

The New EU Climate and Energy Package: Passing the test?

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6 January 2014

On 22 January 2014, the European Commission is expected to publish the proposals for the 2030 Framework for Climate and Energy Policies, which will be discussed and possibly - or maybe, partly - agreed during the 20-21 March 2014 European Council. This is the first comprehensive review of the 2007-09 Climate and Energy Package, which resulted in the so-called '20-20-20' targets by 2020.

The principal intention is to define the EU's climate change and energy policy framework for the period beyond 2020. With the year 2020 being just 'around the corner', it is high time to define the rules for the next decade and beyond to give investors an adequate amount of predictability if not certainty.

The '2030 Framework', however, is not just about predictability; it is also about making the proper adjustments based on the lessons learned. These lessons stem mainly from the implementation of the 2007-09 Climate and Energy Package and the changed circumstances, but also from the new issues that have emerged in the interim.

To this end, the European Commission, through its Communication of April 2013,¹ has launched a stakeholder consultation process focusing on i) targets, ii) instruments, iii) competitiveness and security of supply and iv) capacity and distributional aspects.

This Commentary asks what the main lessons are and how they should influence the 2030 Framework. Or put differently, what are the conditions that the "2030 Framework" will need to meet in order to offer a viable package for discussion?

¹ European Commission, "A 2030 framework for climate and energy policies", COM (2013) 169, 27 March 2013.

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Changes in the EU and the international landscape

There are many ways of grouping the experiences and changes that have occurred since the 2007-09 Climate and Energy Package has been adopted. They have been described before in greater details.² We will group them as follows:

- When implementing the 2007-09 Climate and Energy Package, member states' energy policies diverged to such an extent that they undermined the completion of the internal energy market. Increasingly national solutions inform member states' policies, thereby undermining the prospect of efficient market and 'least-cost' solutions.
- The economic crisis, which has contributed to achieving EU GHG emissions reduction targets, has also made industry margins shrink, and so too the industry's ability to invest in existing and new facilities in the EU. Most governments' fiscal room for manoeuvre was strongly reduced. Investment in R&D, infrastructure, training and education and, more generally, support to manage the transition are becoming more difficult.
- The euro crisis has aggravated European heterogeneity. There has always been a marked difference between the EU-15 and EU-10, i.e. those member states from Central and Eastern Europe that joined after 2004. The new element is the number of member states, especially in the periphery, that are subject to austerity policies.
- The changing global energy outlook has altered the global energy security landscape. Security of energy supply concerns, related both to import dependency and prices, are receding in some parts of the world. At the same time, major discrepancies in energy prices between regions, notably within the OECD, have emerged and are expected to persist, even if the exact level remains subject to debate. 'Something' might have changed, but it is not clear what the responses will or should be.
- There is a different appetite in global governance from the days when the Kyoto Protocol was negotiated and the lead-in to the 2009 Copenhagen climate change conference. This manifests itself currently through the inability to reach a global climate change agreement, as well as through the expectation of decentralised governance when one is agreed upon. As in 2008, there is an expectation on the part of some EU stakeholders (as well as international partners), including the European Commission, some member states, the environmental NGOs and parts of the business community, that the EU would provide leadership by submitting, maybe ahead of the UN Secretary General's summit in September 2014, an 'aggressive' target. At the same time, the expectation for a global carbon market has not yet materialised, with much preparatory activity in many jurisdictions, but with only the EU continuing to enforce a carbon pricing mechanism through the EU ETS, albeit for the moment at a low level. A decentralised climate change agreement and lack of clarity on equivalent carbon pricing can only lead to heightened uncertainty from a competitive point of view.

A few conditions for the 2030 Framework

On the basis of the above analysis, it is possible to formulate a number of conditions that the 2030 Framework will need to meet.

² Egenhofer, Christian and Andre Marcu, "Options for EU Climate Policy: Creating Growth, Jobs and Competitive Advantage in Global Markets", CEPS contribution to the "#climate4Growth" Campaign, December 2013; CEPS Submission to the Consultation on the European Commission consultation on "A 2030 framework for climate and energy policies".

- The Framework must be comprehensive, balanced and long-term/structural. A 'narrow' package will mean an acrimonious discussion and strong opposition from the same group (and more) that opposed back loading, with resulting delays in decision-making and prolonged 'uncertainty'. Any proposal needs to be introduced and explained in a broader, long-term context and address systemic challenges. It needs to be balanced; the package will need to make the tools credible, but at the same time make provisions that make them realistic in today's globally competitive world. The issue of carbon price versus carbon cost must be recognised up front. A strong long-term carbon price signal is needed to drive investment and deploy low-carbon technologies. However, the fact that some sectors of the economy need predictable and stable protection and compensation while living in the world of asymmetrical carbon policies must also be recognised and addressed. In addition, an assumption of, and conditions for low prices does not make sense in conjunction with the *status quo* in measures for protection and compensation. The upcoming package should not shy away from making the distinction between recognising the complexity and overlapping nature of issues, and attempts by some stakeholders to block the discussion and postpone decisions. It should clearly address competitiveness and innovation as key components.
- It needs to look 'doable' and 'implementable', not only in substance, but also in the timeline implied. The package will only have an impact if it is seen that its contents can become reality. Timelines that cannot be kept will mean a loss of credibility. It needs to recognise the realities of the EU and reckon with opposition to a 'hasty approval' from some member states. The EU domestic debate on energy and climate also needs to take into account the international climate change calendar, which expects a new agreement in 2015, with intermediate steps, such as an indication of the EU effort under the UNFCCC in September 2014 for the Ban Ki-Moon Summit, or early 2015 at the latest. It should also clearly identify what the EU stance internationally should be and the reasons why. It is now questionable to simply argue that the EU needs to provide leadership internationally. There is a need to show why that is in the interest of the EU and its practical implications.
- There will be a need for flexibility and resilience to be able to adapt to different circumstances. Carbon pricing, resulting from a regulatory market such as the EU ETS, is helped by provisions for supply-side flexibility, which emerges naturally in other – non-regulatory – markets. As this is lacking in the EU ETS, a mechanism to mimic that reaction needs to be seriously considered, with an appropriate trigger. Note that a price trigger hardly seems compatible with the market nature of the EU ETS. At the same time, there is a need to recognise that no legislator or regulator can anticipate all events, including extreme events, and human judgment still needs to enter the equation, while avoiding the politically impossible solution of a 'carbon bank'. This needs to be done in a way that shields the trigger from potential political gridlock. Such decision-making processes have been developed in other jurisdictions, such as Australia, where recommendations for caps are to be made to the legislation, with a pre-agreed, default, provision in case of political gridlock.
- Finally, the package should make a distinction between 'urgent fix' and 'long-term strategy'. There are a number of 'no regrets' measures that should be considered, while waiting for the broader package to make its way through the decision-making process. Addressing supply-side inflexibility in the EU ETS is such an example; regardless of what the final package consists of, this problem needs to be addressed, and there is no reason to wait for the entire package to be adopted.