provide the Commission with reasons justifying why the plan does not require updating . The update proposal is followed, according to the provisions of paragraph 2 below, the presentation to the Commission of the definitive updating of the plans by Member States by June 30, 2024, then by January 1, 2034 and subsequently every 10 years, unless have motivated the Commission that the plan does not need updating.

³⁷ Pursuant to Article 14, paragraphs 3, 4 and 5.

³⁸ In fact, the agreement is not limited in accepting the unilateral commitments of the individual States, but takes them into an international system characterized by transparency and accountability, guaranteed by binding procedural rules, which leads to the periodic upward updating (ratcheting mechanism) of objectives. See on the point D. Bodansky, *The Paris Climate Change Agreement: A New Hope?*, 323: «Since parties' NDCs are not legally binding, the Paris Agreement's transparency framework is the main mechanism to hold states accountable for doing what they say.». Sul ruolo cruciale di un sistema di credibile ed effettiva trasparenza si veda H.D. Jacoby – Y.H Henry Chen – B.P. Flannery, *Transparency in the Paris Agreement*, Report 308 February 2017 del MIT Joint Program on the Science and Policy of

The integrated energy and climate plan is not the only programming tool envisaged by the new energy governance, as the regulation requires Commission and Member States to also adopt a thirty-year horizon plan: the so called long term strategy³⁹.

The tools of the new governance - in addition to the described planning and programming acts - include means of communication and monitoring of policies and objectives pursued, such as integrated national interim reports on energy and climate, the report on the state of the Union of energy⁴⁰ and a complex system of “communications”, including those relating to energy efficiency⁴¹.

In particular, by 15 March 2023 and every two years thereafter, each Member State shall notify the Commission of the state of implementation of its integrated national plan through interim reports concerning all five dimensions of the Energy Union⁴². With regard to energy efficiency, Member States must provide information with these reports regarding the implementation of trajectories outline in the plans⁴³ and of the planned policies and measures⁴⁴.

Global Change, in core.ac.uk. e H. van Asselt – P. Pauw – H Sælen, Assessment and Review under a 2015 Climate Change Agreement, Nordic Council of Ministers, Copenhagen K, 2015.

³⁹According to the provisions of Article 15, paragraph 1: “By 1 January 2020, and subsequently by 1 January 2029 and every 10 years thereafter, each Member State shall prepare and submit to the Commission its long-term strategy with a perspective of at least 30 years. Member States should, where necessary, update those strategies every five years “. Paragraph 2 also states that the Commission shall, by 1 April 2019, adopt a proposal for a Union long-term strategy for greenhouse gas emissions reduction in accordance with the Paris Agreement, taking into account the Member States' draft integrated national energy and climate plans, paying particular attention to the scenario given by the net zero greenhouse gas emissions within the Union by 2050 and negative emissions and the consequent implications on the budget of the global carbon.

⁴⁰ The detailed time schedule of the report is contained in Article 35 of the Regulation.

⁴¹ As provided for in very detailed articles 18 - 25 of the Regulation, the system includes: integrated communications on policies and measures relating to greenhouse gases and projections, communications of national adaptation actions, financial and technological support provided to developing countries and the use of proceeds from auctioning, integrated communications related to renewable energy, communications on energy efficiency and those on energy security, communications on the internal energy market, those on poverty energy and those on research, innovation and competitiveness. Added to the “communications” are the annual reports requested from the Member States by 15 March 2021, pursuant to Article 26, and the reports on the 2020 objectives, to be presented by 30 April 2022 by each Member State in line with article 27.

⁴² According to the art. 17, par. 2, the integrated national energy and climate progress report shall cover the following elements: a) information on the progress accomplished towards reaching the objectives, targets and contributions set out in the integrated national energy and climate plan, and towards financing and implementing the policies and measures necessary to meet them, including a review of actual investment against initial investment assumptions, b) where applicable, information on the progress in establishing the dialogue referred to in Article 11; c) the information referred to in Articles 20 to 25 and, where appropriate, updates on policies and measures, in accordance with those articles; d) information on adaptation in accordance with point (a)(1) of Article 4; e) as far as possible quantification of the impact of the policies and measures in the integrated national energy and climate plan on air quality and on emissions of air pollutants.

