

Articles

The European Energy Union: Between Climate Ambition and Member State Sovereignty

*Hanna Voßen**

Abstract

This paper examines the legal architecture of the European Energy Union, situating it within the enduring tension between the Union's climate ambition and the energy-policy sovereignty retained by its Member States. The author traces the development of a Europe-wide energy policy from its sectoral origins in the ECSC and EURATOM to the explicit energy competence introduced by Article 194 TFEU with the Treaty of Lisbon. The author analyses the triangle of objectives underlying the Energy Union (security of supply, sustainability, and competitiveness) as well as the fragmented competence regime in which it operates, shaped by the principles of conferral, subsidiarity, and proportionality. Particular attention is given to the sovereignty reservation in Article 194 paragraph 2 subparagraph 2 TFEU and to the Union's response to climate change through the Renewable Energy Directive (RED III) and the Governance Regulation. It is shown that, following the abandonment of binding national targets, these instruments rely on 'soft governance' mechanisms whose effectiveness depends on the goodwill of individual Member States. In conclusion, a series of reforms is proposed, including binding procedural participation rights and a closer linkage between the European Structural and Investment Funds and the Governance Regulation.

* Law student, HHU Düsseldorf. Student Assistant, Chair of Civil Law, German and International Corporate, Commercial and Antitrust Law, Prof. Dr. Kersting, LL.M. (Yale).

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A. Introduction

Over the past decades, a Europe-wide energy policy has emerged, shaped by economic ambition as well as environmental and social responsibility. What began with the European Coal and Steel Community (ECSC) in 1951 and the European Atomic Energy Community (EURATOM) in 1957 was for decades limited to specific sectors of energy production.

However, the past two decades have redefined the Union's role in addressing energy-related challenges. Central to this transformation is the European Energy Union. The Energy Union is grounded in three overarching objectives: security of energy supply, sustainability, and competitiveness. Together, these objectives reflect the need for economic stability, ecological integrity, and consumer protection across the Union.¹

Yet, the path to achieving these goals has been far from straightforward. The EU operates within a fragmented competence regime. While Article 194 TFEU provides the Union with a legal basis for energy policy, it simultaneously preserves Member State sovereignty. As per Article 194 paragraph 2 subparagraph 2 TFEU, key aspects such as energy resource exploitation and energy mix choices are still in the hands of the Member States. This sovereignty reservation, combined with the principles of subsidiarity and proportionality, has often hindered the EU's ability to enforce uniform and binding energy measures. The resulting framework reflects both ambition and limitation: a difficult balance between collective European goals and national interests.

At the heart of current European energy policy lies the pressing challenge of climate change. The Paris Agreement is committing the EU to reduce greenhouse gas emissions by at least 40 % until 2030. This is an immense task. While the EU Emissions Trading System remains the principal market-based instrument of Union climate policy, it does not itself prescribe the expansion of renewable energy sources. The Renewable Energy Directive (RED III) and the EU Governance Regulation are the cornerstone mechanisms in the expansion of renewable energy sources. However, these instruments heavily rely on 'soft

¹ European Commission, 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy' (Communication) COM (2015) 80 final 2.

governance' mechanisms, such as National Energy and Climate Plans (NECPs) and non-binding recommendations from the Commission.

This raises critical questions towards the Energy Union's future: Can a system that relies on voluntary ambition and national goodwill effectively address the urgency of climate change? How can the EU navigate the tension between Member State sovereignty and its role as a global leader in climate action?

B. Background of European energy policy

I. Development of objectives and dimensions in European energy policy

The story of European energy policy begins at the same point in time as EU history itself, namely with the formation of the European Coal and Steel Community (ECSC) in 1951, followed by the European Atomic Energy Community (EURATOM) in 1957. For a long time, European integration was limited to these areas of energy production. The Union only gradually extended its reach across the energy sector, a development that broadened the scope of Union action step by step and culminated in the introduction of an explicit energy competence (Article 194 TFEU) with the Treaty of Lisbon in 2009.

Throughout the last 20 years, a new energy policy has evolved in the Union. However, this evolution has not been without challenges. Member States often have different energy policy approaches due to differing energy dependencies and priorities. For instance, coal-dependent countries such as Poland and others have resisted rapid transitions to renewable energy, chiefly out of concern for the economic and social costs of phasing out a domestic industry on which employment and supply security depend. Conversely, nations like Germany and Denmark have pushed for more ambitious renewable energy targets, prioritizing climate goals with limited domestic fossil resources and strong wind and solar potential. They treat decarbonization not only as an environmental obligation but also as an opportunity to reduce dependence on energy imports.²

The first energy market package from 1996/1998 marks the starting point of a Union-wide energy policy.³ Since then, the EU has pursued the vision of a common European

² Forum Energii, *Energy Transition in Poland: Edition 2025* (2025) (coal 56.2% and renewables 29.4% of electricity generation in 2024); Eurostat, 'Electricity from Renewable Sources Reached 47% in 2024' (*Statistics Explained*, 19 March 2025) <<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250319-1>> accessed 11 June 2026.

³ Jörg Gundel and Julius Buckler, 'Das Europäische Energierecht nach dem Erlaß des Clean Energy Package: Eine gelungene Synthese von EU-Klimaschutz- und EU-Binnenmarktrecht?' [2020] *GewArch* 41, 42; Sabine Schlacke and Michèle Knodt, 'Das Governance-System für die Europäische Energieunion und für den Klimaschutz' [2019] *ZUR* 404, 405; Mariam Dekanozishvili, *Dynamics of EU Renewable Energy Policy Integration* (Springer 2023) 5; Daniela Winkler, Max Baumgart and Thomas Ackermann, *Europäisches Energierecht* (Nomos 2021) para 1.

energy market, encapsulated in the concept of an Energy Union. The Energy Union defines a triangle of objectives for European Energy policy. It consists of security of energy supply, sustainability and competitiveness.⁴ **Security of energy supply** means the secure supply of electricity and gas across the entire Union. This objective is strongly linked to the principle of solidarity among the EU's Member States.⁵ When it comes to **sustainability**, the focus is climate protection. A sustainable economy ensures the natural regenerative capacity of its systems. Therefore, sustainable energy policy and European environmental protection go hand in hand.⁶ **Competitiveness** completes the triangle of objectives. The economic assumption is that competition leads to the optimal use of scarce resources and stimulates innovation.⁷ Together, these key objectives combine economic, ecological and consumer interests.⁸ Nevertheless, tensions frequently arise among Member States when attempting to balance these priorities. One example would be the closure of the Strait of Hormuz during the 2026 Iran war. The Strait of Hormuz is a chokepoint for a large share of the world's seaborne oil and LNG. The closure triggered what the International Energy Agency called the largest supply disruption in the history of the global oil market. However, the resulting scramble to secure affordable short-term supply again, favored fossil alternatives and competition for scarce LNG cargoes, which fosters the tension with the climate goal of accelerating the transition to renewable energy.⁹

The objectives of the European Energy Union are further itemized into five dimensions: (1) security of supply, (2) completion of an EU internal energy market, (3) promotion of energy efficiency, (4) reduction of CO₂ emissions and (5) research, innovation and competitiveness.¹⁰ Together, the three objectives and the five dimensions constitute the framework for today's European energy policy. Any Union acts will be measured against the backdrop of this framework.

