

## European Commission presents Energy Winter Package 2016.

### Introduction

On **30 November 2016**, the European Commission published its long-anticipated “Clean Energy For All Europeans” package, more commonly referred to as the “Winter Package”, consisting of numerous legislative Proposals together with accompanying documents, aimed at further completing the internal market for electricity and implementing the Energy Union.

The Winter Package is part of an overall package of more than 40 planned measures, which was first announced in February 2015 and designed by the Commission to strengthen and standardise the European Union’s energy markets.

As part of the [climate and energy package](#), in July 2015, the Commission published its [Proposal for revision of the EU Emissions Trading System Directive \(“EU ETS”\)](#) for the period after 2020. In July 2016, the Commission published its [Proposal for revision of the non-EU ETS sectors’ Greenhouse Gas Emissions Regulation](#).

In February 2016, as part of its [Energy Security Package](#), the Commission published its [Proposal for revision of the Regulation on Security of Gas Supply](#), its [Proposal for revision of the Decision on Intergovernmental Agreements \(“IGAs”\)](#), its [strategy for liquefied natural gas and storage](#) and its [heating and cooling strategy](#).

The newly published Winter Package has the following key aims:

- to establish a common power market design across the Union and to ensure the adequacy of the Union’s power systems;
- to promote the better integration of electricity produced from renewable sources into the market and assess the sustainability of bioenergy;
- to advance energy efficiency, energy cleanliness and energy performance, including for buildings, in the industry (eco-design), in innovation and in transport, all of which, together with the support of renewables, are needed to achieve the Union’s climate goals; and

- to implement rules on the governance of the Energy Union.

The Winter Package contains the following legislative Proposals:

- Proposal for a recast of the Internal Electricity Market Directive;
- Proposal for a recast of the Internal Electricity Market Regulation;
- Proposal for a recast of the ACER Regulation;
- Proposal for a Regulation on Risk-Preparedness in the Electricity Sector and Repealing the Security of Supply Directive;
- Proposal for a recast of the Renewable Energy Directive;
- Proposal for a revised Energy Efficiency Directive;
- Proposal for a revised Energy Performance of Buildings Directive; and
- Proposal for a Regulation on the Governance of the Energy Union.

In addition, the Winter Package contains a large number of Communications, Commission Regulations, memos, factsheets, reports, impact assessments and other documents covering various topics, ranging from capacity mechanisms to eco-design, bioenergy sustainability, energy prices and costs, energy funding, innovation and transport.

The Proposals and documents are the result of a consultation process started by the Commission in July 2015. They also complement the Energy Security Package released in February 2016, which focused on the security of gas supply, intergovernmental agreements, LNG and gas storage, as well as heating and cooling. Read our client alert on the Energy Security Package [here](#).

View the Communication and press release on the Winter Package [here](#) and [here](#).

This alert contains a selection of key takeaways from the different documents and Proposals. These can be subdivided as follows: (i) rules on a **new power market design** (including **resource adequacy**) (see Section 1 below), (ii) rules on the **promotion and integration of renewables and sustainability of bioenergy** (see Section 2 below), (iii) rules on **energy efficiency and performance** (see Section 3 below), (iv) rules on the **institutional framework** (see Section 4 below) and (v) **miscellaneous** topics (see Section 5 below).

You may get in touch with your Linklaters contact for additional information and insights.

## 1 Power Market Design

The new power market design is intended to better fit the future electricity markets, which will be characterised by more variable and decentralised production, an increased interdependence between systems cross-border and opportunities for consumers to participate

in the market through demand-side response, auto-production, smart metering and storage.

## 1.1 Proposal for a Directive on **Common Rules for the Internal Market on Electricity** (recast)

The Proposal is based on the existing Directive 2009/72/EC, which remains in force. The recast Directive contains certain essential changes and modifications and the scope has been extended. The recast Directive would enter into force on the 20<sup>th</sup> day following its publication and would have to be transposed into national law by a date to be determined.

View the [Proposal](#), [Annexes](#) and [accompanying documents](#).

Key takeaways:

- **General market organisation:** further push for market-based (supply) pricing with possibility of public intervention for vulnerable consumers, subject to strict conditions and notification to the Commission.
- **Consumers:** reinforcement and expansion of consumer rights.