⁴³ Specifically, pursuant to art. 21, par. 1, lett. a): 1) the indicative trajectory for primary and final annual energy consumption from 2021 to 2030 as the national energy savings contribution to achieving the Union-level 2030 target, including the underlying methodology; 2) the indicative milestones of the long-term strategy for the renovation of the national stock of residential and non-residential buildings, both public and private, and the contributions to the Union's energy efficiency targets pursuant to Directive 2012/27/EU in accordance with Article 2a of Directive 2010/31/EU; 3) where applicable, an update of other national objectives set out in the national plan.

⁴⁴ According to the article 21, par. 1, let. b): 1) implemented, adopted and planned policies, measures and programmes to achieve the indicative national energy efficiency contribution for 2030 as well as other objectives referred to in Article 6, including planned measures and instruments (also of a financial nature)

The Regulation provides for a double proof of objectives and measures: both at national level (verification for each country) and at European level (assessment of the countries' aggregate commitment).

By October 31, 2021 and every two years thereafter, the Commission, on the basis of the interim reports and communications received from States, evaluates the progress of both at EU level and that of each individual Member State together with the overall impact of measures adopted by Countries in the five dimensions of energy⁴⁵, with different parameters in sectors of renewable energy⁴⁶, energy efficiency⁴⁷ and the internal energy market⁴⁸.

The Commission, if based on the evaluation of the national plans and the respective updates, reaches the conclusion that objectives, targets, contributions included in them are insufficient to collectively achieve the goals of the Energy Union⁴⁹ "proposes measures and exercises its powers at a Union level" in order to ensure the collective achievement of these objectives⁵⁰. If, on the other hand, the judgment of inadequacy concerns the progress made by individual Member States, subject to a two-year evaluation, pursuant to article 29 of the Regulation, the Commission makes recommendations to them. If, on the basis of the aggregated evaluation of the national interim reports, the Commission concludes that there is a risk of not achieving the Energy Union goals, in addition to make recommendations to all⁵¹ Member States, proposes

to promote the energy performance of buildings, measures to utilize energy efficiency potentials of gas and electricity infrastructure and other measures to promote energy efficiency; 2) where applicable, market-based instruments that incentivize energy efficiency improvements, including but not limited to energy taxes, levies and allowances; 3) national energy efficiency obligation scheme and alternative measures pursuant to Article 7a and 7b of Directive 2012/27/EU and in accordance with Annex III to this Regulation; 4) long-term renovation strategies in accordance with Article 2a of Directive 2010/31/EU; 5) policy and measures to promote energy services in the public sector and measures to remove regulatory and non-regulatory barriers that impede the uptake of energy performance contracting and other energy efficiency service models; 6) regional cooperation in the area of energy efficiency, where applicable; 7) without prejudice to Articles 107 and 108 TFEU, financing measures, including Union support and the use of Union funds, in the area of energy efficiency at national level, where applicable.

⁴⁵ Article 29 of the Regulation, in paragraph 1, identifies the specific areas of evaluation taken into consideration by the Commission, concerning: progress made at the Union level relative to the goals set for 2030, progress made by individual States, the global repercussions of the world air transport sector, including those due to emissions or effects of substances other than CO₂, the overall impact of integrated national energy and climate policy on the functioning of EU climate and energy policy measures, the overall impact of the policies included in the integrated national plans on the functioning of the EU emission allowance trading system and on the balance between demand and supply of allowances in the European carbon market.

⁴⁶ Article 29 paragraph 2 provides that in the area of renewable energy, as part of its assessment referred to in paragraph 1, the Commission shall assess the progress made in the share of energy from renewable sources in the Union's gross final consumption on the basis of an indicative Union trajectory that starts from 20 % in 2020, reaches reference points of at least 18 % in 2022, 43 % in 2025 and 65 % in 2027 of the total increase in the share of energy from renewable sources between the Union's 2020 renewable energy target and the Union's 2030 renewable energy target, and reaches the Union's 2030 renewable energy target of at least 32 % in 2030.