⁴ European Commission (n 1).

⁵ Kim Talus and James McCulloch, 'The Interpretation of the Principle of Energy Solidarity: A Critical Comment on the Opinion of the Advocate General in OPAL' (Energy Insight 89, Oxford Institute for Energy Studies 2021) 2-5; Jörg Gundel, 'Europäisches Energierecht' in Christian Theobald and Jürgen Kühling (eds), *Energierecht* (125th supplement, CH Beck 2024) para 21; Winkler, Baumgart and Ackermann (n 3) para 7.

⁶ Winkler, Baumgart and Ackermann (n 3) para 8.

⁷ *ibid* para 9.

⁸ Gundel, 'Europäisches Energierecht' (n 5) para 21; Winkler, Baumgart and Ackermann (n 3) paras 6-7.

⁹ International Energy Agency, *Oil Market Report* (IEA 2026); see also 'From Chokepoint to Crisis: The Strait of Hormuz and Global Oil Markets' (*Brookings*, 2026) <<https://www.brookings.edu/articles/from-chokepoint-to-crisis-the-strait-of-hormuz-and-global-oil-markets/>> accessed 11 June 2026.

¹⁰ Sophie Bings, 'AEUV Art. 194' in Rudolf Streinz (ed), *EUV/AEUV* (3rd edn, CH Beck 2018) paras 17-18; Christian Calliess, 'AEUV Art. 194' in Christian Calliess and Matthias Ruffert (eds), *EUV/AEUV* (6th edn, CH Beck 2022) para 3; Jens Hamer, 'Art. 194 AEUV' in Hans von der Groeben, Jürgen Schwarze and Armin Hatje (eds), *Europäisches Unionsrecht* (7th edn, Nomos 2015) para 7; Markus Kotzur and Manuela Niehaus, 'AEUV Art 194' in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *EUV/AEUV* (7th edn, CH Beck 2023) para 5.

Additionally, European energy policy is governed by international rules such as the Energy Charter Treaty,¹¹ the Energy Community Treaty,¹² the United Nations Framework Convention on Climate Change (UNFCCC)¹³ and the Paris Agreement.¹⁴

II. How to achieve the Community objectives?

European energy policy is not based on a uniform regulatory mechanism. In fact, European energy policy is highly fragmented. This is due to the strong individual interests of EU Member States in the field of energy. Besides that, the EU's actions in energy law affect a number of other policy areas. This challenges the European legislator to form effective directives or regulations.

1. Competence Regime

The fundamental Treaties of the EU establish whether and to what extent the EU can act in certain areas of policy. Those rules are based on Member State's conferral of competences to the EU, according to the principle of conferral as enshrined in Article 5 paragraphs 1 and 2 TEU. This principle ensures that the Union can only act if and to the extent that Member States have granted it competences in the Treaties.¹⁵ The legislative actions of the Union must remain within the limits set by the European Treaties (TEU, TFEU)¹⁶ and the Charter of Fundamental Rights of the EU (CFR),¹⁷ the primary Union law. The treaties differentiate among three types of competences: **(1)** policy areas in which the EU alone has the sole power to legislate (**exclusive competence**); **(2)** such where only the Member States can legislate; and **(3)** areas, in which the EU and the Member States share the power to legislate (**shared competence**). Whenever the EU enacts legislation, it has to name an appropriate title to competence.¹⁸

In the energy sector, the EU shares competences with the Member States, Article 2 paragraph 2 TFEU in conjunction with Article 4 paragraph 2 letter i TFEU. In areas of shared competence, Member States may only act as long as, and to the extent that the

¹¹ Council and Commission Decision 98/181/EC, ECSC, Euratom of 23 September 1997 on the conclusion, by the European Communities, of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects [1998] OJ L69/1.

¹² Treaty establishing the Energy Community (signed 25 October 2005, entered into force 1 July 2006) [2006] OJ L198/18.

¹³ Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change [1994] OJ L33/11.

¹⁴ Paris Agreement [2016] OJ L282/4.

¹⁵ Calliess (n 10) para 27; Winkler, Baumgart and Ackermann (n 3) para 47.

¹⁶ Consolidated Version of the Treaty on European Union [2012] OJ C 326/13; Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47.

¹⁷ Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

¹⁸ Winkler, Baumgart and Ackermann (n 3) paras 43-45.

Union does not exercise its competence. National law that deviates from EU legislation is inapplicable (so-called **primacy of Union law**).¹⁹

2. Triad of restrictions under Union law

Article 5 TEU contains the so-called triad of limits for European legislation: (1) the **principle of conferral**, (2) the **principle of subsidiarity** and (3) the **principle of proportionality**. The **principle of conferral** has already been set out above (see the section on the competence regime, Article 5(1) and (2) TEU). The **principle of subsidiarity** ensures that, in the case of shared competences, the Union acts if necessary. The Union should only take actions if it is easier to achieve the objectives at a Union level than by the Member States.²⁰ The standard of **proportionality** requires EU actions to be appropriate and necessary towards their objectives.²¹

3. Legal basis

European energy policy affects different fields of politics. Therefore, different TFEU competences may be considered as a basis for actions: The **internal competence** (Article 114 TFEU), the **European emergency competence** (Article 122 TFEU), the **environmental competence** (Article 191 ff. TFEU) and the explicit **energy competence** (Article 194 TFEU).²² The choice of legal basis is often controversial and subject to proceedings before the European Court of Justice (ECJ).²³ This is due to the fact that the legislative procedures differ, depending on the choice of legal competence. The different majority requirements and participation of certain EU institutions throughout the legislative process may be decisive for the adoption of new legislation. Some TFEU provisions even give the Member States a de facto right to veto.²⁴ It follows that the choice of legal basis is crucial for the implementation of energy policy proposals and measures.

a. Internal competence, Article 114 TFEU

Article 114 TFEU aims to establish an internal energy market. The internal energy market is a sub-category of the EU internal market. The objective of Article 114 TFEU is to harmonize Member State's rules. Legislation in the fields of energy policy, however, is

¹⁹ Hamer (n 10) para 20; Martin Nettesheim, 'AEUV Art 194' in Eberhard Grabitz, Meinhard Hilf and Martin Nettesheim (eds), *Das Recht der Europäischen Union* (82nd edn, CH Beck 2024) para 24; Calliess (n 10); Winkler, Baumgart and Ackermann (n 3) paras 43-46.

