



## **Jean Monnet Network on EU Law Enforcement**

### **Working Paper Series**

Conference:

*'The many faces and facets of the enforcement of European Union law: adapting in the ever-evolving landscape and empowering change for successful policies.'*

*11–12 December 2025, Utrecht University*

### **The Changing Role of the Commission as Enforcer of EU Environmental Law**

**Christian Kroll<sup>1</sup>**

#### **Abstract**

In terms of environmental law, there is a noticeable trend towards increasing guidance at European level on the preparation of various plans, such as integrated national energy and climate plans. Novel planning mechanisms, for example found in the Governance Regulation, have led to an improvement in the overall quality of the plans, but also to a significant increase in the quality and quantity of the obligations to be fulfilled by Member States. This development is closely linked to the changing and increasingly powerful role of the Commission. The European Commission plays a novel and key enforcement role in these planning processes by assessing the content of the plans, issuing recommendations to Member States and monitoring compliance with the deadlines. The first cycle of the Governance Regulation revealed that many Member States struggled to meet these obligations, often citing administrative capacities. This trend raises fundamental questions about the enforcement of EU law: Does an increase in planning and reporting obligations in fact lead to more effective enforcement of EU law, or does it instead overload national administrative capacities and even counteract such enforcement? The establishment and expansion of further planning obligations – such as in the Nature Restoration Law – will further increase the complexity and burden on Member States. The key question is therefore how to strike a sustainable balance between the ambition for high-quality and comprehensive plans on the one hand and administrative feasibility on the other.

#### **Keywords:**

open method of coordination, European Semester, energy governance, administrative capacity, policy implementation, institutional change, policy coordination, iterative planning structures

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<sup>1</sup> Research Assistant and PhD candidate at the University of Tübingen, Chair of Professor Dr. Johannes Saurer, LL.M. (Yale), working on a DFG-funded project. This contribution is based on the author's dissertation entitled 'Iterative Planungsstrukturen im Umweltrecht' (working title), which is currently being written as part of this project.

## I. Introduction

In recent decades, there has been a significant rise in policy measures in OECD countries. In the field of environmental policy alone, policy measures quadrupled between 1980 and 2010.<sup>2</sup> However, these measures have not only grown in number. When looking at the content, there has been an increase in the complexity embodied in the respective documents. For example, at the beginning of the 1990s, EU legal documents had an average length of 25 articles, whereas in 2021 this figure had risen to an average of 75 articles. The diversity of terminology used by the Commission and the level of detail in the documents have also increased, while the readability of these documents has declined steadily since 1993.<sup>3</sup> The steady expansion of policy portfolios through the setting of further political goals and the establishment of new instruments, without completely repealing or terminating existing regulations, is described in political science as “policy accumulation”<sup>4</sup> and is typical of advanced democracies.<sup>5</sup>

In addition to this purely numerical increase in policy measures, it should also be noted that regulations with comprehensive and novel planning obligations have recently been established at European level. These include, for example, the Governance Regulation<sup>6</sup>, which came into force on 24 December 2018 as part of the so-called winter package<sup>7</sup>, which particularly emphasises the preparation of integrated national energy and climate plans (NECPs) within the framework of novel iterative processes<sup>8</sup>, or the Regulation on nature restoration<sup>9</sup>, which came into force on 29 July 2024 and imposes an obligation on Member States to draw up national restoration plans. The Commission has various powerful means of influence and control at its disposal as part of the iterative planning process under the Governance Regulation, such as the exercise of gap-filling mechanisms<sup>10</sup> or the issuance of country-specific recommendations, which Member States are required to take due account of.<sup>11</sup>

At first glance, this paints a picture of a powerful Commission at the centre of sophisticated coordination mechanisms. At the same time, however, the number of infringement proceedings initiated by the Commission fell by 67% between 2004 and 2018, indicating a shift towards a “softer” enforcement strategy.<sup>12</sup> In this respect, there are some doubts as to whether the Commission is still fulfilling its role as guardian of the Treaties, as assigned by Article 17 TEU.<sup>13</sup> Against this backdrop, the question arises as to how the role of the Commission has changed over time.

However, the planning obligations imposed on Member States under the Governance Regulation have also revealed implementation problems. For example, Member States were often unable to implement

<sup>2</sup> Xavier Fernández-I-Marín and others, ‘Bureaucratic Quality and the Gap between Implementation Burden and Administrative Capacities’ (2024) 118(3) American Political Science Review 1240, 1240.

<sup>3</sup> Steffen Hurka, Maximilian Haag and Constantin Kaplaner, ‘Policy Complexity in the European Union, 1993 – Today: Introducing the EUPLEX Dataset’ (2022) 29 Journal of European Public Policy 1512, 1521 f.

<sup>4</sup> See also: Christian Adam, Steffen Hurka, Christoph Knill and Yves Steinebach, ‘*Policy accumulation and the democratic responsiveness*’ (Cambridge University Press 2019), 1 f.

<sup>5</sup> Christoph Knill, Yves Steinebach and Dionys Zink, ‘How Policy Growth Affects Policy Implementation: Bureaucratic Overload and Policy Triage’ (2023) 31 Journal of European Public Policy 324, 331.

<sup>6</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council on the Governance of the Energy Union and Climate Action OJ L 328/1 (Governance Regulation) [2018] OJ L 328/1.

<sup>7</sup> Commission, Clean Energy for All Europeans COM(2016) 860 final.

<sup>8</sup> Art. 1(1) and Art. 1(1)(d) Reg (n 6).

<sup>9</sup> Regulation (EU) 2024/1991 of the European Parliament and of the Council on Nature Restoration and Amending Regulation (EU) 2022/869 (Nature Restoration Regulation) [2024] OJ L, 2024/1991.

<sup>10</sup> See p. 9.

<sup>11</sup> Claudio Franzius, ‘Governance-Strukturen des European Green Deal’ in Johannes Saurer (ed), ‘*Wandel der Handlungsformen*’ (Duncker & Humblot 2025).

<sup>12</sup> Daniel R Keleman and Tommaso Pavone, ‘Forbearance and Enforcement at the European Commission: A Response to von der Leyen’ (EU Law Enforcement, 31 May 2022) <<https://eulawenforcement.com/?p=8299>> accessed 27 November 2025.

<sup>13</sup> European Parliament, Parliamentary question – P-000097/2022.

the plans on time, citing a lack of administrative capacity.<sup>14</sup> The obligation to draw up national restoration plans under the Restoration Regulation could exacerbate the overload on Member States' administrative capacities. In addition to the already comprehensive planning obligation, the Recovery Regulation stipulates that recovery plans must be coordinated with the instruments of the Governance Regulation – NECPs and national long-term strategies (LTs).<sup>15</sup> The increasing expansion and intensification of measures without a simultaneous increase in the corresponding administrative capacities gives rise to fears of (further) implementation problems.<sup>16</sup> This problem is exacerbated by the observation that the administrative capacities of many Member States are already declining or at least stagnating.<sup>17</sup>

The study will examine the extent to which the role of the Commission has changed within the framework of general coordination mechanisms, such as the Open Method of Coordination and the European Semester (II.), and specifically in the field of environmental law (III.). In a next step, based on a definition of administrative capacity, the paper addresses the question of how comprehensive planning obligations should be designed in view of strained administrative capacities in Member States in order to ensure the enforcement of secondary law obligations (IV.). This paper argues that the evolution from the Energy Services Directive to the Governance Regulation, together with developments in other coordination frameworks such as the OMC and the European Semester, illustrates how the Commission has gradually expanded its role as a political actor, enhancing its steering capacity while also increasing administrative demands.