⁴⁷ In the field of energy efficiency, pursuant to paragraph 3 of Article 29, the Commission shall assess progress towards collectively achieving a maximum energy consumption at Union level of 1 273 Mtoe of primary energy and 956 Mtoe of final energy in 2030 examining whether has been achieved the maximum EU thresholds set in 2020 and assessing whether the progress of Member States is consistent with the Union's objective.

⁴⁸ The Commission assesses the progress made in achieving the level of electrical interconnectivity that Member State intends to achieve in 2030, as required by paragraph 4 of the aforementioned Article 29.

⁴⁹ In particular, in the first decade, to achieve the Union's 2030 targets on renewable energy and energy efficiency.

⁵⁰ Article. 31, par. 3.

⁵¹ Article. 32, par. 1.

measures and exercises its own powers at Union level to ensure the achievement of the 2030 goals on the renewable energy and energy efficiency fronts⁵², being able in this last sector to also propose additional measures with respect to those envisaged by the relevant directives (2010/31/EU and 2012/27/EU) in order to guarantee the achievement of the target set for 2030⁵³. The regulation also rules a particular monitoring regime with reference to greenhouse gas emissions and absorption from sinks⁵⁴.

In its complex activity, the Commission is assisted by the European Environment Agency, the Climate Change Committee and the Energy Union Committee⁵⁵. The first one assists the Commission in activities carried out for the decarbonisation and energy efficiency⁵⁶ dimensions. The Committee on Climate Change⁵⁷ intervenes in relation to the execution in the areas of structure, format and procedures for the transmission of some information required by the Regulation⁵⁸ and for the definition of timing and procedure for the complete revision of national stocktakes on the final greenhouse gas data, transmitted by the Member States each year to the Secretariat of the UNFCC Convention, and to ensure consultation of the same with respect to conclusions of the revisions⁵⁹.

The Energy Union Committee, on the other hand, assists the Commission in the adoption of implementing acts to define the structure, format, technical specifications and procedure of the information contained in the biennial⁶⁰ intermediate national reports and to define necessary

⁵² Article. 32, par. 2. In the field of energy efficiency, additional measures may relate, in particular to products, in accordance with Directive 2009/125 / EC and Regulation (EU) 2017/1369, buildings, in accordance with Directives 2010/31/EU and 2012/27/EU and transport (see article 32, paragraph 2, letters a), b) and c).

⁵³ See art. 32, par. 3. In the area of renewable energy the additional measures are implemented within one year following the date of reception of the Commission's assessment in order to cover the gap compared to their national reference point, such as: a) national measures to increase deployment of renewable energy; b) adjusting the share of renewable energy in the heating and cooling sector set out in Article 23(1) of Directive (EU) 2018/2001; c) adjusting the share of renewable energy in the transport sector set out in Article 25(1) of Directive (EU) 2018/2001; d) making a voluntary financial payment to the Union renewable energy financing mechanism set up at Union level, contributing to renewable energy projects and managed directly or indirectly by the Commission as set out in Article 33; e) using cooperation mechanisms set out in Directive (EU) 2018/2001.

⁵⁴ According to very detailed provisions of articles 37 and 38 of the Regulation.

⁵⁵ The first Committee assists the Commission mainly in areas of communications and inventory management, the second in the areas of adopting implementing acts following the evaluation of the national intermediate reports on energy and climate, as provided for by the Article 44.

⁵⁶ Article. 42, par. 1.

⁵⁷ This replaces the one established pursuant to article. 26 of the regulation (EU) n. 525/2013, governing the mechanism for monitoring and communicating greenhouse gas emissions and for communicating other information on climate change.

⁵⁸ The information communicated by the Member States concerning national adaptation actions, the financial and technological support provided to developing countries and the use of revenues from the auctioning of allowances, in line with article 19, par. 5; emissions greenhouse gas stocktake laid down by article 26, par. 2 and 3, and removals of greenhouse gases accounted for in accordance with Articles 5 and 14 of Regulation (EU) 2018/841, pursuant to article 26 par. 7 (the text in Italian of the regulation erroneously on the point indicates the “energy union committee referred to in article 44, paragraph 1, letter a”), while the text in English indicates the “Climate Change Committee”); information on national inventory systems and the requirements concerning the establishment, management and operation of national inventory systems, pursuant to art. 37 paragraph 6; information on national and EU policy regimes, measures and projections regarding anthropogenic emissions by source and the absorption of greenhouse gas wells, pursuant to Article 39, par. 3.

