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WORKING PAPER

CONTRIBUTION

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

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

PRELIMINARY COMMENTS OF GERMANY ON THE COMMISSION PROPOSAL FOR A REGULATION ON THE GOVERNANCE OF THE ENERGY UNION

Additional comments of Germany supplementing the remarks of 8 June, 3 July and 24 July. This list of comments may be updated in the future.

Concrete suggestions are highlighted by underlined and bold font and by ~~striketrough~~.

Discussion regarding the Title of the Regulation:

We propose the following change of the title of the Regulation:

„Regulation of the European Parliament and of the Council on the Governance of the Energy Union with a forward looking climate change policy“.

Rationale: We in general welcome that reference is made to climate policy aspects in the title of the proposed Regulation. However, consistency should be ensured by using the wording of the European Council conclusions of 26- 27 June 2014 and of the Communication of the Commission of 25 February 2015.

COM Non-paper on the financing platform

- Germany welcomes in general the concept of a financing mechanism in the context of Article 27 (4). It is important to clarify that such a mechanism merely represents an option for Member States to contribute to fulfilling the EU renewable energy target for 2030 in case of a delivery gap. In this context, the financing mechanism increases flexibility for Member States.
- As regards terminology, Germany suggests the replacement of the term “platform” by “mechanism” as this term more clearly reflects the nature of an option in the context of gap filling for the 2030 renewables target.
- Germany welcomes the Commission’s non-paper as a first explanation of the background of the proposed concept. It is helpful that the paper distinguishes between financial contributions that are proposed to be mandatory in the case of falling below the 2020 baseline share, but optional in the case of filling a gap to the 2030 target. The non-paper clarifies that payments to the financing mechanism are accounted for in the fulfilment of the national 2020 target and are counted as national contributions to the EU 2030 target in case of a delivery gap. It also gives first indications on the utilisation of the financial contributions and establishes an important link to the enabling framework of the RES Directive.

- The basic structure of the financing mechanism should be established at an early stage so that it is ready in time to respond to a potential gap to the 2030 target. The key political elements of the set-up and functioning of the financing mechanism should be clearly defined and eventually be set out in an Annex of the Governance Regulation.
- The technical details of the financing mechanism shall be set out in an implementing act instead of a delegated act. Member States pay their contributions to the financing mechanism out of their future budgets. Therefore the details of the implementing act and the adoption of it should be subject to control by Member States, see Art. 1 of Regulation No 182/2011. As the financing mechanism is “an act of general scope” (Art. 2 para. 2 a of Regulation No 182/2011) and is also related “to the environment” (Art. 2 para. 2 b) iii) of Regulation No 182/2011) the examination procedure according to Art. 5 of the Regulation No 182/2011 should apply.
- In general, further details on the above issues and the exact functioning of the financing mechanism as well as its budgetary treatment remain to be clarified.

Additional comments regarding Art. 15 para. 4

We would like to ask the Commission to clarify the relationship between the provisions in Art. 15 para. 4 and the frequency of the progress reports determined in Art. 15 para. 1.

Art. 21 para. 1 (e) – Reporting on energy poverty

Germany proposes the following amendment to Article 21 para. 1 (e):

Article 21

Integrated reporting on the internal energy market

1. Member States shall include in the integrated national energy and climate progress reports information on the implementation of the following objectives and measures:

(...)

~~(g) national objectives with regards to energy poverty, including the number of households in energy poverty;~~

Rationale for amendments to Art 21: In Germany, provisions to tackle poverty in general are addressed by social economic policy. This also includes energy related aspects. Poverty has to be seen in a wider context. Therefore, energy poverty respectively minimising energy poverty is in our view no part of the internal energy market. We do not see an additional value to define energy poverty and to determine national objectives in this context.

Additional comments regarding Article 17 (1) and (4) and Annex VI Part I

Article 17

Integrated reporting on national adaptation actions, financial and technology support provided to developing countries, auctioning revenue

1. By 15 March 2021, and every two years thereafter, Member States shall report to the Commission information on their national climate change adaptation planning and strategies, outlining their implemented or planned actions to facilitate adaptation to climate change, **in accordance with the reporting requirements agreed upon under the UNFCCC and the Paris Agreement, including the information specified in Part 1 of Annex VI.**
- (...)
4. The Commission shall adopt implementing acts to set out the structure, format and submission processes for Member States' reporting of information pursuant **to para 2 of** this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 37(3).