Consumers will, amongst others, be entitled to (i) enter into dynamic pricing contracts reflecting spot prices and restricting termination fees, (ii) enter into agreements with demand-response providers and aggregators (without the supplier's consent), (iii) access and use free of charge comparison tools and smart metering systems and functionalities and (iv) rely on detailed billing guidelines and information.

- **Distribution system operators ("DSOs"):** clarification of their role with respect to the procurement of network services to ensure flexibility, storage and recharging points for electric vehicles.

DSOs will perform tasks relating to (i) the use of flexibility (including the procurement of standardised services from resources such as distributed generation, demand-side response, storage and energy efficiency measures and from all market participants, to improve the system), (ii) exchange of information and co-ordination with TSOs and (iii) the development of a 5- to 10-year network development plan, to be submitted to the national energy regulator every 2 years. The DSOs should be adequately remunerated for the performance of these tasks.

Moreover, DSOs will be assigned a role in (i) the integration of electro-mobility into the electricity network (e.g. by facilitating the connection of publicly accessible and private recharging points for electric vehicles to the grid) and (ii) the ownership,

development and operation of storage facilities. Both tasks will be based on the principle that DSOs are not allowed to develop charging and storage solutions, unless certain conditions are fulfilled, including (i) lack of interest by other parties, (ii) (for storage) the use being limited to securing the efficient, reliable and secure operation of the distribution system, (iii) approval by the national energy regulator and (iv) compliance with the unbundling provisions. The potential interest of other market participants is reassessed at least every 5 years.

- **Transmission system operators (“TSOs”):** existing provisions are largely maintained, with clarifications concerning energy storage, ancillary services and the new regional co-ordination centres.

TSOs will co-ordinate with other neighbouring TSOs and through the newly introduced regional operational centres (including adopting a framework for the co-ordination and co-operation between these centres). They will also perform tasks relating to (i) the procurement of (balancing and non-frequency) ancillary services from market participants to ensure operational security in a way that is transparent, non-discriminatory and market-based, to ensure effective participation of all market participants, and (ii) the development of a 10-year network development plan at least every 2 years (previously, every year).

Moreover, TSOs will not be allowed to own, manage or operate storage facilities, nor own or control assets providing ancillary services, unless certain conditions are fulfilled, including (i) (for ancillary services) the ancillary services being non-frequency, (ii) lack of interest by other parties, (iii) the use being limited to securing the efficient, reliable and secure operation of the transmission system and excluding the sale of electricity on the market and (iv) approval by the national energy regulator. Decisions to grant a derogation must be notified to ACER and the Commission. The potential interest of other market participants in storage is reassessed at least every 5 years.

- **National regulatory authorities (“NRAs”):** extension of their tasks and competences with respect to regional co-operation on cross-border issues, especially with respect to the establishment and functioning of regional operational centres.

In order to carry out their functions, NRAs will be granted additional powers to issue (joint) binding decisions on electricity undertakings and regional operational centres, carry out investigations and give instructions for dispute settlement, request information and impose penalties.

## 1.2 Proposal for a **Regulation on the Electricity Market** (recast)

The Proposal is based on the existing Regulation (EC) No 714/2009, which remains in force. The recast Regulation aims at setting fundamental principles for well-functioning, integrated electricity markets, which allow non-discriminatory market access for all resource providers and electricity consumers. The recast Regulation would enter into force on the 20<sup>th</sup> day following its publication, and would be binding in its entirety and directly applicable in all Member States as from 1 January 2020.

View the [Proposal](#), [Annex 1](#) and [Annex 2](#), and [accompanying documents](#).

