Clean Energy Package adopted

What will change?
Introduction

The Clean Energy for all Europeans Package ("Clean Energy Package") has been a long time coming. First proposed in November 2016, it was heavily negotiated by the Council of the European Union, the European Parliament and the European Commission ("Commission").

The Clean Energy Package comprises eight different legislative proposals which by now have all been adopted (or at least agreed upon). They provide an update to the European energy policy framework, aimed at facilitating the energy transition and providing a modern European energy market. The legislation mainly covers the following aspects: (1) rules on a new electricity market design, (2) rules on the promotion and integration of energy from renewable sources, (3) rules on energy efficiency and (4) rules on the institutional framework.

Following our Client alert on the Commission’s proposals from 2016, we are now happy to brief you on the key provisions of the adopted documents. If you have further questions on particular aspects of the new legislation or their potential legal implications for your business, do not hesitate to contact us. We will be delighted to discuss any issues with you in person.

Yours sincerely,

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The Clean Energy Package is part of an overall package of more than 40 planned measures, first announced in February 2015, designed by the Commission to strengthen and standardise the European Union’s energy markets. It includes the following eight legislative proposals:

1. Recast of the Internal Electricity Market Directive ("ElecDir")
2. Recast of the Internal Electricity Market Regulation ("ElecReg")
3. Recast of the ACER Regulation ("AcerReg")
5. Recast of the Renewable Energy Directive ("RED")
6. Revised Energy Efficiency Directive ("EED")
8. Regulation on the Governance of the Energy Union ("GovReg")

The transposition of the regulations and directives into national law will keep the Member States busy until the summer of 2021:
Electricity Market Design

The new electricity market design is intended to better fit the future electricity markets, which will be characterised by more variable and decentralised production, an increased interdependence between cross-border systems and opportunities for consumers to participate in the market through demand-side response, aggregation, self-generation, smart metering and storage.
Regulation on the Internal Market for Electricity (recast)

The Regulation on the internal market for electricity ("ElecReg") aims at setting fundamental principles for well-functioning, integrated electricity markets, which allow non-discriminatory market access for all resource providers and electricity consumers.

The ElecReg will be binding in its entirety and directly applicable in all Member States as from 1 January 2020, by which time the existing Regulation (EC) No. 714/2009 will be repealed, whereas some provisions on bidding zones and Regional Coordination Centres will already become binding earlier.
Core market principles
> ElecReg sets out principles which are to govern the national electricity markets in the future.
> Market rules shall, amongst other things
– encourage free price formation;
– empower customers to participate in the energy market and the energy transition;
– allow for aggregation of generation or load from multiple facilities to provide joint offers on the market;
– enable the integration of electricity from renewable energy sources and provide incentives for energy efficiency; and
– deliver appropriate (long-term) investment incentives for a decarbonised and sustainable electricity system, for energy storage, energy efficiency and demand response.
> Safe and sustainable generation, storage and demand are to participate on equal footing in the market.
> Barriers to cross-border electricity flows and transactions shall be progressively removed.
> Market participants shall have a right to obtain grid access on objective, transparent and non-discriminatory terms. (Art. 3)

Wholesale trading
> The rules on wholesale trading aim to prevent the introduction of capping or floors on wholesale prices.
> For day-ahead and intraday markets ElecReg
– includes harmonised gate closure times;
– asks for short market intervals; and
– includes products with bid sizes of ≤ 500 kW to allow for participation of demand-side response, energy storage and small-scale renewables. (Art. 8)
> Market participants, including generators of electricity from renewables, shall be able to hedge price risks.
– To this end, Transmission System Operators (“TSOs”) shall issue long-term transmission rights or have equivalent measures in place.
– Long-term transmission rights shall be allocated on a single allocation platform. (Art. 9)
> There shall be no maximum or minimum limit on wholesale electricity prices, except for harmonised limits on clearing prices for day-ahead and intraday timeframes. This shall take into account the maximum value of lost load (VoLL, i.e. the highest price customers are willing to pay to avoid an outage). (Art. 10)

Balancing markets
> All market participants shall individually or by aggregation have non-discriminatory access to balancing markets.
> The settlement of balancing energy shall be based on marginal pricing, pay-as-cleared, unless an alternative pricing method is approved by all national regulatory bodies.
> By 2021, the imbalance settlement procedure shall be 15 minutes, but (limited) derogations remain possible until the end of 2024.
> TSOs shall publish information on their system balance, the estimated imbalance and energy prices as close to real time as possible (with a 30-minute maximum delay). (Art. 8, Art. 6)

Balancing responsibility
> All market participants shall be responsible for the imbalances they cause in the system. They may delegate this responsibility to a third party. Derogations are possible for
– demonstration projects;
– generating installations < 400 kW (as from 2026: 200 kW); and
– installations supported under the EU state aid rules commissioned prior to the entry into force of the Regulation.
> In this case, the Member State has to ensure that another party takes the financial responsibility for any imbalances. (Art. 5)
## Key Takeaways

### Dispatch

- Dispatching of electricity generation and demand-response shall be non-discriminatory, transparent and widely market-based.

