



ENERGY UNION – ON TRACK?

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The Energy Union has had an impressive start, with 12 legislative proposals in 2016 alone the European Commission means business. However, publishing proposals is one thing, getting the legislation adopted by the European Parliament and Member States is a much harder challenge. In this snapshot we look whether the Energy Union is on track and where we can expect roadblocks.

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Legislative challenges

The European Commission (EC) published an impressive number of energy and climate related legislative proposals in 2015 and 2016: starting with the new Emission Trading System (ETS) for the period after 2020, followed by the Energy Security package in early 2016 and continuing with the Effort Sharing Decision in the summer. With the publication of the Clean Energy Package in November 2016, the EC has delivered the largest part of the legislative proposals and only transport and gas market legislation is yet to come.

Climate legislation

The **Emission Trading System (ETS)** is the corner stone of the EU's policies to tackle climate change and to achieve the target of reducing its GHG emissions by at least 40% below 1990 levels by 2030. Published in 2015, the Directive for a post 2020 ETS was the first Energy Union proposal the EC published. Getting it right is critical for achieving the EU's climate objectives without damaging the EU's competitiveness and risking carbon leakage of energy intensive industries (delocalisation to regions with laxer climate legislation). After difficult discussions, many open questions remain, such as the low price of allowances. The European Parliament and the Council have both agreed on their respective positions in early 2017.

For the Estonian Presidency, ETS is a priority and they aim to come to an interinstitutional agreement by October but as expected, the talks are not easy. Currently the trilogues focus on how to prevent carbon leakage (e.g. by handing out more free allowances), how to deal with the modernisation fund to help poorer countries to update their energy systems and how to reduce the oversupply of pollution allowances (possibly by moving more allowances into the market stability reserve).

The last point will be particularly difficult to bridge as the European Parliament agreed to doubling the rate at which the new 'market stability reserve' will absorb surplus allowances. A further point that causes friction is the compensation of indirect costs i.e. electricity costs, which are particularly important for energy intensive industries.

The German elections on 24 September might also impact the negotiations. The German steel industry made a strong call to the German Government to change the course of the ETS asking for an increase of 5% of free allowances. With regards to aviation, Parliament and Council are expected to agree by the end of the year on a proposal to exempt the sector from the ETS.

In summer 2016 the EC also published a proposal for a revised **Effort Sharing Decision (ESD)** for sectors outside of the ETS, namely transport, waste, buildings and agriculture. The ESD mainly sets out specific emission reduction targets for each Member State aiming to reduce carbon emissions outside the ETS by 30% by 2030. The European Parliament adopted its negotiation mandate in June, and it is now up to the Council to agree on its position. The target date is set for October and the Estonian Presidency will have a tough job to find common ground. The new targets will be particularly difficult for Member States that until recently were allowed to increase emissions.

The European Parliament also moved ahead of the Council when its environment committee adopted its position on the proposal to count **the land use, land use change and forestry sector** in the bloc's climate efforts (LULUCF). Under the rules, EU countries have to ensure that emissions from the sector are compensated by an equivalent removal of carbon dioxide from the atmosphere. For countries with a strong forestry sector such as Poland and Finland this possibility can significantly ease compliance with the CO₂ reduction standards. The European Parliament agreed to double the cap on forest credits and countries can count toward their emission targets to 7%, under certain conditions.

Security of Gas Supply legislation

The so called security of supply package was published in winter 2015 and is the first major Energy Union legislation that has crossed the finishing line. Already in December 2016 the co-legislator agreed on the Intergovernmental Agreement (IGA) Decision that obliges Member States to inform the European Commission about their Intergovernmental Agreements in the field of gas and oil with non-EU countries before concluding them. This allows

the EC to scrutinise whether the IGAs adhere to EU principles. In April 2017 EU institutions also agreed on the larger and more controversial Security of Gas Supply Regulation. The legislation aims to oblige Member States to help each other out in case one Member States suffers supply disruptions.

Still upcoming is the next gas package that is expected in early 2018. The package and its content remain elusive except for its aim to deepen the internal gas market.

The Clean Energy Package

The Clean Energy Package¹ involves eight legislative proposals of which some are highly complex and controversial. For the EC it is of major importance to get the Package adopted before the end of its mandate and before the European elections in 2019; it wants to prove that the EU is global leader and wants to prevent further delays due to the European elections and the change within the institutions. It therefore puts pressure on the Member States and the European Parliament to advance the proposal as quickly as possible, ideally adopting all required policy files at Parliament level within 2017.

