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WORKING PAPER

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Delegations
Subject:	PT comments on the revised Governance Regulation

Delegations will find in annex the PT comments on the revised Governance Regulation.

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

ON THE GOVERNANCE OF THE ENERGY UNION,

COM(2016) 759 FINAL (VERSION 7204/17, OF 22ND JUNE 2017)

1. Global Analysis

This new version of the proposal regulation does not have much impact on our previous analyses, so we maintain most of our global opinion, as referred below:

- This proposal for a regulation is a COM legislative proposal which is welcomed, useful and will bring added value to the topic, in a context of a regulatory framework be established in the Energy Union governance which allows cross-cutting and uniform/harmonized application at EU level. However, it also requires a high degree of complexity and operationalization both as a negotiation and implementation (subsequently) of the future regulation.
- The proposed Regulation should not be approved before finalizing and approving the remaining legislative proposals of the Clean Energy Package, in particular the proposals for revision of the Energy Efficiency Directive, EPBD, Renewables and Electricity Market, since it is fundamental to ensure its perfect articulation.

However this new version has some modifications on the text, which should be highlighted and commented in order to complement previous analysis, as referred below:

- The regulation has now a new designation “REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Governance of the Energy Union and Climate Action”, to highlight the climate action purpose of this legislative instrument, which is welcomed;
- The timing for the submission of the plans (draft and final version) was modified, now defined for 1st April 2018 and 1st April 2019, respectively. Portugal has already commented this timing of this regulation (and related legislation) approval. Then, although the delay introduced, we maintain our concern on the deadlines proposed, that even so seems to be short. It is also important to refer that COM did not modify the timing for the submission of revised plan (1st January 2023 for draft and 1st January 2024 for final version), but to be coherent this timeline should be modified in accordance of first plan timeline (the rationale is the same for the delay is the same as indicated in the respective explanation notes);
- There are included some notes and explanatory notes which are welcome and should be permanent and included in the final version of the regulation (e. g. of relevant notes are those associated to the timings of plans submission, methodology to explain level of interconnection, ...);
- **Article (4(a)(iv)):** Adaptation should not be reported in the context of a “decarbonisation” dimension

- In **article 4 (b) (3)** it was improved the relation between this regulation and the Energy Performance Building Directive as proposed by some MS, including Portugal (see point 3 and respective table below);
- In **article 4** was included some indications as “if applicable” to improve and promote some flexibility on regulation application and It seems to be a good solution;
- Article 4(d) (i) is a good example of the need and inclusion of explanatory notes, explaining the reference for the use of methodology in interconnections target achievement. Now it is clear that should be considered the results of the work of the expert group on electricity interconnection, in line with Portuguese concerns (work not yet public);
- Regarding **article 8**, it is now considered that the time horizon for projection is the time horizon of the plans and more ten years beyond last year of the plan time horizon. Previous text referred 2040 as reference year. This an example of modification with no impact it is almost the same period;

Furthermore, we propose the establishment of binding interconnection targets and specific provisions to ensure the compliance with these targets, in the context of article 4.

2. Articles analysis

As referred in previous point the new version of the document did not modify significantly our article analysis, with the exception for the comment of Article 4(b)(3), that was considered and the text was modified in accordance with our comments.

TEXT in the “new” legislative proposal	REFORMULATION PROPOSED BY PT	Portuguese Comments
Article 4 - National objectives, targets and contributions for each of the five dimensions of the Energy Union	n.a.	<p><u>Clarification needed</u></p> <p>For each dimension and its respective measures, where goals are not set, the goals and respective policies to be reported in the PNEC shall have a voluntary basis (dimensions: energy security, research and innovation; internal market, except for the interconnections’ goal)</p> <p>In paragraph 1-b), regarding “energy efficiency” dimension, having being discussed the changing of PEF (primary energy factor), <u>one should clarify on the impact of the developments associated to this debate and the calculation method of this indicator</u>; in point 3) and 4) it is necessary a concerted policy for the Union, when it comes to buildings’ renovation financial support, as well as to the establishment of a concerted strategy in transport sector, including the support of urban mobility studies, considering things like public transportation availability, public institutions’ and companies’ working hours and road infrastructures.</p> <p>One must be aware that energy efficiency and renewables’ goals are not set yet, and that it is each MS’s responsibility to demonstrate at their PNEC the respective contribution to the European goal, taking COM the responsibility of supervising its achievement analysing MS’s contributes regarding their</p>