- Priority dispatch for generators of electricity from renewable sources
  - shall be granted for small renewables with a capacity < 400 kW (as from 2026: 200 kW) and demonstration projects for innovative technologies;
  - may be granted for electricity from high-efficiency cogeneration with a capacity < 400 kW; and
  - shall not be used to justify cross-border curtailment.

- Grandfathering rules apply to generators which have already been granted priority dispatch as long as the generating facility is not modified significantly.

- Priority dispatch is to be understood as the dispatch of power plants based on other criteria than the merit order and, if in a Member State dispatching is executed in a central model by a TSO, also from network constraints. (Art. 2, Art. 12)

### Re-Dispatch

- Re-dispatching (including curtailment) of generation and demand response shall be based on objective, transparent and non-discriminatory criteria and be open to all kinds of generation technologies, storage and demand response, including operators from other Member States if technically feasible.

- Non-market-based re-dispatching or curtailment of generators using renewable sources is only possible if no other alternatives exist or using those would lead to disproportionate costs or severe risks to network security.

- The system operator requesting re-dispatch or curtailment shall financially compensate the facilities concerned. This entails reimbursing
  - additional operating costs; and/or
  - lost net-revenues otherwise generated on the day-ahead market, including financial support, if applicable.

- Network planning may take into account re-dispatching up to 5% of the annually generated electricity from renewable energy sources directly connected to the grid. (Art. 13)

### Congestion

- Congestion shall be solved with market-based methods. Transaction curtailment shall only take place as a last resort, when re-dispatching or countertrading is not possible.

- Capacity shall be allocated through explicit or implicit auctioning, including both energy and capacity. Continuous trading is allowed for intraday trading.

- Capacity shall be freely tradeable on a secondary basis provided the TSO is informed in advance. (Art. 16)

### Interconnectors

- TSOs cannot limit the volume of interconnection capacity to be allocated in order to solve congestion inside their own bidding zone or as a means of managing flows resulting from transactions taking place inside one bidding zone. This is deemed to be complied with if a minimum level of 70% of available capacity for cross-zonal trade is reached. (Recital 27, Art. 16)

### Bidding zones

- To ensure effective price signals, bidding zones should not contain structural congestions and maximise cross-border trading opportunities while maintaining security of supply.

- The relevant Member States and TSOs may react to structural congestion, either by reviewing their bidding zone configuration or by defining national or multinational action plans including a linear trajectory to reach the benchmark for cross-border trade capacity by 2025. (Art. 14, 15)
**Capacity mechanisms**

- Member States may introduce capacity mechanisms to address residual concerns that may not be eliminated by other measures.
  - Any measure needs to be justified by a resource adequacy concern documented in a European resource adequacy assessment conducted by ENTSO-E and, where available, a national adequacy assessment.
  - When applying a capacity mechanism (to the extent allowed), Member States will have to have a reliability standard in place to indicate their desired level of security of supply.

- ElecReg contains design principles for capacity mechanisms, ensuring, amongst other things, that these do not create unnecessary market distortions, do not limit cross-border trade, and do not go beyond what is necessary.

- Capacity mechanisms shall
  - be temporary (10 years maximum) and be phased out as soon as possible;
  - be open to participation of all resources, including storage and demand side management;
  - take the form of a strategic reserve, unless a strategic reserve cannot address the adequacy concerns. A strategic reserve is to be held outside the market at least for the duration of the contractual period; and
  - have to allow for cross-border participation (if technically feasible, also will strategic reserves).
  - New power plants must not emit more than 550 gr CO2 per kWh. Existing power plants that exceed this limit and emit more than 350 kg CO2 per kW of installed capacity per year are covered by a grace period until 1 July 2025.
  - Existing capacity mechanisms will have to be reviewed to comply with the new requirements (including those on cross-border participation and design). However, grandfathering rules apply for contracts and commitments entered into before 31 December 2019. (Recital 45 et seq., Art. 21 et seq.)

