

CLEAN ENERGY FOR ALL EUROPEANS – NEW EU RULES FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY

Three acts of the Clean Energy for all Europeans Package, covering renewable energy, energy efficiency and governance, have entered into force at the end of 2018 and will reshape the renewable energy landscape in Europe over the coming years.

BACKGROUND

On 30 November 2016, the European Commission presented a proposal for the Clean Energy for all Europeans Package ("Clean Energy Package") consisting of measures to facilitate the clean energy transition. The Clean Energy Package is designed to define the internal energy market regulatory framework up to 2030 and to make the EU's energy sector more stable, competitive and sustainable. It has three main goals: (i) putting energy efficiency first, (ii) achieving global leadership in renewable energy and (iii) providing a fair deal for consumers. Its focus is to incorporate low carbon electricity generation by improving the rules for the internal energy market.

The Clean Energy Package includes eight different legislative acts. The Energy Performance in Buildings Directive (EU) 2018/844 has already entered into force in July 2018 and is not covered by this briefing. The adopted acts discussed in this briefing include:

- the revised Renewable Energy Directive (EU) 2018/2001, OJ L 328/82 ("RES Directive"), repealing the previous Renewable Energy Directive 2009/28/EC,
- the revised Energy Efficiency Directive (EU) 2018/2002, OJ L 328/210 ("Efficiency Directive"), amending the current Energy Efficiency Directive 2012/27/EU, and
- the Governance of the Energy Union Regulation (EU) 2018/1999, OJ L 328/1 ("Governance Regulation"), which amends a number of Directives and repeals the Regulation (EU) No 525/2013 on the mechanisms for monitoring and reporting greenhouse gas emissions.

Political agreement has also been reached for the amended Electricity Directive, Electricity Regulation, Risk-preparedness Regulation and ACER Regulation with expected adoption by the Parliament and Council in early 2019.

Key issues

- A new renewable energy target of at least 32% and an energy efficiency target of at least 32.5% are set for the EU
- Market based support mechanisms for renewable energy projects are a key instrument to increase the share of renewable electricity in the new framework
- The new framework shall improve regulatory certainty and enabling conditions for investments to take place in the renewable energy sector
- Consumers shall be empowered to become full active participants in the energy transition
- National Energy and Climate Plans (NECPs) will be the new framework for Member States to plan their climate and energy objectives in an integrated manner

RENEWABLE ENERGY

The RES Directive adapts the framework for renewable energy development to the 2030 perspective, aims to provide certainty and predictability to investors and addresses the potential of renewable energy sources ("RES") in several sectors.

The RES Directive sets a new, binding EU target of at least 32% for the overall share of RES in gross energy consumption of energy in 2030. It also includes a review clause by 2023 for an upward revision of the EU level target. Member States will have to include their national contributions to the overall target in their integrated National Energy and Climate Plans ("NECP"), enforced through the Governance Regulation, discussed later in this briefing.

It further aims to:

- enable a further increase of renewable energy in the electricity sector,
- increase the level of ambition for the heating, cooling and transport sectors and strengthen the sustainability of the use of biofuels,
- decarbonise the transport sector in a sustainable way and
- empower consumers.

The RES Directive abolishes the grid access and dispatching privileges contained in the previous Directive. However, in case of congestion or over-supply, the grid operator will need to make curtailment choices. In that instance, an alternative to the previous "priority regime" will be introduced under the recast of the Electricity Regulation..

Increasing renewable energy in the electricity sector

While the share of electricity from renewable energy sources ("RES-E") has already increased to 29%, the EU would like to see a further increase to make the electricity sector more inclusive, diverse and secure. For that reason, the RES Directive improves the framework for support schemes, by including stronger principles for Member States to follow when designing their support schemes. In addition, the RES Directive promotes the opening of support schemes for RES-E from other Member States and aims to simplify the administrative procedures for renewable energy projects.

Support schemes

Energy markets alone cannot deliver the desired level of RES in the EU, which is why national support schemes were introduced to overcome this market failure and promote further investment. While the previous Directive did not harmonize the use of support schemes nor impose specific conditions for their design, the RES Directive still does not fully harmonise the use of those schemes and remains rather flexible in how Member States are to implement them. It does however include general principles that Member States should follow when designing their support schemes, especially the following:

- It underlines that schemes shall incentivise the integration of RES-E in a market-based and market-responsive way as well as take into account possible system integration costs and grid stability. This provision is supposed to ensure their stability, decrease the cost of deployment and further Europeanise the policy for renewables.