Furthermore we propose to Delete Annex VI Part I.

Rationale: Germany cannot support the proposed integration of adaptation aspects into the national integrated energy and climate plans, the corresponding reporting obligation as well as the assessment of national adaptation activities by the Commission. However, with a view to enabling the Commission to fulfil the EU's reporting obligations as party to the UNFCCC and the Paris Agreement the existing reporting requirement under Article 15 of the MMR regulation could be transferred to Article 17 of the Governance. The information requirements should be in line with agreed reporting requirements under UNFCCC and the Paris Agreement and should not go beyond. The level of detail in Annex VI goes well beyond the so far existing requirements. By including a general reference to existing and future requirements under the UNFCCC and the Paris Agreement a delegation of competences to the Commission for adopting implementing acts concerning reporting on adaptation becomes obsolete and therefore should be restricted to para 2 of Article 17.

Article 22 (d)

Germany proposes the following additional new wording to include reporting on the phasing out of fossil fuel subsidies in the NECPs

Article 22

Integrated reporting on research, innovation and competitiveness

Member States shall include in the integrated national energy and climate progress reports ~~[referred to in Article 15]~~ the information on the implementation of the following objectives and measures:

(...)

- (d) national objectives to phase out energy subsidies, notably inefficient fossil fuel subsidies;

Rationale for amendments: In order to facilitate and support member states' effort to phase out inefficient fossil fuel subsidies, the European Commission in its Communication on the 'Clean Energy For All Europeans' package (page 12) proposes to include the phase out-process of inefficient fossil fuel subsidies into the EU's Energy Union governance framework (Quote: "This [Clean Energy for all Europeans] package is also stepping up EU's action in removing inefficient fossil fuel subsidies in line with international commitments under G7 and G20 and in the Paris Agreement. (...) The Commission will also establish regular monitoring of fossil fuel subsidies in the EU and expects Member States to use their energy and climate plans to monitor the phase-out of fossil fuel subsidies."). Therefore, the governance regulation should explicitly provide for monitoring and reporting on the phase out processes of inefficient fossil fuel subsidies of the MS via their Progress Reports.

Art. 23 Annual Reporting

Article 23 **Annual Reporting**

1. By [15 March] 2021, and every year thereafter (year X), Member States shall report to the Commission:
their approximated greenhouse gas inventories for the year X-1;
- (e) the information referred to in Article 6(2) of Directive 2009/119/EC;
- (f) the information referred to in Annex IX, point 3, to Directive 2013/30/EU, in accordance with Article 25 of that directive.

For the purposes of point (a), the Commission shall, on the basis of the Member States' approximated greenhouse gas inventories or, if a Member State has not communicated its approximated inventories by that date, on the basis of its own estimates, annually compile a Union approximated greenhouse gas inventory. The Commission shall make that information available to the public by 30 September every year.

2. As of 2023, Member States shall determine and report to the Commission final greenhouse gas inventory data by 15 March each year (X) and preliminary inventory data by 15 January each year including the greenhouse gases and the inventory information listed in Annex III. The report on the final greenhouse gas inventory data shall also include a complete and up-to-date national inventory report.
3. Member States shall submit to the UNFCCC Secretariat national inventories including time series of inventory data until the year X-2 and a national

inventory report in accordance with reporting requirements and timelines adopted by the bodies of the UNFCCC and the Paris Agreement by 15 April each year containing the same information as submitted to the Commission on the final greenhouse gas inventory data in accordance with paragraph 2 of this Article. The Commission shall, in cooperation with the Member States, annually compile a Union greenhouse gas inventory ~~including and prepare~~ a Union greenhouse gas inventory report and shall submit them to the UNFCCC Secretariat by 15 April each year.