## **II. The European Commission as Enforcer of EU law – General Coordination Mechanisms**

The analysis of the Commission's role should not only be conducted in the context of environmental law, but also against the backdrop of general developments in European coordination processes. This allows for an examination of whether the developments in environmental law are an isolated phenomenon or rather an expression of a comprehensive change in the Commission's role in coordination processes. The literature highlights parallels – and even the foundations – of today's iterative planning structures under the Governance Regulation in broader coordination mechanisms, such as the Open Method of Coordination and the European Semester.<sup>18</sup> From this perspective, it therefore seems appropriate to include these coordination mechanisms into the following analysis.

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<sup>14</sup> Commission, Evaluation on the Review of the Regulation on the Governance of the Energy Union and Climate Action SWD(2024) 200 final, 102.

<sup>15</sup> According to Article 14(9)(a) and (b), when drawing up national restoration plans under the Nature Restoration Regulation, Member States must take into account the integrated national energy and climate plans pursuant to Article 3 of the Governance Regulation and the long-term strategies pursuant to Article 15 of the Governance Regulation.

<sup>16</sup> Fernández-I-Marín (n 2) 1240; Christian Adam and others, 'Introducing Vertical Policy Coordination to Comparative Policy Analysis: The Missing Link between Policy Production and Implementation' (2019) 21 Journal of Comparative Policy Analysis 499, 499.

<sup>17</sup> Fernández-I-Marín (n 2) 1241.

<sup>18</sup> Marc Ringel and Michèle Knott, 'EU 2030 Energy Policies: A Review of the Clean Energy Package from a Stakeholder Perspective' (2019) 3(4) Zeitschrift für Umweltpolitik und Umweltrecht 445, 446.

## 1. Open Method of Coordination (OMC)

The OMC was established by the European Council at a special summit held in Lisbon on 23–24 March 2000.<sup>19</sup> It builds on earlier attempts to coordinate Community economic and monetary policy.<sup>20</sup> The OMC establishes a process that enables regular monitoring, evaluation and control of Member States for the purpose of mutual learning.<sup>21</sup> It is a coordination mechanism that operates exclusively in the area of soft law.<sup>22</sup>

The European Commission played a central administrative role in the practical implementation of the OMC in various policy areas of the EU within the framework of the Lisbon Strategy. It proposed multiple indicators for benchmarks, coordinated the process of monitoring and implementing the documents submitted by the Member States, and submitted proposals for European guidelines.<sup>23</sup> It pursued various approaches, with "naming and shaming" becoming particularly important in influencing Member States.<sup>24</sup> The Commission's role as a political actor is assessed as being much more reserved within the framework of the Lisbon Strategy. Large parts of the literature consider this role to be quite weak.<sup>25</sup> The concept of the political actor originates from *Kingdon*, who defines it as someone who invests resources in order to later achieve a profit or added value.<sup>26</sup> The literature attributes this assessment to three main factors. First, the distribution of responsibilities within the framework of the Lisbon Strategy was unclear and the role of the Commission was defined only in political declarations of intent. Furthermore, the European Commission had lost power since the Treaty of Maastricht, whereas the role of the European Parliament and the European Council was very pronounced.<sup>27</sup> The Commission avoided public discourse on the Lisbon Strategy and thereby exerted little ideological influence.<sup>28</sup> The "naming and shaming" approach initially pursued on a large scale as part of the Lisbon Strategy, with what the member states considered to be unnecessary interference by the Commission, led to growing dissatisfaction among the member states.<sup>29</sup> The Commission recognized that its support was dwindling, while Euroscepticism was simultaneously on the rise. From 2005 onwards, a change in the role of the European Commission could be observed, with a greater emphasis on political dialogue with the Member States.<sup>30</sup>

However, the general assessment of the Commission's political role in the context of the Lisbon Strategy is not necessarily applicable to the OMC, which is used precisely when the EU lacks the necessary powers. According to the literature on this subject, the Commission's role was purely administrative in theory, but in practice it has come to be seen as a political actor.<sup>31</sup> The practical implementation of the OMC in the policy area of culture was examined in detail by *Deganis*. This depiction shows that

<sup>19</sup> Norbert Bernsdorff, 'Die Methode der offenen Koordinierung' in Hans J Derra (ed), 'Freiheit, Sicherheit und Recht: Festschrift für Jürgen Meyer zum 70. Geburtstag' (Nomos 2006) 325, 330.

<sup>20</sup> Marcus Göbel, 'Von der Konvergenzstrategie zur offenen Methode der Koordinierung: EG-Verfahren zur Annäherung der Ziele und Politiken im Bereich des sozialen Schutzes' (Nomos 2002) 145.

<sup>21</sup> Beate Braams, 'Koordinierung als Kompetenzkategorie' (Mohr Siebeck 2013) 50 f.

<sup>22</sup> Imelda Maher, 'Law and the Open Method of Coordination: Towards a New Flexibility in European Policy-Making' (2004) 2 Zeitschrift für Staats- und Europawissenschaften 248, 251.

<sup>23</sup> Commission, European Governance – A White Paper COM(2001) 428 final, 18; Caroline de la Porte, 'Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?' (2002) 8(1) European Law Journal 38, 44.

<sup>24</sup> Susana Borrás, 'The Politics of the Lisbon Strategy: The Changing Role of the Commission' (2009) 32(1) West European Politics 97, 100.

<sup>25</sup> *ibid.*

<sup>26</sup> John W Kingdon, 'Agendas, Alternatives, and Public Policies' (2th edn, Harper Collins 1995); Bernhard Zeilinger, 'The European Commission as a Policy Entrepreneur under the European Semester' (2021) 9 Politics and Governance 63, 64.

<sup>27</sup> Borrás (n 24) 104 f.

<sup>28</sup> *ibid* 105.

<sup>29</sup> Borrás (n 24) 100 f.

<sup>30</sup> R Daniel Kelemen and Tommaso Pavone, 'Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union' (2021) <<http://dx.doi.org/10.2139/ssrn.3994918>> accessed 21 December 2025.

