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A cross-border guide to Energy audits

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Prepared in co-operation with KINSTELLAR

Purpose of this guide

By 5 December 2015, all European enterprises qualifying as non-small or medium-sized enterprises were supposed to carry out an audit of their energy consumption. Even though this obligation arises from the EU Energy Efficiency Directive 2012, the range of the concerned enterprises, the scope of the audit and the potential sanctions for non-compliance may differ widely across EU Member States.

In particular, in multinational corporate groups, it is important to determine at which group level action is required: at the parent level only or at the level of sub-sidiaries in their respective jurisdictions as well? It is also important to have a clear understanding of what information will be required.

This cross-border guide has been prepared and updated to the state of law on 1 January 2017 by Linklaters in cooperation with Kinstellar. It aims to raise awareness of the topic and give an overview of the current state of play. It highlights the key features and national features concerning energy audits in various jurisdictions of the European Union, Serbia and Turkey. However, this guide cannot substitute legal advice based on the thorough analysis of a particular case.

In case you require more in-depth information, please speak to your regular contact at Linklaters or Kinstellar.

Contents

Energy audits in the Energy Efficiency Directive - overview

The *Energy Efficiency Directive 2012/27/EU* ("**EED"**) entered into force on 4 December 2012. It established a wide set of binding measures to help the EU reach its 20% energy efficiency target by 2020. The EED recognises that in order to meet the EU 2020 goals, energy saving is necessary at all stages of the energy chain, from its production to its final consumption. Therefore, the EED targets not only Member States, but also consumers and industry members as well.

One of the key measures of the EED is the introduction of energy audits for enterprises on a regular basis in Article 8 of the EED:

> Energy audits are compulsory for those enterprises which do not fall in the scope of the Commission's definition of small and medium-sized enterprises (non-SMEs) (see page 4).

> All non-SMEs must undergo a comprehensive energy audit by 5 December 2015 and at least every four years from the date of the previous audit.

> The minimum criteria an energy audit has to fulfil are set out in Annex IV of the EED, eg they should provide clear information on potential savings.

> Energy audits may be carried out by external experts or, if the Member State concerned has put in place a scheme to assure and check their quality, in-house experts who are not directly engaged in the activity to be audited.

> To ensure compliance, Member States are required to implement penalties for non-compliance with the national provisions adopted pursuant to the EED.

On 30 November 2016, the Commission proposed an update to the EED as part of its Clean Energy Package. The proposed draft of the amended EED in particular sets a 30% binding energy efficiency target for 2030 at EU level. However, the current draft leaves the obligation for non-SMEs to perform energy audits in Article 8 of the EED untouched.

Who is obliged to perform an energy audit?

The EED obliges Member States to ensure that all enterprises that are not small or medium-sized enterprises ("**non-SMEs**") carry out an energy audit. The EED refers to the definition of non-SMEs in *Commission Recommendation 2003/361/EC of 6 May 2003*.

What is the definition of a non-SMEs?

A non-SME has:

> to be engaged in an economic activity, irrespective of its legal form; and

> at least 250 full-time employees; or
> an annual turnover exceeding €50m and
> an annual balance sheet total exceeding €43m.

What about enterprises in a group structure?

In addition to the staff and the financial data of the enterprise in question, employees and financial data of:

> linked enterprises are considered in full; and

> partner enterprises are considered pro rata.

Linked enterprises

> have or control a majority of voting rights;

> have the right to appoint or remove a majority of the members of governing bodies; or

> have the right to exercise a dominant influence.

Partner enterprises

> hold 25% or more of the capital or voting rights of another enterprise;

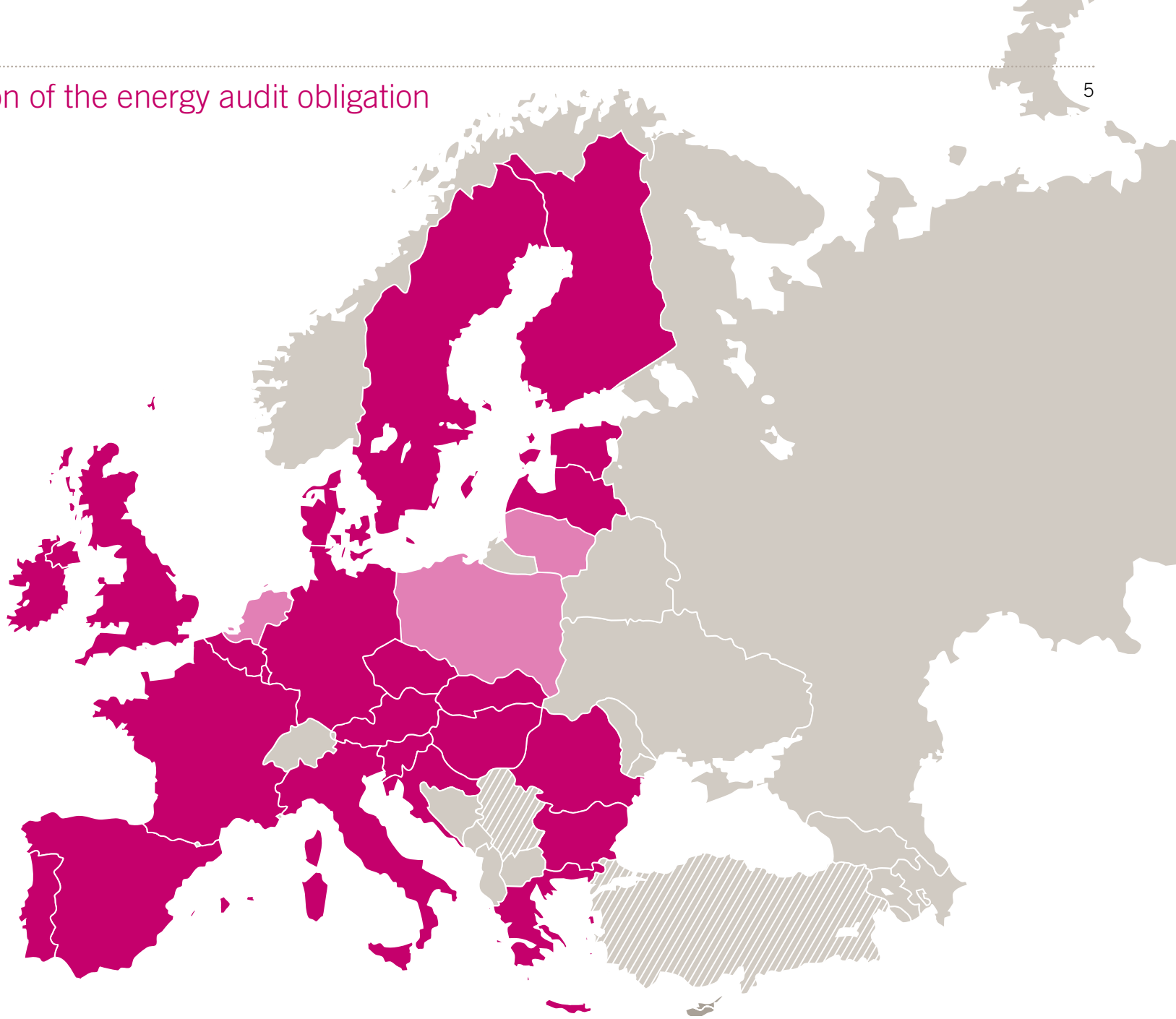
> either solely or jointly with one or more linked enterprises; and

> are not linked enterprises.

State of play – Transposition of the energy audit obligation

The *EU Energy Efficiency Directive* ("**EED**") entered into force on 4 December 2012. The EU Member States were required to transpose the EED into their national laws by 5 June 2014.

While only Malta had transposed the whole set of measures on time, as of 1 January 2017 most Member States have by now fully transposed the obligation to perform energy audits as laid down in Article 8 of the EED.



01 Belgium

Arnaud Coibion
Partner, Belgium (Brussels)
Tel: (+32) 2 501 9018
arnaud.coibion@linklaters.com

Lothar Van Driessche
Associate, Belgium (Brussels)
Tel: (+32) 2 501 9231
lothar.van_driessche@linklaters.com

National legislation & guidance

The obligation has been implemented in Chapter 4.9 of the *Executive Order of the Flemish Government of 1 June 1995 holding general and sectoral provisions relating to environmental safety* (Title II of the "*Vlaams reglement betreffende de milieuvergunning*" or "***VLAREM***", hereafter the "**Executive Order**") by the *Executive Order of the Flemish Government of 16 May 2014 amending various decrees relating to the environment, in view of an adaptation to the evolution of technology and to the CLP Regulation*.

The Flemish energy administration ("***Vlaams Energieagentschap***" or "**VEA**", hereafter the "**Flemish Energy Agency**") provides public guidance on the application/ interpretation of this legislation.

Concerned enterprises

Article 4.9.2.1 of the Executive Order provides:

> that it "applies to all classified establishments" ("***ingedeelde inrichtingen***", i.e. all establishments which have a certain impact on the environment); and

> where more than 250 persons are working or whose annual turnover exceeds €50 million or whose annual balance exceeds €43 million".

This definition is aligned with the EU definition of non-SMEs as laid out in *Commission Recommendation 2003/361/ EC of 6 May 2003*, though no reference is made to linked or partner undertakings in the Executive Order.

Who has to act

The energy audit must be performed by:

> the operator of the classified establishment; or

> a person who is authorised to do so by the operator and who has registered for such purpose on the relevant web application.

Exemptions

> All classified establishments with a total annual energy consumption of at least 0.5 PJ. These establishments must, however, draw up an energy plan, within 6 months of the official notice, of the level of their annual energy consumption exceeding the above-mentioned limit of 0.5 PJ.

> Energy-intensive installations of companies that have entered into "*energy policy agreements for the establishment and the maintenance of energy efficiency in the Flemish energy-intensive industry", concluded by virtue of Article 7.7.1 of the Flemish Energy Decree of 8 May 2009* ("***Vlaams Energiedecreet***", hereafter the "**Energy Decree**"), and that have fulfilled their energy obligations under these agreements (such obligations are typically already included in the energy benchmark agreements).

> All classified establishments that comply with the European energy standard EN 16001 or with the international standard for energy management systems ISO 50 001.

> All classified establishments which hold a valid energy performance certificate public buildings ("*energieprestatiecertificaat publieke gebouwen*"), as mentioned in articles 9.2.12 to 9.2.16 of the Flemish Energy Executive Order of 19 November 2010 ("***Vlaams Energiebesluit***", hereafter the "**Energy Executive Order**").

Scope of the audit

The audit is based on current, measured, traceable and operational data on energy consumption and electricity load profiles.

The energy audit includes a detailed overview of the energy consumption profile of buildings or building groups, industrial processes or installations, including transport.

The energy audit is, insofar as possible, based on an analysis of the life cycle-costs, instead of mere depreciation periods, in order to take long-term cost savings, residual values of long-term investments and discount rates into account.

The energy audit is proportionate and sufficiently representative to be able to draw a reliable picture of overall energy performance and to determine the main improvement points in a reliable manner.

Internal or external auditors

Both external and internal audits are possible.

The auditor, who does not need to comply with any specific formation or certification conditions, must be registered via the relevant web application.

Penalties

Any breach of the obligations can give rise to administrative and criminal sanctions.

> Administrative sanctions can either take the form of:

(i) administrative measures, enforced as the case may be by penalty payments. Administrative measures can include among other things a (temporary) closing order for the establishment. It can also be a combination of measures; or

(ii) administrative fines complemented as the case may be by a reimbursement obligation for any financial benefits obtained through the breach. These fines can amount to €250,000 multiplied by the inflation coefficient applicable to criminal fines (currently 8) and complemented as the case may be by expertise costs and a reimbursement of the illegally obtained benefits.