**Network access charges**

- Network access charges, including charges for connection, use or related network enforcements, shall neutrally support overall system efficiency through price signals to consumers and producers.
- Network charges shall not discriminate, positively or negatively, against
  - production connected at distribution level and production connected at transmission level; and
  - energy storage and aggregation.
- Charges shall not create disincentives for self-generation or self-consumption or participation in demand response.

**Regional co-ordination centres (“RCCs”)**

- TSOs shall co-ordinate with neighbouring TSOs and through the newly introduced regional co-ordination centres (including adopting a framework for the co-ordination and co-operation between these centres).
- RCCs will complement the TSOs’ role by performing the tasks of regional relevance assigned to them, such as the co-ordinated calculation of cross-zonal capacities or co-ordinated security analyses. (Recital 53 et seq., Art. 34 et seq.)
  - The Commission is empowered to define the geographical scope of RCCs. Each Member State may be involved in more than one RCC.
  - RCCs are organised as Limited Liability Companies in the sense of Directive (EU) 2017/1132 by the TSOs of the respective system operation region.
In the management board of a RCC all its participating TSOs are to be represented.

RCCs shall be ready to become operational by 1 July 2022.

EU DSO Entity

Distribution System Operators (“DSOs”) shall co-operate at Union level through the establishment of an EU DSO entity. It will act independently and fulfil tasks including, amongst others, planning of distribution networks and network codes, integration of renewables, facilitation of demand-side flexibility and response and distribution grid users’ access to markets, digitalisation of distribution networks and co-operation with ENTSO-E and TSOs.

All DSOs may become a registered member of the entity.

The voting rights dedicated to each DSO will depend on the number of its customers. (Recital 60, Art. 52 et seqq.)

Network Codes

The Regulation foresees new network codes.

- The new network codes shall include rules on bidding zone configuration, cross-zonal transmission risk hedging, demand response, aggregation, energy storage and sector-specific rules for cyber security.
- Network codes shall be drafted by ENTSO-E or the EU DSO entity, revised by ACER and established by the Commission. (Art. 55)
The Directive on common rules for the internal market for electricity ("ElecDir") is a recast of the current Directive 2009/72/EC. The ElecDir aims to adapt the existing framework to the new market reality taking into account the opportunities and challenges of the goal to decarbonise the energy system and the possibilities technological developments create regarding consumer participation and cross-border co-operation. It asks Member States to ensure a competitive, consumer-centred, flexible and non-discriminatory electricity market organisation.

The recast Directive will have to be transposed into national law by 31 December 2020, by which time Directive 2009/72/EC will be repealed.
Extended customer rights

> Dynamic electricity price contracts:
  - Customers with smart meters shall, amongst other things, be entitled to enter into dynamic electricity price contracts with at least one supplier.
  - Customers may only be switched to dynamic contracts after giving their consent.
  - Suppliers with more than 200,000 final customers are obliged to offer dynamic price contracts. (Art. 11)

> Customers may enter into aggregation contracts (without the supplier’s consent), including aggregation for demand response alongside electricity generators in a non-discriminatory matter. (Art. 13, Art. 17)

> Switching suppliers or aggregators should be possible within three weeks and, in 2026 within one day (from a technical angle). Switching should in principle not be subject to termination fees (at least regarding household consumers, micro- and small enterprises) unless the customer has entered into a fixed-term, fixed-price contract. (Art. 12)

> ElecDir sets out detailed billing guidelines and information requirements. (Art. 18)

> Household consumers and micro-enterprises consuming less than 100,000 kWh per annum must have access to at least one independent, free of charge comparison tool covering the whole market and giving equal treatment to the electricity undertakings in search results. (Art. 14)

Active customers

> All final customers shall be entitled to (also jointly) act as active customers, i.e. to consume, store or sell self-generated electricity within their premises, or to participate in flexibility and energy efficiency schemes. Active customers
  - can delegate the management of their installations and their balancing responsibilities to third parties;
  - have the right to network charges accounting separately for the electricity fed into the grid and electricity consumed from the grid. However, Member States may still grant new rights under existing schemes until the end of 2023; and
  - have the right to a grid connection. (Art. 2 para. 8, Art. 15)

Citizen energy communities

> ElecDir introduces the concept of citizen energy communities. These are legal entities based on voluntary and open participation of natural persons, local authorities and small or micro-enterprises.

> Their primary purpose is to provide environmental, economic or social community benefits for their members or the local areas where it operates rather than financial profits.