Key takeaways:

- Description of core market principles, notably that electricity **prices are formed based on demand and supply**. This includes rules on wholesale trading preventing the introduction of capping or floors on wholesale prices.
- Introduction of rules on **balancing markets**, both for energy and capacity, including free access by all market participants individually or by aggregation. Market participants will be held financially responsible for imbalances they cause, based on marginal pricing and real time value.
- Dispatching of power generation and demand-response must be non-discriminatory and market-based. **Priority dispatch** is allowed for small renewables or high-efficiency cogeneration installations with an installed capacity of less than 500 kW, and for demonstration projects for innovative technologies.
- Priority of **market-based re-dispatching or curtailment**. Producers of electricity from renewables or high-efficiency cogeneration will only be subject to downward non-market-based re-dispatching or curtailment if no other alternative exists and subject to financial compensation by the system operator requesting the curtailment or re-dispatching.
- Introduction of a definition of **bidding zones borders**. These will be based on long-term, structural congestions in the transmission system and subject to review, involving stakeholders from all affected Member States.
- **Congestion** must be solved with **non-transaction based** methods (*i.e.*, not involving a selection between market participants). Capacity must be allocated through **explicit auctioning or implicit auctioning**, including both energy and capacity. **Continuous trading** is allowed for intra-day.
- Prohibition for TSOs to limit the volume of **interconnection capacity** to be allocated in order to solve congestion inside

their own control area or as a means of managing flows on a border.

- **Distribution tariffs** must reflect the cost of use of the distribution system by system users, including so-called “active consumers”. Within 3 months after entry into force of the Regulation (to be confirmed), ACER will provide recommendations on the progressive convergence of transmission and distribution tariff methodologies.
- Member States can introduce **capacity mechanisms**, provided they are justified by a resource adequacy concern documented in a **European resource adequacy assessment** conducted on the basis of a shared methodology established through ENTSO-E and ACER. Where the adequacy assessment has not identified a resource adequacy concern, Member States will not be allowed to implement a capacity mechanism. When applying a capacity mechanism (to the extent allowed), Member States will have to have a **reliability standard** in place to indicate their desired level of security of supply. Capacity mechanisms (other than strategic reserves) will have to allow for cross-border participation, provided there is a network connection. The proposal also contains design principles for capacity mechanisms, ensuring, amongst others, that these do not create unnecessary market distortions or limit cross-border trade, and not go beyond what is necessary. Capacity mechanisms existing on the date of entry into force of the Regulation (to be confirmed) will have to be adapted to comply with certain of the new requirements (including on cross-border participation and design).
- Introduction of **regional operational centres** consisting of TSOs to complement the TSOs’ role by performing functions of regional relevance, such as capacity calculation or facilitating the regional procurement of balancing capacity.
- Introduction of a **European entity for DSOs** as a platform for co-operation between DSOs that are not part of a vertically integrated undertaking or that are unbundled, to promote the completion and functioning of the internal market. The tasks of the new entity will include, amongst others, planning of transmission and distribution systems, integration of renewables, development of demand-side response, digitalisation of distribution networks and co-operation with ENTSO-E.

### 1.3 Proposal for a **Regulation on Risk-preparedness in the Electricity Sector**

The Proposal sets out measures for risk assessments, risk preparedness and the management of crisis situations in relation to

the Union's electricity system's and resource adequacy and security of power supply, and repeals the existing Directive 2005/89/EC. The new Regulation would enter into force on the 20<sup>th</sup> day following its publication, and would be binding in its entirety and directly applicable in all Member States as from the date of its entry into force.

View the [Proposal](#), [Annex](#) and [accompanying documents](#).

The Proposal reacts to the findings of the Commission that Member States take very different approaches in assessing, preventing and managing electricity crisis situations. The proposal therefore sets out, amongst others, methodologies to assess security of supply and to identify crisis scenarios in the Member States and on a regional level, to conduct short-term adequacy assessments, to establish risk-preparedness plans and to manage crisis situations. It also provides for ex-post evaluation of crisis situations and monitoring by the Electricity Coordination Group.

We also refer to the chapter on resource adequacy in the proposed recast of the Electricity Directive (see Section 1.2 above).

## 1.4 Final Report of the **Sector Inquiry on Capacity Mechanisms**.

Linked to the Proposal for a Regulation on Risk Preparedness, the Commission also released its Final Report outlining the conclusions of the Commissions Sector Inquiry into Capacity Mechanisms in the light of State aid constraints.

View the [Report](#) and [Q&A](#).

In the Commission's view, the ideal capacity mechanism should, amongst others:

- be open to all potential domestic and foreign capacity providers, with specific attention to new entries;
- feature a competitive price-setting process that ensures a competition on prices to minimise the price paid for capacity;
- ensure incentives for reliability and investment in interconnection; and
- be designed to coexist with electricity scarcity prices to avoid domestic overcapacity and trade distortions.

