

Background document

EU Clean Energy Package – Overview of Legislative Proposals and their Implications on the Energy Community

On 30 November 2016, the European Commission published the “Clean Energy for all Europeans” package consisting of eight legislative proposals in order to bring legislation in line with the EU 2030 energy and climate policy framework. The package is driven by the ambitious climate policy to cut by at least 40% greenhouse gas emissions and create jobs and growth for all Europeans. Putting energy efficiency first, achieving global leadership in renewable energies and providing a fair deal for consumers are in the focus.

The Energy Community has yet to start the process of adopting the energy and climate objectives to 2030.

Proposal for a Regulation on the Governance of the Energy Union

The proposal is designed to integrate and simplify reporting and monitoring obligations of the European Commission and EU Member States and to make it easier to monitor EU Member State progress in achieving the Energy Union’s objectives, in particular 2030 targets for energy and climate. Based on binding templates, EU Member States are to prepare national integrated energy and climate plans for 2021-2030, to be followed by biennial progress reports. If the 2030 climate and energy goals are at risk of not being met, the Commission may request additional measures. The reform also includes enhanced procedures for public and regional consultations.

Energy Community implications:

By the adoption of the Regulation on the Governance of the Energy Union, a number of existing planning, reporting and monitoring obligations stemming from the Energy Community acquis, such as those from renewables, energy efficiency and environment acquis, would be integrated and streamlined. This would lead to more coherent and coordinated administrative procedures, both at national and regional level, thus ensuring efficient development and achievement of the new, post-2020 energy efficiency, renewables and climate targets. The coordinated solution envisaged in this regulation, accompanied by enhanced e-reporting, would strengthen the governance framework, improve regional cooperation and help to achieve the targets in a more affordable and cost-effective manner.

Proposal for a recast of the Internal Electricity Market Directive

The directive aims to tackle undue barriers to market entry and exit by facilitating cross-border electricity flows. It also tackles customer participation including demand response, investment in flexible energy generation, energy storage, the deployment of electro-mobility and new interconnectors. Electricity prices should be set by the market, with limited possibilities for state price interventions. Targeted protection should be offered to vulnerable

energy consumers under strict conditions. The directive strengthens customer rights and provides a framework for energy communities.

The most important aspect is empowering consumers to participate in the energy market more, and to participate in new ways, building on the new technological opportunities. By strengthening the role of customers, the security of energy supply to citizens and business will be further developed in a more sustainable way. Thus citizens should benefit from the internal market in electricity also contributing to achieving the sustainability targets. Every consumer will be able to offer demand response and to receive remuneration, directly or through aggregators. Dynamic electricity price contracts reflecting the changing prices on the spot or day-ahead markets will allow consumers to respond to price signals and actively manage their consumption. By this, additional costs for new generation can be avoided.

This necessitates the removal of retail price regulation while ensuring the full and appropriate protection of vulnerable consumers. The new market rules aim to deliver a better deal for all energy consumers. For vulnerable and energy poor consumers in particular, the objective is to ensure that they are not left behind as most consumers become active market participants.

Energy Community implications:

In order to reap benefits from the internal electricity market, such as affordable energy prices and secure energy supplies, all Contracting Parties first have to finalize implementation of the Third Energy Package in its entirety, enabling markets to develop and integrate. The small emerging markets of the Energy Community, mostly characterized by the large-scale coal-fired thermal power producers, modest penetration of variable sources, in particular from wind and sun, undeveloped short-term markets and limited participation of consumers, should take advantage of the new opportunities given by the directive.

The new energy market rules will oblige Contracting Parties to measure and monitor energy poverty. The sharing of best practices on how to fight energy poverty will be facilitated through an Energy Poverty Observatory.

Proposal for a recast of the Internal Electricity Market Regulation

Focusing on the wholesale market and grid operation, the objective of the regulation is to strengthen the functioning of the market and cross-border trading. The regulation puts all energy sources on an equal footing (with the exception of priority dispatch for small installations). The proposal sets out design principles for capacity mechanisms, which should be open to participation of capacity providers from other Member States. The proposal introduces regional cooperation centres (ROCs) to be established by TSOs and creates a new EU-level entity for DSOs.

Energy Community implications:

In the Energy Community region, interconnection capacities are participating in the total installed electricity production capacities with a share higher than the 15% target aimed for by the European Union. As a result, transmission networks can be considered fit for hosting cross-border energy trade and market integration. To make sure that the interconnection capacities are utilized in an optimal way, market integration and cross-border trade should be strengthened through the implementation of the new regulation. To benefit from the regulation, markets within different trading timeframes, namely forward, day-ahead, intraday and balancing markets, should be developed first. A process to review bidding zones, being defined by the national borders, is still considered as a politically sensitive issue in the Energy Community. However, a better utilisation of the interconnection capacities could be achieved by implementing a procedure to define bidding zones in a coordinated way,

described by the new regulation. To secure system operation through regionally coordinated activities, a Regional Operational Centre should be established based on criteria and a procedure defined by the regulation.

