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Subject: Clean energy package (**First reading**)

- a) Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast)
- b) Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast)
- c) Proposal for a Regulation of the European Parliament and of the Council on risk-preparedness in the electricity sector
- d) Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast)

- e) Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast)
- f) Proposal for a Regulation of the European Parliament and of the Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013

- Progress Report

I. Introduction

The Commission adopted the 'Clean Energy for all Europeans' - package, containing eight legislative proposals, on 30 November 2016. The package as a whole was presented by the Commission at the meeting of the TTE (Energy) Council on 5 December 2016 and was welcomed by Ministers. The first exchange of views was held at the meeting of the TTE (Energy) Council on 27 February 2017¹. On that occasion, Ministers underlined that this package of proposals, unprecedented in size, would need a careful and thorough examination. The first detailed presentation of all eight proposals in the Energy Working Party was completed by early February 2017, after which the obligatory examination of the Commission's Impact Assessments began.

As regards the eight legislative proposals contained in the Clean Energy Package, and in addition to its other priorities relating *inter alia* to the Energy Labelling and Gas Security of Supply dossiers, the Maltese Presidency has focused Council's efforts on the two legislative proposals relating to energy efficiency and energy performance of buildings, for which it aims to reach a general approach at the 26 June TTE (Energy) Council meeting. It is therefore appropriate that this progress report summarises the work done on the other six proposals.

¹ Note: on the basis of doc. 5800/1/17 REV 1, which contains a summary of the content of the proposals.

After the examination of the impact assessments was completed, the examination of the six proposals consisted mainly of delegations indicating their tentative, preliminary positions, and of clarifications and explanations being provided by the Commission on the basis of clear and detailed presentations per topic. This stage of clarifications and explanations is still ongoing, and most delegations still hold scrutiny reservations on (parts of) the proposals.

For the proposals relating to governance and renewables, the first round of examination of the articles has been more or less completed (though not yet for the Annexes). For governance, climate attachés are participating actively, in view of the important climate-related parts of the proposal and in line with the overall integration of climate and energy policies. As regards the four proposals relating to the electricity market design, the discussions held so far followed a broader, theme-based approach.

This progress report summarises: (a) the main elements of the completed examinations of the Commission's impact assessments, and (b) the main topics that were discussed in the context of the examination of the proposals.

II. Electricity market design

(a) Examination of the impact assessments

The examination of the combined impact assessment of the four Electricity Market Design (EMD) proposals took place on 30 January 2017. Member States acknowledged the analysis of various policy options for a revision of the main framework governing electricity markets and security of electricity supply. Member States also underlined the need for an efficient and cost effective market design, with improved resilience, investment in generation capacity, reducing costs for consumers while improving consumer protection. The main areas of concern included: the establishment of Regional Operation Centres (ROCs) in relation to the role of Transmission System Operators (TSOs) and raise administrative burden; rules on capacity mechanisms; sound level playing field for all technologies, definition of bidding zones and market based supply prices (the phasing out of regulated prices), interconnection specificities and security of electricity supply. There were few particular problems raised in relation to the content of the impact assessment. Member States preferred to focus on elements in the legislative proposals.

(b) Main topics discussed

The first detailed presentation of the EMD at the Energy Working Party took place on 21 March 2017. To date the various proposals were discussed four times. Work on EMD is still in the early stages with many Member States holding scrutiny reservations and asking the Commission for clarifications. A detailed examination of the articles has not yet taken place and the texts were not yet revised.

The Council and the European Parliament have repeatedly stressed that a well-functioning integrated electricity energy market is the best tool to guarantee affordable energy prices, secure energy supplies and allow for the integration of larger volumes of electricity produced from renewable sources in a cost efficient manner. Competitive prices are essential for achieving growth and consumer welfare in the European Union and, hence, are at the heart of EU energy policy.

Member States broadly welcomed the entire EMD package. The new legislation will allow cross-border integration, will empower consumers and provide incentives for necessary investments to fulfil the Union's obligations under the Paris Agreement on climate. Moreover, it will give priority to energy efficiency and contribute to Union's target to create jobs, growth and attract investments.

During the discussion on the Regulation on the internal market for electricity, Member States shared their points of view regarding the organisation of the capacity mechanisms and whether those should be of last resort, and whether national adequacy mechanisms should be kept. They also discussed the need for an European adequacy assessment, scarcity pricing, definition and decision-making regarding the bidding zones, setting out the tasks and duties of the ENTSO-E, definition and mission of the Regional Operational Centres (ROCs) and possible increasing administrative burden.

Concerning the draft Directive on common rules for the internal market in electricity, Member States discussed consumer engagement, the roles of local energy communities, price regulation and the need to protect vulnerable consumers, use of contract termination fees, dynamic price contracts, obligation for Member States to define frameworks for independent aggregators and demand response along principles that enable their full participation in the market, the rules for the roll-out of smart meters and progressive phase-out of blanket price regulation.

Regarding the proposal for a Regulation establishing a European Union Agency for the Cooperation of Energy Regulators (ACER), Member States exchanged views on the expansion of competencies for ACER to the coordination of certain functions related to ROCs, supervision of the Nominated Electricity Market Operators, the duties in the field of wholesale market supervision and cross-border infrastructure and more responsibilities in elaborating and submitting the final proposals for network codes to the Commission while maintaining ENTSO-E's role as technical expert. Member States also asked if the agency will have appropriate financing for its new expanded tasks.