²⁰ Calliess (n 10) para 27; Eike Albrecht and Annegret Mordhorst, 'Die Energiekompetenz des Art 194 AEUV und die 32 %-Zielvorgabe für den Anteil erneuerbarer Energien am Bruttoendenergieverbrauch in 2030 in der EU' [2019] *EnWZ* 343, 344.

²¹ Calliess (n 10) para 27-28; Winkler, Baumgart and Ackermann (n 3) para 48.

²² Bings (n 10) para 36-39; Calliess (n 10) para 19.

²³ Gundel and Buckler (n 3) 42; Christoph Sobotta, 'EuGH: Neue Verfahren im Umweltrecht' [2024] *ZUR* 181; Winkler, Baumgart and Ackermann (n 3) paras 55-56.

²⁴ Sobotta (n 23) 181.

often criticized on the grounds of subsidiarity and proportionality issues.²⁵ That is why Article 114 TFEU is considered to be more of a ‘catch-all provision’.

b. Emergency competence, Article 122 TFEU

The emergency competence is part of the chapter on European economic policy (Articles 120 to 126). Nevertheless, it serves as a legal basis in the event of emergencies in the energy sector. Due to its emergency character, measures based on Article 122 TFEU are often limited in time.²⁶

c. Environmental competence, Article 192 TFEU

Article 192 TFEU regulates the legislative procedure for measures with an environmental objective. Energy policy and environmental policy often overlap. Therefore, Article 192 TFEU can be an appropriate basis for energy policy measures.²⁷ Article 192 paragraph 2 letter c TFEU even directly corresponds to the energy competence in Article 194 paragraph 2 subparagraph 2 TFEU.

d. Energy competence, Article 194 TFEU

The most important legal basis for energy law is Article 194 TFEU. The provision was introduced in 2009 with the Treaty of Lisbon.²⁸ Since the introduction of Article 194 TFEU, the European legislator has used the energy competence as a basis for its Energy Efficiency Directive 2012/27/EU²⁹ and Regulation (EU) 2017/1938 on the security of natural gas supply.³⁰

The introduction of Article 194 TFEU raised two questions: How far does the Union’s competence in the energy sector extend under Article 194? And is there still room to rely on other provisions as a legal basis?³¹ The structure and contents of Article 194 TFEU itself give answers to these questions.

²⁵ Bings (n 10) 36-37.

²⁶ Bings (n 10) 38; Markus Ludwigs, 'Unionsrechtliche Rahmenseetzungen zur Bewältigung der Energiekrise' [2023] *EuZW* 506, 507.

²⁷ Markus Ludwigs, 'Grundstrukturen des Energieumweltrechts' in Franz Jürgen Säcker and Markus Ludwigs (eds), *Berliner Kommentar zum Energierecht* (5th edn, Deutscher Wirtschaftsdienst 2022) paras 1-5.

²⁸ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1.

²⁹ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC [2012] OJ L315/1.

³⁰ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply [2017] OJ L280/1.

³¹ Hamer (n 10) 24-26; Gundel, 'Europäisches Energierecht' (n 5) para 22; Bings (n 10) para 36; Ludwigs, 'Grundstrukturen' (n 27) paras 6-7; Winkler, Baumgart and Ackermann (n 3) paras 55-57; Pirstner-Ebner (n 28) 20-22.

III. The Core competence of Article 194 TFEU

Article 194 TFEU is divided into two paragraphs. Paragraph 1 defines the objectives and guiding principles of energy policy. Paragraph 2 contains the legislative competence itself. According to paragraph 2 subparagraph 1, the European legislator is authorized to take measures to achieve the objectives set out in paragraph 1. Paragraph 2 subparagraph 2 limits the legislative competence of the EU in certain areas of energy law.

1. Objectives and guiding principles (paragraph 1)

The term 'energy policy' covers all aspects of the energy industry (production, transmission, distribution, consumption) and energy sources (e.g. electricity, gas, district heating, hydropower). The broad regulatory spectrum of the energy sector is reflected in the objectives and guiding principles set out in Article 194 paragraph 1 TFEU.

a. The objectives in detail

According to the energy policy objectives in Article 194, the EU takes measures to ensure the **functioning of the energy market** (letter a), to ensure the **security of energy supply** in the Union (letter b), to promote **energy efficiency** and **energy saving** as well as the **development of new and renewable forms of energy** (letter c) and to promote the **interconnection of energy networks** (letter d).

aa. Functioning of the energy market

This objective intends to strengthen the free movement of goods, services and capital in the energy sector, as well as the movement of energy itself between Member States. This includes the possibility of taking competitive measures to prevent market disruption.³²

bb. Security of energy supply in the Union

Security of supply aims to ensure the permanent availability of energy for public and private sectors at an affordable price. The objective especially addresses the independence from foreign energy imports, such as energy imports from Russia.³³

³² Hamer (n 10) para 14; Nettesheim (n 19) para 15.