Independent unbundled network operators are cornerstones of the existing and even more of the new acquis. The Energy Community DSOs have already recognized the need to introduce measures incentivizing DSOs to cost-efficiently integrate new electricity generation, especially generating installations using renewable energy sources and new loads, demand response and energy storage, based on market procedures, in order to efficiently operate their networks and avoid costly network expansions.

Proposal for a Regulation on Risk-Preparedness in the Electricity Sector and Repealing the Security of Supply Directive

The proposal is aimed at addressing shortcomings in the existing legislation, notably a lack of regional coordination and different national systems, by establish common rules on crisis prevention and crisis management in the electricity sector. Regional aspects would be taken into account in the preparation of national risk preparedness plans and in managing crisis situations. The proposed regulation would also require an ex-post evaluation of crisis situations.

Energy Community implications:

The risk management and security of electricity supply are among the Energy Community Treaty obligations facing significant political challenges. Considering the energy import dependency of the Contracting Parties, obsolescence and low energy efficiency of the existing generation fleet and levels of energy intensity of the economies, the solidarity and cooperation between the Contracting Parties is of utmost importance to manage risks and crisis.

By its adoption in the Energy Community, the proposed regulation shall bring a coherent framework for cooperation in the area where protective behaviour of governments, conflicting priorities, non-transparent rules and non-market measures are still present. The methodologies for risk preparedness planning and monitoring as well as obligations for coordination will set the ground for the establishment of mechanisms for least-cost abatement of supply crisis on regional level. It will also contribute to more efficient long-term planning, generation adequacy and investment climate thus supporting market liquidity and stabilizing the supply prices.

Proposal for a recast of the ACER Regulation

The proposal gives ACER a number of new tasks and strengthens its role in the development of network codes and coordination of regional decision-making for 'regulatory issues with cross-border relevance'. ACER is assigned a number of new tasks related to the new regional operational centres (ROCs), the supervision of nominated electricity market operators (that perform tasks related to single day-ahead or single intraday coupling) and the assessment of generation adequacy and risk preparedness.

Energy Community implications:

The proposal perpetuates an existing and well-known legal gap resulting in a negative impact on certainty of regulatory decision-making in both the Contracting Parties and EU Member States. Namely, institutional competences of ACER are limited to the EU, while

competences of the Energy Community Regulatory Board¹ are limited to the Contracting Parties. As a result, obtaining an exemption under the Third Energy Package for a project involving both Contracting Parties and EU Member States is not a straightforward process. In case the concerned EU national regulatory authorities do not agree on the exemption decision, decision-making is transferred to ACER; the same procedure applies in case of disagreement between two or more Contracting Party regulators where ECRB steps in as the decision-making body. However, no such rules are defined in case of disagreement between EU and Energy Community regulators, in case an interconnector spans the territories of the EU Member States and Contracting Parties. The same legal gap exists in case national regulators cannot agree on cross-border allocation of investment costs under Regulation 543/2013 on submission and publication of data in electricity markets. The number of relevant cases is expected to increase with the implementation of Third Energy Package gas and electricity network codes and guidelines in the Contracting Parties.

The proposal for a recast of the ACER Regulation does not solve this shortcoming and, therefore, perpetuates uncertainty for investors. Thus, it is necessary to unify the regulatory oversight regime on the interface between Contracting Parties and the Member States and establish undisputable competences for regulatory decisions concerning markets and infrastructure spanning the borders in question.

ACER would be best placed to take such decisions, having in mind that ACER – different from ECRB² – has a solid institutional set up with permanent staff.³

For the sake of fairness and legitimacy, this would require granting the regulatory authority of the Contracting Party/Parties concerned the same rights and powers within ACER as a regulatory authority of an European Union Member State.

Proposal for a recast of the Renewable Energy Directive

The proposal sets out a binding EU-wide target of at least 27% for the share of renewable energy consumed in the EU in 2030 (in contrast to the previous binding national targets). Support schemes for RES-generated electricity have to avoid unnecessary distortions of electricity markets, take into account balancing and grid constraints and respond to market signals via competitive tendering. Member States must open a minimum share of new

¹ ECRB is an institution of the Energy Community established by the Energy Community Treaty. It is composed of one representative of the national regulatory authority of each Contracting Party and the European Commission representing the European Union and acting as Vice-President. The Vice-Presidency is assisted by an ACER representative. ECRB is headed by a Board of high-level representatives chaired by a President. Within these general rules, ECRB is free to design its *modus operandi* by adopting Internal Rules of Procedure. Different from ACER, ECRB does not have decisive powers but an advisory role unless empowered by the Ministerial Council issue a binding decision which has not been the case so far. The legal framework primarily designs ECRB as coordination platform of regulators for exchange of knowledge and development of best practices.

² ECRB is operating as non-permanent body benefitting only from reimbursement of costs of Contracting Party regulators' participation at ECRB meetings and support by the ECRB Section at the Energy Community Secretariat.