> Criminal sanctions can range between prison sentences from 1 month to 2 years and criminal fines between €100 and €250,000 multiplied by the inflation coefficient applicable to criminal fines (currently 8).

Notification

The operator of the classified establishment, or a person who is authorised by the operator, shows the results of the energy audit in the relevant web application, which is made available for this purpose by the Flemish Energy Agency.

The operator or any other person, authorised for this purpose by the operator, can always have access to the data of its own energy audit upon request by the Flemish Energy Agency.

A supervisor may consult the web application. The data available in this web application may not be used by the supervisor, nor by any other party, without the prior written consent of the operator.

National legislation & guidance

The obligation has been implemented in Chapter 3 of the *Walloon Decree of 9 December 1993 relating to the promotion of rational energy consumption, of energy savings and of renewable energy ("Décret relative à la promotion de l'utilisation rationnelle de l'énergie, des économies d'énergie et des énergies renouvelables"*, hereafter the "**Decree**") by a *Walloon Decree of 26 May 2016*, and further specified in an *Executive Order of the Walloon Government, dated 8 September 2016* (the "**Executive Order**").

The Walloon energy ministry provides public guidance on the application/ interpretation of this legislation.

Concerned enterprises

Any undertaking which does not fulfil the criteria to qualify as SME, as set out in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, provided that the final energy consumption of the undertaking in the Walloon Region represents at least 20% of its final energy consumption in Belgium.

Who has to act

The relevant undertaking.

Exemptions

> Any undertaking with an energy or environment management system, certified by an independent body in accordance with the relevant standards, provided that (i) the system provides for an energy audit compliant with Annex 1 of the Decree, (ii) the final energy consumption of the activities audited in the framework of the system represent minimum 60% of its final energy consumption in the Walloon Region, (iii) it has had a valid certificate for at least 4 years, (iv) it keeps information on the last audit available for the energy minister or his representative for at least 10 years and (v) it proves its compliance with the aforementioned conditions by sending a completed form to the energy minister at least every 4 years.

> Any undertaking which is a party to an environmental agreement, as referred to in the Walloon Environmental Code of 27 May 2004 ("***Code Wallonne de l'Environnement***", hereafter the "**Environmental Code**"), provided that (i) the total final energy consumption of the activities audited in the framework of such an environmental agreement represent at least 60% of its final energy consumption in the Walloon Region, (ii) it keeps information on the last audit available for the energy minister or his representative for at least 10 years, (iii) it has not terminated its participation to the environmental agreement in the past 4 years and (iv) it proves its compliance with the aforementioned conditions by sending a completed form to the energy minister at least every 4 years.

Scope of the audit

The audit is based on current, measured, traceable and operational data on energy consumption and electricity load profiles.

The energy audit includes a detailed overview of the energy consumption profile of buildings or building groups, industrial processes or installations, including transport.

The energy audit is, insofar as possible, based on an analysis of the life-cycle costs, instead of mere depreciation periods, in order to take long-term cost savings, residual values of long-term investments and discount rates into account.

The energy audit is proportionate and sufficiently representative to be able to draw a reliable picture of overall energy performance and to determine the main improvement points in a reliable manner.

Internal or external auditors

External auditors, certified in accordance with the specifications set out in the Environmental Code.

Penalties

Any breach of the obligations can give rise to administrative sanctions:

> the absence of communication of the energy audit report or the due forms can give rise to administrative sanctions for an amount of €250 per week and, as from the end of a 1-year delay, of €20,000;

> the communication of above-mentioned report or forms containing errors can give rise to an administrative sanction for an amount of €250, it being understood that the undertaking has 1 month to review the error and that any delay can give rise to administrative sanctions for an amount of €250 per week and, as from the end of a 1-year delay, of €20,000;

> the absence of communication of the energy audit report, upon request, to the competent authorities can give rise to an administrative sanction for an amount of €25,000.

All above-mentioned sanctions are doubled if the undertaking has already been sentenced for any one of such infringements in the course of the previous 10 years.

Notification

Every 4 years, the undertaking must send the energy audit report to the energy minister and keep such report during a period of at least 10 years.

National legislation & guidance

The obligation has been implemented in Book 2, Title 5, Chapter 2 of the *Ordinance of 2 May 2013 holding the Brussels Code of Air, Climate and Energy Management* ("*Code bruxellois de l'Air, du Climat et de la Maîtrise de l'Energie*" or "*Brussels Wetboek van Lucht, Klimaat en Energiebeheersing*", hereafter the "**Code**") by an *Ordinance of 18 December 2015*, and further specified in an *Executive Order of the Brussels-Capital Government, dated 8 December 2016* (the "**Executive Order**").

The Brussels Institute for the Environmental Management ("*Institut Bruxellois pour la Gestion de l'Environnement*" or "*IBGE*" or "*Brussels Instituut voor Milieubeheer*" or "*BIM*") provides public guidance on the application/ interpretation of this legislation.

Concerned enterprises

Article 2.5.7 of the Code provides that it applies to all undertakings employing at least 250 people or whose annual turnover exceeds €50 million or whose annual balance exceeds €43 million.

This definition is aligned with the EU definition of non-SMEs as laid out in *Commission Recommendation 2003/361/ EC of 6 May 2003*, though no reference is made to connected or associated undertakings.

Who has to act

The relevant undertaking.

Exemptions

- Any undertaking which carries out an energy or environment management system which is certified by an independent body, in accordance with the relevant standards adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation, the European Telecommunications Standards Institute and the International Organisation for Standardisation and put at the public's disposal, provided that such system provides for an energy audit complying with the minimal criteria set out in the Code (whereby it is specified that "energy or environment management system" refers to a set of elements in correlation or in interaction, included in a plan which sets an energy efficiency objective as well as a strategy to meet such objective);
- Any undertaking which must carry out a local action plan for energy management ("*Plan local d'action pour la gestion énergétique*" or "*PLAGE*") in accordance with the Code (i.e. any company or non-profit organisation which owns or occupies buildings for a total surface area of at least 100,000m^2);
- Any undertaking which must carry out an audit by virtue of the legislation relating to environmental permits.

Scope of the audit	Internal or external auditors	Penalties	Notification
The audit is based on current, measured, traceable and operational data on energy consumption and electricity load profiles. The energy audit includes a detailed overview of the energy consumption profile of buildings or building groups, industrial processes or installations, including transport. The energy audit is, insofar as possible, based on an analysis of the life-cycle costs, instead of mere depreciation periods, in order to take long-term cost savings, residual values of long-term investments and discount rates into account. The energy audit is proportionate and sufficiently representative to be able to draw a reliable picture of overall energy performance and to determine the main improvement points in a reliable manner.	External auditors, certified in accordance with the specifications set out in the Code. These auditors must comply with a number of minimum criteria set out in the Code.	Any breach of the obligations can give rise to criminal sanctions, which can range between prison sentences from 8 days to 2 years and criminal fines between €50 and €100,000 multiplied by the inflation coefficient applicable to criminal fines (currently 8).	N/A.

02 Bulgaria

Diana Dimova
Partner, Bulgaria (Sofia)
Tel: (+359) 876210908
diana.dimova@kinstellar.com

Mladen Minev
Managing Associate, Bulgaria (Sofia)
Tel: (+359) 29048381
mladen.minev@kinstellar.com

National legislation & guidance

Article 8 of the EED is implemented in Chapter III, Section IV of the *Energy Efficiency Act* ("**EEA**"), promulgated in the State Gazette, issue No. 35, dated 15 May 2015.

Ordinance No E-РД-04-05, dated 8 September 2016, regulating energy audits in more detail, has been adopted by the Minister of Energy and the Minister of Economy and was promulgated in the State Gazette, issue No. 81, dated 14 October 2016 ("**Ordinance**").

The Bulgarian Sustainable Energy Development Agency ("**SEDA**") publishes non-binding guidance in relation to energy audits, see www.seea.government.bg.

Concerned enterprises

The duty to perform energy audits rests with:

> owners of certain industrial systems with an annual energy consumption exceeding 3,000 MWh;

> owners of systems for external artificial lighting in settlements with populations of over 20,000 people;

> non-SMEs engaged in economic activities, in particular manufacturing and provision of services. The EEA refers to the respective definitions in the *Small and Medium-Sized Enterprises Act* ("**SMSEA**") which follow closely the definitions laid down in Title I of the Annex to the *Commission Recommendation 2003/361/EC of 6 May 2003*. It is unclear whether partner enterprises and linked enterprises would also be included in the calculation concerning SME status. Further official guidance by SEDA is expected.

Who has to act

The law is inconsistent, addressing in certain cases the "owners of enterprises" and in other cases the "enterprises" themselves. However, it may be concluded that the obligation to assess whether an enterprise has to perform an energy audit lies with the representative body of each individual enterprise (company).

The representative body of each individual enterprise should conclude a contract for an energy audit.

Exemptions

Exemptions exist for:

> all enterprises engaged in the generation, transportation, distribution and supply of energy;

> enterprises and owners of industrial systems that have implemented a certified energy or environmental management system, which are in compliance with the minimum audit requirements under the Ordinance.

According to the guidelines of SEDA, issued prior to the adoption of the Ordinance, qualifying management systems are:

(i) ISO 14000 – Environmental Management System;

(ii) EN 16247-1 – Energy Audit Standard; and

(iii) ISO 50001 – Energy Management System.

However, SEDA may issue new guidelines for confirmation that such management systems are in compliance with the Ordinance; and

> qualifying legal entities/individuals who already performed an audit in accordance with the repealed Energy Efficiency Act. They are exempted from the duty to perform a new energy audit before 15 May 2016.

Scope of the audit

The mandatory energy audits should be carried out every four years. Nonetheless, a new mandatory energy audit should be performed for:

> industrial systems – one year after the implementation of major changes in the technological equipment and/or the production systems, a change in the fuel base or a change in the manner of energy conversion; and

> systems for external artificial lighting – within one year of implementation of changes in the installation or a change in the requirements for illumination of the site.

The Ordinance sets out the requirements in relation to the scope of the mandatory energy audits, which are based on the minimum criteria, laid down in Annex VI of the EED.

Internal or external auditors

The energy audits have to be performed by external auditors registered with a public registry kept by SEDA.

In order to be included in the registry, auditors have to be sole traders or companies that possess the necessary technical means and qualified personnel (i.e. energy efficiency consultants that meet specific education and practical experience requirements, and have successfully passed an exam).

Penalties

Failure to comply with the obligation to carry out a mandatory energy audit would result in administrative sanctions in the following amounts:

> a fine ranging from BGN 10,000 (approx. €5,100) to BGN 30,000 (approx. €15,300) could be imposed on natural persons; or

> a fine ranging from BGN 50,000 (approx. €25,500) to BGN 100,000 (approx. €50,100) could be imposed on companies and sole traders.

The EEA again prescribes that sanctions would be imposed on the "owner of the enterprise". It may be concluded that the term refers to the company that operates the going concern rather than the parent company or the shareholders. Therefore, a sanction would actually be imposed on the individual enterprise (company) that is non-compliant.

Notification

The concerned enterprise, acting through its representative body, is obliged to submit:

> a summary of the main findings of the energy audits, within 14 days of the completion of the energy audit, along with other ancillary documents as required by the Ordinance; and

> by 31 January every year, a declaration (in the substance and the form, as set out in the Ordinance) to SEDA that the concerned enterprise is subject to a mandatory energy audit.