- For direct price support schemes, the RES Directive prescribes that support shall be granted in the form of a market premium, which could be sliding or fixed.
- The support should be granted through an open, transparent, competitive, non-discriminatory and cost-effective manner. Tendering may be limited to specific technologies where opening support to all producers would lead to a sub-optimal result considering a number of situations laid down in the Directive. Tendering processes shall include non-discriminatory and transparent criteria and set clear dates and rules for delivery

Opening of support schemes for RES-E from other Member States

Cooperation between Member States was already encouraged under the previous Directive. Yet, the possibilities have so far hardly been used by the Member States. The RES Directive provides Member States with the *option* to open participation in support schemes for producers of RES-E located in another Member State.

Concretely, a Member State may provide support for an indicative share of its annual newly-supported capacity, or of the budget allocated thereto, to producers in other Member States. The indicative shares may, in each year, amount to, at least 5% between 2023 and 2026 and at least 10% between 2027 and 2030, or, where lower, to the level of interconnectivity of the concerned Member State in any given year.

Proof of physical import of RES-E may be required by Member States, and to that end Member States may limit participation in their support schemes to producers that are located in Member States with which there is a direct interconnection. The RES Directive however warns Member States to not change or otherwise affect cross-zonal schedules or capacity allocation. It underlines that cross-border electricity transfers shall only be determined by the outcome of capacity allocation pursuant to EU law.

If a Member State decides to open support to producers in other Member States, the participating Member States need to agree on the principles of participating in the cross-border support schemes, which as a minimum should contain the principles of allocation of renewable electricity that is the subject of cross-border support.

The Commission will evaluate the implementation of support schemes in other Member States by 2023 and will assess the need to make it an *obligation* for Member States to partially open their support schemes to RES-E produced in other Member States. The Commission envisages a 5% opening by 2025 and a 10% opening by 2030.

Simplified administrative procedures

The RES Directive obliges the Member States to introduce single points of contact for the applicants and provides for time limits for the permit granting processes. The permit granting process shall cover relevant administrative permits to build, repower, and operate plants for the production of RES and assets necessary for their connection to the grid. In principle, the permit granting process cannot exceed a period of two years for procedures applicable to power plants. Where duly justified this period may be extended by up to one year.

Mainstreaming RES in the heating, cooling and transport sectors and strengthening sustainability

Heating and cooling

The Commission in 2016 reported that the energy used for heating and cooling in buildings and industry accounts for about 50% of the EU's annual energy consumption and that renewable energy only accounts for just 18% of the heating and cooling supply. In line with the Commission's EU Heating and Cooling Strategy of 2016, the RES Directive now includes the heating and cooling sectors more explicitly in a number of provisions.

In order to make sure that RES are mainstreamed in the heating and cooling sectors, the RES Directive lays down that each Member State shall endeavour to increase their share of renewable energy supplied for heating and cooling by an indicative 1.3 percentage points as an annual average calculated for the periods of 2021-2025 and 2026-2030, starting from the level achieved in 2020. Member States may establish and make public a list of measures and may designate and make public the implementing entities, such as fuel suppliers, public or professional bodies, which shall contribute to this increase.

In the area of district heating and cooling, information needs to be provided to final consumers on the energy performance and the share of RES in their district heating and cooling systems. Member States shall allow consumers to disconnect, i.e. terminate or modify their contract, in order to produce heating or cooling from RES themselves, if the systems are not considered efficient as per the Directive by 31 December 2025.

Transport

The EU's transport sector is still largely dependent on oil supplies to fuel cars, trucks, ships and planes. The RES Directive now wants to encourage the further development of alternative transport fuels, such as advanced biofuels. Namely, the RES Directive requires each Member State to set an obligation on fuel suppliers to ensure that the share of renewable energy within the final consumption of energy in the transport sector is at least 14% by 2030 (minimum share) in accordance with an indicative trajectory set by the Member State and calculated in accordance with the methodology set out in the Directive. The Commission will assess that obligation with a view to submitting a legislative proposal by 2023 to increase the target in the event of further substantial costs reductions in the production of renewable energy, where necessary to meet the EU's international commitments for decarbonisation, or where justified on the grounds of a significant decrease in energy consumption in the EU.

Sustainability

The RES Directive includes sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels and a mechanism of verification of compliance is included. It is understood from the Recitals that the EU wishes to harmonise the sustainability and greenhouse gas emissions saving criteria across the Member States and that steps will be taken in this direction to promote sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels.

The Commission will monitor the origin of biofuels, bioliquids and biomass fuels consumed in the EU and the impact of their production, including the impact as a result of displacement, on land use in the EU and in the main third

countries of supply. Such monitoring shall be based on Member States' integrated NECPs and corresponding progress reports enforced through the Governance Regulation.