		<p>trajectories towards their individual goals.</p> <p>Among other aspects, national goals for renewables and energy efficiency must consider interconnection capacity, where there should be a correlation between these two concepts.</p>
<p>Article 4(a)(2) - National objectives, targets and contributions for each of the five dimensions of the Energy Union</p> <p>Article 4(a)(iv):</p> <p>Article 18(a)(2) - Integrated reporting on renewable energy</p>	<p>n.a.</p> <p>iv. where applicable, other objectives and targets, including sector targets and adaptation goals</p>	<p>For process consolidation of goals' setting and renewable quotes trajectory monitoring, in transport sector final energy consumption, between 2021 and 2030, <u>one believes necessary to keep promoting the processes associated to the availability of data demanded for this purpose.</u></p> <p>Adaptation should not be reported in the context of a decarbonisation dimension</p>
<p>Article 4(d)(1) - National objectives, targets and contributions for each of the five dimensions of the Energy Union</p>	<p>Article 4 (d) as regards the dimension "Internal Energy Market": (1) the level of electricity interconnectivity that the Member State aims for in 2030 in consideration of the electricity interconnection target for 2030 of at least 15 %; Member States shall explain the underlying methodology used with a view of achieving the binding electricity interconnection target for 2030</p>	<p>Interconnections are the basic requirement for the internal energy market, as the elimination of physical and economic barriers are the basic requirement for the rest of economic sectors. The Clean Energy Package assumes increasing levels of interconnectivity, but does not take into account that there are some Member States that are below their interconnection target. <u>The absence of a sufficient level of interconnections produces important problems for Member</u></p>

	<p><i>of at least 15 % for all Member States, including necessary increases above the minimum target for border Member States to achieve a 10% target, and a roadmap for the compliance with these targets.</i></p>	<p><u>States: higher prices, higher volatility, higher costs of dealing with security of supply and with higher volatility, higher network and system costs for integrating renewables in the market, among others.</u></p> <p>There are some barriers that actually hinder the progress towards the achievement of the interconnection target:</p> <ul style="list-style-type: none"> - The absence of a legally binding target and of a governance system at EU level with concrete rules and measures to ensure the compliance with this target by providing the right incentives and tackling possible conflicts of interest of affected parties; - The absence of an adequate framework at EU level to promote these projects, where the process of PCI selection/evaluation must be improved. The regulation of PCI focuses too much on the exclusively monetary benefits of the projects, without taking into account essential externalities for security of supply, the compliance with ambitious environmental objectives, competition and competitiveness of internal market. <p>In this context, we propose the establishment of binding interconnection targets and specific provisions to ensure the compliance with these targets.</p>
<p>Article 4 - National objectives, targets and contributions for each of the five dimensions of the Energy Union</p> <p>Annex I - GENERAL FRAMEWORK FOR INTEGRATED NATIONAL ENERGY AND CLIMATE PLANS</p>	n.a.	<p><u>Clarification needed</u></p> <p>Article 4th, in articulation with Annex I, regarding “energy security” dimension, it is important to understand whether it is enough to refer to the SOS Regulation and what numerical information is to be presented, since, for now, one only knows that within this dimension the type of information to be</p>

		showed, by looking at the template, will be a set of planning instruments in the scope of the SOS Regulation existing gas and future in electricity.
Article 5(1) - Member States' contribution setting process in the area of renewable energy	n.a.	<u>We need clarification on what it is intended in paragraph d) i) regarding the "equitable implementation in all Energy Union".</u>
Article 6(1)(b) - Member States' contribution setting process in the area of energy efficiency	n.a.	<u>We need clarification on how the MS should establish their national indicative contribution for 2030, considering energy efficiency promoting measures between MS and EU level. This reference, although theoretically correct, by promoting energy efficiency dimensions' integration, both national and European, raises us some practicality reserves.</u>
Article 9(1) - Draft integrated national energy and climate plans (1) By 1 April 2018 and every ten years thereafter Member States shall prepare and submit to the Commission a draft of the integrated national energy and climate plan referred to in Article 3(1).	(1) By 1 April 2018 <i>[to be defined]</i> and every ten years thereafter Member States shall prepare and submit to the Commission a draft of the integrated national energy and climate plan referred to in Article 3(1).	Concerning the conclusion of the adoption process of this Regulation and the complexity of its subjects, as well as the regional cooperation and public consultation, <u>it is considered that the deadlines for the submission of the PNEC must be set accordingly the Regulation's date of approval and the approval of all other Directive's and regulations' proposals of this Clean Energy Package.</u> PT comment: We do not see the immediate link of the integrated plans with the Facilitative Dialogue under the UNFCCC/Paris Agreement decision. In that context the overall progress in terms of implementation of (I)NDCs will be assessed and this, for the EU and its Member States, will relate to the overall targets contemplated in the (I)NDC. The information of the integrated plans,

