



House of Commons
European Scrutiny Committee

EU Energy Policy

Twenty-ninth Report of Session 2016–17

Documents considered by the Committee on 25 January 2017

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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Introduction: EU Energy Policy

Security of energy supply, competitively priced energy and reducing the environmental impact of energy generation are key public policy goals for any country. Electricity imported into the United Kingdom from the EU makes a valuable contribution to the UK's security of supply.¹ There are already existing connections to France, the Netherlands and Ireland and a further seven interconnectors—to France, Belgium, Norway, Denmark and Ireland—are planned by 2022. By that stage, interconnected electricity could potentially supply around 20% of the UK's peak energy demand.

While the EU and its Member States recognise the value of interconnection, each Member State remains ultimately responsible for security of energy supply to its citizens, and for deciding on the most appropriate energy mix.

As EU Member States develop the internal energy market, so the global approach to energy is fundamentally changing, with an increasing reliance on renewable energy.

The Commission has accordingly proposed a “Clean Energy” Package. It aims “to keep the European Union competitive as the clean energy transition is changing the global energy markets.” The proposals have three main goals:

- putting energy efficiency first;
- achieving global leadership in renewable energies; and
- providing a fair deal for consumers.

The package consists of eight legislative proposals relating to energy efficiency, renewable energy, electricity market design and governance, as well as a number of non-legislative documents. In this Report, we assess the UK Government approach to the legislative proposals and summarise some of the supporting documentation.

At the heart of the proposals is a new approach to **electricity market design**, designed to ensure a more effective internal energy market that promotes the secure supply of efficient, clean and affordable energy. The Commission also proposes a new overarching **energy governance** structure with a view to ensuring that the EU delivers on its energy and climate change commitments.

Brexit

Given the interconnection between the United Kingdom and the wider EU energy market, we are concerned to explore the extent to which this legislation will apply to, or impact upon, the United Kingdom once it has withdrawn from the European Union.

¹ Ofgem's most optimistic assessment of electricity capacity over the current winter assumed, among other assumptions, that the interconnectors with mainland Europe would import at maximum capacity, as they did in winter 2014–15.

Each of the Explanatory Memoranda on these proposals contains the following passage:

“On 23 June, the people of the United Kingdom voted in the EU referendum to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.”

Negotiations on two of the proposals (on **energy performance of buildings** and **energy efficiency**) are likely to progress swiftly. Even taking into account a twelve month implementation period, it is conceivable that the UK will be required to implement those proposals before it leaves the European Union.

The other proposals are likely to proceed at a slower pace and therefore the degree of application to the UK will very much depend on the type of future relationship negotiated between the UK and the EU, notably in terms of the trade of energy and the conditions that might be placed on that trade.

On Brexit, the package raises important factual questions about the arrangements for energy trading between the EU and third countries. There is little reference throughout the proposals to third countries—the UK’s status once it leaves the EU—with the exception of the revisions to the rules governing the EU’s Agency for the Cooperation of Energy Regulators (ACER), which facilitates the smooth functioning of the internal energy market by providing a forum for cooperation between national regulators. The Commission proposes that third countries should be able to participate in the activities of that Agency, as long as they have concluded an agreement with the EU and apply EU energy, environment and competition law.

We understand the Government’s concerns not to prejudice Brexit negotiations, but in this, and in other cases, the Government’s position can only be understood and evaluated with more information on the Brexit related aspects of the proposals. Much of that information is factual, and will be no secret to the EU negotiators. We make no judgements about the future energy relationship between the EU and the UK, but we wish to be as fully informed as possible.

Conclusion

We recognise that this is an early stage in the proceedings. The Government is clear in its various Explanatory Memoranda that it is still formulating its position and will submit a clear assessment of the costs and benefits of each proposal to the UK in due course. When it does so, we expect a full response to the questions we pose, or a clear explanation of why it would not be in the national interest to provide such a response.

Given the outstanding questions on Brexit and on the impact of the proposals, we retain all of the legislative proposals under scrutiny. We consider them to be of interest to the House as a whole. We draw all the proposals to the attention of the Committee on Business, Energy and Industrial Strategy Committee and we draw this Report to the attention of the Committee on Exiting the European Union.