For the purposes of exemption, the enterprises and owners of industrial systems should provide a declaration to SEDA that the used certified management system is in compliance with the Ordinance.

Energy auditors registered with SEDA are obliged to file with SEDA a list of the qualifying non-SMEs, industrial systems and systems for external artificial lighting that they have audited during the previous calendar year.

03 Czech Republic

Kamil Blažek
Partner, Czech Republic (Prague)
Tel: (+420) 221622160
kamil.blazek@kinstellar.com

Michal Forýtek
Senior Associate, Czech Republic (Prague)
Tel: (+420) 221622228
michal.forytek@kinstellar.com

National legislation & guidance

Article 8 of the EED was implemented into Czech legislation by *Amendment no. 103/2015 Coll.* (the "**Amendment**") to *Act no. 406/2000 Coll., on Energy Management* (the "**Energy Management Act**").

The Amendment came into force on 1 July 2015. As to the minimum criteria on energy audits pursuant to Annex VI of the EED, these have been implemented by *Decree no. 480/2012 Coll. to the Energy Management Act* (the "**Decree**").

Non-binding guidance on the duty to perform energy audits is provided by the Czech Ministry of Industry and Trade (the "**Ministry**").

Concerned enterprises

The duty to perform energy audits rests with:

> non-SMEs as defined in *Commission Recommendation 2003/361/EC of 6 May 2003*, and

> energy consumers whose total energy consumption exceeds 35,000 GJ (approx. 9,700 MWh) per year in the case of private sector consumers and 1,500 GJ (approx. 417 MWh) per year in the case of public bodies.

Who has to act

Responsibility for assessing whether an enterprise has to perform an energy audit rests with the representative body of each individual enterprise operating in the Czech Republic.

The obligation to implement the audit rests with the representative body of each individual enterprise operating in the Czech Republic.

Exemptions

An enterprise qualifying as a non-SME does not need to carry out an energy audit:

> if it has implemented and certified an energy management system according to Czech harmonised standard ČSN EN ISO 50001 or an environmental management system according to Czech harmonised standard ČSN EN ISO 14001 that includes an energy audit; or

> if it was subject to an energy audit in the three years prior to 1 July 2015.

Under certain conditions, enterprises without any energy consumption or control over energy consumption may be exempt from the duty to perform an energy audit.

Scope of the audit

The energy audit:

- has to be completed no later than on 5 December 2015 and thereafter regularly updated at least once every four years; and
- has to concern all energy facilities and buildings the enterprise in question uses or owns.

However, there might be certain parts of the energy usage that do not have to be audited, and, in particular, a building only falls within the scope of the energy audit if its substantial part is used by the enterprise in question.

In accordance with the implementing Decree, every energy audit includes, among other things, the following (i) a description and assessment of the existing condition of the audited object(s), (ii) a list of measures proposed to improve energy efficiency and (iii) selection of the optimal variant to be implemented.

Internal or external auditors

The energy audit may be performed by an internal or an external auditor.

An auditor may not hold a position on the executive body of the enterprise by which it is engaged to conduct the audit, or be a stakeholder thereof, or be a person close to such persons.

Czech energy auditors are enrolled on a list administrated by the Ministry that is publicly available on the Internet. In order to be entered on the list, auditors have to prove their technical knowledge by passing a mandatory exam and fulfil necessary education and experience requirements.

Penalties

The non-complying enterprise will be held responsible.

Failure to comply with the obligation to undertake an energy audit in due time and in an appropriate manner constitutes an administrative offence and could result in a fine of up to CZK 5 million (approx. €182,000).

Failure to provide an energy audit when requested by the Ministry or State Energy Inspection, or to notify and provide the required documents to the Ministry when the energy audit is carried out by an energy auditor from another EU Member State, constitutes an administrative offence and could result in a fine of up to CZK 100,000 (approx. €3,600).

Notification

Upon the request of the Ministry or the State Energy Inspection, the enterprise is obliged to provide the energy audit performed.
If the energy audit is carried out by an energy auditor from another EU Member State, the Ministry needs to be notified and provided with documents evidencing the authorisation of such energy auditor under the national law of the respective EU Member State.

04 France

Paul Lignières
Partner, France (Paris)
Tel: (+33) 15 64 35 70 1
paul.lignieres@linklaters.com

Marianna Frison-Roche
Managing Associate, France (Paris)
Tel: (+33) 15 64 32 80 5
marianna.frison-roche@linklaters.com

National legislation & guidance

Article 8 of the 2012/27 EU Directive has been implemented in the *French Energy Code (Articles L. 233-1 to L. 233-4 and R. 233-1 to D. 233-9)* by Article 40 of the *Law no. 2013-619 dated 16 July 2013*.

Implementation regulation has been adopted by the French Minister for Energy *(Decree no. 2013-1121, Decree no. 2014-1393* and *Ministerial order dated 24 November 2014 specifying the modalities of the energy audit)* as amended by *Ordinance no. 2015-1734* dated 24 December 2015 and *Decree no. 2015-1823* dated 30 December 2015.

The Ministry for Energy has published specific guidelines on an online page dedicated to energy audits regulation: *http://www.driee.ile-de-france.developpement-durable.gouv.fr/les-audits-energetiques-reglementaires-pour-les-a2427.html*

Concerned enterprises

The duty to perform energy audits rests with

> non-Small Medium Sized Enterprises (**SME**) as defined in *Commission Recommendation 2003/361/EC of 6 May 2003*.

> non-trading private legal entities with an economic activity, that for the accounting periods 2016 and 2015 had either:

(i) at least 250 employees; or

(ii) an annual turnover exceeding €50 million and a balance-sheet total exceeding €43 million.

Therefore, public entities in charge of public housing (*Offices Publics de l'Habitat*) or medical and social entities which are incorporated under the French Companies Register are also concerned.

Who has to act

The company itself has to act, as identified by its "SIREN" incorporation number.

Exemptions

> Companies that have an ISO 50001:2011 certification of an energy management system are exempted from performing an energy audit (*Article D. 233-4 of the French Energy Code*).

Scope of the audit

The energy audit must cover at least 80% of the amount of the company's energy consumption. *(Article D. 233-3 of the French Energy Code)*.

However, for energy audits carried out prior to 5 December 2015, the scope of the audit can be limited to at least 65% of the company's energy consumption. *(Article D. 233-5 of the French Energy Code)*.

In any case, an energy audit certified ISO 14001:2004 will be considered as adequate.

For a company which operates similar activities in various premises/buildings, the regulation enables it to carry out an energy audit based, under specific conditions, on a sample of these various premises/buildings *(order dated 24 November 2014 relating to the modalities of the energy audit, Article 1 and Appendix 1)*.

However, the regulation does not impose to carry out specific works for energy savings that would be recommended as a result of the energy audit. The obligation to carry out a full energy audit is only meant as an incentive for better energy consumption and energy saving measures by companies.

Internal or external auditors

Both external and internal audits are possible, provided that, in both cases, the auditor justifies the relevant specific technical qualifications which are listed in the *Appendix 2 of the order dated 24 November 2014 relating to the modalities of the energy audit (Article D. 233-6 of the French Energy Code)*.

> **External auditors** are notably required to be certified by the standard NF X 50-091 (or an equivalent standard) and justify sufficient previous professional experience in energy audits.

A list of external auditors has been published by the ATEE *(Association Technique Energie Environnement)* at: http://www.atee.fr/management-de-lenergie-audit-energetique.

> **Internal auditors** must also hold sufficient technical qualifications and notably be able to implement the methodology provided by the standard NF EN 16247-1:2012.

Both external and internal auditors are not allowed to directly take part in the activity within the scope of the audit of the concerned premises/building.

Penalties

The concerned non-SME will be held responsible for non-compliance.
(Article L. 233-4 of the French Energy Code).

In the event of a failure to comply with the obligation to carry out an energy audit, the representative of the State at a regional level *(Préfet de région)* will send a formal notice indicating a timeframe within which the concerned company will have to take steps in order to ensure its compliance.

Should this formal notice be left unremedied, a fine of an amount capped at 2% of the previous annual turnover (excluding VAT) may be applied.

That rate may be increased from 2% to 4% in the event of a repeat infringement.

Notification

The audits must be notified to the *Préfet de région* in the region where the company's head office is located or, for companies with a head office located abroad, to the representative of the State in the region Ile-de-France *(Préfet de la région Ile-de-France) (Article D. 233-7 of the French Energy Code)*.

This notification must also include:

> the definition of the scope of the performed audit;

> a summary of the audit (mentioning specific items such as, *inter alia*, the energy consumption and the type of energy used, proposed mitigation measures and the costs estimate for their implementation, the amount of annual energy savings etc.); and

> a copy of the valid ISO 50001:2011 or ISO 14001:2004 compliance certificate delivered by a certification authority.

This notification must be done through a dedicated national web platform within a two month-period after completion of the audit.

The platform was launched on 8 March 2016 at the following address *http://audit-energie.ademe.fr*

Non-SME should keep energy audit reports for 8 years and be able to produce them upon request from the *Préfet de Région* within 15 days.

05 Germany

Markus Appel
Partner, Germany (Berlin)
Tel: (+49) 30 21496 315
markus.appel@linklaters.com

Henry Hoda
Associate, Germany (Berlin)
Tel: (+49) 30 21496 310
henry.hoda@linklaters.com

National legislation & guidance

The relevant legislation implementing Article 8 of the EED is sec. 8 et seqq. of the German Act on Energy Services (*Energiedienstleistungsgesetz*, "**EDL-G**").

The Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*, "**BAFA**") has published an updated version of its non-binding guide on the duty to implement energy audits on 4 October 2016.

Apart from the BAFA Germany's promotional bank KfW published further non-binding guidance on the definition of micro, small and medium-sized enterprises.

Concerned enterprises

The duty to perform energy audits rests with non-SMEs as defined in *Commission Recommendation 2003/361/EC of 6 May 2003*.

Entities which have or will become non-SMEs after 5 December 2015 have to perform an energy audit within 20 months after the first day of the business year in which the entity has become a non-SME.

According to the BAFA, the following entities are not concerned:

> Entities which are not engaged in economic activities. This might, under certain conditions, apply to mere holding companies.

> Organisations mainly entrusted with tasks of public authority.

> Enterprises without any energy consumption.

Who has to act

The obligation to assess whether an enterprise has to perform an energy audit sits with the representative body of each individual enterprise operating in Germany.

The obligation to implement the energy audit sits with the representative body of each individual enterprise operating in Germany.

Exemptions

> Enterprises which have implemented a certified energy management system according to DIN EN ISO 50001 or a certified environment management system according to EMAS by 5 December 2015 are exempted from the duty to perform an energy audit.

> The duty to perform an energy audit by 5 December 2015 is deemed to be fulfilled if, between 4 December 2012 and 5 December 2015, an energy audit complying with the requirements pursuant to sec. 8a EDL-G has been carried out already.

  However, in this case, the respective enterprise has to carry out an energy audit at least every four years from the date of the previous audit.

> Until 31 December 2016, evidence of the commencement of the implementation of an energy management system or of an environment management system sufficed to be exempted from the duty to perform an energy audit by 5 December 2015.

Scope of the audit

In principle, the qualifying enterprise must perform an audit of the entirety of its energy usage. However, the BAFA considers an energy audit to be representative if it covers at least 90% of the total energy usage of the qualifying enterprise.