The Regulation on risk-preparedness in the electricity sector was considered by the Member States as a very timely and useful addition to the electricity package which will allow for strengthening EU security of electricity supply. However, Member States raised questions regarding the modalities and management of regional cooperation and the future relation with the ROCs. Moreover, questions were raised regarding the non-market based measures, solidarity measures and methodology for the common risk-preparedness plans.

III. Renewable energy

(a) Examination of the impact assessment

The Commission presented the impact assessment by means of detailed presentations on the five main topics covered in the proposal: bioenergy/sustainability, transport, electricity, consumers, and heating & cooling. Delegations inquired about the Commission's analysis underlying several proposed provisions, often because of serious concerns about the proportionality of these provisions and their economic, social, and environmental consequences at national, regional or local level, including on (very) small actors such as fuel suppliers and small forest owners. Thus, questions were asked about the effects of: the proposed annual 1% increase of the share of renewable energy in the heating and cooling supply; the proposed gradual phase-out of first generation biofuels ²; the proposed gradual increase of advanced biofuels; and the administrative burden on all actors. Delegations underlined that they would need time to model the consequences (economic/financial/jobs/etc.) of the policy choices proposed at national level.

(b) Main topics discussed

The proposed partial opening up of support schemes (10-15%) to generators of renewable energy located in other Member States was a topic that raised concerns. Many questions were posed about the proposed "one-stop shop" that would coordinate and facilitate the entire permit granting process for applicants wanting to build/operate renewable energy plants and associated transmission and distribution infrastructure. In view of the binding overall 27% renewable energy target for the EU, and Member States' right to determine their fuel mix under the Treaty, the need for additional (indicative) national (sub)targets (transport, and heating and cooling) was questioned. The issues of the system of Guarantees of Origin, and of adequate infrastructure interconnections (in relation to national renewables targets) were also raised. Questions were also raised about the many proposed delegated acts.

² Note: this proposed phase-out concerns only the ability of Member States to *count* first generation biofuels as renewable energy.

As regards heating and cooling, discussions notably related to the proposed annual 1% increase of the share of renewable energy in the heating and cooling supply and to the opening up of heating and cooling systems to competition. For transport, the provision introducing an obligation on European transport fuel suppliers to supply to the market an increasing share of advanced renewable fuels was discussed, and questions were raised about the near-absence of provisions that would enable or stimulate electro-mobility. As regards consumers, the rights of (small-scale) renewable energy self-producers, self-consumers and renewable energy communities, including the proposed simple notification of small-scale renewables installations, were debated.

Regarding biofuels, bioliquids and biomass, the main topics discussed were the new sustainability criteria for forest biomass, investor certainty in the context of the proposed gradual phaseout of first-generation biofuels, the overall administrative burden for governments, companies and in particular smaller actors such as forest owners and fuel suppliers, and the proposed increasing greenhouse gas savings requirements for these fuels, as well as their expected availability on the domestic and import markets.

IV. Governance

(a) Examination of the impact assessment

At the meeting devoted to the examination of the impact assessment, delegations posed questions regarding some choices made by the Commission in its proposal. This included notably the appropriateness of the proposed linear trajectories for national shares of renewable energy and energy efficiency from 2021 to 2030 and possible alternatives, as well as the proportionality of the administrative burden. The meeting was dominated by questions from delegations and the presentations of their preliminary positions relating to the proposal itself.

(b) Main topics discussed

A main topic was the deadlines for the reporting of draft and final integrated national energy and climate plans. This concerned in particular the difficulties that Member States will have in drawing up the *first* of these plans before the proposed deadlines, given the scope of this new exercise, the need to consult the public and gather public support, and the difficulty of drafting the first draft plan by 1 January 2018 as proposed by the Commission, when the governance regulation will not yet be in force. Concerns were raised about the administrative burden, relating to the amount of detailed information that the Member States would have to report for the draft and final plans, the updates thereof, and the biennial progress reports, and relating to the number of objectives, targets and subtargets, in particular those *not* relating to the quantified targets endorsed by the October 2014 European Council (such as regarding the dimensions of "energy security" and "research, innovation and competitiveness"). The need to safeguard sufficient flexibility to account for national specificities was also raised.

Provisions relating to the filling of a 'gap' between the aggregated national contributions for renewables and the linear trajectory leading to the overall binding EU level target for 2030, in particular the need for more clarity and more specific provisions on this 'what if' issue, were also discussed, as were provisions related to obligations that result from the Paris Agreement. In addition, delegations expressed concern about the proposed provision that Member States may modify their planned targets, objectives and contributions only upward. As regards the Commission's assessment as to whether the efforts areas of renewables and energy efficiency are sufficient, a discussion was held whether this should be done in 2023 as proposed, or later. Discussions were also held on the issue of how 'early efforts' could be taken into account, and how the electricity interconnection target would be measured.

The examinations also addressed the financial platform that the Commission would set up (via a delegated act) in order to finance renewables projects, in particular its functioning and the provision that Member States falling below the level of their current binding 2020 renewables target would contribute financially to this platform. Delegations also discussed the intended nature and consequences of the proposed Commission recommendations of which the Member States should take utmost account. In general terms, concerns were raised about the proposed widespread use of delegated acts. Furthermore, the proposed replacement of the current Climate Change Committee with a new Energy Union Committee raised concerns.