³³ Bings (n 10) paras 22-24; Hamer (n 10) para 15; Nettesheim (n 19) para 16; Ludwigs, 'Grundstrukturen' (n 27) para 4; Calliess (n 10) para 13; Kotzur and Niehaus (n 10) para 5; Jörg Gundel, 'AEUV Art. 194' in Matthias Pechstein, Carsten Nowak and Ulrich Häde (eds), *Frankfurter Kommentar EUV/GRC/AEUV* (2nd edn, Mohr Siebeck 2023) paras 10-13; Winkler, Baumgart and Ackermann (n 3) para 7.

cc. Energy efficiency, energy savings and development of new and renewable forms of energy

This EU objective is twofold. Firstly, the overall energy consumption needs to be reduced. Secondly, energy production has to be switched to renewable sources.³⁴ This objective does also refer to the environmental competence in Article 192 TFEU. The concept of energy efficiency and the promotion of renewable energy production have an ecological, climate-protection dimension.

dd. Interconnection

The interconnection of energy networks is particularly concerned with the infrastructure of the energy sector. The interconnection of national networks is necessary to create an EU energy market.³⁵

b. The guiding principles

In addition to the energy policy objectives, Article 194 paragraph TFEU lays down three guiding principles: **solidarity**, **completion of the internal market** and **environmental protection**. The Union pursues its energy policy objectives against the background of these three guiding principles.³⁶

According to the European Court of Justice, the **principle of solidarity** underpins the entire Community system. By enshrining the idea of solidarity in Article 194 paragraph TFEU, it acquires importance specifically with regard to energy policy.³⁷ The increasing interconnection of national markets creates interdependencies. As a result, national energy policy measures tend to have impacts on neighboring markets. Issues that arise from this interdependence are addressed by this principle.

The **idea of environmental protection** goes hand in hand with Article 11 TFEU. Again, this shows that energy and environmental policy are closely linked to each other and must be treated in an integrative way.³⁸

Moreover, the EU is pursuing a fully integrated **internal energy market** alongside of the solidarity and environmental dimensions of the Energy Union.³⁹

³⁴ Calliess (n 10) paras 14-15; Kotzur and Niehaus (n 10) para 5.

³⁵ Nettesheim (n 19) para 20; Ludwigs, 'Grundstrukturen' (n 27) para 5; Calliess (n 10) paras 16-17.

³⁶ Bings (n 10) paras 32-35; Hamer (n 10) paras 9-12; Nettesheim (n 19) paras 21-24; Ludwigs, 'Grundstrukturen' (n 27) para 3; Calliess (n 10) paras 4-8; Gundel, 'AEUV Art. 194' (n 33) paras 4-6; Albrecht and Mordhorst (n 20) 344.

³⁷ Ludwigs, 'Unionsrechtliche Rahmensetzungen' (n 26) 507.

³⁸ Hamer (n 10) para 11; Nettesheim (n 19) para 21.

³⁹ Bings (n 10) para 33; Albrecht and Mordhorst (n 20) 344.

2. Legislative competence and Member State reservation (paragraph 2)

Article 194 paragraph 2 subparagraph 1 TFEU constitutes a uniform legislative competence for the field of energy policy. The more important question, however, is how this competence is restricted by the reservation for Member States in Article 194 paragraph 2 subparagraph 2.

a. Legislative competence (subparagraph 1)

Pursuant to Article 194 paragraph 2 subparagraph 1 TFEU, the European Parliament and the Council shall adopt measures in accordance with the ordinary legislative procedure. The ordinary legislative procedure is laid down in Article 289 paragraph 1 in conjunction with Article 294 TFEU. It requires a qualified majority vote in the Council of the EU (Article 16 paragraph 3 TEU).

b. Member State's reservation of competence (subparagraph 2)

Article 194 paragraph 2 subparagraph 2 TFEU is a sovereignty reservation that applies to various elements in the field of energy policy. It grants Member States the right to **determine the conditions for exploiting its energy resources, its choice between different energy sources** and the general **structure of its energy supply**. It also mentions Article 192 paragraph 2 letter c TFEU which sets out the unanimity requirement for decisions by the European Council. This raises questions towards the nature of the sovereignty reservation in Article 194 (paragraph 2 subparagraph 2 TFEU and its relation to Article 192 paragraph 2 letter c TFEU.⁴⁰

Most literalists consider Article 194 paragraph 2 subparagraph 2 TFEU a material limitation of competences. A material limitation of competences would exclude the Union from taking any measures in the fields of energy policy that are listed in Article 194 paragraph 2 subparagraph 2 TFEU.⁴¹

A smaller group of legal scholars calls the reservation in Article 194 paragraph 2 subparagraph 2 TFEU a procedural provision. The reference to Article 192 paragraph 2 TFEU allows the Union to take actions under the condition that it adheres to the legislative procedure of Article 192 paragraph 2 TFEU. In contrast to Article 194 paragraph 2 TFEU, Article 192 paragraph 2 TFEU requires a unanimous voting by the Council. Accordingly, the adoption of new legislation in the areas covered by Article 194 paragraph 2

⁴⁰ Hamer (n 10) para 27; Bings (n 10) para 40; Albrecht and Mordhorst (n 20) 345-346; Jens Brauneck, 'Neues EU-Öko-Label für Finanzprodukte nach Vorgaben der EU-Kommission?' [2019] WM 1530, 1531; Talus and McCulloch (n 5) 5-6.

⁴¹ Hamer (n 10) para 27; Bings (n 10) para 40; Kotzur and Niehaus (n 10) para 6; Gundel, 'AEUV Art. 194' (n 33) para 28; Charlotte Kreuter-Kirchhof, 'Der Künftige Ausbau der Erneuerbaren Energien in der EU' [2017] EuZW 829, 830; Albrecht and Mordhorst (n 20) 345-346.

subparagraph 2 TFEU would not be excluded but rather grant every Member State a right to veto in the Council.⁴²

The first interpretation of Article 194 paragraph 2 subparagraph 2 TFEU is supported by the fact that the very nature of the provision expresses a substantive reservation. It is therefore not a merely procedural provision. Additionally, even if Article 192 paragraph 2 TFEU was considered as a legal basis for legislation in the excluded areas, a unanimous vote in the Council is utopian. Measures to phase out coal across Europe or reintroduce nationally binding renewable energy targets are not supported by all Member States. Therefore, the Union's competence for measures affecting the energy mix and energy supply of its Member States, has in fact been limited by the introduction of Article 194 TFEU in the Treaty of Lisbon.⁴³ Due to the principle of *lex specialis derogat legi generali*, Article 194 TFEU as a rule excludes the use of Articles 114 and 192 TFEU as legal bases for energy policy measures.⁴⁴ The precise relationship between Article 194 TFEU and these competing legal bases is, however, far from settled. Where a measure pursues a predominantly environmental or internal-market aim, recourse to Article 192 or Article 194 TFEU may still be appropriate, the decisive criterion being the measure's "centre of gravity". In this respect, the reservation in Article 194 paragraph 2 subparagraph 2 TFEU is a clear expression of the Member States' sovereignty in the energy sector.