There are also certain parts of the energy usage that do not have to be audited, in particular the energy that is delivered to third parties, energy usage outside Germany or energy usage for international transportation that does not start or end in Germany.

The energy audit itself has to comply with DIN EN 16247-1.

Internal or external auditors

The energy audit may be performed by an internal or an external auditor.

If the energy audit is conducted by an internal auditor, he or she may not be involved in the activities the energy audit examines.

External auditors may be found in a list published by the Federal Authority for Energy Efficiency (*Bundesstelle für Energieeffizienz*).

Generally, auditors have to be independent of companies active in the distribution of energy efficiency products. Also, they have to prove their technical knowledge by respective training or studies.

Penalties

The non-complying enterprise will be held responsible. Compliance with the obligation to perform an energy audit is ensured via spot checks of the BAFA.

Enterprises requested to do so by the BAFA have to confirm in an electronic form on the BAFA website (www.bafa.de) that they have met their energy audit obligations or that they are exempted from the duty to perform energy audits.

A failure to notify an energy audit, when requested by the BAFA, or to undertake an energy audit in due time and in an appropriate manner constitutes an administrative offence and may be sanctioned by the BAFA with a fine of up to €50,000 per offence. This also applies if an enterprise erroneously declares that it qualifies as an SME.

Notification

A notification to the BAFA only has to be made upon the direct request of the BAFA.

06 Hungary

Kristóf Ferenczi
Partner, Hungary (Budapest)
Tel: (+36) 1 428 4471
kristof.ferenczi@kinstellar.com

Balázs Sepsey
Managing Associate, Hungary (Budapest)
Tel: (+36) 1 428 4417
balazs.sepsey@kinstellar.com

National legislation & guidance

The relevant Hungarian legislation implementing Article 8 of the EED consists of:

- *Act LVII of 2015 on Energy Efficiency* (the "**Energy Efficiency Act**");
- *Government Decree 122/2015. (V.26.) on Energy Efficiency* (the "**Energy Efficiency Decree**");
- the Energy Efficiency Act empowers the Hungarian Energy and Public Utility Regulatory Authority (the "**HEPURA**") to adopt a Decree on the reporting obligation of large enterprises and energy auditors. The Decree is expected to be adopted and published in the near future.

  The HEPURA has published legally non-binding guidelines in relation to energy audits on its website.

Concerned enterprises

The Energy Efficiency Act applies its own definition of non-SMEs which is based on the *Commission Recommendation 2003/361/EC of 6 May 2003*.

According to the Energy Efficiency Act, energy audits are mandatory for the following enterprises:

- enterprises which qualify as non-SMEs; and
- partner enterprises and linked enterprises, provided that their final energy consumption is at least equal to or more than 5% of the final energy consumption of the enterprise with the largest energy consumption in the corporate group, even if they are SMEs themselves. Notwithstanding the foregoing, pursuant to the latest modification of the Energy Efficiency Act, from 1 July 2017 partner enterprises will no longer be required to carry out energy audits, and linked enterprises will only be required to carry out energy audits if their final energy consumption is at least equal to or more than 3 GWh, even if they are SMEs themselves.

Who has to act

According to the Energy Efficiency Act, enterprises shall assess the audit obligation and implement the audit.

Owners and tenants have joint responsibility for conducting an energy audit for a given building if they are both large enterprises and the tenant leases more than 50% of the basic area in the whole building.

Exemptions

Pursuant to the Energy Efficiency Act, enterprises are not required to conduct energy audits if:

- they are non-SMEs and operate an EN ISO 50 001 qualified energy management system;
- they qualify as non-SMEs due to the fact that they are controlled directly or indirectly by public bodies with capital or voting rights of more than 25%;
- the energy consumption of a partner enterprise or a linked enterprise is below 5% of the final energy consumption of the enterprise with the largest energy consumption in the corporate group. We note that this exemption will be replaced from 1 July 2017 with the following one:
  - partner enterprises will no longer be required to carry out energy audits; and
  - linked enterprises will not be required to conduct energy audits if their energy consumption is less than 3 GWh.

Scope of the audit

The Energy Efficiency Decree contains more detailed rules than Annex VI of the Energy Efficiency Directive. Energy audit shall cover, among other things, the following (i) presentation of cost-efficient energy use possibilities, advanced technologies and equipments and potential renewable energy resources and (ii) methodology on monitoring the implementation of recommended measures.

Pursuant to the Energy Efficiency Decree, energy audits have to define the necessary measures in connection with potential savings in the following categories:

> simple: no investment required;

> cost-optimised: return without promotion;

> cost-associated: reasonable only with promotion.

According to the Energy Efficiency Decree, energy audits may be performed on the basis of the provisions of the standard MSZN EN 16247-1,-2,-3,-4 to the extent the rules of these standards comply with the minimum requirements of the Energy Efficiency Decree.

From 1 July 2017, an energy audit should not cover the energy consumption of a particular field which would otherwise be subject to the audit obligation (building, process, transport), if the energy consumption of such field is less than 10% of the concerned company's total energy consumption.

Internal or external auditors

Both internal and external audits are possible. Internal auditor is subject to specific criteria set out under the Energy Efficiency Decree.

External audits may be carried out by either energy auditors or energy audit organisations.

Penalties

Enterprises required to conduct energy audits are responsible for the preparation of the mandatory energy audit, whilst energy auditors and energy audit organisations are responsible for the professional content of the energy audit.

In case of non-compliance with the energy audit obligation, HEPURA may impose a fine in an amount of up to HUF 10 million (approx. €32,000) on obliged enterprises.

The fine can be re-imposed. The minimum amount of such fine is 150% of the previously imposed fine and the maximum amount is HUF 15 million (approx. €48,000).

The obliged company may be fined if it does not conduct a new energy audit within 180 days of the HEPURA's decision on the fact that the company's former energy audit is invalid.

HEPURA may impose a fine up to HUF 1 million (approx. €3,200) on energy auditors or energy audit organisations in case of non-compliance of their obligation to correct the energy audits within 90 days of the HEPURA's related request.

Notification

Large enterprises have to make an online registration every year. A failure to make the registration may be sanctioned by HEPURA with a fine up to HUF 1 million (approx. €3,200).

Large enterprises are required to submit a report to HEPURA every year about their energy consumption and implemented energy efficiency measures. Non-complying enterprises may be sanctioned by HEPURA with a fine up to HUF 1 million (approx. €3,200).

Energy auditors have to provide HEPURA relevant data in relation to the energy audit performed by them within 30 days of the completion of the audit.

07 Italy

Tessa Lee
Counsel, Italy (Milan)
Tel: (+39) 02 88393 5230
tessa.lee@linklaters.com

Silvia Di Stefano
Managing Associate, Italy (Milan)
Tel: (+39) 02 88393 5334
silvia.di_stefano@linklaters.com

National legislation & guidance

Italy has implemented Article 8 of the EED with *Legislative Decree no. 102 of 4 July 2014* ("**Decree 102**"), as subsequently integrated and amended.

In addition, the Ministry of Economic Development has provided certain clarifications in relation to some specific provisions of Decree 102 with a document called Clarifications in relation to the energy audits of the enterprises pursuant to Article 8 of Legislative Decree no. 102 of 2014 issued on May 2015 the "**Clarifications**").

More recently the *Legislative Decree no. 141 of 18 July 2016* ("**Decree 141**") has provided:

- a definition of energy audit in compliance with the definition provided by the EED;
- that the energy audits shall not include clauses preventing the findings of the audit from being transferred to any qualified/accredited energy service provider, on the condition that the customer does not object; and
- that access to the markets of the providers of energy services must be based on transparent and non-discriminatory criteria.

Concerned enterprises

The duty to perform energy audits rests with

- "large enterprises". With the Clarifications, the Ministry of Economic Development has specified that the definition provided by Article 2 of Decree 102 has to be integrated by reference to the criteria provided in *Commission Recommendation 2003/361/EC of 6 May 2003*; and
- energy intensive enterprises. These are enterprises with an energy consumption (electricity or other energy sources) of 2.4 GWh/year minimum and energy costs being at least 3% of the yearly turnover.

Who has to act

The "large enterprises" and the energy intensive enterprises.

Exemptions

Exemptions apply to enterprises that have adopted management systems consistent with the technical rules "EMAS" (i.e. the "Community eco-management and audit scheme" established by the *EU Regulation no. 1221/2009*) and ISO 50001 or EN ISO 14001, on condition the that the relevant environmental management systems include an energy audit performed in compliance with the minimum criteria indicated in Annex 2 to Decree 102 (which are the same criteria indicated in Annex VI to the EED).

Scope of the audit

In compliance with the EED, the Decree 102 provides that the energy audit has the purpose of obtaining an adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings. The energy audits must be performed in compliance with the minimum criteria indicated in Annex 2 to Decree 102 (which are the same as those listed in Annex VI to the EED).

The Clarifications provide that, in case the obliged enterprise operates several facilities, the energy audit shall be performed in a number of facilities (i) proportional and (ii) sufficiently representative, in order to: (a) provide an adequate picture of the enterprise's aggregated energy consumption; and (b) properly identify the most significant measures to implement.

"Big enterprises" shall perform an energy audit in their production sites located within the Italian territory by 5 December 2015 and subsequently every four years.

Energy intensive enterprises are required to commission energy audits within the same deadlines established for the "large enterprises", irrespective of their dimensions, and to put in place the measures of energy efficiency suggested by the audit within a reasonable time or, as an alternative, to adopt management systems consistent with the rules ISO 50001.

Internal or external auditors

Internal audits are not expressly excluded. But the ENEA shall perform controls over 100% of the energy audits carried out by internal auditors to ascertain that they are performed in compliance with the requirements set by Decree 102.

As to "External auditors", currently they are:

(i) companies that provide energy services;

(ii) experts in energy management;

(iii) energy auditors; and – in relation to the EMAS voluntary system; or

(iv) the National Superior Institution for Environmental Protection and Research (ISPRA).

Starting from 19 July 2016, the energy audits shall be carried out by entities certified by organisations accredited pursuant to the EU Regulation no. 765/2008 or that have adhered to international mutual recognition agreements, on the basis of the rules UNI CEI 11352, UNI CEI 11339 or further rules that should be elaborated by UNI CEI in collaboration with ENEA.

Penalties

The "large enterprises" and the energy intensive enterprises that do not commission the energy audit are subject to a fine ranging from €4,000 and €40,000.

If the energy audit is not performed in compliance with the applicable regulation, the fine is between €2,000 and €20,000.

Notification

The results of the energy audit must be communicated to the ENEA and the ISPRA.

The ENEA maintains and manages a database of the enterprises subject to energy audits where the date and findings of the energy audits are recorded.

08 Luxembourg

Guy Loesch
Partner, Luxembourg
Tel: (+352) 26088212
guy.loesch@linklaters.com

Oliver Reisch
Counsel, Luxembourg
Tel: (+352) 26088294
olivier.reisch@linklaters.com

National legislation & guidance

Article 8 of the EED has been implemented into Luxembourg Law in article 11 of the amended law of 5 August 1993 on the reasonable use of energy ("*Loi modifiée du 5 août 1993 concernant l'utilisation rationnelle de l'énergie*" (the "**Law**").

Concerned enterprises

Each enterprise, irrespective of its legal form, must carry out an energy audit by **10 December 2016** at the latest and then every four years from the date of the previous audit.

This obligation does only apply to non-SMEs; meaning enterprises where more than 250 persons are working and either have an annual turnover exceeding €50 million and/ or an annual balance sheet total exceeding €43 million. This definition corresponds with the EU definition of SMEs as laid out in Annex I to the Commission Regulation (EU) No 651/2014 of 17 June 2014.