<sup>31</sup> Kate Mattocks, 'Co-ordinating Co-ordination: The European Commission and the Culture Open Method of Co-ordination' (2018) 56(2) JCMS 318, 320.

the drafting of the respective guidelines for the policy area – in theory a task of the European Council – was often carried out by the Commission as a kind of "ghostwriter" in the context of practical implementation. The Commission also took on the day-to-day administration of the OMC, and was able to provide the Member States with reports, statistics and other information at its discretion, thereby exerting a degree of political control.<sup>32</sup> In this position, it had a prominent visibility and presence vis-à-vis the Member States and, as a "gatekeeper", was able to steer the flow of information in a targeted manner.<sup>33</sup> Moreover, the OMC would probably never have been introduced without the Commission's initiative<sup>34</sup> – in the policy area of culture – which also paints a picture of a Commission that has always sought to expand its powers.<sup>35</sup> Admittedly, the policy area of culture is an extremely specific section of EU law, which means that the findings are not representative of the entire OMC<sup>36</sup> , but similar observations were also made in the context of the implementation of the European Employment Strategy. According to these observations, the Commission has taken a leading role in committees where the chairperson's leadership skills were weak, both in the policy area of culture and in the European Employment Strategy.<sup>37</sup>

Accordingly, the assessment that the OMC is too often described as an apolitical coordination mechanism is to be agreed with.<sup>38</sup> Within the framework of the OMC, the Commission has taken an active role in policy-making and expand its powers. Drawing on *Kingsdon's* definition above, it may be concluded that the Commission employed administrative resources to broaden its powers and enhance its political influence. Accordingly, within the framework of the Lisbon Strategy, it already assumed a role as a political actor in addition to its purely administrative function, although, at least prior to the revision of the Lisbon Strategy, this only extended to the scope of the OMC.

## 2. European Semester

The OMC was then continued with the Europe 2020 strategy and the European Semester established to implement this objective. The following section will therefore examine whether the Commission has further expanded its role as a political actor, which was already partially evident in the Lisbon Strategy. In terms of content, the European Semester embodies a new governance approach that was introduced in 2010 in response to the financial and sovereign debt crisis by means of a package of measures following the euro crisis and has since been revised several times.<sup>39</sup> Central to the functioning of the European Semester is an annual cycle that serves to coordinate Member States' socio-economic measures and runs in repeating cycles.<sup>40</sup>

With regard to the role of the Commission, the literature suggests that, within the framework of the Europe 2020 strategy, the Commission has been relegated to a mere "service provider" role, which means that it is likely to find it extremely difficult to regain its role as a political actor or even to rise

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<sup>32</sup> Ibid 31.

<sup>33</sup> Susana Borrás, 'The European Commission as Network Broker' (2007) 11(1) European Integration Online Papers 1, 5 f.

<sup>34</sup> Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Agenda for Culture in a Globalizing World COM(2007) 242 final, 13.

<sup>35</sup> Mattocks (n 31) 330.

<sup>36</sup> *ibid.*

<sup>37</sup> Isabelle Deganis, 'The Politics Behind Consensus: Tracing the Role of the Commission within the European Employment Strategy' (2006) 2(1) JCER, 21, 28 f.

<sup>38</sup> Caroline de la Porte and Philippe Pochet, 'The OMC Intertwined with the Debates on Governance, Democracy and Social Europe' (2023) <[https://www.researchgate.net/publication/237401560\\_The\\_OMC\\_Intertwined\\_with\\_the\\_Debates\\_on\\_Governance\\_Democracy\\_and\\_Social\\_Europe#citations](https://www.researchgate.net/publication/237401560_The_OMC_Intertwined_with_the_Debates_on_Governance_Democracy_and_Social_Europe#citations)> accessed 18 December 2025, 1, 30.

<sup>39</sup> Commission, The EU's economic governance explained, Fact Sheet of 26 November 2015 <[https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo\\_15\\_6071/MEMO\\_15\\_6071\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_15_6071/MEMO_15_6071_EN.pdf)> accessed 1 August 2025.

<sup>40</sup> Matthias Duwe and Eike Karola Velten, 'Lessons from the European Semester for Effective 2030 Governance for Energy and Climate' (Ecologic Institute, October 2016) <[https://www.ecologic.eu/sites/default/files/publication/2016/2124-lessonseusemester\\_oct2016\\_energyuniongovernance\\_ecologicinstitute\\_0.pdf](https://www.ecologic.eu/sites/default/files/publication/2016/2124-lessonseusemester_oct2016_energyuniongovernance_ecologicinstitute_0.pdf)> accessed 18 December 2025, 1, 8.

once again to its former position as the European “engine of integration”.<sup>41</sup> Other voices in the literature, however, were more cautious and described the Commission's role in these times as merely unclear.<sup>42</sup> Various approaches have been developed in the literature to examine a possible expansion of the Commission's tasks – or, in this case, a change in its role – which cannot be presented in their entirety here.<sup>43</sup> It is common to differentiate between the "breadth" of the Commission's involvement, i.e., the formal assignment of tasks, and the "depth" of the Commission's involvement, i.e. its participation in political decision-making processes as laid down in procedural law.<sup>44</sup> With regard to the "breadth" of the Commission's remit, it should be noted that there has been an expansion of its powers in the area of policy implementation.<sup>45</sup> Accordingly, the Commission is now also responsible for monitoring overall debt, national expenditure and macroeconomic imbalances, which means that its involvement in economic policy surveillance has increased.<sup>46</sup>

Looking at the 'depth' of the Commission's involvement in political decision-making processes – which is the focus of this section – there are also various indications that, contrary to some of the views expressed above, the Commission has been able to further expand its role as a political actor within the European Semester. First of all, the procedural design of various instruments of the European Semester – such as the macroeconomic imbalance procedure – can be cited as evidence of this. The Commission is granted the power to subject Member States with serious macroeconomic imbalances to a special review if they fall below the relevant thresholds. It has a kind of interpretative power when assessing the resulting findings.<sup>47</sup> This interpretative role gives the Commission the opportunity to actively shape the political discourse.<sup>48</sup> If macroeconomic imbalances are identified, it is again up to the Commission to impose appropriate corrective measures on the Member States, whereby failure to implement these measures can result in a fine.<sup>49</sup> The second aspect that demonstrates the Commission's influential role can be seen in its handling of country-specific recommendations. While at the beginning of the European Semester the Member States were still tempted to negotiate compromises with the Commission on the country-specific recommendations and to reduce their impact, their importance increased in the course of the European Semester. For the first time, the Commission offered Member State – in this case, France – an extension of the deadline for its budget consolidation, provided that it implemented the Commission's country-specific recommendations regarding the French social security system.<sup>50</sup> This process is also referred to in the literature as the 'small self-empowerment of the Commission'.<sup>51</sup> The Commission's role is further strengthened by the fact that its proposed recommendations and sanctions are considered adopted unless a 'reverse qualified majority' of the Council votes against them. This is a departure from the previous regulatory framework, which required the Council to vote in favour of the Commission's proposal by a two-thirds majority.<sup>52</sup> In addition, the Commission called on Member State governments to involve their social partners more closely in the preparation of national documents, such as national employment

<sup>41</sup> Nicolai v. Ondarza, 'Koordinatoren an der Spitze – Politische Führung in den reformierten Strukturen der Europäischen Union' (SWP-Studie, April 2011) <[https://www.swp-berlin.org/publications/products/studien/2011\\_S08\\_orz\\_ks.pdf](https://www.swp-berlin.org/publications/products/studien/2011_S08_orz_ks.pdf)> accessed 21 December 2025, 1, 6, 13.

<sup>42</sup> Michael W Bauer and Stefan Becker, 'The Unexpected Winner of the Crisis: The European Commission's Strengthened Role in Economic Governance' (2014) 36(3) Journal of European Integration 213, 214.

<sup>43</sup> For a detailed discussion of the various views, see: Leon N Lindberg and Stuart A Scheingold, 'Europe's Would-Be Polity: Patterns of Change in the European Community' (Prentice-Hall, Englewood Cliffs 1970), 67-71; Tanja A Börzel, 'Mind the Gap! European Integration between Level and Scope' (2005) 12(2) Journal of European Public Policy 217, 219 f.