4. Member States shall report to the Commission the preliminary and the final national inventory data, by 15 January and 15 March respectively in the years 2027 and 2032, prepared for their LULUCF accounts for the purpose of the compliance reports in accordance with Article 12 of Regulation [] [LULUCF].
5. The Commission is empowered to adopt delegated acts in accordance with Article 36 to:
 - (g) amend Part 2 of Annex III by adding or deleting substances in the list of greenhouse gases, updating values for global warming potentials or updating the applicable inventory guidelines in accordance with relevant decisions adopted by the bodies of the UNFCCC or the Paris Agreement.
 - (h) ~~supplement this Regulation by adopting values for global warming potentials and specifying the inventory guidelines applicable in accordance with relevant decisions adopted by the bodies of the UNFCCC or Paris Agreement.~~
6. The Commission shall adopt implementing acts to set out the structure, technical details, format and processes for the Member States' submission of approximated greenhouse gas inventories pursuant to paragraph 1, greenhouse gas inventories pursuant to paragraph 2, and accounted greenhouse gas emissions and removals in accordance with Articles 5 and 12 of Regulation [] [LULUCF] in accordance with relevant decisions adopted by the bodies of the UNFCCC or the Paris Agreement. When proposing such implementing acts the Commission shall take into account the UNFCCC or Paris Agreement reporting requirements and timetables for the monitoring and reporting of that information and the relevant decisions adopted by the bodies of the UNFCCC or Paris Agreement in order to ensure compliance by the Union with its reporting obligations as a Party to the UNFCCC and the Paris Agreement. Those implementing acts shall also specify the timescales for cooperation and coordination between the Commission and the Member States in preparing the Union greenhouse gas inventory report. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

Rationale for amendments to Art 23:

Para. 3: Amendments are necessary to make sure that the whole time series of inventory data until X-2 is submitted to UNFCCC and the Commission and that no additional reporting burden arises.

para. 5: Member States know and will refer to Annex III. It is suggested to amend the information there in order to provide also methodological and GWP information there. There is no reason why the Annex should only contain information on gases and not on methods and GWPs. If this is amended, then 5 (b) can be deleted.

para. 6: Amendments are necessary to ensure streamlining with UNFCCC and Paris Agreement. A reference only to the timetables does not ensure consistency of reporting. Reporting requirements are essential and have to be included.

Art. 35 – Role of the European Environment Agency

Article 35

Role of the European Environment Agency

The European Environment Agency shall assist the Commission in its work as regards the decarbonisation ~~and energy efficiency~~ dimensions to comply with Articles 14, 15, 16, 17, 18, ~~19~~, 23, 24, 25 ~~(4)~~, 29, 30, 31, 32 and 34 in accordance with its annual work programme. That shall include assistance, as required, with:

- (a) compiling the information reported by Member States on policies and measures and projections **related to the decarbonisation dimensions**;
- (b) performing quality assurance and quality control procedures on the information reported by Member States on projections and policies and measures **related to the decarbonisation dimensions**;
- (c) **in consultation with the Member States**, preparing estimates or complementing the ones available to the European Commission for data on projections not reported by the Member States **related to the decarbonisation dimensions**;
- (...)
- (h) **in consultation with the Member States**, preparing estimates for data not reported in the national greenhouse gas inventories;
- (...)

Rationale for amendments to Art 35: Estimates should be agreed upon by MS to be transparent and to avoid discrepancies between the data used on national and on European level.

The competence given to the EEA in this article goes beyond REGULATION (EC) No 401/2009 (regulation on the European Environment Agency and the European Environment Information and Observation Network). The regulation is clear that the EEA has competences with regard to environmental topics only, not with energy efficiency. Therefore, the competence of the EEA should not be extended towards energy efficiency topics. One harmonised methodology should be used by the Commission for the assessment of all dimensions (energy security, energy market,

energy efficiency, decarbonisation, research/innovation/competitiveness) of the national climate and energy plans. If other institutions are involved in this assessment process, these institutions should deal with their core competence only.

Art. 38 – Review

In the proposal for the Governance Regulation several references are made to the Paris agreement (e.g. review procedure in Art. 38, assessment of NECPs and EU targets according to Paris Agreement). However, the proposal does not contain any provisions concerning concrete interactions between the NDC-process, the legislative non-ETS process and the NECP process – especially with regards to timelines. We asked the Commission in our written comments of 24 July for information on the planned process as regards the communication of the Nationally Determined Contribution of the EU and its Member States under the Paris Agreement, the implementation of the NDCs through ETS and non-ETS legislation and the interaction of these processes with the NECP process. Or does the Commission consider that these processes are unlinked? We will further scrutinize this issue and make appropriate proposals, if necessary.

Art. 42 - Amendment to Regulation (EC) No 663/2009

We oppose the deletion of the reporting obligations according to Regulation (EC) No 663/2009 if there is no replacement as not all projects financed under Regulation (EC) No 663/2009 are implemented yet.