In order to establish the size of an enterprise, employees and financial data of linked enterprises and partner enterprises must also be added.

Who has to act

The company in question.

Exemptions

Enterprises implementing an environmental or energy management system, certified by an accreditation body which is a signatory to the European accreditation multilateral agreement, do not need to comply with the obligation, provided that their management system has foreseen an energy audit which is to be performed in accordance with the minimum criteria provided for by the Law.

In addition, enterprises with an energy consumption below 100 MWh are allowed to perform a simplified audit which takes into account the cost-efficiency ratio of the audit.

Scope of the audit

Energy audits have to:

- be based on measured and traceable updated operation data on the energy consumption and, concerning electricity, on the load profiles;
- contain a detailed assessment of the energy consumption of buildings or groups of buildings, as well as industrial operations or installations, particularly in the transport sector;
- be based on an analysis of the life-cycle cost instead of on simple amortisation periods in order to take into account long-term cost-savings, the residual value of long-term investments and discount rates; and
- be in proportion and sufficiently representative to give a reliable picture of the overall energy performance and to effectively inventory the most significant opportunities for improvement.

Internal or external auditors

Energy audits must be carried out by either experts approved by the Minister for Economic Affairs or internal experts or energy auditors who are not directly engaged in the activity to be audited.

The Minister for Economic Affairs has already appointed experts entitled to perform energy audits.

Enterprises can appoint an internal expert or energy auditor, provided that the employee meets the criteria set by the Law and is fully independent when performing the energy audit.

Internal auditors do not have to be approved by the Minister for Economic Affairs.

Penalties

The legal entity, as well as all the members of a legal entity's board of directors, may be held responsible for non-compliance.

The Law provides for criminal sanctions in case of non-compliance. They range from eight days' to two months' imprisonment and/or a fine of up to €50,000.

Notification

There is no duty to notify a state agency of the energy audit performed.

However, upon specific request from the Minister for Economic Affairs, the enterprise is obliged to inform the Minister for Economic Affairs about the performance of the required energy audit.

09 The Netherlands

Anouk Oosterom
Counsel, The Netherlands (Amsterdam)
Tel: (+31) 207 996 276
anouk.oosterom@linklaters.com

Gijs Smit
Managing Associate, The Netherlands (Amsterdam)
Tel: (+31) 207 996 271
gijs.smit@linklaters.com

National legislation & guidance

The relevant implementing legislation is the *Dutch temporary regulation for the implementation of sections 8 and 14 of the Energy Efficiency Directive* (*Tijdelijke regeling implementatie artikelen 8 en 14 Richtlijn energie-efficiëntie*) pursuant to Section 21.6 paragraph 6 in conjunction with section 8.40 paragraph 1 of the *Environmental Management Act* (Wet milieubeheer, "**EMA**"). This temporary regulation entered into force on 1 July 2015.

Section 8, paragraphs 4-7, of the EED are eventually to be implemented in the fourth tranche of amendments to the *Dutch Activities* (Environmental Management) *Decree* (*Activiteitenbesluit milieubeheer*, "**Activities Decree**"), which is expected to be effected by year end 2015, following which the aforementioned temporary regulation will be withdrawn.

Public guidance is given in the website of the Netherlands Enterprise Agency ("*Rijksdienst voor Ondernemend Nederland*" or "**RvO**").

Concerned enterprises

The obligation to have energy audits performed applies to:

Anyone operating an establishment (the "**Company**") as referred to in section 1.1 of the EMA, which establishment also qualifies as an enterprise as referred to in title I of the attachment to *Commission Recommendation 2003/361/EC of 6 May 2003* and which establishment does not also belong to the category SME as referred to in section 2, sub 26, of the EED (the "**Enterprise**").

Who has to act

The Company has to ensure that the Enterprise is subject to an energy audit prior to 5 December 2015 and at least every four years from the date of the previous energy audit.

Exemptions

An exemption to this obligation applies in case the Company:

- is a party to the *Dutch Long-term agreement on energy efficiency 2001 – 2020* (*Meerjarenafspraak energie-efficiëntie 2001 – 2020*) or the D*utch Long-term agreement on energy efficiency ETS enterprises* (M*eerjarenafspraak energie-efficiëntie ETS-ondernemingen*); or
- applies an energy management system as referred to in section 2, paragraph 11, of the EED, which system is certified in accordance with European or international standards and comprises an energy audit which complies with the minimum criteria as referred to in schedule 11 to the EED.

Scope of the audit

The energy audit is to comply with the minimum criteria referred to in schedule VI to the EED.

The report of the energy audit is to at least contain the following information:

> a schematic overview of all energy streams present in the Enterprise, the scope and the functional division of such energy streams, and all conversions into other energy carriers that are based on actual, measured and traceable data regarding the energy consumption and electricity load profiles;

> a description of the key internal and external factors influencing the energy consumption, positively or negatively, of the Enterprise;

> a quantified overview of the energy-saving potential of the Enterprise with respect to the coming four years; and

> a description of the potential cost-efficient measures to save energy.

Internal or external auditors

The audit can be performed by the Company or an external service provider on the instruction of the Company.

Penalties

Pursuant to the Activities Decree, the competent authorities are entitled to impose sanctions.

Administrative sanctions (eg an order subject to a penalty for non-compliance) are stipulated in parts 5.3.1 and 5.3.2 of the *Dutch General Administrative Law Act* (*Algemene wet bestuursrecht*) and applicable to environmental legislation pursuant to chapter 5 of the *Dutch Environmental Permitting (General Provisions) Act* (*Wet algemene bepalingen omgevingsrecht*).

Criminal sanctions are stipulated in section 1a of the *Dutch Economic Offences Act* (*Wet op de economische delicten*) and applicable to the Activities Decree pursuant to section 8.40 of the EMA.

Notification

The report is to be submitted to the competent authorities within four weeks of completion of the audit.

The competent authorities verify the energy audit and submit the audit reports to the RvO.

10 Poland

Patryk Figiel
Managing Associate, Poland (Warsaw)
Tel: (+48) 22 526 5176
patryk.figiel@linklaters.com

National legislation & guidance

The Energy Efficiency Directive 2012/27/EU was implemented into the Polish legal system by the new act dated 20 May 2016 on energy efficiency ("**EEA**"), which entered into force on 1 October 2016.

The President of the Energy Regulatory Office ("**Prezes Urzędu Regulacji Energetyki**") has published an information bulletin in which it emphasised the establishment of the new obligation to perform energy audits; however, it did not set out any guidance in this respect.

Concerned enterprises

All enterprises, except for small and medium-sized enterprises (SMEs), will be obliged to perform energy audits every four years. The SMEs are defined by reference to the Polish legislation. Pursuant to the act on the Freedom of Business Activity dated 2 July 2004 (Polish: Ustawa o swobodzie działalności gospodarczej), SMEs are enterprises employing fewer than 250 persons and which have an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million. This definition is in line with the EU definition of SMEs.

The Polish act on the Freedom of Business Activity does not refer to (foreign) partner enterprises or linked enterprises with respect to the energy audits obligation.

Who has to act

The company in question is obliged to either perform an energy audit or have an energy audit performed by an independent auditor.

The parent company is not obliged to act for its subsidiary.

Exemptions

The following entities will be exempt from the obligation to perform an energy audit:

> energy management systems specified in the Polish Standard on energy management systems, requirements and recommendations of use; and

> enterprises which possess energy management systems and/or environmental management systems as defined in Article 2 point 13 of *EMAS Regulation (EC) No. 1221/2009*, if, within the scope of these systems, energy audits have been performed;

Pursuant to the *act on standardisation dated 12 September 2002* (Polish: *Ustawa o normalizacji*), "**Polish Standard**" means the national standard, adopted by consensus and approved by the national standardisation authority, widely available, marked by – on an exclusive basis – the symbol PN.

There are no further exemptions regarding the obligation to perform energy audits (i.e. there are no specific exemptions for holding companies).

Scope of the audit

Based on the interim provisions, an enterprise is obliged to perform its first energy audit within 12 months of the EEA's coming into force, that is by 1 October 2017. Please note that this deadline will probably be extended due to the fact that the relevant legislation has not been adopted yet.

Audits will be performed on the basis of actual, representative, measured and identifiable data regarding energy consumption and in reference to electricity, also regarding power demand. Audits will include a detailed review of all energy consumption in buildings, groups of buildings, industrial installations and transport. Audits will also be based (if possible) on life-cycle cost analysis of buildings, group of buildings and industrial installations.

The company has to retain data regarding the audit for a period of five years for inspection purposes.

Internal or external auditors

As a general rule, energy audits will be performed by external auditors.

However, energy audits may also be performed by internal auditors if they are not directly involved in the audited activities of the company.

Penalties

A company that fails to fulfil its energy audit obligations will be subject to a financial penalty of up to 5% of the turnover generated by that company in the preceding year.

There is no direct liability of the executive board members.

Notification

The company will be obliged to notify the Polish regulator, i.e. the President of the Energy Regulatory of the energy audit within 30 days of the completion of the energy audit.

The notification will also include information about energy savings which are possible to achieve.

11 Portugal

Pedro Siza Vieira
Partner, Portugal (Lisbon)
Tel: (+351) 2186 40014
pedro.siza@linklaters.com

Vera Eiró
Managing Associate, Portugal (Lisbon)
Tel: (+351) 2186 40020
vera.eiro@linklaters.com

National legislation & guidance

The relevant legislation implementing Article 8 of the EED is *Decree-Law n. º 68-A/2015, dated 30 April.*

There is a section of Q&A on the website of the Portuguese Agency for the Energy (*Agência para a Energia*, "**ADENE**") that may be helpful in accessing what is necessary in relation to some of the steps towards complying with the energy audit obligation (www.sgcie.publico.adene.pt/FAQS/Paginas/FAQs.aspx).

There are also guidelines available concerning the application and interpretation of Building Energy Certification System (www.adene.pt/sites/default/files/documentos/pr-sce_v0_maio2015.pdf).

Further guidance can be obtained at the Directorate General for Geology and Energy (DGEG) (www.dgeg.pt/).

Concerned enterprises

There is a general clause imposing an obligation on every non-SME to perform an energy audit periodically. The Portuguese definition of non-SMEs refers to the *Commission Recommendation 2003/361/EC of 6 May 2003* and follows the definition included in the EU Directives: SMEs means enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million.

The performance of the energy audits is regulated under other specific provisions which regulate different sectors, such as buildings, transport and intensive consumption enterprises.

Who has to act

The company in question or the owner if the audit relates to a building.

Exemptions

If the energy audit turns out not to be cost-effective, certain enterprises may be exempt from the obligation to have an energy audit every four years and this term may be extended to eight years.

Where buildings are concerned, there are a few exemptions, such as buildings used for religious purposes, buildings used exclusively for parking, storage and similar purposes, single-family buildings with a usable area equal or smaller than 50m^2, building in ruins, military infrastructures, monuments and buildings that are within protected areas.

Scope of the audit

The energy audit shall apply to the concerned enterprises (non-SMEs, as mentioned in section 2) and to industrial or commercial units, car fleets, buildings or building sections or other energy consumer equipment held by non-SMEs.

The scope of the audit depends on the characteristics of the unit and will be defined by the certified expert.

There are specific regulations concerning intensive energy consumption, which are entities whose facilities have had in the previous year an energy consumption exceeding 500 tonne of oil equivalent per year and specific regulations concerning companies within the transportation sector.