<sup>44</sup> Börzel (n 43) 220; Bauer and Becker, (n 42) 216.

<sup>45</sup> Reinout A van der Veer and Markus Haverland, 'Bread and Butter or Bread and Circuses? Politicisation and the European Commission in the European Semester' (2018) 19 European Union Politics 524, 525.

<sup>46</sup> Bauer and Becker (n 42) 222.

<sup>47</sup> ibid 223.

<sup>48</sup> Zeilinger (n 26) 67 f.

<sup>49</sup> Bauer and Stefan (n 42) 222 f.

<sup>50</sup> Commission, MEMO/13/463 (29 May 2013), 5 f.

<sup>51</sup> Bauer and Stefan (n 42) 223.

<sup>52</sup> See Article 3(3) of Council Regulation (EC) 1467/97 on Speeding Up and Clarifying the Implementation of the Excessive Deficit Procedure [1997] OJ L209/1 which refers to the former Article 104c(6) EC Treaty, which in turn requires a qualified majority of the Council.

plans, and to attach their views to the respective documents. It stands to reason that the Commission wanted to increase the pressure on national governments to reform and ultimately bring about a politicisation of the country-specific recommendations.<sup>53</sup>

The above remarks show that, within the framework of the European Semester, the Commission performed highly political tasks by issuing opinions and country-specific recommendations, monitoring Member States, interpreting results and imposing corrective measures where necessary. In this respect, there is even talk of an upswing in its role as a policy manager.<sup>54</sup> In any case, it can be said that the Commission was able to consolidate and further expand its role as a political actor, which was already evident in parts of the Lisbon Strategy.

### **III. The Changing Role of the Commission in Environmental Law**

#### **1. Regulatory Structure**

After tracing the development of the Commission's general coordination mechanisms, the focus will now shift to their application in environmental law, specifically through the Energy Services Directive, Energy Efficiency Directive and Governance Regulation.

The Energy Services Directive<sup>55</sup> created the first international framework within which Member States had to report on their energy saving results. In this respect, it represents an important milestone in the development of energy law.<sup>56</sup> It set a target of saving at least 9% of energy at European level by 2016.<sup>57</sup> The main instrument for achieving this target is the obligation on Member States to draw up National Energy Efficiency Action Plans (NEEAPs).<sup>58</sup> These had to be submitted by the Member States to the Commission every three years. The Commission then assessed<sup>59</sup> these plans and could – but was not obliged to – give the Member States advice on how to improve their plans.<sup>60</sup> However, this regulatory construct had shortcomings in various areas. The calculation of Member States' energy savings alone posed problems due to the structure of the Energy Services Directive. No uniform calculation method was established for determining energy savings values, which led to considerable uncertainty in the actual calculation of energy savings.<sup>61</sup> For example, it was unclear how early savings were to be taken into account in the context of actual energy savings.<sup>62</sup> In addition, the Commission also found it difficult to assess the energy savings reported by Member States in terms of plausibility and comparability. This is due to the lack of harmonised reporting requirements.<sup>63</sup>

The Energy Services Directive was subsequently replaced by the Energy Efficiency Directive, adopted in December 2012,<sup>64</sup> which aimed to further expand progress in the field of energy efficiency.<sup>65</sup> The adoption of this directive should be seen in the context of the Council's conclusion of 4 February 2011 that the European target of a 20% increase in energy efficiency by 2020 is in danger

<sup>53</sup> Zeilinger (n 26) 67 f.

<sup>54</sup> Bauer and Becker (n 42) 228.

<sup>55</sup> Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC [2006] OJ L114/64.

<sup>56</sup> Stefan Thomas and others, 'How to Measure the Overall Energy Savings Linked to Policies and Energy Services at the National Level' (2011) 5(1) Energy Efficiency 19, 20.

<sup>57</sup> Art. 4(1) subparagraph 1 Dir (n 55)

<sup>58</sup> Art. 4(2) subparagraph 1 Dir (n 55)

<sup>59</sup> See Article 14(4) Dir (n 55).

<sup>60</sup> See Art. 14(5) Dir (n 55).

<sup>61</sup> See also: Piet G M Boonekamp, 'How Much Will the Energy Service Directive Contribute to the 20% EU Energy Savings Goal' (2011) 4 Energy Efficiency 285, 286.

<sup>62</sup> *ibid.*

<sup>63</sup> Thomas and others (n 56) 33.

<sup>64</sup> 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.

<sup>65</sup> Marina Economou and others, 'Strategic Energy and Climate Policy Planning: Lessons Learned from European Energy Efficiency Policies' (2022) 171 Energy Policy 113225, 113226.

of not being met.<sup>66</sup> The regulatory structure of the Energy Efficiency Directive is based on the Energy Services Directive and provides for the development of national energy efficiency action plans by the Member States and their subsequent submission to the Commission. This submission takes place in a three-year cycle, beginning with the submission on 30 April 2014. The Energy Efficiency Directive is significantly more ambitious than the Energy Services Directive and imposes far more obligations on Member States in the area of energy efficiency. There is also a growing catalogue of procedural obligations. The Energy Services Directive standardised the transmission of NEEAPs to the Commission as the only relevant reporting obligation; beyond that, there were no other relevant reporting obligations. The Energy Efficiency Directive now establishes an annual reporting obligation, which is also the most important instrument for assessing the progress of the Directive.<sup>67</sup> This is also an expression of a changing regulatory structure: while the NEEAPs served both strategic planning and progress monitoring under the Energy Services Directive, the Energy Efficiency Directive marks a transition towards the separation of planning and monitoring.<sup>68</sup> From then on, the NEEAPs served not only as a mere monitoring tool, but also took on the role of a central policy planning instrument and formed the basis for a structured dialogue between the Commission and the Member States.<sup>69</sup> This forum was also supported by an informal exchange between the Member States and the Commission, which built on earlier forms of informal dialogue.<sup>70</sup> Furthermore, the Member States were no longer as free in the preparation of relevant documents as they had been under the Energy Services Directive. The Commission steered the planning process by providing the Member States with a formal<sup>71</sup> template for the first time as a ‘guide’ for the preparation of the NEEAPs, the use of which was not mandatory but strongly recommended.<sup>72</sup> In order to assess the comparability and plausibility of energy savings, the Energy Efficiency Directive also introduced uniform calculation principles.<sup>73</sup>

On 24 December 2018, the Governance Regulation came into force. The Governance Regulation eliminated a cost-inefficient system consisting of many duplications at European level. Their central instrument are NECPs.<sup>74</sup> Under Article 3(1) of the Governance Regulation, Member States are required to draw up these NECPs and submit them to the Commission within certain deadlines. The Commission then assesses these plans<sup>75</sup> and may issue country-specific recommendations to Member States. However, the Commission does not always have discretion to issue country-specific recommendations. In the area of renewable energy, the Commission is obliged to issue country-specific recommendations – for example, regarding an adjustment of the level of ambition – if the targets or contributions of the respective Member States are insufficient. When subsequently drawing up the final plan, Member States must then take ‘due account’<sup>76</sup> of the Commission’s country-specific recommendations. Although these recommendations are not legally binding on the Members States, any

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<sup>66</sup> see Recital 2 Dir (n 64).