		<p>especially if it is not adequately pondered and worked by Member States – which will be difficult to do so in a rushed timeframe – will thus not be required for the Facilitative Dialogue. What is most relevant for that exercise is that we have all the legislation in place and that the follow up work for implementation and planning is being undertaken at EU and Member State level.</p>
Article 10 - Public consultation	n.a.	<p><u>This pre-step can slow the MS's PNEC draft formal presentation process down, which, in turn, should be considered when establishing the draft's elaboration and presentation to the Commission deadlines.</u></p>
Article 11 - Regional cooperation	n.a.	<p><u>Clarification needed</u></p> <p>The Commission should properly <u>make explicit in this article in which way and in what conditions should the “regional cooperation” be applied</u>, and in a clearer way the division of the MS by regions, or in what EU's legal instrument, the Commission is basing itself for the definition of this cooperation.</p> <p><u>The application of this concept should also be clarified, as this cooperation might not be doable in certain Energy Union's dimensions.</u> For instance, in the energy efficiency area it is not understandable how the regional cooperation concept can</p>

		be applied, hence the need for clarifications.
<p>Article 13(1) - Update of the integrated national energy and climate plan</p> <p>(1) By 1 January 2023, and every 10 years thereafter, Member States shall submit to the Commission a draft update of the latest notified integrated national energy and climate plan referred to in Article 3 or confirm to the Commission that the plan remains valid.</p> <p>Article 14 Long-term low emission strategies</p>	<p>(1) By 1 January 2023, and every 10 years thereafter, Member States shall inform the Commission the continuity of the plan as it is, or submit a draft update of the latest notified integrated national energy and climate plan, referred to in Article 3, where the adoption of new policies, and new strategies should be presented and explained.</p> <p>(14(1)): The approach for 30 years horizon is ok with us.</p> <p>(14(2(b)): Would prefer a general reference to all sectors and not partially listing sectors. All sectors must contribute and this discriminatory approach is not justified.</p>	<p><u>Circumstances that could lead to the need of a PNEC revision should be indicated.</u> The presented text is generic (adoption of new policies, new strategies, definition of national plans/revision of national plans)</p> <p>In number 3, it is highlighted that when the PNCE is updated, if the MS decides to review goals previously set, it must always be with an ambitious mind set, not being possible to fall back from previous commitments.</p> <p>The timing for the submission of revised plan should be in accordance with the modification of timeline proposal for the submission of first draft and final version of plans (respectively 1st April 2018 and 1st April 2019)</p>
<p>Article 15(1) - Integrated National Energy and Climate Progress Reports</p> <p>(1) Without prejudice to Article 23, by 15 March 2021, and every two years thereafter, each Member State shall report to the Commission on the status of</p>	<p>Without prejudice to Article 23, by 15 May 2021, and every two years thereafter, each Member State shall report to the Commission on the status of implementation of the integrated national energy and climate plan by means of integrated national energy and climate progress reports covering all five key</p>	<p><u>One questions why the biannual report must be done by march 15 of the following year, since there might not be available information by then, hence the suggestion for its completion by may 15 of the following year instead.</u> Besides the possible non--available data by march 15, one should also consider the complexity and data volume to report which can</p>