Payment of fees is due following each registration of energy consumption and registration of energy audits. Some of the fees are still to be approved by regulation of the competent ministry and have not yet been approved.

Internal or external auditors

Auditors have to be independent and certified. Depending on the audit target, there are different requirements and qualifications:

- relating to buildings, the expert must be certified by the Buildings Energy Certification System (*Sistema de Certificação Energética dos Edifícios* (SCE));
- relating to industrial facilities, the expert must be certified by the Management System for Intensive Energy Consumption (*Sistema de Gestão dos Consumos Intensivos de Energia (SGCIE)*); and
- relating to the transportation sector, the expert must be certified in compliance with the Management of Energy Consumption for the Transportation Sector Regulation (*Regulamento da Gestão do Consumo de Energia para o Sector dos Transportes (RGCEST)*).

All the certified experts must be registered with ADENE.

If there is an expert within the company with the necessary certification, that person may perform the energy audit, but the audit must then be registered with the competent authorities.

Penalties

Breach of the obligations to perform energy audits and breach of the obligation to register with the Directorate General for Geology and Energy are considered as misdemeanours that can give cause to the payment of fines from €250 up to €3,640 for individuals and from €2,500 up to €44,000 for enterprises, with possible ancillary penalties, depending on the importance of the breach.

As a general rule, the company will be held responsible for non-compliance. Directors may be held responsible in accordance with the Portuguese Companies Code (*Código das Sociedades Comerciais*), Article 72.º: as a rule, managers, administrators or directors are liable towards the company for damages caused by acts or omissions in breach of their legal or contractual obligations, except if they prove that they have committed no fault.

Notification

There is a registration requirement of the company in question with the Directorate General for Geology and Energy (*Direcção-General de Energia e Geologia* (DGEG). Some of the platforms in which it will be possible to register online are still in construction.

Also, every four years the company will be required to register its energy consumption. Concerning industrial facilities, this may be done through this website: www.sgcie.publico.adene.pt/SGCIE/Paginas/RegistoInstalacoes.aspx.

12 Romania

Iustinian Captariu
Counsel, Romania (Bucharest)
Tel: (+40) 213071643
iustinian.captariu@kinstellar.com

Amalia De Ligenza
Senior Associate, Romania (Bucharest)
Tel: (+40) 213071671
amalia.deligenza@kinstellar.com

National legislation & guidance

Article 8 of the EED has been implemented in Romania by *Law no. 121/2014 on energy efficiency*, which was amended, effective from 29 July 2016, by Law no. 160/2016 (the "**Energy Efficiency Law**").

In addition, the Romanian energy regulator ("**ANRE**"), through its dedicated Energy Efficiency Department, has issued some secondary legislation and further guidance, including:

(i) a regulation on authorising energy auditors in the industry sector;

(ii) a decision approving the minimum clauses to be included in energy management contracts; and

(iii) a guide on preparing energy audits.

Concerned enterprises

The duty to perform energy audits rests with:

> non-SMEs. SMEs under Romanian law are defined in line with the EU definition by reference to *Commission Recommendation 2003/361/EC of 6 May 2003*.

> companies (regardless of whether SMEs or non-SMEs) whose energy consumption exceeds 1,000 toe (tonne of oil equivalent) per year.

This includes branches, working points and other secondary seats whose energy consumption exceeds 1,000 toe per year which are deemed as independent units under the Energy Efficiency Law if (i) located at different geographic points and (ii) not directly connected through their functionality or through energy networks.

Who has to act

The company in question, through its relevant representative body.

Each company meeting the criteria set forth in the Energy Efficiency Law, as well as each branch/working point/secondary seat deemed to be an independent unit, has the obligation to perform an energy audit.

Exemptions

Non-SMEs that have implemented either (i) an energy management system certified by a duly accredited certification body according to SR EN ISO 50001:2011 standard or (ii) an environmental management system certified by a duly accredited certification body according to SR EN ISO 14001:2005 standard are exempted from the obligation of carrying out an energy audit every four years if they prove that the certification of the respective management system was obtained based on an energy audit prepared in accordance with the Energy Efficiency Law.

Scope of the audit

All entities that are obliged to perform an energy audit, but have not performed one by 4 August 2014 (date of entry into force of the Energy Efficiency Law), must perform an energy audit by 5 December 2015 and repeat it every four years. All entities having performed an energy audit after 1 January 2013 must perform the next energy audit four years after the date of the audit performed, according to the requirements of the Energy Efficiency Law.

As of 29 July 2016, for companies whose energy consumption exceeds 1,000 toe per year, the energy audit is limited to an energy consumption outline chosen by the company, which must, nevertheless, represent at least 50% of the aggregate energy consumption outline of that company. New provisions also clarify the rules applicable for companies with multiple secondary seats among which for some the energy consumption exceeds 1,000 toe per year and for others the consumption is below this threshold.

Detailed information on the scope of energy audits and different types of energy balances used are included in the Guide on Preparing Energy Audits issued by ANRE.

Companies whose energy consumption exceeds 1,000 toe per year are under an obligation to additionally perform other energy efficiency related obligations provided by law:

(i) preparation of programmes for energy efficiency improvement; and

(ii) appointing an ANRE certified energy manager or concluding an energy management agreement with an ANRE certified individual or company.

Internal or external auditors

An external audit by ANRE authorised auditors is required. External auditors (including contact details) are listed on a dedicated page on ANRE's website.

Penalties

The company, subject to the obligation of performing the energy audit, would be liable and will be obliged to pay any relevant fine.

In any case, for secondary seats (such as branches/working points/other secondary seats) deemed independent units, the impact of the fine would ultimately always be on the parent company.

Non-compliance with the obligations to carry out energy audits by companies with an energy consumption exceeding 1,000 toe per year is sanctioned by imposition of fines of between RON 10,000 (approx. €2,300) and RON 200,000 (approx. €45,200). The exact amount of the fine will be determined pro rata with respect to energy consumption according to a specific formula.

For failure to comply with other obligations related to performance of energy audits, fines range from RON 1,000 (approx. €225) to RON 30,000 (approx. €6,800).

As an energy efficiency certificate is required for construction of new buildings, as well as for the sale and lease of certain types of buildings (including energy consuming buildings), non-compliance results in a risk of cancellation of the relevant sale-purchase/lease agreement or the handover protocol being declared null and void.

Notification

There is no explicit legal obligation to notify the performance of an energy audit, but entities under an obligation to perform energy audits have an obligation to submit a yearly overall energy consumption statement to ANRE, and, for consumers exceeding the 1,000 toe per year threshold, an energy review questionnaire as well.

In any case, upon ANRE's request, the relevant information/documents should be submitted.

On the other hand, energy auditors are under an obligation to report to ANRE a list of the energy audits performed during each year.

13 Serbia

Branislav Marić
Partner, Serbia (Belgrade)
Tel: (+381) 13210201
branislav.maric@kinstellar.com

Tijana Arsenijević
Senior Associate, Serbia (Belgrade)
Tel: (+381) 113210210
tijana.arsenijevic@kinstellar.com

National legislation & guidance

Although the Republic of Serbia is not a member of the EU, as part of the Energy Community, it is obliged to implement certain EU laws. There is no duty to transpose the current *EED 2012/27/EU* at the moment but such duty is expected to be introduced in the following years.

The main law regulating energy efficiency in the Republic of Serbia is the *Law on Efficient Use of Energy* (the "**Energy Efficiency Law**"), which was adopted in 2013 and transposed the main provisions of *Directives 2006/32/EC*, *2010/30/EC* and *2010/31/EC*.

In 2016, a number of by-laws and rulebooks to the Energy Efficiency Law were adopted, including:

(i) a rulebook on the appointment of energy managers in local municipalities and companies predominantly engaged in the production sector;

(ii) a decree setting out the thresholds for annual energy consumption based on which obligors of the energy management system are determined; and

(iii) a rulebook regulating conditions for use of state funds for improving energy efficiency and criteria for exemption from the obligation to perform an energy review.

However, several implementing regulations to the Energy Efficiency Law are still missing, *inter alia*, the methodology for conducting energy reviews and the manner and conditions for performing energy audits.

In general, the issuing of interpretation and guidance on new laws is not customary in the

(continued...)

Concerned enterprises

The Energy Efficiency Law does not contain a definition of SMEs and instead contains a list of "obligors" of the energy management system, which depending on the predominant business activity and thresholds for energy consumption has the obligation to undergo an energy review at least once in five years. This obligation also applies to most public bodies, as well as public companies using publicly owned facilities (except for facilities used by the public obligors of the energy management system having more than 500m² of usable area and facilities that are classified within the prescribed energy classes for which an energy review has to be performed at least once every ten years).

According to the Energy Efficiency Law, an energy review is mandatory for:

> facilities used by the public obligors of the energy management system (having more than 500m² of usable area);

> facilities and/or their respective parts, that are classified within the prescribed energy classes; and

> facilities and their respective parts, in the case of a change in their purpose or owner, or if they are intended for renting.

Obligors predominantly engaged in the production sector and/or trade and services sector are obliged to undertake an energy review if they consume energy in excess of respective thresholds prescribed by a Government decree adopted in 2016.

These thresholds are:

(continued...)

Who has to act

The obligation to assess whether an entity has to perform an energy review rests with the users or owners of the relevant facilities.

The users or owners of the relevant facilities are obliged to procure an energy review.

Exemptions

A certain exemption to the obligation to perform an energy review is introduced under the rulebook regulating conditions for use of state funds for improving energy efficiency and criteria for an exemption from the obligation to perform an energy review adopted in 2016.

According to this rulebook, when applying for budget funds to improve energy efficiency or following completion of a project aimed at improving energy efficiency, users of the state budget (i.e. municipalities and households) are obliged to submit a report on the performed energy review. This obligation does not apply to projects whose value is less than RSD 500,000 (approx. €4,000).

National legislation & guidance	Concerned enterprises	Who has to act	Exemptions
Republic of Serbia and has not been made available for energy reviews. The ministry in charge of energy is the main point of contact when it comes to interpretation of the Energy Efficiency Law and the relevant by-laws, but such opinions are generally not legally binding.	> for companies whose main activity is production – annual primary energy consumption is higher than 2,500 toe per year (for entities engaged in, *inter alia*, agriculture, mining, construction, processing, electricity supply and water supply); > for companies whose main activity is production but which do not perform the activities listed immediately above – aggregate primary annual energy consumption in all objects they possess is higher than 1,000 toe; and > for companies whose main activity is trade and services (including wholesale, telecommunications, traffic, storage, accommodation) – annual primary energy consumption is higher than 1,000 toe per year.		

Scope of the audit

Energy reviews need to be performed in line with the methodology adopted by a competent ministry; however, no such methodology has yet been adopted.

A report on a conducted energy review contains, inter alia, analysis of energy efficiency of the facility, technical and economic analysis of the potential for increasing the energy efficiency of the facility, an estimate of the potential energy savings and a decrease in CO_2 emissions, and other data important for estimating energy efficiency of the facility, as well as proposed measures aimed at increasing the energy efficiency.

The Energy Efficiency Law also regulates an energy audit which is defined as a systematic procedure with an aim to check results of the energy review and effects on the development of energy efficiency and implementing other analysis and measures in accordance with the Energy Efficiency Law.

Internal or external auditors

An energy adviser needs to be external as the Energy Efficiency Law provides that there is a conflict of interest in the event that an energy adviser is employed by the entity which is subject to the energy review.

An energy review and energy audit needs to be conducted by a licensed energy adviser, who can be a legal or natural person registered with the Serbian ministry in charge of energy affairs. In the case of obligors of an energy management system, the certified energy adviser must be a legal entity.