<sup>67</sup> Paolo Zangheri, Marina Economou and Nicole Labanca, ‘Progress in the Implementation of the EU Energy Efficiency Directive through the Lens of the National Annual Reports’ (2019) 12 Energies 1107, 1118.

<sup>68</sup> Economou and others (n 65) 113227.

<sup>69</sup> Economou and others (n 65) 113229, 113334; Marc Ringel and Michèle Knodt, ‘The Governance of the European Energy Union: Efficiency, Effectiveness and Acceptance of the Winter Package 2016’ (2018) 112 Energy Policy 209, 211; Paolo Bertoldi and Marina Economou, ‘The Assessment of the Member States National Energy Efficiency Action Plans: will the EU reach the 2020 target?’ (International Energy Policies & Programmes Evaluation Conference, Amsterdam 2016) <<https://energy-evaluation.org/wp-content/uploads/2019/06/2016-paper-bertoldi.pdf>> accessed 20 December 2025, 1, 2.

<sup>70</sup> See Concerted Action Energy Performance of Buildings <<https://www.ca-epbd.eu/about>> accessed 22 May 2025.

<sup>71</sup> Commission Implementing Decision of 22 May 2013 Establishing a Template for the National Energy Efficiency Action Plans under Directive 2012/27/EU of the European Parliament and of the Council [2013] OJ L141/48.

<sup>72</sup> Commission, Commission Staff Working Document: Guidance for National Energy Efficiency Action Plans, Accompanying the Commission Implementing Decision establishing a template for National Energy Efficiency Action Plans under Directive 2012/27/EU of the European Parliament and the Council SWD(2013) 180 final.

<sup>73</sup> See Annex V Dir (n 65).

<sup>74</sup> Sabine Schlacke, ‘Klimaschutzgesetz und Klimaschutzplan: Kohärentes Schutzkonzept oder klimapolitisches Feigenblatt?’ in Stiftung Gesellschaft für Rechtspolitik, Trier und Institut für Rechtspolitik an der Universität Trier (eds), ‘Bitburger Gespräche Jahrbuch 2021’ (C.H. Beck, Munich 2022) 71, 73.

<sup>75</sup> Art. 9(2) Reg (n 6).

<sup>76</sup> Art. 9(3) Reg (n 6).

Member State that deviates from or completely ignores them is obliged to publicly disclose the reasons for its decision.<sup>77</sup> In this respect, these recommendations have a considerable *de facto* binding effect.<sup>78</sup> Within the regulatory framework, the gap-closing mechanisms are also worth highlighting. If, after adding up the Member States' contributions to the pursuit of the Energy Union's objectives, the Commission concludes that the level of ambition is too low, the gap-closing mechanism of Article 31 of the Governance Regulation applies. This obliges the Commission to issue country-specific recommendations in the field of renewable energies and gives it the option of issuing country-specific recommendations in the other four dimensions of the Energy Union.<sup>79</sup> The NECPs are to be updated in a next step, although this is not mandatory and can be rejected on public grounds.<sup>80</sup> The process here is similar: the Member States submit a draft, which is evaluated and provided with country-specific recommendations. The Member States then draw up their final (updated) plan. If gaps in the achievement of targets remain at this stage, the gap-closing mechanism moves to a stricter procedure and gives the Commission further powers.<sup>81</sup> In addition, the Governance Regulation imposes a flood of reporting obligations on Member States.<sup>82</sup> For example, under Article 17(1) of the Governance Regulation, Member States must report on the status of implementation of their NECPs by 15 March 2023 and every two years thereafter. In addition, under Article 26 of the Governance Regulation, they must submit annual reports to the Commission.

## 2. Assessing the Role of the Commission

The Commission already had a monitoring and evaluation role under the Energy Services Directive. In addition, it was able to influence Member States' planning by issuing country-specific recommendations. Nevertheless, it should be noted that the Commission was unable to fulfil its regulatory monitoring and evaluation role under the Energy Services Directive due to various implementation shortcomings. There were no harmonised reporting requirements for the transmission of data contained in the NEEAPs, which made it considerably more difficult for the Commission to check the plausibility of the data transmitted and to compare the energy savings reported. Furthermore, the dialogue structures with the Member States lacked formalisation. There was also no formal template for plan preparation, which made it difficult to compare the plans and resulted in a high degree of variance in the level of detail of the plans. The possibility of issuing country-specific recommendations was entirely at the discretion of the Commission and was not backed up by 'comply or explain' provisions, as found in the Governance Regulation. Furthermore, apart from the obligation to submit the plans, there were no other reporting obligations for the Member States, so that the intensity of monitoring by the Commission can be assessed as very low and the overall regulatory burden as not very strict.<sup>83</sup> The role of the Commission in the area of the Energy Services Directive can therefore be assessed as weak.

The adoption of the Energy Efficiency Directive was accompanied by a new understanding of NEEAPs as strategic documents that can serve as a basis for structured dialogue between the Commission and the Member States.<sup>84</sup> This shift in understanding was further reinforced by the Commission's invitation to the Member States to conceptualize the NEEAPs as "policy planning tools"<sup>85</sup>. Accordingly, Member States were expected not merely to report their energy-saving measures as required by the Directive, but to present their national energy-saving policies in a comprehensive and

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<sup>77</sup> *ibid.*

<sup>78</sup> Johannes Saurer, 'Wandel der Handlungsformen im Umweltrecht der EU – Bestandsaufnahme und Forschungsperspektiven' (2023) 56 *Die Verwaltung* 159, 176.

<sup>79</sup> Art. 31(1) Reg (n 6).

<sup>80</sup> Art. 14(1) Reg (n 6).

<sup>81</sup> Art. 31(3) Reg (n 6).

<sup>82</sup> See Chapter 4 of the Governance Regulation entitled 'Reporting', Art. 17–28 Reg (n 6).

<sup>83</sup> See Economidou and others (n 65) 113332.

<sup>84</sup> See p. 8.

<sup>85</sup> Gregor Thenius, 'National Energy Efficiency Action Plans as a policy tool' Core Theme Series Report CAESDII/CTSR/1.1. (Concerted Action Energy Services Directive, September 2012) accessed 18 December 2025.

coherent manner.<sup>86</sup> By granting the Commission greater influence and control within the framework of the Energy Efficiency Directive, the Commission was able to shape these policy planning documents and participate more actively in the political discourse, which can be seen as enhancing its institutional significance. The strengthening of influence and control can be observed in several respects. Whereas the Energy Services Directive had not previously imposed any relevant reporting obligations on Member States apart from the submission of plans, the Energy Efficiency Directive required Member States to report annually on the progress made in meeting their national energy efficiency targets. In addition, templates for the preparation of NEEAPs and annual reports have been made available. This has also ensured greater comparability of plans and reports. The Commission has thus succeeded in moving beyond its mere role as an administrative body in the field of energy efficiency with the Energy Efficiency Directive.<sup>87</sup>