⁵⁹ According to the Article. 38, par. 3.

⁶⁰ Article 17, par. 4.

provisions for the establishment and functioning of the Union financing mechanism for renewable energy⁶¹.

Finally, article 45 of the Regulation contemplates the political phase of the complex governance procedural structure - the so called review - providing that within six months of each overall budget referred to in Article 14 of the Paris Agreement, the Commission shall present a report to the European Parliament and the Council on the application of the Regulation, on its contribution to the Energy Union governance, on its contribution to the long-term objectives of the Paris agreement, on the progress made towards achieving the goals set for 2030 on the subject of climate and energy and on additional objectives of the Energy Union as well as on the compliance with provisions on planning, communication and monitoring of the regulation to Union law or decisions relating to the UNFCC and the Paris Agreement. Reports of the Commission, which, as seen, include the entire spectrum of Union actions on energy and climate, can be accompanied by legislative proposals, evidently functional to adapt the European legal system to needs highlighted by the process of implementation of the approved plans and communication and monitoring activities.

Follows: Compliance system outlined by the Regulation.

As seen, the Commission has several opportunities to intervene in case it finds that programming of individual Member States or its implementation puts at risk the achievement of union's objectives in the five dimensions, with particular attention to those of renewable energy and energy efficiency. The Commission intervenes in the evaluation phase of individual plans proposals and the related updates, making specific recommendations for each Member State⁶²; it also makes specific recommendations in the context of the European Semester⁶³ which Countries must take into account in formulating updates immediately following their plans⁶⁴; when assessing national plans and their respective updates⁶⁵, proposes measures and exercises its powers at Union level in order to ensure the collective achievement of the Energy Union objectives; formulates recommendations in the assessment of Member States' two-year interim reports⁶⁶, i.e. exercises its powers at Union level and, also proposes specific additional measures to ensure achievement of the 2030 targets on renewable energy and energy efficiency⁶⁷.

⁶¹ Foreseen and regulated in Art. 33.

⁶² Article. 9, par. 2 e 31, par. 1.

⁶³ This is a cycle of coordination of economic and budgetary policies within the EU which is concentrated in the first six months of the year, during which Member States align their economic and budgetary policies with the agreed objectives and standards at the Union level. The progress of the Member States in the renewable energy and energy efficiency sectors with reference to the targets set for 2020 was also (and still is) monitored in the framework of the European Semester. For the 2030 objectives, the soil of the European Semester will change, focusing on issues of macroeconomic and structural reform, while the governance of the Energy Union will focus on the energy issue and climate change. However, the Commission may make climate and energy recommendations in both systems as they are "where energy and climate specific policy issues are relevant for macroeconomic or structural reforms, they could still be addressed by the Country Specific Recommendations in the European Semester Process" (European Commission, New Energy Union governance to deliver common goals, 30 November 2016, in ec.europa.eu).

⁶⁴ Article. 14, par. 5.

⁶⁵ Article. 31, par. 3.

⁶⁶ Article. 32, par. 1.

⁶⁷ Article. 32, par. 2, 3 e 6.

Therefore, the compliance system is based on “recommendations” of the Commission to Member States and on, not well defined, “measures” and “powers” that Commission proposes and exercises at Union’s level⁶⁸.

Well, “recommendations” are, pursuant to article 288, par. 5, TFEU, non-binding legal acts and the Regulation does not clarify what happens if a State decides not to be in line with them⁶⁹, limiting itself in providing that they are immediately made available by the Commission and that the recipient takes them into due account⁷⁰ in a spirit of solidarity with other Member States and the Union specifying, in the national interim report drafted in the following year, how it has adapted them or motivating its decision of no-compliance.

The absence of binding national objectives, the nature of the legal instrument identified by the Regulation for the dialogue between the Commission and Member States and the vagueness of measures that the Commission could adopt to bring Member States back to pursuing the union objective, are the main reasons for criticisms raised in doctrine to the governance of the Energy Union⁷¹.