Penalties

A company or other legal entity listed as an obligor of the energy management system may be fined if it does not perform a regular energy review with a fine ranging from RSD 500,000 (approx. €4,200) to RSD 1 million (approx. €8,400). A responsible person within such legal entity may also be fined in an amount ranging from RSD 5,000 (approx. €40) to RSD 150,000 (approx. €1,250).

The Energy Efficiency Law does not prescribe any fines or other sanctions, in the case where owners of a building fail to procure the relevant energy review report.

Notification

Pursuant to the Energy Efficiency law, the energy adviser needs, upon conducting an energy review and audit, to submit to the relevant ministry data on such review and audit within deadlines and in the manner and form determined by such ministry. However, the relevant by-law has not yet been adopted.

14 Slovakia

Roman Oleksik
Partner, Slovakia (Bratislava)
Tel: (+421) 259291155
roman.oleksik@kinstellar.com

Jakub Berthoty
Associate, Slovakia (Bratislava)
Tel: (+421) 259291126
jakub.berthoty@kinstellar.com

National legislation & guidance

The relevant legislation implementing Article 8 of the EED is *Act No. 321/2014 Coll.* on the energy efficiency (the "**Act**") effective as of 1 December 2014.

As to the minimal criteria on energy audits pursuant to Annex VI of the EED, these have been implemented by *Decree No. 179/2015 Coll. on energy audit of the Ministry of Economy* (the "**Decree**").

Public guidance on provisions of the Act implementing Article 8 of the EED is in the form of an explanatory report to the Act and information provided on the website of Slovak Innovation and Energy Agency ("**SIEA**").

Concerned enterprises

The duty to perform energy audits rests with:

> "large enterprises". These are non-SMEs in the sense of the *Commission Regulation No. 651/2014 of 17 June 2014* (the "**Regulation**"). The Act does not explicitly take account of the partner or linked enterprises within the meaning of the Regulation. However, we believe that for the purpose of assessment of whether the enterprise with its registered seat in Slovakia fulfils the definition of a large enterprise, the cross-border links to the partner and linked enterprises with the seat outside Slovakia must be taken into consideration.

> electricity producers – when constructing a new electricity facility or renewing an existing electricity facility with a certain minimum output – are obliged to undertake energy audits for the purpose of showing the heat supply potential of the facility to the Ministry of Economy.

> heat producers beyond 10 MW output are obliged to undertake energy audits for the purpose of showing the electricity (made by highly effective combined production of electricity and heat production) supply potential of the facility to the Ministry of Economy.

Who has to act

The Company in question or, in case of a branch office, the founder of such branch office.

Exemptions

> If the company in question adopts and complies with an energy or environment management system (i.e. STN EN ISO 50001 and STN EN ISO 14001/AC), the requirement of periodic (once per four years) energy audits no longer applies. However, when adopting such management system it is still necessary to perform an energy audit at least once.

> There are no explicit exemptions for holding companies or enterprises with no economic activity or no energy consumption.

> Based on the Act's transitory provisions, only enterprises which were established or became large enterprises prior to the effectiveness of the Act, i.e. prior to 1 December 2014, are obliged to comply with these obligations by 5 December 2015.

  Enterprises which were established or became large enterprises on or after 1 December 2014 shall adopt energy audits (or a management system) at least once per four years, i.e. by 1 December 2018 at the latest.

Scope of the audit

In general, an energy audit is a set of (non-binding) energy saving recommendations to the company made by a certified energy auditor.

The Decree sets out more detailed requirements as regards the content of energy audits, its respective parts, as well as sets of data/information which need to be submitted to SIEA.

Based on the Decree, the energy saving recommendations shall include: a description of the recommendation; energy savings in technical units; energy costs savings; investment costs; operation costs; and return of the investment.

Based on such recommendations, the energy auditor then calculates economic and environmental evaluation of such recommendations.

Internal or external auditors

Internal and external audits are possible.

Energy audits can be done only by certified energy auditors which can be either an employee or an external subcontractor.

A list of Slovak energy auditors is available on the Slovak Innovation and Energy Agency's website at: www.siea.sk/materials/files/vzdelavanie/energeticky_auditor/Zoznam_En_auditorov_SIEA.pdf.

Energy auditors certified in other EU/EEA Member States are also allowed to produce energy audits.

Penalties

The company in question will be held liable.

However, the branch office (although being registered in Slovakia) does not have a separate legal identity under Slovak law and, therefore, the founder of such branch is subject to all obligations under the Act, including potential penalties for non-compliance.

The consequence for non-compliance is administrative liability.

The Slovak Trade Inspection shall impose an administrative penalty of €5,000 to €30,000 for not adopting an energy audit despite the statutory obligation.

An administrative penalty of €500 to €5,000 shall be imposed for not complying with other obligations under the Act.

Notification

Large enterprises are obliged to provide SIEA with data/information pursuant to the Decree and a summary information list from the energy audit within 30 days of its production.

The written report from the energy audit shall be provided to SIEA within 30 days of its request.

There is also a duty to keep a record of the written report of the energy audit together with any material on which the energy audit is based until the undertaking of the next energy audit.

15 Spain

José Giménez
Partner, Spain (Madrid)
Tel: (+34) 91 399 6150
jose.gimenez@linklaters.com

Roberto Sánchez
Counsel, Spain (Madrid)
Tel: (+34) 91 399 6047
roberto.sanchez@linklaters.com

National legislation & guidance

Article 8 of the EU's Energy Efficiency Directive ("EED") was implemented in Spain in February 2016 by Royal Decree 56/2016 of 12 February 2016 on energy audits, accreditation of service providers, energy auditors and promoting efficiency in energy supply ("**Royal Decree 56/2016**").

The Spanish Markets and Competition Authority (*Comisión Nacional de los Mercados y la Competencia*) or the Ministry of Energy, Tourism and Digital Agenda are expected to provide future guidance, where appropriate.

Concerned enterprises

Generally speaking, Royal Decree 56/2016 applies to non-SME companies. When defining non-SME companies, Royal Decree 56/2016 follows the EU definition contained in Commission Recommendation 2003/361/EC of 6 May 2003. For the avoidance of doubt, this refers to companies (i) employing at least 250 persons; or (ii) whose annual turnover exceeds €50 million and whose total annual balance sheet exceeds €43 million.

Royal Decree 56/2016 also applies to groups of companies (as defined in Article 42 of the Spanish Commercial Code) that, taking into account the aggregate figures of all the companies that form the consolidated group, meet non-SME requirements.

Who has to act

The company in question has to act.

Exemptions

All micro, small and medium-sized companies ("SMEs") are excluded from the scope of application of Royal Decree 56/2012, in accordance with Title I of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003.

Scope of the audit

According to Article 3 of Royal Decree 56/2016, energy audits must:

(a) be based on current, measured and verifiable operational data on energy consumption and, in the case of electricity, load profiles whenever they become available.

(b) include a detailed examination of energy consumption profiles of buildings or groups of buildings, industrial or commercial operations or installations, or a private or public service, including transportation within the facilities or, where necessary, vehicle fleets.

(c) be based, wherever possible, on profitability standards in the cost analysis of the life cycle rather than simple depreciation periods, in order to take into account long-term savings, residual values of long-term investments and discount rates.

(d) be proportionate and sufficiently representative so that a reliable picture of the overall energy performance can be estimated, and the most significant improvement opportunities can be reliably determined.

Internal or external auditors

Energy audits must be performed by properly qualified energy auditors.

However, they may be performed by qualified technicians belonging to the audited company, provided that (i) they are not directly involved in the audited activities; and (ii) they do not belong to an internal control department in such company.

Penalties

The company in breach of the obligations is liable. Failure to comply the obligations set forth in Royal Decree 56/2016 could potentially entail penalties, including fines of up to approx. €100,000, and interim measures, such as a bar on carrying out its activity for a period of not less than two years and no more than five years.

Notification

Any energy audits carried out will be registered with the Energy Audits Registry created by the Ministry of Energy, Tourism and Digital Agenda.

Applications for registration have to be submitted to the competent regional authority on energy efficiency where the audited installations are located, within three months of the energy audit.

16 Sweden

David Hansson
Managing Associate, Sweden (Stockholm)
Tel: (+46) 8 665 4154
david.hansson@linklaters.com

Anna Eriksson
Associate, Sweden (Stockholm)
Tel: (+46) 8 665 6741
anna.eriksson@linklaters.com

National legislation & guidance

The EED Audit Obligation is implemented in Sweden through the *Swedish Act (2014:266) on energy auditing* (the "**Swedish Act**"), the *decree (2014:347) on energy audits in large enterprises*, and the *Energy Authority's guidelines (2014:4020) regarding energy audits in large enterprises*.

In addition thereto, the Energy Authority has published a FAQ document on their web page that is updated continuously.

Any energy audit related questions may be addressed directly to the Swedish Energy Agency by e-mail to: infoekl@energymyndigheten.se.

Concerned enterprises

The duty will apply to all enterprises qualifying as large enterprises.

These are defined as enterprises that have at least 250 employees and an annual turnover exceeding €50 million or a balance sheet exceeding €43 million.

Enterprise is to be interpreted in accordance with section I of the appendix to the *Commission Recommendation 2003/361/EC of 6 May 2003*.

Who has to act

Each Swedish entity is obliged to make its own assessment whether it is required under the Swedish Act to perform an energy audit or not.

The Swedish parent company is responsible for the energy audit of the group, but may choose whether the audit shall be implemented on a group level or if each of the group companies shall provide information regarding its business (in which case each group company shall inform the authority which company group it belongs to).

Exemptions

Scope of the audit

The energy audit shall be performed with such detail that it gives a representative picture of the enterprise's aggregated energy consumption, including a general description of the enterprise's total energy consumption, as well as a more detailed description of the business areas to which the enterprise's material energy consumption are referable.

The extent of the obligation is assessed on a case-by-case basis, taking into consideration the business of the specific entity subject to such energy audit, as well as that the audit has to be detailed enough to be used as a decisions basis for concrete energy saving measures.

The energy audit shall be conducted in accordance with international ISO standard, European EN-standard or Swedish SS standard.

Internal or external auditors

Internal audits are possible; however, the person conducting the energy audit has to be certified and independent in relation to the business audited. In order for a person employed by the enterprise that is to be audited to fulfil the requirement of independency, he/she cannot be directly involved in the business that is to be audited.

A list of all certified external energy auditors is available at the Swedish Energy Agency's web page, please see link below.

www.energimyndigheten.se/energieffektivisering/lag-och-ratt/energikartlaggning-i-stora-foretag/certifierad-energikartlaggare/certifierade-energikartlaggare/.

Penalties

The relevant entity or, in the case of a group, the Swedish parent company is liable in case of non-compliance.

The Swedish Energy Agency may issue orders against a non-complying large entity, requesting the relevant entity to take actions deemed (reasonably) necessary by the authority in order to complete the supervision of the company's energy audit.

Such order may be accompanied by a penalty, should the requested actions not be completed within the time period granted in the order.

The penalty amount will be calculated as a percentage of the company's turnover during a certain time period, taking into consideration the non-complying entity's financial strength (based on the latest annual report) and other relevant circumstances.

With that said, the penalty amount will always amount to at least the cost of performing the energy audit or (if higher) the estimated gain/savings that the relevant enterprise can be assumed to normally have received by not conducting the energy audit.

Notification

All enterprises required under the Swedish Act to perform an energy audit, shall provide the Swedish Energy Agency with information of the energy audit performed.