The Governance Regulation then establishes the emergence of iterative planning structures, opening up numerous options for action for the Commission in a detailed, iterative process. Significant differences in the regulatory structure are apparent at first glance. The Governance Regulation divides the planning process into the following stages: draft – final plan – draft of the updated plan – final updated plan. This detailed process offers the Commission several starting points for exercising control and shaping policy. As in the Energy Services and Energy Efficiency Directives, the Commission can also issue country-specific recommendations here. However, compliance with these recommendations by the Member States is ‘ensured’ to a certain extent under the Governance Regulation through ‘comply or explain’ provisions. This also applies in the context of plan updates by Member States. In this respect, the instrument of *de facto* binding force is of considerable importance. Several sections of the Governance Regulation show a hardening of soft governance, which has gained popularity in political science under the term “harder soft governance”. This promotes the rise of the Commission as a political decision-maker within the framework of the Governance Regulation.<sup>88</sup> However, such an obligation to take due account of the Commission's country-specific recommendations<sup>89</sup> is completely absent from the Energy Services and Energy Efficiency Directives. Similarly, the extent to which the recommendations have been taken into account is only monitored by the Commission within the framework of the Governance Regulation.<sup>90</sup> While the Energy Services Directive only required the transmission of the mandatory content of the NEEAPs as the sole relevant reporting obligation, the Governance Regulation imposes comprehensive obligations on Member States to submit annual progress reports, biennial integrated national energy and climate progress reports, to state the reasons for not taking into account the Commission's country-specific recommendations or to justify any failure to update the plan. It should also be noted that the Commission's scope for influence and control has been expanded with the creation of the two gap-closing mechanisms<sup>91</sup>. While this management approach by the Commission is gaining importance, the use of traditional enforcement instruments – particularly infringement proceedings – is declining.<sup>92</sup> Nevertheless, infringement proceedings continue to be initiated under the Governance Regulation.<sup>93</sup> The management approach therefore does not replace the traditional enforcement mechanisms, but enables the Commission to continue using them and strengthen the obligations addressed to the Member States.

Regulatory developments in the field of energy efficiency illustrates a picture of the Commission's changing role. Within the regulatory framework examined here, the Commission has gained increasing influence, control, participation and scope for shaping policy and is now in a position to play a

<sup>86</sup> Michèle Knodt and Marc Ringel, ‘The European Commission as a Policy Shaper – Harder Soft Governance in the Energy Union’ in Jörn Ege, Michael W Bauer and Stefan Becker (eds), ‘*The European Commission in Turbulent Times: Assessing Organizational Change and Policy Impact*’ (Nomos, Baden-Baden 2021) 181, 181 ff.

<sup>87</sup> Marina Economidou and others, ‘Assessment of the First National Energy Efficiency Action Plans under the Energy Efficiency Directive: Synthesis Report’ (JRC, 2016) <DOI: 10.2790/98108> accessed 18 December 2025, 1, 1 ff.

<sup>88</sup> Knodt and Ringel (n 87) 181 ff.

<sup>89</sup> See Art. 13(b); Art. 9(3); Art. 34(2)(a) Reg (n 6).

<sup>90</sup> See i.e. Commission, Staff Working Document on the Review of the National Energy Efficiency Action Plans SWD(2020) 904 final.

<sup>91</sup> Ambition gap and delivery gap filling procedures.

<sup>92</sup> Keleman and Pavone (n 12).

<sup>93</sup> European Commission, Commission Staff Working Document – Evaluation, SWD(2024) 200 final.

decisive role in shaping planning in environmental law. This was certainly facilitated by instances of inadequate implementation and enforcement at the national level, attributable, for example, to insufficient resources or a lack of political will.<sup>94</sup> In view of the declining number of infringement proceedings, it is evident that the Commission's approach based on partnership and dialogue is becoming increasingly significant.<sup>95</sup> This continuous rise in importance has now reached its preliminary peak with the emergence of iterative planning structures in the area of Governance Regulation. As the preceding discussion of the OMC and the European Semester has shown, this development is not unique to environmental law. Rather, it reflects the Commission's growing significance in EU co-ordination processes more broadly.

#### **IV. Consequences for Administrative Capacities at the National and European Commission Level**

However, the European Commission's rise in importance due to the increasing standardisation of opportunities for influence and control, as well as the need for detailed planning, is synonymous with increasing obligations for Member States. This raises concerns about overloading their administrative capacities, which could lead to implementation deficits.

An examination of the first cycle of the Governance Regulation reveals fundamental problems in the Member States with regard to compliance with the deadlines set out in the Governance Regulation. Only 9 out of 27 Member States submitted the other planning instrument of the Governance Regulation, the long-term strategy, on time.<sup>96</sup> Member States were required to submit their final updated NECPs to the Commission by 30 June 2024. Only five Member States submitted their plans on time. Even today – September 2025 – not all NECPs have been submitted to the Commission. This also marks the longest delay in the submission of plans under the Governance Regulation. While 12 Member States submitted their NECPs on time by 31 December for the first draft and Spain submitted its plan on 22 February 2019, the latest date for submission<sup>97</sup>, the number of plans submitted on time has been steadily declining since then, while the latest date for plan submission has also been steadily pushed back.

The report published by the Commission on the review of the Governance Regulation<sup>98</sup> suggests possible explanations for the significant delays. The report is based on various sources, such as individual stakeholders, the public, the assessments of the NECPs and the respective progress reports.<sup>99</sup> The Commission is unsure whether the delays are related to the regulatory structure of the Governance Regulation as such or rather to Member States' practices in drawing up plans. National authorities, on the other hand, point to short time intervals between the individual procedural steps and limited administrative capacities.<sup>100</sup> Member States from smaller Central and Eastern European countries in particular see their lack of administrative and technical capacity as a major obstacle to the preparation of detailed plans.<sup>101</sup>

<sup>94</sup> Miroslava Scholten and Daniel Scholten, 'From Regulation to Enforcement in the EU Policy Cycle: A New Type of Functional Spillover?' 2017 *JCMS* 55(4) 925, 937.

<sup>95</sup> See Urszula Jaremba, 'European Commission' in M Scholten (ed), '*Research Handbook on the Enforcement of EU Law*' 116 f.

<sup>96</sup> Commission, Evaluation on the Review of the Regulation on the Governance of the Energy Union and Climate Action SWD(2024) 200 final, 102.

<sup>97</sup> See Commission, Commission Recommendation of 18 June 2019 [2019] OJ C297/33.

<sup>98</sup> Commission, Report from the Commission to the European Parliament and the Council on the Review of the Regulation on the Governance of the Energy Union and Climate Action COM(2024) 550 final.

<sup>99</sup> *ibid* 2 f.

<sup>100</sup> Commission (n 98) 102.

<sup>101</sup> Nick Evans, Paul Schöberlein, Matthias Duwe, 'Raising the Bar on National Climate Governance in the EU: How EU Policy Can Help Member States Deliver Certainty, Accountability, Consistency, and Consensus on the Road to Net Zero' (Ecologic Institute 2024) <<https://www.ecologic.eu/sites/default/files/publication/2024/50146-Raising-the-bar-on-national-climate-governance.pdf>> accessed 18 December 2025, 54.