<p>implementation of the integrated national energy and climate plan by means of integrated national energy and climate progress reports covering all five key dimensions of the Energy Union.</p> <p>Article 17 _Integrated reporting on national adaptation actions, financial and technology support provided to developing countries, auctioning revenue</p>	<p>dimensions of the Energy Union.</p>	<p>hinder the Regulation compliance.</p> <p>17(1): There is no justification to change the current reporting dates of the MMR. Propose to maintain the same reporting dates.</p> <p>17(2): There is no justification to change the current reporting dates of the MMR. Propose to maintain the same reporting dates.</p>
<p>Article 19 (30),(32) and (35) - Integrated reporting on energy efficiency</p>	<p>n.a.</p>	<p><u>Clarification needed</u></p> <p>In these three points <u>it should become clearer the relation between this Regulation and both EED and EPBD Directives.</u></p>
<p>Article 20(f) - Integrated reporting on energy security and</p> <p>Article 11 - Regional cooperation</p>	<p>n.a.</p>	<p><u>Clarification needed</u></p> <p><u>It is not clear whether the regional cooperation, foreseen in the report/communication in the scope of the energy security, is an already foreseen mechanism in the European legislation or a new one.</u></p> <p>In fact, it is not that clear what kind of cooperation is this and if it is the one foreseen, for instance, in the Gas Security of Supply Regulation.</p>
<p>Article 22 - Integrated reporting on research, innovation and competitiveness</p>	<p>n.a.</p>	<p>Since there is an express reference to public and private national expenditure, it is necessary the Commission to clarify</p>

		what type of private expenditure should be covered.
Article 23(1) - Annual Reporting (1) By 15 March 2021, and every year thereafter (year X), Member States shall report to the Commission:	(1) By 15 May 2021, and every year thereafter (year X), Member States shall report to the Commission:	Based on the description in the commentary to article 15. (23(1)(a): There is no justification to change the current reporting dates of the MMR. Propose to maintain the same reporting dates. It is not possible to report approximated GHG inventories for X-1 in March X.
Article 25(3)(c) - Assessment of progress	(3)(c) Use results from modelling exercises in relation to future trends in energy consumption at Union level and national level and use other complementary analysis or/and complementing with the contribution of expected energy efficiency increases under the existing European regulations and other complementary analyses.	In the context of the referred complementary analysis, <u>it should be explicit the reference to the expected increases in energy efficiency as a result of the application of European regulation.</u>
Article 27(4)(c) - Response to insufficient ambition of integrated national energy and climate plans and insufficient progress towards the Union's energy and climate targets and objectives (4)(c) 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;	n.a.	Scrutiny Reserve regarding the response to insufficient ambition of PNEC and insufficient progress on the goals' and objectives' compliance of the climate policy and Union for Energy, in this paragraph of article 27 th , a reservation of analysis is expressed and clarification is requested from the Commission on the establishment of the funding platform and how the MS contribute to it.
Article 27(5)(a) - Response to insufficient ambition of integrated national energy and climate plans and insufficient progress towards the Union's energy and climate targets and objectives	n.a.	Clarification needed Paragraph 5-a) Question the potential contribution of ecodesign (products) in

(5)(a) products, pursuant to Directive 2010/30/EU and Directive 2009/125/EC;		terms of compensation for difficulties in meeting the energy efficiency targets.
Article 27(5)(c) - Response to insufficient ambition of integrated national energy and climate plans and insufficient progress towards the Union's energy and climate targets and objectives (5)(c) Transport.	n.a.	<u>Clarification needed</u> Paragraph 5-a) It should be clarified the reference to the possible need to advocate additional measures to ensure energy efficiency results in the transport sector, based on the indicated paragraph.
Article 29(2)(e) - State of the Energy Union report (2)(e) biennially, a report on voluntary schemes in respect of which the Commission has adopted a decision according to Article 27(4) of [recast of Directive 2009/28/EC as proposed by COM(2016) 767], containing the information specified in Annex IX to this Regulation;	(2)(e) biennially, a report on voluntary schemes in respect of which the Commission has adopted a decision according to Article 27(4) and Article 30 of [recast of Directive 2009/28/EC as proposed by COM(2016) 767], containing the information specified in Annex IX to this Regulation;	In paragraph 2-e) of article 29th of the Governance Regulation a reference is made to article 27th of the RES Directive recast, although a direct reference to its article 30th is not made. For the sake of consistency, such reference could be made in the text of Article 29 (e) of the Governance Regulation
CHAPTER 7 - COOPERATION AND SUPPORT (Article 34 to 35)	n.a.	<u>Clarification needed</u> In terms of regional cooperation, the Regulation provides that MS should cooperate with each other at regional level so that the goals, objectives and contributions set out in their PNEC are effectively met. In the area of energy efficiency it is not understood how this can be done, hence the need for clarification on this. Nor does it seem reasonable that it should be presented a draft for "validation" by the Commission.
CHAPTER 8 – DELEGATION (Article 36)	n.a.	<u>Scrutiny Reserve</u> It should be discussed, after consolidation of the rest of the articles, to effectively know what should be the delegation of powers conferred on the Commission throughout this process.