On this point we can grasp a similarity with the doctrine divisions on effectiveness degree of the Paris agreement⁷². The paradigm shift with respect to the top down approach, proper to the Kyoto Protocol, with binding objectives, negotiated at international level, fixed within the treaty itself and supervised by a compliance system is in fact, subject of conflicting judgments. Against those who point out the recommended character of measures and the wide margin of discretion granted to the Parties in the determination of their contributions, as a weakness of the agreement, expressing perplexity about effectiveness of mechanisms for controlling the implementation of commitments⁷³ and of those who refer to lights and shadows⁷⁴, another part

⁶⁸ M. Vandendriessche – A. Saz-Carranza – J.M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, cit. 7, observe that these measures, not better described “effectively keeping the door for a range of policy options”.

⁶⁹ See. M. Duwe - N. Meyer, - K. Umpfenbach, *Governance of the Energy Union. Assessment of the Commission Proposal for a Governance Regulation, 2017*, in www.ecologic.eu/de.

⁷⁰ In the proposal Regulation of the Commission was referring to an “utmost consideration” (“Member States shall take utmost account of any recommendations from the Commission”). The attenuation of the term in the final text (“due accounts”) seems to be read as an underlining of the merely recommended character of the instrument.

⁷¹ See, in addition to last cit., L. Ammannati, *Una nuova governance per la transizione energetica dell’Unione europea. Soluzioni ambigue in un contesto conflittuale*, cit., spec. 16-18; Id. *The Governance of the Energy Union: An ‘Intricate System’ Unable to Achieve the European Union Common Goals*, cit.; M. Vandendriessche – A. Saz-Carranza – J.M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, cit.. More articulated is the judgment of M. Ringel – M. Knodt, *The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016*, cit., 219, even they agree on «the soft governance modes are not expected to deliver high compliance», note, on the other hand, that «the Commission has inserted a strong tool into the regulation to ensure the effective use of soft coordination. Its “blank check” to go directly for additional legislation at European level that the Commission inserted in the event of insufficient ambition on the part of Member States seems to be harder tool than those used in other OMC applications».

⁷² Take the similarity M. Vandendriessche – A. Saz-Carranza – J.M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, cit observing that «[t]he unique and idiosyncratic project of governance of the Energy Union is mainly a response to the 2030 renewables and energy efficiency targets which are not nationally binding. In this way, the new proposed governance model resembles the design of the Paris Agreement mechanisms to some degree».

⁷³ M. Gervasi, *Rilievi critici sull’accordo di Parigi: le sue potenzialità e il suo ruolo nell’evoluzione dell’azione internazionale di contrasto al cambiamento climatico*, spec. 42-46; H. van Asselt, *International Climate Change Law in a Bottom-Up World*, in *Questions of International Law*, cit., 8-11; R. Falk, *Voluntary International Law and the Paris Agreement*, in <https://richardfalk.wordpress.com> e A.M. Slaughter, *The Paris Approach to Global Governance*, Project Syndicate, 28 December 2015, in <https://scholar.princeton.edu> e in www.project-syndicate.org. According to the last writer, former

of doctrine suspends the judgment⁷⁵ believing that the new approach may represent the reason for the possible success, as well as the “Achilles heel” of the agreement⁷⁶.

Also the Energy Union governance requires a paradigm shift: from national binding targets - although only for renewable energy - to voluntary contributions outlined in the integrated plans aiming at reaching union binding objectives - in a constant dialogue and in an iterative process between the Commission and Member States⁷⁷.

Regarding tools of the Energy Union governance, perplexities of the doctrine have focused in particular on the degree of effectiveness of recommendations, due to the non-exciting results of specific recommendations to Member States (Country Specific Recommendations) formulated in the European Semester⁷⁸. This, since the Regulation does not foresee particular consequences for States that disregard recommendations of the Commission⁷⁹, except for the duty to motivate in their subsequent interim reports - in a time frame that can reach up to two years,⁸⁰ - so reasoning their decision.

President of American Society of International Law, Paris Agreement is “essentially a statement of good intentions”.