Considering Russia's war of aggression against Ukraine and climate change, the Union faces various areas of tension in the field of energy policy. Article 194 TFEU is the Union's basis to respond to these crises. The EU's focus point is to achieve a balance of interests among the Member States. This is crucial as an effective energy policy has never been more important than today.

C. European energy policy in terms of climate change

After the examination of the European legislative framework for energy policy, an analysis of today's world challenges regarding energy will be the second focus point. Despite the global energy supply crisis triggered by the closure of the Strait of Hormuz during the

⁴² Gundel, 'AEUV Art. 194' (n 33) paras 29-32; Marjan Peeters and Thomas Schomerus, 'An EU Law Perspective on the Role of Regional Authorities in the Field of Renewable Energy' in Marjan Peeters and Thomas Schomerus (eds), *Renewable Energy Law in the EU* (Edward Elgar 2014) 11-14; Winkler, Baumgart and Ackermann (n 3) paras 80-82.

⁴³ Calliess (n 10) paras 28-29; Peeters and Schomerus (n 42) 12-13; Schlacke and Knodt (n 3) 405; Dekanozishvili (n 3) 46-48.

⁴⁴ Gundel, 'AEUV Art. 194' (n 33) para 22; Nettesheim (n 19) paras 27-29; Jörg Hacker, Dieter Spath and Hanns Hatt, *Governance für die Europäische Energieunion: Gestaltungsoptionen für die Steuerung der EU-Klima- und Energiepolitik bis 2030* (acatech/Leopoldina/Akademienunion 2018) 9-11.

2026 Iran war, through which a substantial share of the world's seaborne oil trade passes, global climate change remains as the overarching precarious task.

This chapter critically assesses the EU's response to climate change challenges by looking at different regulatory mechanisms. Finally, the paper will focus on the development of guidelines for an effective European energy policy in the future.

I. The Challenge of Climate Crisis

Climate change is a global environmental issue. No country in the world can protect the Earth's atmosphere on its own. As part of the Paris Agreement, the EU and its Member States have jointly agreed to reduce the EU's greenhouse gas emissions by at least 40% until 2030 compared to 1990 levels.⁴⁵ Whether the EU achieves this target is measured by Europe-wide, cross-sectoral greenhouse gas emissions, not by the emissions in the individual Member States. Therefore, the EU Member States depend on each other to fulfill the requirements of the Paris Agreement. The effective contribution to this joint target among all EU Member States has proven to be challenging, particularly for Member States with higher reliance on fossil fuels. Poland, for example, has resisted decarbonization due to economic concerns and its dependence on coal. This creates internal tensions within the EU, as countries with advanced renewable energy infrastructure, like Sweden, push for more ambitious climate goals while others favor a slower transition. The EU – in this context – is responsible to effectively steer this development process among the Member States.⁴⁶

A central instrument for the expansion of renewable energy in the Union is the **Renewable Energy Directive (RED III)**.⁴⁷ It serves the expansion of renewable energies throughout the EU. The expansion of renewable energy is one of the objectives in Article 194 paragraph 1 letter c TFEU. The promotion of renewable energies is also part of the EU's climate protection strategy. Fossil fuels are to be replaced by renewable energies to avoid greenhouse gas emissions. Within that strategy, however, the principal lever for reducing emissions is not RED III but the EU Emissions Trading System. The Emissions Trading System caps and prices greenhouse gas emissions across the power and industrial sectors. Following the 2023 reform, the system is being extended to buildings

⁴⁵ Charlotte Kreuter-Kirchhof, 'Emissionshandel und Erneuerbare Energien Richtlinie: Instrumente zur Umsetzung der Klimaschutzstrategie der EU' [2019] ZUR 396, 397; Winkler, Baumgart and Ackermann (n 3) paras 12-13.

⁴⁶ Peeters and Schomerus (n 42) 3-5; Dekanozishvili (n 3) 48-50; Kreuter-Kirchhof, 'Emissionshandel' (n 45) 397-98; Marc Ringel and Michèle Knodt, 'Governance der Energieunion: Weiche Steuerung mit harten Zügen?' (2017) 40 *integration* 125, 126-127; Fabian Pause, '„Saubere Energie für alle Europäer“ – Was bringt das Legislativpaket der EU?' [2019] ZUR 387, 388.

⁴⁷ Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources (RED III) [2023] OJ L2413/1.

and road transport. RED III does not replace this carbon pricing mechanism. Rather, it completes it by addressing the non-price barriers to renewables that a carbon price alone does not remove.⁴⁸

II. Objectives and content of the Renewable Energy Directive

The current Renewable Energy Directive (RED III 2023/24) is the third European directive to promote renewable energy since its introduction in 2001. At its forefront is the binding target to increase the share of renewable energy sources in Europe's energy consumption to at least 42.5% by 2030. It is also closely linked to the energy sector. For instance, the RED III contains specific rules for the transport and heating/cooling sectors and promotes cooperation and trade between countries in the internal energy market. It also includes provisions to speed up authorization procedures for renewable energy projects, strengthens the development of new technologies and innovations and sets sustainability criteria for bioenergy.⁴⁹

1. European instead of national objectives

On the one hand, the Directive establishes a Europe-wide expansion target of 42.5% by 2030. On the other hand, it does not bind its Member States to any specific expansion rates. The Member States are solely obliged to hold on to their 2020-level of renewables.

This raises the problem that RED III only secures the status quo.⁵⁰ This, however, is an overstatement. The 2020 share operates as a non-regression floor rather than a ceiling, and the binding 42.5% Union target is operationalized through the Governance Regulation. What RED III gives up relative to RED I are binding national targets and not the binding Union-wide target or the duty of each Member State to contribute towards it. However, the EU will not reach the 42.5% target by 2030 if the expansion of renewable energy in Member States stagnates.⁵¹

Unlike the two latter directives (RED II and III), the original Renewable Energy Directive (RED I) set binding expansion targets for each Member State. This ensured the EU that it would be able to meet its overall target for renewable energy development. In this respect,

⁴⁸ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC and Decision (EU) 2015/1814 [2023] OJ L130/134.

⁴⁹ Kreuter-Kirchhof, 'Emissionshandel' (n 45) 398-399; Ludwigs, 'Unionsrechtliche Rahmensetzungen' (n 27) 508; Pause (n 46) 389-390; Ringel and Knodt (n 46) 128-129; Antonia vom Dahl, 'Zeitenwende für ein neues Energierecht? Zur Umsetzung des EU-Winterpakets in deutsches Recht' [2020] N&R 66, 67.