Art. 51 Transitional provisions

Article 51

Transitional provisions

By way of derogation from Article 50 of this Regulation, Articles 7 and 17(1)(a) and (d) of Regulation (EU) No 525/2013 shall continue to apply to the reports containing the data required under those Articles for the years 2018, 2019 and 2020.

Article 11 of Regulation (EU) No 525/2013 as amended by Regulation (EU) 662/2014 shall continue to apply until the end of the additional period for fulfilling commitments set out in Decision 1/CMP.8 of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol.

Article 19 of Regulation (EU) No 525/2013 shall continue to apply to the reviews of the GHG inventory data for the years 2018, 2019 and 2020.

Article 22 of Regulation (EU) No 525/2013 shall continue to apply to the submission of the report required under that Article.

Rationale for amendments to Art 35: Article 11 of Regulation (EU) 525/2013 deals with the retirement of Kyoto units and has been amended via Regulation (EU) 662/2014 to also include the 2nd commitment period until 2020: “The Union and the

Member States shall each, at the end of the second commitment period under the Kyoto Protocol, and in accordance with Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies and a joint fulfilment agreement, retire from their respective registries AAUs, RMUs, ERUs, CERs, tCERs or ICERs equivalent to the greenhouse gas emissions from sources and removals by sinks covered by their respective assigned amounts”.

Since the retirement of Kyoto units for the 2nd commitment period will not be completed by 2021, it is suggested to continue to apply Article 11 Regulation (EU) 525/2013 with the above mentioned amendment until the retirement process has been completed.

Annex I, Part 2 - List of parameters and variables to be reported in Section B of National Plans

Germany proposes the following amendment to the List of parameters and variables in Annex I, Part 2:

1. General parameters and variables

(9) International oil, gas and coal fuel import prices [euro/GJ or euro/toe] – ~~aligned with~~ **based on** Commission's recommendations

(10) EU-ETS carbon price [euro/EUA] - ~~aligned with~~ **based on** Commission's recommendations

Rationale for amendment: *We recognized that there is need for a certain alignment on fuel and carbon prices across Member States in order to enable the comparability among the projections of different Member States. However Member States should have some flexibility to consider own reflections on future fuel and carbon prices and how to incorporate them in the projections without deviating significantly from the Commission's recommendations on this. This flexibility would also be helpful to allow comparability with existing national projections and would allow the consideration of more up-to-date price information. Notwithstanding such deviations, maximum consistency across national projections needs to be ensured as far as possible, e.g. in the context of the Technical Working Group.*

3. GHG emissions and removals related indicators

(4) CO2 emission related indicators

~~(a) Carbon intensity of electricity and steam production [tCO₂eq/MWh]~~

Rationale for deletion: *In addition to the methodological caveats made by the Dutch delegation, which we support, we generally doubt that it is meaningful to use a purely national carbon intensity of electricity generation as an indicator: Due to a more and*

more integrated European electricity market with growing electricity exports and imports, the indicator would be subject to distortions because a considerable share of the CO₂-emissions are to be allocated to electricity exports and imports. While carbon intensity should not be assessed at the national level, it may be assessed at EU-level. Against this background, the proposed indicator should not be part of the individual NECP.

Annex III: GHG INVENTORYIES INFORMATION

Germany proposes to add the following text at the end of Annex III part 2:

(...)

Part 2

“Global Warming Potentials (GWPs)

Member States and the Commission shall use the global warming potentials listed in Annex III to Decision 24/CP.19 of the Conference of the Parties to the UNFCCC for the purpose of determining and reporting greenhouse gas inventories pursuant to Article paragraphs 2 to 4.

Greenhouse Gas Inventory Guidelines

Member States and the Commission shall determine greenhouse gas inventories referred to in Article 23, paragraphs 2 to 4 in accordance with:

(a) the 2006 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories;

(b) the IPCC 2013 Revised Supplementary Methods and Good Practice Guidance Arising from the Kyoto Protocol;

(c) the 2013 Supplement to the 2006 IPCC Guidelines for National Greenhouse Gas inventories: Wetlands for wetland drainage and rewetting;

(d) the UNFCCC guidelines for the preparation of national communications by Parties included in Annex I to the Convention, part I: UNFCCC reporting guidelines on annual inventories as set out in Decision 24/CP.19 of the Conference of the Parties to the UNFCCC.”