⁷⁴ M. Montini, *Riflessioni critiche sull'accordo di Parigi sui cambiamenti climatici*, cit., 720 e 750-752. For the Author the positive elements are represented by the factual overcoming (if not of law) of the rigid distinction between Countries of Annex I of the Framework Convention and those not included in the Annex and by the establishment of a regulatory framework of duration potentially infinite, since it provides for a periodic review system. The negative elements, on the other hand, are represented by the fact that the achievement of the general objective is entrusted to the respect of national contributions determined by the contracting parties on a completely voluntary basis and by the lack of an effective system of monitoring and verification of compliance with the obligations to be met by the parties. Furthermore, according to the Author, although it is characterized by lights and shadows, the Paris Agreement must be assessed as a tool potentially capable of meeting the challenge of climate change in the coming decades, within the framework of a common will of the parties, but respecting their respective circumstances and needs.

⁷⁵ D. Bodansky, *The legal character of the Paris agreement*, cit., 150: «One cannot definitively say how much the legally binding character of the Paris agreement and its various provisions matters. Making a provision legally binding may provide a greater signal of commitment and greater assurance of compliance. But transparency, accountability and precision can make a significant difference, and legal bindingness can be a double-edged sword, if it leads States not to participate or to make less ambitious commitments. Thus, the issue of legal character, though important, is only one factor in assessing the significance of the Paris outcome».

⁷⁶ J.E. Viñuales, *El Acuerdo de París sobre cambio climático y su talón Sino-Americano*, cit.: «Se ha redistribuido el esfuerzo en materia de lucha contra el cambio climático entre todos los países, incluyéndose a las grandes economías emergentes. Pero no es el Acuerdo de París el que efectúa la parte esencial de dicha redistribución; de modo más modesto, el Acuerdo se limita a organizar los compromisos que los Estados decidan asumir unilateralmente a nivel nacional. Es esa la gran ventaja del Acuerdo del París, así como su talón de Aquiles».

⁷⁷ M. Vandendriessche – A. Saz-Carranza – J.M. Glachant, *The Governance of the EU's Energy Union: Bridging the Gap?*, cit., 18 but they note that « [a] key difference with Paris is that the Energy Union governance will require states to report on their plans through detailed templates, and that the Commission can take measures (some stronger than others) in case it sees the collective goal will not be met».

⁷⁸ C. Adolf - J. Nix, observe in *The effectiveness of the European semester from a governance perspective*, 2016, in green.budget.eu, that none of the specific recommendations, related to energy and climate, formulated by the Commission on the occasion of the European Semesters of the 2012-2014 period was completely implemented by the recipient States: only some progress was made in 53% of cases, none in the remaining 43%.

⁷⁹ See M. Duwe - N. Ohlendorf - K. Umpfenbach, *Governance of the Energy Union. Assessment of the Commission Proposal for a Governance Regulation*, 2 February 2017, in ecologic.eu, and the solutions suggested therein ensuring greater effectiveness of the recommendations.

⁸⁰ M. Duwe - N. Ohlendorf - K. Umpfenbach, *Governance of the Energy Union*, 2017, cit., 15 suggested on the point that “[r]eporting on recommendations must be annual”.

Otherwise the Union level measures, being not appropriately detailed, open up to the Commission a wide range of possibilities for intervention. However, should they require the ordinary legislative procedure, must come to terms with the political consensus of Member States⁸¹.

Greater concreteness is instead, recognized to the additional measures that the Commission can adopt in the field of renewable energy and energy efficiency⁸².

In my opinion, the governance defined in the Regulation is set in the wake of the “new open method of coordination” inaugurated by the European Council in Lisbon on 23 and 24 March 2000⁸³, designed to assist Member States in the progressive elaboration of their policies in order to guarantee convergence towards the main aims of the EU⁸⁴.

This method creates a system of coordination between the definition of central objectives and decentralized responsibilities for their implementation⁸⁵, through the determination of quantitative and qualitative indicators and benchmarks, commensurate with needs of different Member States and sectors, and the transposition of European guidelines in national and regional policies by setting specific objectives and adopting measures that take into account the relative diversities, with periodic performance of monitoring, verification and peer review activities, organized with the function of mutual learning processes. It is not surprising, therefore, that criticisms that are put forward today about the Energy Union governance follow those that have drawn on the new open method of coordination, relative to its scarce efficacy as it is not guarded by sanctions and not structured on the relationship hierarchy⁸⁶.