Article 40 - Amendments to Directive 98/70/EC	n.a.	<p>The proposed amendments, with which it is agreed, will imply the amendment of Decree-Law 89/2008, of May 30, amended by DL 142/2010, of December 31 and 214-E / 2015, of September 30.</p> <ul style="list-style-type: none"> - According to the amendment proposed in point (1). - In point (2) it is eliminated the need to indicate the place of purchase and the origin of the products. Highly recommended this change. - As proposed in point (3), where this article is aligned with the methodology now established by Council Directive (EU) 2015/652.
Article 43 - Amendment to Regulation (EC) No 715/2009	n.a.	No apparent impact; Will be eventually reflected in ERSE regulations.
Article 45 - Amendment to Council Directive 2009/119/EC	n.a.	It is pointed out that, if the regulation is approved, it will be necessary to amend article 25th of Decree-Law 165/2013, as amended by Decree-Law No. 130/2014 of 29 August
Article 49(2)(a) - Amendments to Council Directive (EU) 2015/652	<p>Council Directive (EU) 2015/652 is amended as follows:</p> <p>(1)in Annex I, Part 2, points 2, 3, 4 and 7 are deleted.</p> <p>(2)Annex III is amended as follows:</p> <p>(a)point 1 is replaced by the following:</p> <p>"1. Until December 31 of each year Member States are to report the data listed in point 3. These data must be reported for all fuel and energy placed on the market in each Member State. Where multiple biofuels are blended with fossil fuels, the data for each biofuel must be provided."</p>	<p>The proposed amendments, with which we fully agree, will not have implications for the transposition of this directive, if it is published in accordance with the presented proposal.</p> <ul style="list-style-type: none"> - In point (1), it is eliminated the need to indicate the origin, place of purchase, SME and the trade mark of the raw material. <p>Highly recommended this change.</p> <p>In point 2-a), the date of submission of the data is deleted. Due to the availability of all the necessary information for the preparation of these reports, the date to be established for this</p>

		<p>purpose is the date that is being eliminated. <u>Not including this reference, it will be considered the date of August 31 that appears in point 1 of article 5th of the directive which is considered not feasible for the reasons stated.</u></p> <p>- In point 2-b), in what regards point 3, reference to the origin and place of purchase is eliminated.</p> <p>Fully agreed.</p> <p>- In point 3-a), in what regards Annex IV, the forms for reporting origin and place of purchase are deleted.</p> <p>Fully agreed</p>
Annex I - GENERAL FRAMEWORK FOR INTEGRATED NATIONAL ENERGY AND CLIMATE PLANS	n.a.	<p><u>The template still lacks many clarifications, namely in the detail sought in dimensions such as energy security or the internal market.</u></p> <p>In the Energy Efficiency dimension, it can be seen that the same has implications in the Energy Efficiency Directives (EED) and Energy Performance of Buildings (EPBD) review proposals, within the Clean Energy Package, insofar as all reporting obligations regarding its Implementation fall within the scope of this regulation.</p> <p>The energy efficiency area seems to be well defined, nevertheless it seems more fragile in defining the targets and goals for renewable energies (RED II contributions). It is therefore important to clarify how individual MS contributions will be established.</p> <p>In addition to Annex I or in a new Annex, it is considered important that COM could develop a table identifying all the</p>

Portuguese Comments

		reports required in the scope of this Regulation.
Annex I (Part 2) - GENERAL FRAMEWORK FOR INTEGRATED NATIONAL ENERGY AND CLIMATE PLANS	n.a.	<u>Note that there is no data, in particular as regards the number of passengers per km for individual transportation in road transport.</u>
Annex II - NOTIFICATION OF MEMBER STATES' MEASURES AND METHODOLOGIES TO IMPLEMENT ARTICLE 7 OF DIRECTIVE 2012/27/EU [VERSION AS AMENDED IN ACCORDANCE WITH PROPOSAL COM(2016)761]	n.a.	Annexes II and VII (Part 2) relates to the subject of reporting and in some cases, could be difficult, as there is no register available for consultation, so the establishment of the selected indicators makes its implementation complex.
Annex VII - ADDITIONAL REPORTING OBLIGATIONS		