Also, the Commission has published guidelines as to what type of capacity mechanism fits to suit each Member State's specific concerns, such as long-term risks and local adequacy issues.

## 2 Renewable Energy and Bioenergy Sustainability

The Proposal for a **Directive on the Promotion of the Use of Energy from Renewable Sources** (recast) is based on the existing Directive 2009/28/EC, which remains in force. The recast Directive aims at tackling the existing issues hampering renewable energy deployment, such as investor uncertainty, administrative hurdles, the need to improve cost-effectiveness of renewables deployment, the need to update the policy framework and the risk of loss of citizen buy-in during the transition towards 2030. The recast Directive would enter into force on 1 January 2021 and (except for few provisions) would have to be transposed into national law by 30 June 2021.

View the [Proposal](#), [Annexes](#) and [accompanying documents](#).

Key takeaways:

- A **Union-wide minimum target of 27% share of renewable energy** in gross final consumption by 2030. Member States have to reach a **minimum national share of renewable energy in gross final consumption of between 10% and 49%**. If a Member State fails to reach its targets, payments must be made into a fund used to launch competitive bidding procedures for renewable projects. Member States will be allowed to statistically transfer amounts of renewable energy among themselves.
- The **contribution of biofuels, bio-liquids and biomass fuels consumed in transport**, if produced from food or feed crops, to the calculation of a Member State's gross final consumption of renewable energy is **limited to 7% of the final consumption of energy for road and rail** in that Member State by 2020, further reduced to 3.8% by 2030. At the same time, the share of biofuels and biogas produced from certain feedstock used in the transport sector is supposed to gradually increase. To count towards the renewable energy targets, the contribution of biofuels, bio-liquids and biomass fuels will need to meet further sustainability and greenhouse gas emissions saving criteria.
- The **share of renewable energy in the heating and cooling sector** is supposed to **increase by 1% each year**. Consumers that are connected to a district heating or cooling system not meeting the efficiency criteria of directive 2012/27/EU will be allowed to produce heating or cooling from renewable energy sources themselves.
- **General rules on support mechanisms**: rather than giving detailed prerequisites for support mechanisms and a clear tendency towards tendering mechanisms, the Proposal requires quite generally that support will be designed as to integrate renewables in the electricity market and should be



granted in an open, transparent, competitive, non-discriminatory and cost-effective manner.

- A new provision on the **stability of financial support** ensures that the level of and conditions attached to the support of renewable energy projects are not altered in a way that negatively impacts the rights conferred or the economics of supported projects.
- Member States must **enhance predictability for investors** by defining and publishing a long-term schedule in relation to the expected allocation of support, covering at least the next 3 years.
- The rules on **priority grid access** for renewables have been **removed**.
- **Streamlined permitting process**: by 1 January 2021, single administration contact points must be set up to co-ordinate the entire permit granting process and guide applicants through the application process.
- Permit granting procedures should **not last longer than 3 years, or 1 year** in the case of an application to repower an existing installation. Demonstration projects, installations smaller than 50 kW and certain repowering projects will only be subject to a notification.
- **Support schemes must be open to projects from other Member States** for at least 10% of the newly-supported capacity between 2021 and 2025, and 15% between 2026 and 2030. Member States can either set up joint support schemes or open their respective support schemes through co-operation agreements. Energy produced will in principle count towards the funding of Member State's renewable targets.
- Member States may engage in **joint projects** for renewable production with other Member States or third countries, which **may involve private operators**.
- **Renewable self-consumers** (auto-producers) may sell their excess production without losing their rights as consumers. They are also entitled to remuneration for excess energy they feed into the grid. Self-consumers will be considered as energy suppliers only if they feed more than 10 MWh into the grid as a household and 500 MWh as a legal person.
- **Guarantees of origin** continue to be issued for renewable production. If the energy produced is supported through a renewables support scheme, guarantees of origin will be directly transferred to the market by auctioning, in order to offset the cost of the renewables support.