“The Commission will make every effort to facilitate agreement on all these proposals by the end of the year”

The package in co-legislation

The European Parliament went quickly into motion and published the last draft report of the package in July. However, the Parliament's Committee on Industry, Technology, Research and Energy (ITRE) that is responsible for most part of the package is struggling to stick to the ambitious timetable. What adds to the complexity of the package is the fact that it is interconnected and the different proposals must be seen in relation to each other.

The latest revision within the ITRE Committee foresees the following dates for the vote:

Legislation	Consider. Amendm.	Committee vote
Energy Performance of Buildings	10 July	12 Oct
Energy Efficiency	4 Sep	28 Nov
Renewables Directive	4 Sep	28 Nov
Governance	11 Sep	28 Nov
Electricity Market Design	6 Nov	11 Dec
Risk Preparedness	6 Nov	11 Dec
ACER	6 Nov	11 Dec

¹ For more information on the package see our Energy Flash [Winter package is Coming](#)

Parliament and Council prioritised the **Energy Efficiency Directive** and the **Energy Performance of Buildings Directive**. The Council reached a general approach on both files in the end of June. The Parliament will vote on the reports in autumn so the trilogues should start in 2017. However, the draft report by Polish rapporteur Adam Gierek (S&D), that sets lower ambitions than most MEPs, aims to leave some space for coal which will make negotiations in ITRE more difficult than expected. With regards to the Energy Performance in Buildings Directive, the catastrophe of Grenfell tower which got out of hand because of cheap insulation material is likely to impact the negotiations and strengthen the push for measures for vulnerable households.

For the **Renewables Directive** (RED II) that sets the framework for supporting the EU's ambition to become a leader in renewable energy, difficult discussions lie ahead. In the mainly responsible ITRE Committee there are more than 1300 amendments, and the Environment Committee that deals with the biofuels and biomass sections of the proposal tabled a similar number. There is consensus in the European Parliament to raise the level of ambition of the current renewables target of 27% by 2030 and to make the target binding at the national level. It is already clear that this point will lead to tough discussions between the European Parliament and the Member States, which are themselves deeply divided over the target and how it will impact the energy mix, a competence strongly guarded by the Member States.

The **Electricity Market Design** proposals (Regulation on the internal market for electricity and Directive on common rules for the internal market for electricity) that aim to create a consumer centred and market based framework to achieve the goals of decarbonisation, energy efficiency and competitiveness will inspire even more amendments. There are many controversial and complex issues to be sorted out; in particular capacity market mechanism (owner of power plants is remunerated for making electricity generation capacity available and not for the consumed electricity) will be heavily debated. The Recast of the EU Agency for the Cooperation of Energy Regulators (**ACER Regulation**) aiming to enhance regional cooperation will receive the least attention. Having said that, the Regulation is important as ACER is critical for ensuring the uninterrupted flow of gas and electricity throughout the EU and fair competition by developing the underlying rules and standards (network codes). Also related to the Internal Electricity Market is the **Regulation on Risk-Preparedness**

in the electricity sector that aims to increase cooperation between Member States in case of electricity shortages.

Another challenging proposal concerns the **Governance Framework** of the overall Energy Union which aims to ensure that policies and measures at various levels (national, local, regional, and EU level) are coherent, complementary and sufficiently ambitious. With 1500 amendments to be sorted out the envisaged timeline will also be challenging to keep.

For the Council it might even be more difficult to advance the package quickly. With most proposals of the Clean Energy Package the Council is still in the early stages of discussions and there is a lot of work to do until the end of the year.

The Estonian Presidency which is in charge during the second half of 2017 is well prepared and has devoted many resources. However, the sheer number of files will slow down progress. At stake are many issues that will require huge investments by the Member States with repercussions on the energy mix – they will fight tooth and nails on some of the issues. In particular smaller Member States that often have only one or two attachés responsible for the whole Package will struggle and need to prioritise certain issues. The upcoming Bulgarian Presidency will have the difficult task to advance or even finalise the files, while not sharing the green-enthusiasm of some of the more prosperous EU Member States.

While the EC has good reasons to finalise the Clean Energy Package before 2019, the strong time pressure risks compromising the quality of the legislation. Many Member States will often not be able to discuss the issues properly in their Ministries and will not have the opportunity to give appropriate input. The possible outcome will be that many Member States will feel steamrolled and be dissatisfied with the final texts.

Transport

Transport is the last major area of the Energy Union the EC needs to tackle and that comes increasingly into focus of EU stakeholders, the media and the public. The diesel emission scandal has increased the stakes and raised the pressure for Europe to overhaul its transport system quickly if it wants to fulfil its climate commitments, keep air pollution within acceptable levels and keep European industry competitive. However, other issues such as the truck cartel, the low-emission mobility strategy, German automakers' alleged cartel and two major legislative packages have kept the EC busy.