> A citizen energy community can be engaged in electricity generation, distribution and supply, consumption, aggregation, storage or energy efficiency services, provide charging services for electric vehicles or provide other energy services to its shareholders or members.

> A Member State may also allow citizen energy communities to own or operate distribution grids and open them to cross-border participation.

> Member States shall ensure that citizen energy communities
  - can access all electricity markets directly or through aggregation;
  - are treated in a non-discriminatory manner; and
  - with regard to self-consumption, are treated like active customers. (Art. 2 para. 11, Art. 16)

Distribution system operators

> ElecDir clarifies the role of DSOs with respect to the procurement of network services to ensure flexibility, storage and recharging points for electric vehicles.

> DSOs will perform tasks relating to
  - the use of flexibility (including the procurement of standardised services from resources such as distributed generation, demand-side response, storage and energy efficiency measures and from all market participants, to improve the system);
  - the exchange of information and co-ordination with TSOs; and
  - the development of a 5- to 10-year network development plan, to be published and submitted to the national energy regulator every two years.
Moreover, DSOs may be assigned a role in—

- the integration of electro-mobility into the electricity network (e.g. by facilitating the connection of publicly accessible and private recharging points for electric vehicles to the grid); and
- the ownership, development and operation of storage facilities.

The tasks will be based on the principle that DSOs are not allowed to develop charging and storage solutions, unless certain conditions are fulfilled, including:

- no other party being awarded with such rights after a tendering procedure;
- such facilities being necessary for the DSOs to fulfil their obligations and not used by the DSOs to buy or sell electricity in the electricity markets;
- the approval by the national energy regulator; and
- compliance with the unbundling provisions.

The potential availability and interest of other market participants to invest in storage facilities is reassessed at least every five years, except for the usual depreciation period of certain new battery storage facilities with a final investment decision by 2024. (Art. 30 et seqq.)

Transmission system operators

- The existing provisions for TSOs are largely maintained, with clarifications concerning energy storage, ancillary services and the new regional co-ordination centres.
- Moreover, TSOs will not be allowed to own, develop, manage or operate storage facilities, nor own or control assets providing ancillary services, unless certain conditions are fulfilled, which are largely the same as for DSOs. (Art. 54)

No price regulation

- As a general rule, suppliers shall be free to determine the price for the electricity they sell on the market.
- However, until at least 2025, Member States may for a limited time intervene in electricity price setting for poor and vulnerable customers. Equal access for Union electricity companies to customers is to be guaranteed.
- For other household consumers and micro-enterprises, Member States may allow regulated prices for a transitional period. All beneficiaries of such a scheme are to be offered smart meters to be installed at no extra upfront cost. (Art. 5)

Smart Meter roll-out

- As before, Member States may decide to systematically roll out smart meters only after a positive cost-benefit assessment and set minimum standards for new smart meters. However, all final customers are entitled to receive a smart meter when bearing the associated costs. (Art. 19, Art. 21, Annex II)

National regulatory authorities

- Tasks and competences of national regulatory authorities (“NRAs”) are extended with respect to regional co-operation on cross-border issues, especially with respect to the establishment and functioning of regional co-ordination centres, and the monitoring of ENTSO-E and the EU DSO entity regarding their compliance with their obligations under the new rules.
- In order to carry out their functions, NRAs are granted additional powers to issue (joint) binding decisions on electricity undertakings and regional co-ordination centres, carry out investigations and give instructions for dispute settlement, request information and impose penalties.

New generating capacity

- Before authorising the construction of new generating capacity, Member States shall also assess alternatives, such as demand response solutions and energy storage. (Art. 8)
The Regulation on risk-preparedness in the electricity sector ("ElecRisk") sets out measures for risk assessments, risk preparedness and the management of crisis situations in relation to the EU’s electricity system and resource adequacy and security of electricity supply, and repeals the existing Directive 2005/89/EC. ElecRisk is binding in its entirety and directly applicable in all Member States as from the date of its entry into force.

ElecRisk reacts to the findings of the Commission that Member States take very different approaches in assessing, preventing and managing electricity crisis situations.

ElecRisk therefore sets out, amongst other things, methodologies to:

> assess security of supply;
> identify crisis scenarios in the Member States and on a regional level;
> conduct short-term adequacy assessments; and
> establish risk-preparedness plans and manage crisis situations.