⁵⁰ Uta Stäsche, 'Reform des EU-Emissionshandelssystems, der Effort-Sharing-Verordnung, der Erneuerbare-Energien-Richtlinie und der Energieeffizienzrichtlinie – „Fit for 55“?' [2023] KlimR 171, 177-178.

⁵¹ European Commission, *State of the Energy Union Report 2024* (Communication) COM(2024) 404 final.

the current directive (RED III) falls short of the old regulations.⁵² The reformed directive thus follows the guidelines of the European Council, emphasizing the sovereignty of Member States. The European Council emphasizes the Member State's competence regarding their energy mix, which excludes binding national targets.⁵³

The end of national targets for each Member States coincided with the introduction of Article 194 TFEU by the Treaty of Lisbon in 2009. This link should not be read too literally, however. RED I (Directive 2009/28/EC) retained binding national targets until 2020. The actual move away from binding national targets only came with RED II in 2018. Rather, the Lisbon competence shift (Article 194 TFEU) made such targets legally harder to adopt thereafter than ending them in 2009. Prior to the Treaty of Lisbon and Article 194 TFEU, the Renewable Energy Directive (RED I) was based on the environmental competence of Article 192 TFEU (formerly Article 174 TEC). With energy policy falling under 'environmental policy', the establishment of new EU energy legislation only required a qualified majority vote in the European Council. Single Member States were not able to prevent their adoption. Since 2009, environmental energy measures have been mentioned by the wording of Article 194 TFEU.⁵⁴ This means that the Renewable Energy Directive can no longer be based solely on the EU's environmental competence. Consequently, the establishment of binding Member State targets can no longer be decided by a qualified majority vote in the Council. This conclusion is, however, contested. It presupposes the material reading of Article 194 paragraph 2 subparagraph 2 TFEU set out above, whereas proponents of the procedural reading argue that binding targets could still be adopted under the unanimity procedure of Article 192 paragraph 2 TFEU. According to Article 194 paragraph 2 subparagraph 2 TFEU, this would constitute an encroachment on the sovereignty of the Member States.

2. Regulatory mechanisms of the Renewable Energy Directive (RED III)

The corner stone of the function of the Renewable Energy Directive (RED III) is the target to increase the EU's share of renewable energies to 42.5% by 2030. In 2022 the overall share of renewable energies amounted only to 22.2%. Until today, it is unclear how the EU will manage to achieve its target.⁵⁵

⁵² Gundel and Buckler (n 3); Jens Vollprecht, Wieland Lehnert and Nurelia Kather, 'Die Neue Erneuerbare-Energien-Richtlinie (RED II): Steife Brise oder laues Lüftchen aus Europa?' [2020] ZUR 204, 207-208; vom Dahl (n 46) 67-68.

⁵³ Peeters and Schomerus (n 42) 11-12; Kreuter-Kirchhof, 'Emissionshandel' (n 45) 398; Pirstner-Ebner (n 28) 22-23.

⁵⁴ Calliess (n 10) para 19; Gundel and Buckler (n 3) 42-43; Kreuter-Kirchhof, 'Der Künftige Ausbau' (n 41) 830; Albrecht and Mordhorst (n 20) 344-345; Hacker, Spath and Hatt (n 44) 10-11.

⁵⁵ Peeters and Schomerus (n 42) 8-10; Simon Römling and Dominik Lammers, 'Das Neue Governance-System der Europäischen Energieunion: Anforderungen an Beteiligungs- und Überprüfungsrechte' [2019] ZUR 332, 333; Hacker, Spath and Hatt (n 44) 12-13.

The RED III directive follows a new approach to achieve the 2030 target without the binding sub-targets for EU Member States. The **National Energy and Climate Plans** – so called **NECPs** – are at the heart of the RED III strategy. All Member States are obliged to determine national targets for the expansion of renewables in NECPs. However, the RED III leaves it up to the Member States how ambitiously they set their targets.⁵⁶ In this respect, the governance regime is 'soft', even though the National Energy and Climate Plans are framed by the Governance Regulation, which is directly applicable. RED III itself is a directive that must be transposed into national law, so the 'softness' of the regime lies in the substance of the obligations rather than in the legal form of the instruments.⁵⁷

The details concerning procedure, definition and monitoring of these plans are set out by the **EU Governance Regulation**. The EU Governance Regulation works as an 'umbrella act' to ensure an EU overarching governance for energy and climate policy until 2030.⁵⁸ Thus, it serves to realize the EU's climate protection goals from the Paris Agreement. At the same time, the Governance Regulation is supposed to compensate the EU's lack of competence in the field of energy policy.

The key objective of the Governance Regulation is the realization of the five dimensions of European energy policy, thereby achieving the target of a 42.5% share in renewables by 2030. Therefore, the Governance Regulation integrates common climate and energy policies in a single legal act. Functionally, it establishes a complex set of reporting, monitoring and control instruments. However, the Governance Regulation is still a classic "limping regulation", which means that – despite its applicability on a surface level – it leaves important elements of an effective energy policy in the hands of the Member States.⁵⁹

According to the Governance Regulation, NECPs are submitted by the Member States, reviewed by the Commission and – if necessary – sent back with recommendations for improvement. The NECPs always cover a period of ten years. The content of the plans should cover objectives, strategies and measures for the realization of the 5 dimensions that frame the Energy Union. Member States are obliged to provide reports about their

⁵⁶ Pirstner-Ebner (n 28) 12; Kreuter-Kirchhof, 'Emissionshandel' (n 45) 399; Peeters and Schomerus (n 42) 11; Ringel and Knodt (n 46) 130-131; Schlacke and Knodt (n 3) 405-406; Römling and Lammers (n 55) 333-334.

⁵⁷ Calliess (n 10) 22-23; Gundel and Buckler (n 3) 43; Schlacke and Knodt, 'Das Governance-System' (n 1); Römling and Lammers (n 55) 334; Kreuter-Kirchhof, 'Der Künftige Ausbau' (n 41) 831; Winkler, Baumgart and Ackermann (n 3) 25-27; Sabine Schlacke, 'Klimaschutzrecht im Mehrebenensystem' [2020] *EnWZ* 355, 357; Pause (n 46) 389.

⁵⁸ Schlacke and Knodt (n 3) 405-406; Römling and Lammers (n 55) 333-334; Hacker, Spath and Hatt (n 44) 14-16; Stäsche (n 50) 178.