Empowering Consumers

The RES Directive recognizes the consumers as the drivers of the energy transition and lays down provisions applicable to renewable self-consumers and renewable energy communities:

- Renewable self-consumers are entitled to generate renewable energy, including for their own consumption, store and sell their excess production, install and operate electricity storage systems combined with installations generating RES-E for self-consumption, and receive a remuneration for the self-generated electricity they feed into the grid. The Directive maintains their rights and obligations as final consumers. Charges and fees may only be applied to self-generated electricity under certain conditions laid down by the Directive, inter alia if the self-generated RES-E is produced in installations with a total installed electrical capacity of more than 30 kW.
- Renewable energy communities are entitled to produce, consume, store and sell RES and Member States shall ensure that final customers are entitled to participate in such communities without losing their rights as final customer. The Member States shall provide an enabling framework to promote and facilitate the development of renewable energy communities.

ENERGY EFFICIENCY

The EU framework for energy efficiency was built around an energy efficiency target of 20% for 2020. Most provisions of the Efficiency Directive do not introduce significant changes, but rather provide an update of existing obligations in order to fit the 2030 perspective. The Efficiency Directive sets a new energy efficiency target for the EU for 2030 of at least 32.5%.

Member States shall set indicative national energy efficiency contributions towards the EU's 2030 target in accordance with the Governance Regulation, i.e. through inclusion in the Member States' integrated NECPs, laid down in the Governance Regulation.

The Commission will assess the EU's 2030 energy efficiency targets with a view to submit a legislative proposal by 2023 to revise those targets upwards in the event of substantial cost reductions resulting from economic or technological developments, or where needed to meet the EU's international commitments for decarbonisation.

GOVERNANCE OF THE ENERGY UNION

The Governance Regulation sets out the framework for EU Member States and the Commission to work together towards achieving the common project of providing all Europeans access to secure, affordable and climate-friendly energy. The Regulation takes account of the obligations that arose out of the Paris Climate Agreement and aims to ensure that national objectives and policies are coherent with EU goals. In doing so, the Regulation consolidates the existing scattered planning and reporting obligations from the main pieces of EU legislation across energy, climate and other Energy Union related policy areas. Especially, the RES Directive and the Efficiency Directive contain numerous references to the Governance Regulation. It is expected that this

alignment of reporting obligations across the different frameworks will enhance transparency and reduce the administrative burden on Member States.

Member States' obligations related to planning and reporting are clarified under the current Regulation and the process for review, and if needed, sanctioning, is repeated in the provisions of this Regulation, making the Member States' various obligations under EU as well as international law more transparent.

Integrated National Energy and Climate Plans (NECPs)

The Member States shall notify their first binding NECP to the Commission by 31 December 2019, and every ten years thereafter. The first plan shall cover the period from 2021 to 2030, bearing in mind the longer-term perspective. Objectives, targets and contributions shall be set out for the five dimensions of the Energy Union, namely for (i) decarbonisation, (ii) energy efficiency, (iii) energy security, (iv) internal energy market, and (v) research, innovation and competitiveness.

A public consultation shall be provided in drafting those plans. Member States are expected to collaborate at a regional level to efficiently reach the targets. The Commission will assess these plans and will look at whether the targets, objectives and contributions are sufficient for the collective achievement of the Energy Union objectives, and for the first ten-years period in particular the targets of the Union's 2030 Climate and Energy Framework; and whether they comply with the requirements laid down in the Regulation as well as pursuant Commission recommendations.

The Member States have to prepare and report their long-term low emission strategies with a 50-year perspective to the Commission by 1 January 2020 and every 10 years thereafter.

The above follows the Commission's long-term strategy to become climate neutral by 2050. In addition, in aiming to achieve the overall climate objectives, the Commission shall, by 1 April 2019, adopt a proposal for an EU long-term strategy for greenhouse gas emissions reduction in accordance with the Paris Agreement, taking into account the Member States' draft integrated NECPs.

Reporting

The Member States shall report, inter alia, on the status of implementation of the NECP by means of integrated national energy and climate progress reports to the Commission by 15 March 2023, and every two years thereafter. The reports should cover all five dimensions of the Energy Union. Detailed requirements of what those progress reports should contain are laid down in the Governance Regulation.

Furthermore, by 15 March 2021 and every two years thereafter, Member States shall undertake:

- integrated reporting on greenhouse gas policies, measures and projections; and
- integrated reporting on national adaptation actions, financial and technology support provided to developing countries and auctioning revenue.

By 30 April 2022, the Member States shall report on the achievement of the 2020 energy efficiency national targets.