It also provides for ex-post evaluation of crisis situations and monitoring by the Electricity Coordination Group.
Renewable Energy

The new provisions on renewable energy are intended to facilitate the deployment of renewable energy during the energy transition until 2030 by setting EU-wide targets on renewable energy, streamlining the administrative permission process, providing stability on financial support and strengthening consumer rights.
The new Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (“RED 2018”) is a recast of the current Directive 2009/28/EC (“RED 2009”), which remains in force until 30 June 2021. RED 2018 aims to tackle the existing issues hampering renewable energy deployment, such as investor uncertainty, administrative hurdles, the need to improve cost-effectiveness of renewables deployment, the need to update the policy framework and the risk of loss of citizen buy-in during the transition towards 2030. RED 2018 entered into force on 24 December 2018 and (except for a few provisions) will have to be transposed into national law by 30 June 2021 when RED 2009 will cease to be in force.
2030 renewables target
> RED 2018 sets an EU-wide minimum target of a 32% share of renewable energy in gross final consumption by 2030.
  - Unlike RED 2009, RED 2018 does not translate the union-wide target into binding national targets. Instead, the Member States are supposed to set their own targets which together deliver the EU target. (Art. 3 para. 2)
  - However, Member States can at no point fall behind the binding national targets already foreseen in RED 2009 which have been calculated to reach a 20% share of renewables by 2020.
> The Member States are allowed to statistically transfer amounts of energy from renewable sources between each other. In order to become effective, the Member States need to notify the Commission or use the “Union renewable development platform” which the Commission is to establish. (Art. 8)
> In 2023, the Commission is required to evaluate the 32% target and to potentially increase it.

Sector targets
> The share of renewable energy in the heating and cooling sector is supposed to increase by an indicative 1.3% each year, or by 1.1% for Member States not using waste heat and cold. (Art. 23 para. 1)
> In the transport sector RED 2018 introduces an EU-wide target of at least 14% renewables by 2030. (Art. 25 para. 1)
  - Next to detailed sustainability criteria RED 2018 also now lays down greenhouse gas emissions savings criteria to fulfil for biofuels, bioliquids and biomass fuels in order to count towards the 14% target.
  - Additionally, the contribution of biofuels, bioliquids and biomass fuels consumed in transport, if produced from food or feed crops, to the calculation of a Member State’s gross final consumption of renewable energy is limited to 7% of the final consumption of energy for road and rail in that Member State by 2020 and will be gradually phased out by 2030.
  - At the same time, the share of biofuels and biogas produced from certain feedstock used in the transport sector is supposed to gradually increase.

Support schemes
> Member States are allowed to apply support schemes for electricity from renewable sources. Support shall
  - be designed so as to integrate renewables in the electricity market in a market-based and market-responsive way and should be granted in an open, transparent, competitive, non-discriminatory and cost-effective manner; and
  - as a principle be granted in the form of a market premium via tendering procedures but may be limited to specific technologies if a technological open tender would lead to suboptimal results. (Art. 4)

Stability of financial support
> A new provision on the stability of financial support ensures that the level of and conditions attached to the support of renewable energy projects are not altered in a way that negatively impacts the rights conferred or the economics of supported projects.
> The level of support may only be changed if such change was already implied in the initial allocation rules.
> Member States must enhance predictability for investors by defining and publishing a long-term schedule in relation to the expected allocation of support, covering at least the next three to five years, depending on budgetary planning provisions. (Art. 6)
Cross-border support

> Instead of being mandatory, as the Commission had proposed, Member States can now choose whether they open their support schemes for electricity from renewable sources produced in other Member States:
> - In doing so, they may limit the support to physically imported energy.
> - In 2023, the Commission will evaluate whether the opening of support schemes should become mandatory to reach an opening of 5% by 2025 and 10% by 2030. (Art. 5)

> In addition, Member States may co-ordinate their promotion of renewables and apply joint support schemes for electricity, heating or cooling from renewable sources. (Art. 13)

> Member States may also engage in joint projects with other Member States or third countries regarding the production of electricity as well as heating or cooling from renewable sources, which may involve private operators. (Art. 9 to Art. 11)

Guarantees of origin

> Guarantees of origin shall be issued not only for electricity but also for gas, heating or cooling from renewable sources.

> Member States may also issue guarantees of origin for energy from non-renewable sources.