Any discussion of member states' administrative capacities must first address the terminology itself. Political science literature often focuses on procedural and political innovation, while the question of the implementation capacities required for this receives far less attention.<sup>102</sup> Several approaches have been developed in political science research to arrive at a definition of the term. *Matthews* distinguishes between control and implementation capacities with regard to administrative capacities.<sup>103</sup> Based on this, *Lodge* and *Wegrich* have established a distinction between four types of administrative capacities. They differentiate between implementation capacities, regulatory capacity, coordination capacity and analytical capacity.<sup>104</sup> Specifically, *Lodge* and *Wegrich* interpret this as a distinction between the administration's own implementation capacities, its resources for regulating and monitoring the implementation carried out by other actors, its ability to coordinate and mediate between different authorities and other representatives, and its capacity to organise and utilize analytical capacities.<sup>105</sup> Another approach distinguishes between structure, human resources, and systems and instruments when measuring administrative capacity.<sup>106</sup>

This confirms what one might assume at first glance: administrative capacity is not a rigid quantity whose value can be recorded in a generalised and static manner. In order to be able to measure administrative capacity – for example, of individual Member States – it is necessary to establish a benchmark across several dimensions of administration.<sup>107</sup> In this respect, political science research criticises the fact that many data sets contain uncertainties in the form of estimates or only cover individual dimensions of administrative capacity.<sup>108</sup> In view of the considerable methodological challenges associated with reliably measuring and defining administrative capacities, the focus here should be on how to achieve a sustainable balance between detailed planning and the often strained administrative capacities of Member States. In this respect, the aim is not to contribute to further research on terminology.

## 1. Balancing Detailed Planning and Strained Administrative Capacities

This consideration is based on a so-called management approach<sup>109</sup>. Proponents of this approach assume that the implementation problems faced by Member States are due to aggravating circumstances rather than a lack of willingness to implement. According to this approach, possible starting points can be found in missing or insufficient state capacities, insufficient implementation deadlines or unclear definitions within normative regulatory frameworks. It would also be possible to use a so-called enforcement approach<sup>110</sup>, which assumes that Member States make a voluntary decision on whether or not to comply with regulations based on a cost-benefit analysis.

One possible, but also very simple, approach would be to place a greater obligation on the Commission to work towards promoting Member State capacities. The Governance Regulation already stipulates in Article 15(8) that the Commission is obliged to support Member States in developing their long-term strategies, for example by providing scientific expertise. Technical capacity building is supported by various EU programmes, such as the LIFE programme or the Commission's technical

<sup>102</sup> Martin Lodge and Kai Wegrich, 'Governance Innovation, Administrative Capacities and Policy Instruments' in M Lodge and K Wegrich (eds), *'The Problem-solving Capacity of the Modern State – Governance Challenges and Administrative Capacities'* (Oxford University Press, Oxford 2014) 1, 10.

<sup>103</sup> Felicity Matthews, 'Governance, Governing and the Capacity of Executives in Times of Crisis' in Martin Lodge and Kai Wegrich (eds), *'Executive Politics in Times of Crisis'* (London, Bloomsbury 2014) 217, 217 ff.

<sup>104</sup> Lodge and Wegrich (n 102) 10.

<sup>105</sup> *ibid.*

<sup>106</sup> Ekaterina Domorenok, Paolo Graziano and Laura Polverari, 'Policy Integration, Policy Design and Administrative Capacities: Evidence from EU Cohesion Policy' (2021) 40 *Policy and Society* 58, 62.

<sup>107</sup> Fernández-I-Marín and others (n 2) 1246.

<sup>108</sup> *ibid.*

<sup>109</sup> Abram Chayes and Antonia Handler Chayes, 'On Compliance' (1993) 47(2) *International Organization* 175, 187 f.

<sup>110</sup> See on this and on criticism of the management approach: George W Downs, David M Rocke and Peter N Barsoom, 'Is the Good News about Compliance Good News about Cooperation?' (1996) 50(3) *International Organization* 379, 397 ff.

assistance instrument.<sup>111</sup> For example, the Commission's experts supported the EU accession countries in building up their legal and administrative capacities.<sup>112</sup> However, as there are still considerable differences in the administrative and technical capacities of the individual Member States, the Commission should nevertheless expand its support for the Member States in this regard. This could be done, for example, within the framework of the Governance Regulation, by providing concrete analyses or convening technical working groups to facilitate the preparation of strategic documents.<sup>113</sup>

### a) Internal Coherence Deficits

On the surface the question arises as to what extent comprehensive planning structures in environmental law can be optimised in order to conserve national capacities as far as possible or at least not to overburden them. This will be illustrated using the Governance Regulation as an example. In their assessment of the Governance Regulation, some Member States criticise that it, or rather the iterative planning system enshrined in it, suffers from internal and external coherence deficits.<sup>114</sup>

For example, Representatives of the Member States identify the lack of coordination between the individual planning instruments in terms of timing and content as an internal inconsistency in the planning structure of the Governance Regulation.<sup>115</sup> According to them, the problem lies in the fact that Member States are required to submit both the draft NECPs and their final versions before the LTs.<sup>116</sup> This raises several questions, as the NECPs must be coordinated with the LTs<sup>117</sup>, which is unlikely to be possible given the time frame. Looking at the practical implementation of this regulation, it appears that eleven of the Member States submitted their LTs at least one year late, which can be taken as an indication that, at least in these eleven Member States, the content of the LTs has not been sufficiently incorporated into the NECPs.<sup>118</sup> This problem inherent in the regulatory structure is exacerbated by the fact that the NECPs are required to be updated after five years, whereas the Governance Regulation does not provide for such an obligation for LTs.<sup>119</sup> According to reports from one Member State, this can lead to a situation where a LTs, and thus also the long-term orientation, is not revised despite being clearly outdated.<sup>120</sup> Such obsolescence is conceivable, for example, as a result of changes in scientific and technical knowledge or simply external events, such as the reassessment of natural gas's share in the energy mix following the outbreak of the Russia/Ukraine-conflict.<sup>121</sup> The

<sup>111</sup> Evans, Schöberlein and Duwe (n 101) 17.

<sup>112</sup> Tanja A Börzel and Aron Buzogány, 'Compliance with EU Environmental Law: The Iceberg is Melting' (2019) 28(2) Environmental Politics 315, 333.

<sup>113</sup> Evans, Schöberlein and Duwe (n 101) 24.

<sup>114</sup> See Commission, (n 99) 41 ff., according to which 16 of the 29 national authorities surveyed stated that the obligations resulting from the Governance Regulation were coherent, whereas 6 of the 29 national authorities stated that the provisions were not coherent in themselves, overlapped (9/28) or were contradictory (6/28).

<sup>115</sup> *ibid* 95.

<sup>116</sup> The difficulty arises from the fact that Member States were required to submit a long-term strategy for the first time by 1 January 2020 and subsequently by 1 January 2029. By contrast, the (final) NECPs had to be submitted for the first time by 31 December 2019 and thereafter by 1 January 2029. It follows that the long-term strategies are to be submitted after the NECPs.

<sup>117</sup> Art. 15(6) Reg (n 6).

<sup>118</sup> Eike Karola Velten and others, 'Charting a Path to Net Zero: An Assessment of National Long-Term Strategies in the EU' (Ecologic Institute 2022) <<https://www.ecologic.eu/sites/default/files/publication/2022/50058-charting-a-path-to-net-zero-Full-Report-web.pdf>> accessed 18 December 2025, 1, 88.