³ The alternative of equipping ECRB with an organisational structure mirroring ACER would have significant budgetary impact. ACER's budget for the financial year 2015 amounted to EUR 16.558.587. Costs for establishing a comparable institutional set up for ECRB should not be estimated on a significantly lower level, having in mind that expenditures of ACER mainly correlate with its tasks and only to a minor extent to the number of NRAs coordinated under its umbrella. The current set up of ECRB as non-permanent body with only tri-annual meeting frequency does not allow for elaborated decision-making processes without serious content related support by the ECRB Section. The ECRB Section, on the other hand, in its current set up does not have sufficient human resources for providing back up for ECRB decisions without relying on human resources of other Secretariat units.

support schemes to RES generated electricity from other Member States. The proposal also provides guidelines for renewable energy communities.

Energy Community implications: *If all Energy Community Contracting Parties meet their individual binding 2020 renewables energy targets, the Energy Community-wide target is estimated to reach 15%. Bosnia and Herzegovina and Montenegro have already met their targets, while Serbia, Albania, Kosovo* and Moldova are on track or very close to meeting their interim targets. Given the energy system and country's size, the progress of Ukraine will be critical in achieving 15% RES share in 2020. A number of Contracting Parties have already begun reforming their support schemes and the Secretariat has enforced the application of the EU State Aid Guidelines for Environmental Protection and Energy 2014-2020.*

The discussion on the post-2020 RES target for the Energy Community is yet to begin. The European Commission can start the official process to identify the modalities for the implementation in the Energy Community only after the new RES Directive is adopted at EU level. Taking into account the length of time the EU will require to adopt the Clean Energy Package and the length of time needed to prepare the directive for adoption in the Energy Community, stakeholders are calling for the Energy Community to shape up its energy and climate objectives to 2030. This year, the Energy Community will have to initiate the identification of the energy and climate objectives convergent with the EU objectives to 2030. These shall go hand in hand with the adoption of the new market design and putting the customer in the center of the clean energy transition. Additional electricity market integration and cross-border cooperation efforts will be required to accommodate the further uptake of intermittent generation from renewable energy sources.

Proposal for a revised Energy Efficiency Directive

The proposal sets a 30% binding energy efficiency target at the EU level for 2030 to be achieved by indicative national energy efficiency contributions. The Member States are to notify these in their national energy and climate plans, as proposed in the new Energy Governance Regulation. The European Commission can propose additional measures should its assessment of the Member States' progress show that the EU is not on track to achieve the 2030 target. The revised directive also proposes to extend beyond 2020 the application of the energy savings obligation schemes, which requires energy companies to save 1.5% of their energy sales per year through energy efficiency measures delivered.

Energy Community implications: *The Energy Community adopted the Energy Efficiency Directive in 2015 and the transposition deadline is October 2017. The directive establishes a common framework of measures for the promotion of energy efficiency within the Energy Community, to set a 20 % energy consumption reduction target at the Energy Community level in 2020. A number of the directive's measures have been amended to take into account the particular socio-economic circumstances of the Energy Community Contracting, as well as the later adoption year, e.g. the energy savings target under the energy efficiency obligation scheme has been set at 0.7%/year, instead of 1.5 % /year in the EU, and the central public buildings renovation target was set at 1%/year instead of 3%/year in the EU.*

The revised Energy Efficiency Directive, when adopted in the Energy Community, will have to bring the level of ambition of the Contracting Parties closer to the Member States, especially in the overall efficiency targets and measures beyond 2020, in order to enable the Energy Community countries to benefit from the high-untapped potential of efficiency in their economies.

As to the new benefits, the directive provides greater clarity and strengthens the social dimension through measures to reduce energy poverty. It is more streamlined with the “sister” Energy Performance of Buildings Directive and it is easier to understand and implement. The proposed binding target of 30% by 2030 remains at the EU level, while at the Member States’ level the target remains indicative, thus leaving more flexibility for reaching it.

Proposal for a revised Energy Performance of Buildings Directive

The proposed directive modernises and streamlines the existing Energy Performance of Buildings Directive (EPBD). It introduces binding obligations on electro-mobility in residential and non-residential buildings and 'smartness indicators' that assesses the technological capability of the building, as well as provisions concerning national databases on energy performance certificates.

Energy Community implications:

The current EPBD has not yet been fully implemented in the Energy Community, and hence, there is a strong need for stepping up implementation.

The revised Energy Performance of Buildings Directive is expected to increase the renovation rate; it supports further the removal of specific barriers to energy efficiency and renewable energy in buildings, which fall within the scope of the EPBD. It also considers the need for additional measures relating to energy efficiency and the use of renewable energy in buildings, with a 2030 perspective; and improves access to funding and stimulate investment (Smart Financing for Smart Buildings). The revised directive will also simplify the link between the renovation measures.

The Energy Community will need to develop also the financial mechanisms to support building renovation, by strengthening the links between achieving higher renovation rates, funding and energy performance certificates as well as by reinforcing provisions on national long-term building renovation strategies, with a view to decarbonising the building stock.