### 3 Energy efficiency

#### 3.1 Proposal for a **Directive on Energy Efficiency** (revision)

The Proposal amends Directive 2012/27/EU on Energy Efficiency. The revised Directive amends existing Articles that are directly related to achieving the 2030 targets and introduces a few new Articles to extend consumer rights and increased access to smart metering tools, billing and consumption information. The revised Directive would enter into force on the 20<sup>th</sup> day following its publication and would have to be transposed into national law 12 months after its date of entry into force.

View the [Proposal](#), [Annex](#) and [accompanying documents](#).

Key takeaways:

- Confirmation of a **30% binding energy efficiency target for 2030**.
- **No national binding targets for the Member States, but indicative national targets** will be notified to the Commission, expressed as absolute levels of primary and final energy consumption in 2020 and contributions towards the Union's 2030 targets.
- **Specific requirements** for energy savings will be imposed by the Member States on so-called "**obligated parties**", which will be designated on the basis of objective and non-discriminatory criteria among energy distributors and/or retail companies (including transport fuel distributors and retailers). Measurement, control and verification systems will be put in place.
- Consumers of district heating, cooling and domestic hot water must benefit from **competitively priced meters** reflecting their actual energy consumption.
- **Billing and consumption information** must be accurate and based on actual consumption; consumers will receive their bills and billing information for energy consumption free of charge and will receive access to their consumption data in an appropriate way.

#### 3.2 Proposal for a **Directive on the Energy Performance of Buildings** (revision)

The Proposal amends Directive 2010/31/EU on the Energy Performance of Buildings. The revised Directive covers topics including, amongst others, renovation targets, energy performance certificates, inspection, monitoring and control of energy use and the presence of electrical recharging points (including an obligation to equip 1 out of 10 new or substantially renovated non-residential buildings with a recharging point reactive to price signals). The

revised Directive would enter into force on the 20<sup>th</sup> day following its publication and would have to be transposed into national law 12 months after its date of entry into force.

View the [Proposal](#), [Annex](#) and [accompanying documents](#).

## 4 Institutional and procedural backing

### 4.1 Proposal for a **Regulation on the Governance of the Energy Union**

The Regulation aims at streamlining and updating existing but scattered planning and reporting obligations from EU legislation relating to energy, climate and other policy areas related to the Energy Union. It asks for integrated national energy and climate plans covering 10-year periods, and integrated monitoring arrangements by the Commission. The new Regulation would enter into force on the 20<sup>th</sup> day following its publication, and would be binding in its entirety and directly applicable in all Member States as from its date of entry into force for most, and as from 1 January 2021 for certain, provisions.

View the [Proposal](#), [Annexes](#) and [accompanying documents](#).

### 4.2 Proposal for a **Regulation establishing ACER** (recast)

The Proposal is based on the existing Regulation (EC) No 713/2009, which remains in force. The recast adapts the existing rules to take into account the changed and enhanced roles that ACER will play in establishing the Energy Union, and reflecting the stronger co-ordination tasks conferred on it. The recast Regulation would enter into force on the 20<sup>th</sup> day following its publication, and would be binding in its entirety and directly applicable in all Member States as from its date of entry into force.

View the [Proposal](#), [Annex](#) and [accompanying documents](#).

## 5 Other Elements

In addition to the legislative proposals discussed above, the Winter Package contains a number of other Proposals, Communications, Commission Regulations, impact assessments, factsheets, memos and reports covering, amongst other matters, eco-design of equipment and products for the industry, bioenergy sustainability, energy prices and costs, energy funding, clean energy innovation and transport.

[View all documents](#).

## 6 Next Steps and Timeline

The Winter Package's legislative Proposals will go through the Ordinary Legislative Procedure before becoming binding Union legislation. Therefore, the European Parliament and the Council need to agree on a common text and adopt the Proposals. The average length of the Ordinary Legislative Procedure is around 18 months – about 85% of the Proposals going through the Ordinary Legislative Procedure are published in the Official Journal of the Union within this period. However, in the case of complex legislative Proposals, the procedure might take longer.

The Maltese Presidency of the Council of the EU, which will start in January 2017, is expected to prioritise the discussions on the Proposals for a revision of the Energy Efficiency Directive and the Energy Performance of Buildings Directive. Discussions on the Proposals on Power Market Design, Governance of the Energy Union and the recast of the Renewable Energy Directive will most probably be opened during the second part of the Presidency (April-June 2017).

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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