⁵⁹ Albrecht and Mordhorst (n 20) 345; Schlacke, 'Klimaschutzrecht' (n 57) 357-358; vom Dahl (n 49) 68.

progress to the Commission every two years. The Commission assesses the progress and provides the Member States with non-binding recommendations.⁶⁰

The mechanism of the Governance Regulation raises the question whether RED III enables the European Commission to ensure progress in the expansion of renewable energy share. How does the EU guarantee that national targets are sufficiently ambitious to meet the EU-wide target? How can the EU be sure that its Member States will meet their own targets from the NECPs? And what is the consequence if Member States do not adequately contribute to the Union's goal?

The simple answer to these questions is: There is none. The Commission may issue recommendations to Member States if it considers their targets in the NECPs to be inadequate. These recommendations, however, are not binding on the Member States. If Member States don't implement adequate strategies and measures to reach their NECP targets, there is a so-called 'delivery gap'. Here too, the Union makes recommendations. The Commission also works on a 'target path' for the expansion of renewable energies: By 2022 they planned to achieve 18% of their 2030 target, 43% by 2025, 65% by 2027 and finally 100% by 2030.⁶¹

However, the success of RED III will be measured by the overall expansion in the share of renewables among the EU. Some Member States may fall short of their national targets and others may exceed them. If these developments balance out one another, the Union still meets its target path for the expansion of renewable energies. In this case, the Commission will not take any action to close national delivery gaps. Member States that do not meet their targets will only have to report on how they intend to close the national delivery-gap.

3. Assessment of today's renewable energy strategy

On the positive side, the Governance Regulation succeeds in linking the EU's energy and climate policies. This link is crucial with regard to the EU's obligation to achieve the climate protection goals of the Paris Agreement.⁶²

However, the Governance Regulation relies on very 'soft' mechanisms to coordinate the extension of renewable energy sources among the Union.⁶³ This is due to the EU's limited

⁶⁰ Gundel and Buckler (n 3) 43; Schlacke and Knodt (n 3) 406; Römling and Lammers (n 55) 334-335; Kreuter-Kirchhof, 'Der Künftige Ausbau' (n 41) 831-832; Kreuter-Kirchhof, 'Emissionshandel' (n 45) 399-400; Hacker, Spath and Hatt (n 44) 16-18; Josef Falke, 'Neue Entwicklungen im Europäischen Umweltrecht (Berichtszeitraum: 7.12.2023–15.2.2024)' [2024] ZUR 245, 247.

⁶¹ Schlacke and Knodt (n 3) 406-407; Kreuter-Kirchhof, 'Der Künftige Ausbau' (n 41) 832-833; Dekanozishvili (n 3) 50-52; Kreuter-Kirchhof, 'Emissionshandel' (n 45) 400; Hacker, Spath and Hatt (n 44) 18-20; Ringel and Knodt (n 46) 131-132.

⁶² Schlacke and Knodt (n 3) 407.

⁶³ Peeters and Schomerus (n 42) 14-15; Schlacke and Knodt (n 3) 405.

legislative powers in the field of energy policy, in particular the Member States reservation in Article 194 paragraph 2 subparagraph 2 TFEU.

Until today, there is no political agreement among the Member States on what a European energy mix should look like.⁶⁴ This precludes the EU from establishing strong and effective mechanisms towards the expansion of renewable energies. The legal nature of the Governance Regulation does not change its character as a 'soft law'. On a surface level, the regulation has a binding effect towards the EU Member States. However, in terms of its contents and measures, it has the character of a directive. The recourse to the national NECPs and the 10-year-strategies highlight this impression. The 'soft control approach' of the Governance Regulation is further reinforced by the gap-filling mechanisms. As a result, the Governance Regulation's effectiveness is highly dependent on the will of each Member State.

Sovereignty arguments have tended to delay EU-wide initiatives in the past. For example, the debates between France and Germany regarding nuclear energy have been hindering collective progress. France strongly advocates for nuclear power as a low-carbon energy source to meet the climate targets, while Germany resists due to safety concerns and prioritizes renewable energy sources.

Besides, the mechanisms to hold Member States accountable in case they don't act properly to achieve the 2030 target are weak. The Commission's recommendations are *de facto* non-binding on the Member States.⁶⁵ Their lack of ambition towards the extension of the renewable energies share cannot be prosecuted by the Commission. Furthermore, they cannot be held accountable for their failures to comply with the national NECP target.

An analysis of the current NECPs reveals a lack of ambition on the part of the Member States. The result is sobering. According to the Commission's Energy Union Report 2024, the 2022 share is only slightly above the binding intermediate trajectory share of 22.2% for the year 2022.⁶⁶ Yet, renewable energy shares continue to vary widely between Member States. Sweden had the highest share in 2022 (66%), followed by Finland (47.9%), Latvia (43.3%) and Denmark (41.6%). In contrast, other countries are struggling to meet their own expansion plans. France, for example, is still behind its 2020 renewable energy target for 2024.⁶⁷ Other countries, such as Poland, established extension rates that

⁶⁴ Gundel and Buckler (n 3) 43-44; Schlacke and Knodt (n 3) 405-406; Römling and Lammers (n 55) 335; Hacker, Spath and Hatt (n 44) 20-22; Patrick Sikora, 'Grundstrukturen der Energieversorgungssicherheit' [2023] NJW 2989; Pause (n 46) 390.

⁶⁵ Hacker, Spath and Hatt (n 44) 22-24; Römling and Lammers (n 55) 335-336; Kreuter-Kirchhof, 'Der Künftige Ausbau' (n 41) 833; Kreuter-Kirchhof, 'Emissionshandel' (n 45) 400-401; Ludwigs, 'Unionsrechtliche Rahmensetzungen' (n 26) 508-509; Stäsche (n 50) 178-179.

⁶⁶ European Commission (n 51).

⁶⁷ Eurostat, 'Share of Energy from Renewable Sources' (Eurostat Data Browser, nrg_ind_ren) <https://ec.europa.eu/eurostat/databrowser/view/nrg_ind_ren/default/table> accessed 23 May 2026.

undercut the EU's 2030 goal. Their lack of ambition could cause the EU to struggle to meet the share-rates in the future.⁶⁸

Against this backdrop, the sovereignty of Member States appears problematic regarding the push of renewable energies. The EU will have a hard time to achieve its renewables expansion targets in the future. The reason for this is the Union's 'soft-law approach', fostered by the Renewable Energy Directive (RED III) and the Governance Regulation. On the one hand, EU Member States set their own national targets for the extension of renewable energies. On the other hand, the EU itself is obliged to adhere to the Paris Agreement. Since the extension of renewable energies is a crucial element to reduce greenhouse gases, the Member State's sovereignty conflicts with the EU's obligation to live up to an international Treaty, the Paris Agreement. Despite this, the European Union should act as role model for other countries to establish effective climate protection.