Rationale for amendments to Annex III: Change title to “GHG INVENTORY INFORMATION” for consistency with the text in Article 23. Global Warming Potentials (GWPs) are an essential basis to compiling GHG inventories, thus this should be available to Member States directly. There is no reason to list all the gases in Annex III but not provide information on methods or GWPs.

Additional comments regarding Annex IV (c):

The proposed amendments reflect the current MMR text. Each reporting element not marked with ‘where available’ automatically classifies as a binding reporting

obligation. This means that the absence of 'where available' creates a non-negligible difference from a legal point of view. Annex V (a) of the draft Governance regulation confirms the importance of the wording by explicitly differentiating between "projections without measures where available" and "projections with measures" and "projections with additional measures."

Since there is no obvious justification of the extension of reporting obligations in the field, the differentiation made by introducing "where available" needs to be maintained for the reporting obligations in question.

ANNEX IV

POLICIES AND MEASURES INFORMATION IN THE AREA OF GREENHOUSE GAS EMISSIONS

Information to be included in the reports referred to in Article 16:

(...)

(c) information on national policies and measures, or groups of measures, and on implementation of Union policies and measures, or groups of measures, that limit or reduce greenhouse gas emissions by sources or enhance removals by sinks, presented on a sectoral basis and organised by gas or group of gases (HFCs and PFCs) listed in Part 2 of Annex III. That information shall refer to applicable and relevant national or Union policies and shall include:

(iv) **where used**, indicators to monitor and evaluate progress over time

Rationale for amendment: The passage goes beyond the requirements of the MMR where indicators are not a reporting obligation. The deduction of indicators is very time-consuming and laborious. Indicators would not be comparable across MS.

(v) **where available**, quantitative estimates of the effects on emissions by sources and removals by sinks of greenhouse gases

Rationale for amendment: The passage goes beyond the requirements of the MMR where quantitative estimates of the effects on emissions by sources and removals by sinks of greenhouse gases are not a reporting obligation.

(vi) **where available**, estimates of the projected costs and benefits of policies and measures, as well as estimates of the realised costs and benefits of policies and measures;

Rationale for amendment: The passage goes beyond the requirements of the MMR where costs and benefits are not a reporting obligation. Moreover, costs are very hard to assess/calculate without a consistent Without Measures Scenario. It is unclear how a counterfactual scenario should be designed (also no Guidance by EC so far) which could be the base for consistent calculations and reporting. The assessment of costs would be laborious and results not comparable across MS.

(vii) **where available**, all references to the assessments of the costs and effects of national policies and measures, to information in the implementation of Union policies and measures that limit or reduce greenhouse gas emissions by sources or enhance removals by sinks and to the underpinning technical reports;

Rationale for amendment: This point goes beyond the requirements of the MMR.

(viii) **where available**, an assessment of the contribution of the policy or measure to the achievement of the long-term low emission strategy referred to in Article 14;

Rationale for amendment: The passage goes beyond the requirements of the MMR. The methodology of the assessment is not clear. Therefore, comparability between MS is not ensured.

(d) **where available**, information on planned additional national policies and measures envisaged with a view to limiting greenhouse gas emissions beyond their commitments under Regulation [] [ESR] and Regulation [] [LULUCF];

Rationale for amendment: The passage goes beyond the existing requirements of the MMR. It is not clear what is meant by 'additional policies and measures' compared to the existing reporting obligation on 'current and future LULUCF action' (Art.10 29/2013/EU).

Additional Comment regarding Annex VII Part 2

In addition to the scrutiny reservation concerning Annex VII Part 1 (German written comments of 24 July) Germany notifies that also Annex VII Part 2 is subject to a scrutiny reservation (especially Annex VII Part 2 (h)).

Annex VIII

There is a key reporting obligation under RED I which is currently not taken into account in the governance regulation. This is the obligation to report information about the impact of the rising demand for biofuels on social sustainability both within the EU and in third countries. This important requirement from RED I (Article 17 (7)) should be amended to Annex VIII of the draft governance regulation. Beyond this reporting requirement for biofuels, possible amendments to this specific reporting obligation resulting from the discussions on RED II should be made only after the final version of RED II is agreed on to avoid any prior decisions