The Commission will establish an online platform (e-platform) to facilitate communication between the Member States and the Commission and to promote cooperation between the Member States and facilitate public access to information. The e-platform shall become operational by 1 January 2020.

Assessment of progress

By 31 October 2021 and every two years thereafter, the Commission shall assess, in particular on the basis of the integrated national energy and climate progress reports, the progress made at EU and Member State levels.

If based on the Commission's assessment of progress, policy developments show inconsistencies with the overarching objectives of the Energy Union, the Commission shall issue recommendations to the Member States concerned.

Response to insufficient ambition

On the first planning level the Commission assesses the draft integrated NECPs or draft updates. If the Commission concludes that the objectives, targets and contributions of the Member States are insufficient for the collective achievement of the Energy Union objectives, and in particular for the first ten-year period, for the Union's binding 2030 targets for renewable energy and the Union's 2030 target for energy efficiency, the Commission:

- *shall* as regards the Union's target for renewable energy issue recommendations to the Member States whose contribution is deemed insufficient to increase their ambition in order to achieve a sufficient level of collective ambition, and
- *may* as regards the other Energy Union objectives issue recommendations to the Member States whose contribution is deemed insufficient to increase their ambition in order to achieve a sufficient level of collective ambition.

Response to insufficient progress

Furthermore, the Commission observes the progress towards the Union's energy and climate objectives and targets. If the Commission merely concludes that insufficient progress is made by a Member State towards meeting their targets, objectives and contributions, their reference points for renewable energy, or in implementing the policies and measures set out in their integrated NECP, the Commission shall issue a recommendation to the respective Member State. Where, on the basis of its aggregate assessment of Member States' integrated national energy and climate progress reports and supported by other information sources, as appropriate, the Commission concludes that the Union is at risk of not meeting the objectives of the Energy Union (and in particular for the first ten-year period, the targets of the Union's 2030 Framework for Climate and Energy), it may issue recommendations to all Member States pursuant to mitigate such a risk.

- In the area of *renewable energy*, the Commission shall assess if the national measures are sufficient to achieve the Union's renewable energy targets. In the case of insufficient national measures, the Commission shall, as appropriate, propose measures and exercise its power at Union level in addition to those recommendations in order to ensure, in particular, the achievement of the Union's 2030 target for renewable energy.
- In the area of *energy efficiency*, the Commission shall as appropriate, propose measures and exercise its powers at Union level in addition

to those recommendations in order to ensure, in particular, the achievement of the Union's 2030 target for energy efficiency.

OUTLOOK

The RES Directive, Efficiency Directive and Governance Regulation, are central pieces to realize the EU's wider long-term strategy to become climate neutral by 2050.

The provisions of the revised RES Directive that represent a substantive amendment as compared to the earlier version will need to be transposed into national law by 30 June 2021 at the latest and, hence, require material changes to the Member States' RES-E support schemes and other areas of law.

The revised Efficiency Directive, which will have to be implemented by June 2020 (with some provisions only due for implementation by October 2020), provides an energy efficiency framework towards 2030 that needs to be reflected in the Member States' NECPs.

The Governance Regulation will be directly applicable in national law and should ensure that a transparent and reliable planning, reporting and monitoring system is in place. It is expected that the Regulation will ease the administrative burden on the national authorities and will still allow the Commission to monitor Member State progress towards achieving their targets as well as their impact on the overall EU target.

CONTACTS

Dr. Björn Heinlein
Partner

T +49 211 4355 5099
E bjoern.heinlein
@cliffordchance.com

Dr. Mathias Elspaß
Partner

T +49 211 4355 5260
E mathias.elspass
@cliffordchance.com

Dr. Thomas Voland
Partner

T +49 211 4355 5642
E thomas.voland
@cliffordchance.com

Dr. Martin Weitenberg
Counsel

T +49 211 4355 5110
E martin.weitenberg
@cliffordchance.com

Katelijan Van Hende
Business Development
Manager

T +49 211 4355 5356
E katelijan.vanhende
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. If you would like to know more about the subjects covered in this publication or our services, please contact the authors or your usual contact at Clifford Chance.

www.cliffordchance.com

Clifford Chance, Königsallee 59, 40215
Düsseldorf, Germany

© Clifford Chance 2019

Clifford Chance Deutschland LLP is a limited liability partnership with registered office at 10 Upper Bank Street, London E14 5JJ, registered in England and Wales under OC393460. A branch office of the firm is registered in the Partnership Register at Frankfurt am Main Local Court under PR 2189.

Regulatory information pursuant to Sec. 5
TMG and 2, 3 DL-InfoV:

www.cliffordchance.com/deuregulatory

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.