> Different from what was originally proposed by the Commission, guarantees of origin for energy supported through a renewables support scheme will not, in order to offset the cost of the renewables support, be directly transferred to the market by auctioning. Instead, Member States will have to otherwise ensure that the market value of the guarantee is taken into account in the relevant support scheme. This may also entail that guarantees of origin for supported electricity are not issued at all. (Art. 19)

Grid connections

> The rules on priority grid access for renewable electricity have been removed from RED 2018. The rules for generators of renewable electricity are now, in principle, the same as for generators of electricity from other than renewable sources and can be found in ElecReg and ElecDir. However, there are exemptions regarding dispatch and re-dispatch of electricity from renewable sources.

Permitting

> Single contact points set up by the Member States shall guide an applicant through and facilitate the entire administrative process covering all relevant administrative permits to build, repower and operate plants for the production of energy from renewable sources and assets necessary for their connection to the grid.

> In general, the permit-granting process shall not exceed two years for power plants and one year for small-scale installations with an electrical capacity of less than 150 kW and for the repowering of existing renewable power plants. (Art. 16)

> However, for installations with an electrical capacity of 10.8 kW or less, Member States need to establish a simple notification procedure for grid connections. They can establish such a procedure for installations < 50 kW, provided that grid stability, reliability and safety are maintained. (Art. 17)

> As far as generators of gas from renewable sources are concerned, RED 2019 continues to provide rules on priority grid access. (Art. 20)

Renewable self-consumers

> Renewable self-consumers shall have the right to generate energy for self-consumption, to store and to sell excess electricity individually, via aggregators or, when located in the same multi-apartment blocks, jointly without losing their rights as consumers.

> Self-consumers may also ask a third party to own or manage their installation as long as the third party remains subject to the renewable self-consumer's instructions.

> Member States shall promote and facilitate renewables self-generation, amongst other things, by addressing unjustified barriers to financing or regulatory barriers or by granting access to relevant support schemes.

> Regarding charges and fees, Member States shall ensure that
> - procedures and (network charges) relating to the electricity consumed from or fed into the grid are
>   - cost-reflective, non-discriminatory and proportionate;
charges and fees relating to self-generated energy remaining on the premises are only introduced for generation facilities with an installed capacity of more than 30 kW, for electricity supported via a support scheme or when the share of installed self-consumption exceeds 8% of the installed electricity capacity of a Member State. In any case, charges and fees must be non-discriminatory and proportionate; and
- no double (network) charges are applied to stored electricity remaining in the premises.

Non-household self-consumers only profit from these rules as long as the self-generation, storage and sale of excess energy do not constitute their primary commercial or professional activity. (Art. 21, Art. 1 para. 14)

Renewable energy communities
RED 2018 also introduces the concept of renewable energy communities. These are legal entities aiming at environmental, economic or social, rather than financial, profits, consisting of natural persons, small and medium enterprises or local authorities, controlled by shareholders or members located in the proximity of renewable energy projects owned and developed by the community.

Renewable energy communities are entitled to produce, consume, store, or sell renewable energy and share it within the community. The Member States shall promote and facilitate the development of these communities, amongst other things, by ensuring that
- renewable energy communities are subject to fair, proportionate and transparent procedures, including registration and licensing procedures, and cost-reflective network charges, as well as relevant charges, levies and taxes;
- the relevant distribution system operator co-operates with renewable energy communities to facilitate energy transfers within renewable energy communities; and
- the participation in the renewable energy communities is accessible to all consumers. (Art. 2 para. 16, Art. 22)

District heating and cooling
Regarding district heating and cooling, Member States may either
- increase the share of energy from renewables or waste by 1% per year by measures in their discretion; or
- allow third party suppliers of energy from renewables or waste to connect (and sell) to district heating or cooling systems when there is demand from new customers or existing capacity is replaced or expanded.

When opting for third party access, Member States may grant exemptions to operators, but not for big district heating and cooling systems (≥ 20 MW) using less than 50% renewable energy, 75% cogenerated heat or 50% of a combination of both until 2025.

Also, consumers may terminate or change their contract in order to produce heating or cooling from renewable sources themselves if their system is not efficient according to EED and, there is no plan to change this by the end of 2025. But, Member States may
- limit the right to terminate a contract to alternatives showing significantly better energy performance; and
- in case of physical disconnection, ask the customer to compensate the former district heating supplier for the disconnection costs and the non-depreciated portion of assets needed to provide heat and cold to the customer.