In May, the first part of the long-awaited **Mobility Package**, “Europe on the Move”, was published marking an important milestone for EU’s road transport sector. The package covers a wide range of topics, from social fairness (review of EU rules on access to the road haulage market, use of hired vehicles next to the implementation, clarification of the rules on cabotage and assessing driving and rest periods), to payment systems (Eurovignette and Electronic Toll Service). All of these elements are included in the first chunk of transport legislation foreseen in this legislature. The most controversial aspect of the package is the attempt to address the divide between Eastern and Western European countries on working conditions and wages, while preserving the internal market and promoting social fairness in EU’s road transport sector.

A political agreement is unlikely to be reached before the end of 2018. However, given the high politicisation of the issue, a heated debate between the three EU institutions can be expected where the interest of the old EU Members represented by France will be confronted with the arguments presented by the group of younger EU Member States united around one of the largest benefitters of the internal market – Poland.

Looking towards the future, in November, the EC is expected to present the second chapter of the Mobility Package. For the decarbonisation of the transport sector advancing smart and integrated transport solutions is a top priority. The upcoming emission performance standards for cars and vans proposal and the fuel efficiency standards for heavy duty vehicles (Q1 2018) are the most complex and controversial topics the transport industry will face in the coming months.

Directly related to the emission performance standards and the diesel scandal, the Commission proposed a **Regulation on the approval and market surveillance of motor vehicles** in January 2016 to replace the current Framework Directive. The European Parliament adopted its report already in April and also the Council, pushed by the Maltese Presidency, agreed on its common approach on 29 May. The Estonian Presidency will aim to advance the trilogues as much as possible. This measure complements two new emissions test rules (WLTP and RDE), which come into force this September, and are intended to both more accurately measure and oversee fuel consumption and emissions from cars, in particular by testing real-driving emissions.

In addition, the **Clean Vehicle Directive** will be revised, most likely leading to zero emission vehicle procurement quotas for public authorities, and possibly also captive fleets. While this approach has some support among industry, Member States will probably be less enthusiastic in view of the expected costs of implementation.

Conclusions

The EC managed to publish an impressive number of proposals that could help to make the European energy system fit for the future and contribute to the decarbonisation targets. In question are many instruments that are crucial for the EU’s energy ambitions e.g. the Renewables Directive to make the European energy system competitive, the Energy Market Design to finally achieve an internal market for electricity and the ETS to raise emission costs to a level necessary to fulfil the Paris commitments. Most importantly, all of these elements need to work together to provide the market signals for a low carbon economy. However, the Clean Energy Package in particular could become victim of both the extreme time pressure and conflicting vested interests. Both legislators are stretched to their limits and pushing the proposals across the finishing line will come at the expense of quality and possibly due process. This is particularly problematic for Member States that do not have enough resources to deal with all the proposals at the same time. For business it is also difficult to get its concerns heard and there is the risk that important facts are not being considered. The Clean Energy Package can only achieve its intended objectives if it can incentivise the private sector to invest and if it manages to establish a working energy market. It is therefore crucial to understand business concerns and motivations and not make any shortcuts just to finish the package in time. The quality of this very important and ambitious initiative should not be sacrificed for the sake of speed.

Clean Energy Package – Hot Issues

Energy Efficiency

- Energy saving target (30% in Council vs. max. 45% in the European Parliament)
- Binding target vs indicative target
- mandatory energy savings obligation (demand for more flexibility from 1.5% annual savings obligation)

Energy Performance of Building

- Measures to tackle energy poverty
- Charging points for electric vehicles
- Targets for renewable production in buildings

Renewables Directive

- Renewables target (27% proposed by EC vs 35% by ITRE rapporteur and 45% by ENVI)
- Phasing out of priority dispatch
- Lowering the ceiling of conventional biofuels from 7% to 3.8% and inclusion of ILUC
- Sustainability criteria for solid biomass
- New principles for renewables support schemes
- Framework for large-scale corporate investors in RES

Governance Framework

- Overall mechanisms e.g. targets vs incentives and level of prescriptiveness
- Role of ETS in governance framework
- Inclusion of targets into governance framework Enforcement mechanism?

Electricity Market Design

- Priority dispatch for renewable energy
Establishment of an EU level Distribution Network Operator (DSO) entity
- Establishment and mandate of regional operation centers
- Capacity mechanisms and the limit to installations with 550g CO₂/kWh (exclusion of coal)
- Establishment of regional bidding zones e.g. dividing Germany into two zones
- Phasing out of regulated prices
- Information for consumers

ACER & Risk Preparedness

- Extent of ACER's competences
- Modalities of regional cooperation
- Solidarity measures

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