Indeed, the intensity of the Union’s powers depends on the subjects in which they are exercised based on competences entrusted to it by the treaties. The degree varies from the subjects in which the Union exercises its ordinary legislation, being able to adopt legally binding decisions for Member States, on areas that they have an exclusive competence, for which the Union will be able to carry out a coordinating action depending on the pursuit of common goals only with the consent and voluntary participation of these.

⁸¹ See M. Vandendriessche - A. Saz-Carranza - J.M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, cit. 10: “for these types of measures, political limitations will likely persist: implementing new Union-level measures would presumably require the ordinary legislative procedure and, hence, political (member state) consent. In other words, this hardly seems like a flexible tool in the Commission’s hands ».

⁸² See again, in this sense, M. Vandendriessche - A. Saz-Carranza - J.M. Glachant, *The Governance of the EU’s Energy Union: Bridging the Gap?*, cit. 11.

⁸³ Lisbon European Council 23 and 24 March 2000. Presidency Conclusions, par. 37, in europarl.europa.eu: «Implementation of the strategic goal will be facilitated by applying a new open method of coordination as the means of spreading best practice and achieving greater convergence towards the main EU goals. This method, which is designed to help Member States to progressively develop their own policies, involves: fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms; establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice; translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences; periodic monitoring, evaluation and peer review organized as mutual learning processes».

⁸⁴ See in this sense Ringel - M. Knodt, *The governance of the European Energy Union: Efficiency, effectiveness and acceptance of the Winter Package 2016*, cit., 210-211.

⁸⁵ See. G. Schmid – S. Kull, *Die Europäische Beschäftigungsstrategie. Perspektiven der Offenen Methode der Koordinierung*, in H. Kaelble – G. Schmid (Hrsg), *Das europäische Sozialmodell. Auf dem Weg zum transnationalen Sozialstaat*, Berlin, 2004, 317 ss.

⁸⁶ See I. Linsenmann – C. Meyer, *Dritter Weg, Übergang oder Teststrecke? Theoretische Konzeption und Praxis der offenen Politikkoordination*, in *Integration*, 4/25, 2002, 285 ss.

The governance of the Stability and Growth Pact is also based on the open method of coordination model, but it makes use of particularly effective tools for the areas it refers to⁸⁷. The same recommendations - as mentioned, non-binding legal instruments - reveal in this context the maximum degree of effectiveness, being preparatory to possible application of sanctions, according to article 126 TFEU.

Well, the article 194, par. 2, TFEU assigns energy to the ordinary legislation of Parliament and the Council⁸⁸, but with the limit that Member States determine conditions of use of its energy sources, the choice between various sources and the general structure of supply. This limit can only be broken by a special legislative procedure, which requires unanimous deliberation by the Council and prior consultation of the European Parliament, the Economic and Social Committee and the Committee of the Regions⁸⁹. Therefore, even the dissent of a single Member State⁹⁰ can prevent legislating with binding effects in this matter. Moreover, the same special legislative procedure is required by article 192, par. 2, TFEU, again in the field of the environment, when the EU adopts provisions of a fiscal nature and measures that affect the territorial planning, the management of water resources or the destination of the land: areas of intervention strictly related to energy policies and climate.

In conclusion, the Energy Union governance designs a procedural scheme that is very detailed in structure and binding in the form, but essentially open to the possible different outcomes that the dialogue and the iterative process between the European institutions and Member States can favor⁹¹. The hope is that, as for the Paris Agreement⁹², the ambition of each

⁸⁷ Budgetary policies are decided by individual Member States, but they are a matter of common interest which they undertake to coordinate within the Council through three different coordination instruments: (i) definition of broad guidelines for Member States' economic policies and for those of the Union (Article 121, paragraph 2 TFEU); (ii) surveillance procedures on the economic development of each of the Member States and the Union (Article 121, paragraphs 3-4, TFEU); (iii) prohibition of excessive public deficits and related control procedures and, possibly, sanctions (Article 126 TFEU).