However, there are no obligations at all when in a Member State
- district heating and cooling is hardly used (<2%); or
- most district heating or cooling systems are efficient heating or cooling according to EED (>90%). (Art. 24)
Energy Efficiency

The new rules aim at increasing energy efficiency in the EU by setting efficiency targets for the EU and Member States, introducing several EU-wide guideline mechanisms and expanding consumer rights concerning metering and billing of heating, cooling and hot water.
The Directive (EU) 2018/2002 revises Directive 2012/27/EU on energy efficiency ("EED"). It modifies existing Articles that are directly related to achieving the 2030 targets and introduces a few new Articles to extend consumer rights and increase access to smart metering tools, billing and consumption information. EED entered into force on 24 December 2018 and most provisions need to be transposed into national law within 18 months after its date of entry into force.
The EED provides for an indicative 32.5% energy efficiency target for 2030. This translates into an EU-wide consumption of no more than 1,273 Mtoe of primary energy and/or 956 Mtoe of final energy (Art. 1 para. 1), or 1,128 Mtoe and 846 Mtoe after Brexit.

Like RED 2018 for renewable energy, EED does not set binding national targets for energy efficiency. Instead, indicative national targets will have to be notified to the Commission, expressed as absolute levels of primary and final energy consumption in 2020 and contributions towards the Union’s 2030 targets.

The Member States are obliged to reduce their annual final energy consumption by 0.8% every year for the period 2021-2030 and shall continue to do so, unless it is no longer necessary in order to reach the Union’s long-term energy and climate targets for 2050. (Art. 7 para. 1)

As for renewable electricity, the provisions on grid access and dispatch of electricity from high-efficiency cogeneration and on demand response were moved to ElecReg, and the rules on monitoring, reporting and planning to GovReg.

New Commission’s guidelines and assessments

SMEs and energy audits: By 31 December 2019, the Commission shall assess whether it is suitable to rely on the general definition of small and medium-sized enterprise (SME) for the obligation to conduct an energy audit (all non-SMEs, Art. 8 para. 4 EED) and shall, if appropriate, make legislative proposals.

Private investments: By 1 January 2020, the Commission shall provide guidance for Member States on how to unlock private investment in order to mobilise private financing for energy efficiency measures and energy renovation.

Grid efficiency: By 31 December 2020, the Commission shall, after consulting relevant stakeholders, prepare a common methodology to encourage network operators to reduce losses, implement a cost-efficient and energy-efficient infrastructure investment programme and properly account for the energy efficiency and flexibility of the grid.

Storage efficiency: By 1 January 2021, the Commission shall carry out an assessment of the potential for energy efficiency in the conversion, transformation, transmission, transportation and storage of energy, and shall, if appropriate, make legislative proposals.

Extended consumer rights

Competitively priced and modern meters

- Consumers of district heating, cooling and domestic hot water are to benefit from competitively priced meters reflecting their actual energy consumption. (Art. 9 para. 1)
- As from 25 October 2020, new meters and heat cost allocators need to be readable remotely, older ones need to be rendered readable or replaced by 1 January 2027. (Art. 9c)

Billing and consumption information must be reliable, accurate and based on actual consumption for consumers of electricity and gas without smart meters and for all consumers of heating, cooling and hot water. In any case they must be provided free of charge.

Key Takeaways

2030 energy efficiency target

- The EED provides for an indicative 32.5% energy efficiency target for 2030. This translates into an EU-wide consumption of no more than 1,273 Mtoe of primary energy and/or 956 Mtoe of final energy (Art. 1 para. 1), or 1,128 Mtoe and 846 Mtoe after Brexit.

Grid access for high-efficiency cogeneration

- As for renewable electricity, the provisions on grid access and dispatch of electricity from high-efficiency cogeneration and on demand response were moved to ElecReg, and the rules on monitoring, reporting and planning to GovReg.

EEBuildD covers topics including, amongst others:

> renovation targets;
> energy performance certificates;
> inspection, monitoring and control of energy use; and
> the presence of electrical recharging points (including an obligation to equip one out of 10 parking spaces at new or substantially renovated non-residential buildings with a recharging point reactive to price signals. (Art. 8 para. 2)

EEBuildD needs to be transposed into national law by 10 March 2020.
Institutions and Procedures

The new provisions consolidate existing EU governance rules and introduce the new reporting obligation for Member States concerning climate protection, in particular the submission of national energy and climate plans.
Regulation on the Governance of the Energy Union

Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action ("GovReg") aims at streamlining and updating existing but scattered planning and reporting obligations from EU legislation relating to energy, climate and other policy areas related to the Energy Union. GovReg entered into force on 24 December 2018 and since then has been binding in its entirety and directly applicable in all Member States for most, and as from 1 January 2021 for certain, provisions.
Integrated national energy and climate plans

- A central instrument to jointly meet the targets and objectives of the Energy Union are the integrated national energy and climate plans ("NECP") each Member State needs to prepare and submit to the Commission.