<sup>119</sup> According to Art. 15(1) sentence 2 of the Reg (n 6), 'these strategies should be updated every five years, if necessary'.

<sup>120</sup> European Commission (n 98) 95; See the evaluation by Velten and others (n 118) p. 87, according to which only three Member States were found to have complete consistency between their NECPs and LTs, based on the indicators selected for the evaluation.

<sup>121</sup> Velten and others, (n 118); also advocating an update requirement: Sebastian Oberthür and others, 'Review of the Governance Regulation and the European Climate Law: Upgrading the EU's Procedural Climate Governance' (GreenDeal-NET, May 2024) <[https://www.greendealnet.eu/sites/default/files/2024-05/GDN\\_POP2\\_Review\\_GC\\_ECL\\_compressed.pdf](https://www.greendealnet.eu/sites/default/files/2024-05/GDN_POP2_Review_GC_ECL_compressed.pdf)> accessed 20 December 2025, 1, 10.

development of internal coherence between these instruments would be desirable in terms of legal clarity and the reduction of the burden on Member States' capacities.<sup>122</sup>

## b) External Coherence Deficits

Various shortcomings are also apparent in the area of external coherence within the framework of the Governance Regulation. In its report on the review of the Governance Regulation, for example, the Commission concludes that the Governance Regulation is not fully consistent with the reporting requirements of the "Fit for 55 package"<sup>123</sup> and that Member States only partially exploit the synergies between different policy areas in their NECPs.<sup>124</sup> It also finds that the timing of various reporting obligations is poorly coordinated. While the reporting cycle for national integrated and climate-related progress reports falls on 15 March of odd-numbered years, the deadline for the UNFCCC reporting cycle falls on 31 December of even-numbered years. As a result, the two-yearly transparency reports to be submitted under the Paris Climate Agreement are out of date.<sup>125</sup> Reference was made at the outset to the entry into force of the Nature Restoration Regulation. In this case, too, it will be interesting to see to what extent the planning instruments of the Governance Regulation can be successfully coordinated with the national restoration plans. These are to be submitted by the Member States to the Commission for the first time by 1 September 2026.<sup>126</sup> When drawing up their national recovery plans, Member States must take into account both their NECPs and their LTs under the Governance Regulation.

## 2. Resilience of the Commission's Administrative Capacities

The increase in powers on the part of the Commission and the resulting increase in demands on Member States mean, in any case, a more comprehensive use of Member State capacities. One question that is hardly addressed in this discourse, however, is whether the Commission has the capacity to exercise its powers and fulfil its obligations. The list in the annex to the European Green Deal alone, which contains over 40 measures – such as a proposal for the 8th Environment Action Programme or the proposal for the "Climate Law" – shows that the Commission is regularly assigned extremely extensive tasks.<sup>127</sup> The Governance Regulation also shows that Member States have to submit a large number of documents to the Commission in the form of reports or detailed processes. This means that the Commission also needs the capacity to review and evaluate these documents and suggest appropriate improvements. For example, Article 17(1) of the Nature Restoration Regulation stipulates that the Commission must carry out an assessment six months after receiving a draft recovery plan from a Member State. The Governance Regulation, on the other hand, requires the Commission to issue country-specific recommendations to Member States at least six months before the deadline for submitting NECPs. It is therefore surprising to note that the Directorate-General for Environment employed 492 staff in 2021, compared to 687 in 2009. This represents a reduction in the total share of all Commission staff from 2.1% to 1.4%. For this reason, some literature calls for the staffing levels of the relevant Directorates-General and the Legal Service's environmental team to be increased by a factor of at least 10 in order to ensure that infringement proceedings can be initiated in a timely manner.<sup>128</sup> In view of the Commission's increasing powers – but also its increasing responsibilities –

<sup>122</sup> Sebastian Oberthür and others 'Towards an EU Climate Governance Framework to Deliver on the European Green Deal' (GreenDeal-NET, February 2023) <<https://www.brussels-school.be/sites/default/files/Policy%20options%20paper%20EU%20Climate%20Governance%20Framework%202023-compressed.pdf>> accessed 20 December 2025, 1, 12.

<sup>123</sup> European Commission (n 98) 43.

<sup>124</sup> *ibid* 44.

<sup>125</sup> *ibid* 45.

<sup>126</sup> See Art. 16 Reg (n 9).

<sup>127</sup> Commission, Annex to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Green Deal COM(2019) 640 final.

<sup>128</sup> Laura Hildt and Raphael Weyland, 'Stepping up Enforcement: Recommendations for an EC Better Compliance Agenda' (European Environmental Bureau, April 2022) <[https://eeb.org/wp-content/uploads/2022/06/EEB-Bird-Life\\_Stepping-up-Enforcement\\_Recommendations-for-an-EC-Better-Compliance-Agenda\\_2022-1.pdf](https://eeb.org/wp-content/uploads/2022/06/EEB-Bird-Life_Stepping-up-Enforcement_Recommendations-for-an-EC-Better-Compliance-Agenda_2022-1.pdf)> accessed 20 December 2025, 1, 9.

this could lead to a resurgence of the political science debates of the 1990s, which dealt with the question of a ‘management deficit’ in the EU. At the time, the literature understood such a deficit to mean the ever-widening gap between the Commission’s growing tasks and its administrative capacities.<sup>129</sup> So far, there are no signs – within the framework of the Governance Regulation – that the Commission would be unable to meet the deadlines<sup>130</sup> set for it. However, it remains to be seen whether the Commission will continue to be able to fulfil the obligations imposed on it by legal acts within the framework of planning processes without any loss of quality.

## V. Conclusion

The European Commission has undergone a significant evolution in recent decades. While the Lisbon Strategy presented a mixed picture, with the Commission acting as a political player primarily through the OMC but with little political presence in areas of exclusive or shared EU competence, its role expanded as coordination developed into the European Semester. This shift can be observed not only in general coordination mechanisms – such as the OMC or the European Semester – but also in environmental law. In the area of coordinated planning systems, particularly those found in the Energy Services and Energy Efficiency Directives and the Governance Regulation, the Commission has gained increasing powers of influence and control, while the requirements and obligations imposed on Member States have grown steadily. With the emergence of iterative planning structures under the Governance Regulation, the rise in importance of the European Commission has now reached its preliminary peak.

However, the increasing scope for influence and the growing density of control are counterbalanced by the Member States, which must meet these requirements. The practical implementation of the Governance Regulation has shown that Member States’ administrative capacities are experiencing implementation problems. One possible approach is therefore to pay greater attention to ensuring sufficient coherence in complex coordination processes so as not to overstretch Member States’ resources. The increased administrative burden also affects the Commission. It therefore remains to be seen whether it can fully exercise its comprehensive role in coordination processes.

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<sup>129</sup> See also: Les Metcalfe, ‘Building Capacities for Integration: The Future Role of the Commission’ (1996) (2) EIPASCOPE 1, 2 ff.

<sup>130</sup> For example, Article 17(1) of the Nature Restoration Regulation (n 9) stipulates that the Commission must carry out an assessment six months after receiving a draft recovery plan from a Member State. The Governance Regulation, on the other hand, requires the Commission to issue country-specific recommendations to Member States at least six months before the deadline for submitting NECPs.

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