As part of the supervision and evaluation of the Swedish Act, the Swedish Energy Agency will request entities to provide information regarding the total energy consumption for buildings, operational energy and transportation, as well as information regarding proposed cost-effective and energy saving measures.

17 Turkey

Halide Çetinkaya
Partner, Turkey (Istanbul)
Tel: (+90) 2123495022
halide.cetinkaya@kinstellar.com

Onur Taktak
Partner, Turkey (Istanbul)
Tel (+90) 2123495027
onur.taktak@kinstellar.com

National legislation & guidance

Turkish legislators have not enacted any law or regulation on the application of Article 8 of the Energy Efficiency Directive (EED). However, the *Turkish Law on Energy Efficiency No. 5627* and the secondary legislation under it (the "**Law**") has a corresponding intent and purpose. The objective of the Law is the effective use of energy and decreasing the cost of energy.

The Ministry of Energy and Natural Resources, the General Directorate of Renewable Energy, the Energy Efficiency Association (ENVER) and the Energy Efficiency and Management Association (EYODER) provide further guidance.

Concerned enterprises

The energy audit scope is determined by the definitions of industrial enterprise and building, and the specified thresholds for energy consumption and construction area.

The criteria for performing an energy audit for both a building and industrial enterprise are as follows:

> industrial enterprise: An annual energy consumption of over 5000 toe (tonne of oil equivalent); and

> building: If used in the service sector and have a floor area of over 20,000m^2.

The concept of non-SME (as the one given by the EED) is not defined at all by the Law.

Who has to act

The General Directorate of Renewable Energy determines whether an energy audit will be performed based on the company's shared data.

The General Directorate of Renewable Energy and the companies it empowers implement the audit.

Exemptions

Exemptions apply to:

> monuments;

> agricultural plants in which business and production takes place;

> buildings used as chapels;

> buildings whose planned period of use is less than two years;

> buildings used less than four months a year; and

> buildings with a used area less than 50m^2.

Scope of the audit

Having an energy manager and/or establishing an energy management unit is an obligation under the Law. However, if an Industrial Enterprise has a quality management department which includes an energy manager, then that Industrial Enterprise can use that department as an energy management unit.

The following should have an energy manager:

> industrial enterprises that annually consume over 1,000 toe;

> commercial and service-sector buildings that have at least 20,000m^2 of floor space or annually consume over 500 toe; and

> public buildings that have at least 10,000m^2 of floor area or annually consume over 250 toe.

The following should establish an energy management unit:

> organised industrial zones which contain at least 50 enterprises each with an annual consumption of less than 1,000 toe; and

> industrial enterprises outside the public sector that consume over 50,000 toe.

Buildings and enterprises should comply with the national or international ISO 50001 – Standard for Energy Management Systems, Operating Manual and Conditions.

Internal or external auditors

Audits can only be performed by the General Directorate of Renewable Energy or by the companies it empowers.

The General Directorate of Renewable Energy is a subsidiary of the Ministry of Energy and Natural Resources. Therefore, an internal audit is not possible.

Penalties

The General Directorate of Renewable Energy determines non-compliance. Industrial Enterprises, owners or the management of a building are liable for non-compliance.

However, the specific persons of an Industrial Enterprise who would be liable are not determined in the Law.

In the case of non-compliance of an industrial enterprise, that enterprise will be subject to an administrative fine of TL 37,951.

Notification

Once performed, the energy audit report should be sent to the General Directorate of Renewable Energy.

18 United Kingdom

Vanessa Havard-Williams
Partner, United Kingdom (London)
Tel: (+44) 20 7456 4280
vanessa.havard-williams@linklaters.com

Ruth Knox
Associate, United Kingdom (London)
Tel: (+44) 20 7456 4413
ruth.knox@linklaters.com

National legislation & guidance

The relevant implementing legislation is the Energy Savings Opportunity Scheme Regulations 2014 (SI 2014/1643) (the "**ESOS Regulations**").

The UK Environment Agency has issued guidance (now on Version 5.0) titled "Complying with the Energy Savings Opportunity Scheme".

A helpful outline of the regime is also provided by the Department of Energy and Climate Change at: www.gov.uk/guidance/energy-savings-opportunity-scheme-esos.

Concerned enterprises

The UK regime implements the EU definition of an SME in reverse by defining a "large undertaking" as one:

> employing at least 250 persons; or

> having an annual turnover over €50 million and an annual balance sheet total of €43 million.

In respect of a UK-registered undertaking, "employees" includes all employees contracted in the UK or abroad, irrespective of the total hours for which they are employed. A large undertaking includes an overseas (non-UK registered) company with a UK registered establishment which has 250 or more UK employees.

Private equity funds structured as limited partnerships will be treated similarly to other corporate groupings in that the control tests specified in the Companies Act 2006 will still apply.

Additionally, if an undertaking forming part of an ESOS organisation supplies energy to another organisation for the latter's consumption, such energy supplies will not form part of the ESOS undertaking's assessment to the extent that such energy supplies;

(i) are measured; or

(ii) can be reasonably estimated.

Specifically, in respect of investment companies, where such companies do not have turnover and employ fewer than 250 persons, they fall outside the ESOS Regulations. However, where such companies have at least one large undertaking in their group that provides goods and/or services, all of the group's activities within the UK will be within scope (subject to exemptions).

Who has to act

If so, the highest UK parent company needs to identify all the UK subsidiaries which form part of the group as determined by applying specific tests set out under the Companies Act 2006. Both the highest UK parent company, the large undertaking (if different from the highest UK parent company) and the relevant subsidiary companies will then form the UK ESOS organisation.

The highest UK parent company is responsible for ensuring that the ESOS assessment is completed and for notifying the Environment Agency of compliance for itself and on behalf of its subsidiary undertakings. Another undertaking within the highest UK parent group can be chosen to act as the responsible undertaking, provided all undertakings in the highest UK parent group agree this in writing. Separately, undertakings within a highest UK parent group can disaggregate from one another for the purposes of ESOS, provided they agree in writing with their highest UK parent.

Exemptions

Where the relevant energy consumption of a participant is monitored or assessed under:

(i) a certified ISO 50001 energy management system;

(ii) the Display Energy Certificate regime which shows the energy performance of public buildings only; or

(iii) the Green Deal regime, which provides assessments for domestic and non-domestic buildings that qualify under Regulation 7 of the Green Deal Framework Regulations 2012.

During the relevant compliance period (and such assessments are appropriately documented), then the participant shall be deemed to have complied with the duty to perform an ESOS assessment.

> Any such existing certifications or assessments must have been issued after 5 December 2011 and be valid as at the compliance date i.e. 5 December 2015 for the first compliance period; 5 December 2019 for the second compliance period.

> If the relevant organisation has zero energy supplies, then it does not need to appoint a lead assessor in order to complete a notification of compliance. However, it will need to notify the Environment Agency that, although the organisation qualifies for the scheme, it has no energy responsibility.

Scope of the audit

Compliance with the ESOS Regulations in relation to the scope of the audit is a two stage process. First of all, the qualifying organisation will have to calculate the total energy consumption of the ESOS organisation forming the subject of a notification for the relevant compliance period based on the energy consumption during a "reference period" of assets held and activities carried out by the participant on the relevant qualification date, e.g. energy consumption from buildings, modes of transport and industrial processes held or used by the group. The "reference period" refers to the period of 12 consecutive months which

(i) begins no more than 12 months before 31 December 2014 (or the relevant qualification date); and

(ii) ends on or before the compliance date (in respect of the first phase, 5 December 2015; in respect of the second phase, 5 December 2019).

Once the total energy consumption has been calculated, the responsible undertaking may elect to identify its "areas of significant energy consumption" for the purposes of carrying out an energy audit. These consist of assets held or activities carried on by the participant which together account for not less than 90% of the participant's total energy consumption. The alternative to this is auditing 100% of the use of its non-exempt operations.

Internal or external auditors

The audits must be carried out by approved "lead assessors" who can be either internal or external to the ESOS organisation.

The lead assessor must be a member of an approved ESOS lead assessor register.

A link to the current list of approved registers of lead assessors can be found here: www.gov.uk/guidance/energy-savings-opportunity-scheme-esos.

Penalties

The regulator may impose financial and publication penalties if organisations do not meet their obligations. Penalties include:

> £5,000 for failures to notify or maintain records; and

> £50,000 for a failure to undertake an energy audit.

Additional penalties of £500 per day may apply for each working day that undertakings remain in breach. The outlined penalties are imposed upon the relevant responsible undertaking (i.e. the highest parent of the group, nominated responsible undertaking or disaggregated undertaking(s)). An Environment Agency ("**EA**") newsletter issued in July 2016 stated that the EA *inter alia* will:

> focus on ensuring compliance, using enforcement notices where necessary;

> serve civil penalties only in serious cases; and

> serve compliance notices (i.e. information requests) in cases where the EA suspects a breach and requires further information.

The EA has a dedicated ESOS Enforcement Team targeting high risk organisations, with a number of compliance and enforcement notices already served. Regarding the 150 organisations which submitted an "Intent to Comply Late Notification" but have not submitted a full compliance notification, the EA indicated that it was monitoring progress made towards compliance and will issue enforcement notices to bring them into compliance where necessary. The agency will be working with external contractors to carry out further audits until March 2017. Participants should keep and maintain evidence to demonstrate how they have complied with the scheme.

Notification

An individual with management control (i.e. board members or, where these do not exist, persons exercising management control, a "responsible officer") of the responsible undertaking had to submit a notification of compliance to the Environment Agency by 5 December 2015 in respect of the first phase.

The Environment Agency then stated that enforcement action would not normally be taken, provided that the relevant notification of compliance was received by 29 January 2016 and, for those organisations committing to achieving compliance through ISO 50001 certification, enforcement action would not normally be taken as long as notification was received by 30 June 2016. In respect of the second phase, notifications will need to be submitted by 5 December 2019. Where an internal lead assessor performs the relevant audit, two responsible officers will need to provide the relevant notification in writing.

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Our dedicated energy lawyers have peerless knowledge and experience, encompassing major transactions and regulatory advice across:

> power generation – thermal, nuclear and renewable;

> oil and gas – E&P, transportation, storage, petrochemicals and refineries, LNG;

> networks – electricity transmission and distribution; and

> energy trading and commodities.

Projects & Energy – Europe, 1st tier
Chambers 2015

A global footprint

With more than 50 partners and over 180 other lawyers dedicated to energy work across our network of 29 offices, alongside our alliances with firms in Asia, Australia and South Africa, Linklaters can provide full global coverage to meet our clients' needs.

Kinstellar's energy practice

Kinstellar's energy practice consists of more than 20 lawyers located in our offices throughout Emerging Europe, Turkey and Central Asia. We are a closely integrated regional energy practice team, sharing matters, common training and know-how on a continuous basis.

Our track record includes work with conventional power generators, major utilities, energy commodity traders, oil and gas upstream and downstream companies, renewable energy companies, financial institutions and energy sector investors throughout Emerging Europe, Turkey and Central Asia.

We understand not only the legal perspective of the energy business but are also aware of the industry's underlying key commercial and technical issues. Moreover, we closely monitor and are often involved in the legislative processes in our home jurisdictions and are fully up-to-date on local and EU legislation affecting the energy sector.

You can rely on our specialist expert advice for:

> energy project development;

> financing of an energy project;

> investing in renewable energy projects;

> acquiring an energy company or energy assets;

> negotiating energy-related commercial agreements, network contracts and infrastructure development agreements;

> the regulation of the energy markets; and

> energy and climate change policy matters.

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