- Covering 10-year periods, NECPs shall contain the
  - national objectives and targets of the Member States regarding the five dimensions of the Energy Union (energy security, internal energy market, energy efficiency, decarbonising and research, innovation and competitiveness); and
  - the corresponding policies and measures, as the national targets, trajectories and milestones regarding the Member States' contributions to GHG reduction, energy efficiency, renewables deployment and stronger interconnection between bidding zones.

- GovReg provides the Member States with a mandatory template for drafting their NECPs. All NECPs are to be published on a central website hosted by the Commission. The drafts for the first plans (covering the years 2021 to 2030) had to be submitted to the Commission by 31 December 2018. The final plans are due by 31 December 2019. (Art. 9)

Reporting and update

- Subsequently, Member States have to regularly report on the status of implementation and the Commission may react to insufficient ambition as well as to insufficient progress, mostly by issuing recommendations of which the Member States “shall take due account”.

- Two years after the implementation date of their NECPs, Member States must report whether and how they intend to update the plans (the first report is due on 30 June 2023) and submit a final update one year after.

Long-term strategies

- In addition to the NECPs Member States are obliged to develop long-term strategies covering at least a 30-year period. The strategies should contribute to the overall climate objectives, in particular the reduction of greenhouse gas emissions and the mitigation of global warming.

- The first strategy is due on 1 January 2020 and subsequently by 1 January 2029 and every 10 years thereafter. An update is due after five years.

Trajectories for renewables contribution

- The Member States are obliged not only to set a national target of their share of renewables in gross final energy consumption in their NECPs, but also to calculate a linear trajectory for their contribution between 2021 and 2030. (Art. 4)

Bi-annual assessment

- If the Commission concludes in its bi-annual assessment (first time due 31 October 2021) that the linear Union trajectory regarding renewable energy is not met, Member States that have fallen below their national reference points or their baseline regarding their share of renewable energy shall ensure that the gap is covered by introducing additional measures within one year, which may also involve
  - making a voluntary financial payment to the Union renewable energy financing mechanism set up at Union level; or
  - contributing to renewable energy projects managed directly or indirectly by the Commission. (Art. 32)

Renewable energy financing mechanism

- By 1 January 2021, the Commission shall establish the Union renewable energy financing mechanism to tender support for new renewable energy projects in the Union with the aim of covering a gap in the indicative Union trajectory. (Art. 33)

- Every year, renewable energy generated by installations financed by the financing mechanism shall be statistically attributed to the participating Member States, reflecting their relative payments. Projects supported by this financing mechanism that are financed by sources other than Member States' payments shall not count towards Member States' national contributions but towards the Union binding target.
The *Regulation establishing a European Union Agency for the Cooperation of Energy Regulators (recast)* ("AcerReg") replaces Regulation (EC) No 713/2009. In the future, ACER will monitor compliance with the new rules on the energy market design. However, it will primarily support the Member States’ regulatory bodies in exercising control and will not have competence to adapt resolutions on its own. For certain services, ACER will henceforth be able to charge fees. Moreover, ACER may give direct approval to streamline regulatory procedures. The recast Regulation will enter into force 20 days after its publication and will be binding in its entirety and directly applicable in all Member States as from its date of entry into force.

View the [Regulation](#)
What’s next?
To comply with the new legislation and to transpose the Directives into national law, the Member States will need to adapt their energy legislation. During the year 2020 the new electricity market design and the new provisions on energy efficiency will apply or need to be transposed, followed by RED 2018 in mid-2021. In 2019 only GovReg and AcerReg apply.

Aside from this, the EU institutions are working on other legislation in the field of energy:

- The Commission has just proposed to apply its Guidelines on Energy and Environmental State Aid 2014-20 for another two years until 2022. Within this time, the Commission will decide on whether or not it needs to amend the existing rules.
- The Gas Market Directive 2009/73/EC has been amended to ensure the rules governing the EU’s internal gas market apply to gas transmission lines between a Member State and a third country.
- Following the elections for the new European Parliament in May 2019, the new Commission will decide on how far a general review of the gas market rules is desirable to better align gas and (the new) electricity market rules.
- However, if, by 31 December 2021, no changes to the retail market provisions of the Gas Market Directive 2009/73/EC have been proposed, Art 24 EED requires the Commission at least to propose new provisions related to metering, billing and consumer information for natural gas, in order to align them where appropriate, with the respective provisions for electricity.
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