However, still some Member States insist that they retain sovereignty over energy policy. Accordingly, if the Union still takes actions in the field of energy policy, this is often subject to proceedings before the European Court of Justice.⁶⁹

4. Solutions

The following actions show how the EU Commission can effectively use RED III and the Governance Regulation to realize its 2030 target and the requirements of the Paris Agreement. While some of these measures can be pursued within the existing legal framework (*de lege lata*), most of them would require amendments to the Governance Regulation and are therefore proposed *de lege ferenda*.

a. Effective participation of local entities and the public

The procedure on which parties shall participate in the development of a Member State's NECP is governed by Article 10 Governance Regulation. However, the regulation only gives rudimentary guidelines towards the participation of cities, municipalities, other local entities or the public.⁷⁰ In order to take sufficient account of the importance of local and regional authorities as well as public interest bodies and non-governmental organizations, the procedural framework of the NECPs should be regulated in a legally binding manner. Today, there is no obligation to explain to those bodies and organizations how their recommendations will be considered in the preparation of the plan. Nor is it necessary to justify why they will not be taken into account. However, after the establishment of the plan, it is up to those entities to realize the plan in the manner it has

⁶⁸ European Commission (n 51); Schlacke and Knodt (n 3) 407.

⁶⁹ Brauneck (n 40) 1531.

⁷⁰ Schlacke and Knodt (n 3) 407; Hacker, Spath and Hatt (n 44) 24-26; Römling and Lammers (n 55) 336-337; Falke (n 57) 247-248.

been established. Active participation of local and public entities in the development process of NECPs would help to establish effective measures for the extension of renewable energies.⁷¹

b. Financial incentives and financial sanctions

The review of the first NECPs already indicated a lack of ambition by the Member States. Financial incentives could help to make them more ambitious.⁷² So far, the Regulation itself does not contribute to incentivize this. According to Article 33 of the Regulation, Member States can pay a contribution if they end up with a delivery-gap. However, such contribution is voluntary. Further instruments for financing climate and energy policy measures are needed here.

A closer link between the European Structural and Investment Funds (ESI Funds) and the Governance Regulation could provide an attractive funding incentive⁷³. The promotion of renewable energies is already recognized in various funds. A direct link between the ESI Funds and the Governance Regulation would enable more regional projects to support the extension of renewable energy shares. At the same time, this could close the gap caused by lack of ambition or failure to implement climate targets, given the EU's insufficient legislative competence in energy policy. Finally, the initiation of linking the ESI Funds to the Governance Regulation would only require a qualified majority vote in the Council under the ordinary legislative procedure (Article 177 TFEU); the necessary funding, however, depends on the multiannual financial framework, which the Council must adopt unanimously under Article 312 paragraph 2 TFEU.

From another point of view, this interconnection would also open the possibility of sanctions. A Member State's failure to comply with the Commission's recommendations on proper NECPs could – in the worst case – result in the cancellation of ESI Funds. This could be a powerful control mechanism in cases where national targets are not ambitious enough or not sufficiently implemented. Therefore, the possibility of sanctions would make the soft governance of the Energy Union more effective. Such a mechanism would, however, raise two objections. First, it is doubtful whether the Union has the competence to attach energy-policy conditions to the cohesion funds in this way. Second, insofar as the withheld funding pursued objectives unrelated to climate protection, this conditionality could run up against the prohibition of improperly coupling unrelated policy aims. Any

⁷¹ Hacker, Spath and Hatt (n 44) 26-28; Peeters and Schomerus (n 42) 16-18; Schlacke and Knodt, 'Das Governance-System' (n 1) 407; Römling and Lammers (n 55) 337.

⁷² Schlacke and Knodt (n 3) 407-08; Ringel and Knodt (n 46) 133-134; Hacker, Spath and Hatt (n 44) 28-30.

⁷³ Peeters and Schomerus (n 42) 18-20; Ringel and Knodt (n 46) 134-135; Römling and Lammers (n 55) 337-338; Schlacke and Knodt (n 3) 408.

such linkage would therefore have to be confined to climate- and energy-related conditions and anchored in a sufficiently clear legal basis.

c. Access to legal remedies

Another way to promote the Regulation's effectiveness is the establishment of judicial enforceability. Therefore, environmental organizations should be able to invoke measures regarding Member State's NECPs before the ECJ. A right of action would give these organizations the opportunity to monitor the national progress in the extension of renewable energies.⁷⁴

For instance, environmental organizations could be enabled to sue if Member States do not draw up NECPs or if they do not live up to their targets. Additionally, they could enact legal remedies if the NECPs are not ambitious enough or monitor procedural errors in the development of NECPs (for example, failure to properly involve the public). In this manner, access to legal remedies could at least partially outweigh the deficits of the 'soft governance' elements, such as the Commission's non-binding recommendations.

D. Concluding Remarks and Future Directions

Looking at these proposals, there still seems to be a way to prevent the Union from falling short of its objective to reach a total share of 42.5% renewable energies by 2030. However, the clock is ticking and without any changes, the Union risks failing the requirements of the Paris Agreement.

Climate change is an urgent problem that requires the contribution of every country around the globe. There is only a narrow window left for us to avert an irreversible global climate crisis. Therefore, we can no longer ignore any power plays between the EU and its Member States but have to find effective solutions for those problems.

As shown above, three reforms could strengthen the Governance Regulation without abandoning the Member States' reservation under Article 194 paragraph 2 subparagraph 2 TFEU: First, a legally binding framework for the effective participation of local and public entities in the drafting of the NECPs, second, financial incentives coupled with sanctions by linking the ESI Funds to compliance with the Governance Regulation and third, access to legal remedies allowing environmental organizations to enforce Member States' NECP obligations before the ECJ. Taken together, these measures could compensate, at least in part, for the weaknesses of the Union's 'soft governance' approach.

⁷⁴ Falke (n 60) 248; Hacker, Spath and Hatt (n 44) 30-32; Römling and Lammers (n 55) 338; Ringel and Knodt (n 46) 135-136.