⁸⁸ The Lisbon Treaty establishes that the decision-making rule in the Union is the ordinary legislative procedure, by virtue of which legislative acts are adopted, on a proposal from the Commission, by the European Parliament and the Council acting by qualified majority.

⁸⁹ Article. 194, par. 2, lett. c). this standard has thus introduced a so called. special "passerelle" clause, which allows the transition to the ordinary legislative procedure, and therefore, to qualified majority voting, in the matters indicated by the first paragraph of the same paragraph. Article. 48, par. 7 of the TEU instead regulates in a general way, as a simplified revision procedure of the TFEU and of Title V of the TEU, the so called "passerelle" standard, providing that what these provide that the Council must decide unanimously in a specific sector or case, the Council itself may adopt a decision - acting unanimously after approval by a majority of the members of the European Parliament - that allows a majority to be deliberated, except for decisions that have military implications or fall within the defense sector. The same can happen when the TFEU provides for the Council to adopt acts in accordance with the special legislative procedure; also in this case the same council - with the same procedure - can adopt a decision that allows the passage to the ordinary legislative procedure. The initiative in this sense is transmitted to the national parliaments, which have six months to oppose it. If this were to happen even by a single Parliament, the decision could not be taken. The Commission, with Communication COM (2019) final dated 9 April 2019, "A more efficient and democratic decision-making process in the EU energy and climate policy", proposed the adoption of the bridging clause for tax decisions on the subject environmental.

⁹⁰ The resistance of the Vise grad group countries (Poland, Hungary, Slovakia and the Czech Republic) is known with respect to binding national targets and more generally on the timing and modalities of the energy transition, although the group's compactness can be undermined by the diversity of energy mixes of the four countries. See on M. Dufour, How to get the Vise grad Group to sign up to the EU's Clean Energy Package, in Energy Post, 6 March 2017.

⁹¹ See M. Vandendriessche - A. Saz-Carranza - J.M. Glachant, The Governance of the EU's Energy Union: Bridging the Gap ?, cit., 11: «It is strong on formal processes and procedures, but very much open-ended on substance – and particularly enforcement rules».

Member State “can be increased through a process of naming and shaming”⁹³, according to the approach indicated by Elinor Ostrom⁹⁴ and favored by the Regulation’s provision of the establishment of a multi-level dialogue on climate and energy within each state, among all the so-called non-state actors⁹⁵.

⁹² Which has created a platform for enhanced cooperation between States on which it will be played according to shared and transparent rules. See, F. Romanin Jacur, *L’Accordo di Parigi e i passi avanti della cooperazione multilaterale sul clima*, cit. D. Bodansky, observes in *The Paris Climate Change Agreement: A new Hope?*, cit., 2, “[t]he Paris Agreement seeks Goldilocks solution that is neither too strong (and hence unacceptable to key states) nor too weak (and hence ineffective). To safeguard national decision-making, it adopts a bottom-up approach, in which the Agreement “reflects rather than drives national policy.” But to promote stronger action, states’ “nationally-determined contributions” (or NDCs, for short) are complemented by international norms to ensure transparency and accountability and to prod states to progressively ratchet up their efforts». On the other hand, H. van Asselt, *International climate change law in a bottom-up world*, cit. 9, observes that “it remain unclear what kind of incentives the transparency framework will offer for Parties to ratchet up implementation”, clarifying «such incentives need not be limited to ‘sticks’ (e.g. financial penalties or other sanctions), but may also be in the form of ‘carrots’ (e.g. financial support)”.

⁹³ R. Falkner, *The Paris Agreement and the New Logic of International Climate Politics*, cit.

⁹⁴ See. E. Ostrom, *Polycentric systems for coping with collective action and global environmental change*, in *Global Environmental Change*, 2010, 550 ss.

⁹⁵ Article 11: Each Member State establishes a multi-level dialogue on climate and energy, in which local authorities, civil society organizations, the business community, investors and other interested parties as well as the public are able to participate actively and discuss the various scenarios envisaged for energy and climate policies, including in the long term, and review their progress.