1 Energy Performance of Buildings

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive amending Directive 2010/31/EU on the energy performance of buildings
Legal base	Article 194(2) TFEU
Department	Communities and Local Government
Document Number	(38339), 15108/16 + ADDs 1–5, COM(16) 765

Summary and Committee's conclusions

1.1 The building sector is the largest single energy consumer in Europe, absorbing 40% of final energy. About 75% of buildings are energy inefficient according to the European Commission, yet only around 1% of the building stock is renovated each year.

1.2 This proposal—one of the energy efficiency measures under the Clean Energy Package—is designed to accelerate the cost-effective renovation of the existing building stock by creating the right market conditions.

1.3 It updates the existing Energy Performance of Buildings Directive (EPBD) by:

- encouraging the use of modern technologies, including building automation and charging infrastructure for electric vehicles, to ensure buildings operate efficiently;
- streamlining or deleting provisions that have not delivered the expected output;
- strengthening the links between achieving higher renovation rates, funding and energy performance certificates; and
- reinforcing provisions on national long-term building renovation strategies, with a view to decarbonising the building stock by 2050.

1.4 The Minister for Housing and Planning, (Gavin Barwell), is supportive of some of the proposals but is concerned about the cost and proportionality of a number of the changes proposed by the Commission. The Government's position is set out in greater detail below.

1.5 The Government highlights a range of concerns relating to the proposal, notably the potential additional cost of some of the suggested changes. We ask that the Government supply further details of its analysis once further progress has been made. We would also welcome any early indication as to whether the Government's concerns might be shared by others.

1.6 We note that the Maltese Presidency intends to prioritise this proposal. We therefore look forward to the requested information as soon as possible.

1.7 There is a 12 month deadline for implementation by Member States following adoption of the legislation. We observe that the possible swift adoption of this measure means that implementation may be required before the UK has left the European Union.

1.8 We retain the document under scrutiny and draw it to the attention of the Business, Energy and Industrial Strategy Committee and the Committee on Exiting the European Union.

Full details of the documents

Proposal for a Directive amending Directive 2010/31/EU on the energy performance of buildings: (38339), [15108/16](#) + ADDs 1–5, COM(16) 765.

Background

1.9 The Energy Performance of Buildings Directive was originally introduced in 2002 (Directive 2002/91/EC) and was then substantially amended and expanded when it was recast in 2010 (Directive 2010/31/EU). The aim of the Directive is to promote the improvement of the energy performance of buildings and to reduce energy consumption in both residential and non-domestic buildings by raising awareness of energy use, mandating minimum standards, and requiring inspections of key equipment such as boilers. The current requirements of the Directive include:

- a framework for Energy Performance Certificates (EPCs) and requirements on their issue and display;
- minimum energy performance requirements for buildings, which should be “cost-optimal”;
- requirements for new buildings to be nearly zero energy from 31 December 2020 (public buildings from 31 December 2018);
- requirement for the adoption of a national methodology for calculating the energy performance of buildings to underpin both EPCs and minimum energy performance requirements for building works; and
- inspection of air conditioning systems and heating systems and standards for inspection and control.

1.10 A review of the Directive identified the need for changes (see para 1.3).

European Commission proposal

1.11 The key elements of the proposal are as follows:

- An extension of current reporting requirements (presently set out in the Energy Efficiency Directive) to include consideration of energy poverty issues and support for smart financing of building renovations;
- Removal of the requirement for analysis and consideration of high efficiency alternative systems;
- New non-residential buildings with more than ten parking spaces, and non-residential buildings with more than ten parking spaces undergoing major renovation will have to equip one parking space per ten for electric vehicle recharging. This will apply to all non-residential buildings with more than ten parking spaces buildings as of 2025. New residential buildings with over ten parking spaces, and those undergoing major renovation, will have to put in place the pre-cabling for electric recharging. Member States will be able to choose to exempt buildings owned and occupied by SMEs, as well as public buildings covered by the Alternative Fuels Infrastructure Directive;
- A requirement that, when a technical building system is installed, replaced or upgraded, the overall energy performance of the complete altered system is assessed, documented and passed on to the building owner;
- Introduction of a ‘smartness indicator’ rating the readiness of the building to adapt its operation to the needs of the occupant and of the grid, and to improve its performance;
- An implicit proposal to put in place a database of Environmental Performance Certificates (EPCs), which would allow the tracking of actual energy consumption—notably in public buildings with a surface area over a certain threshold;
- Member States should also use EPCs to assess energy savings from renovations financed with public support;
- Amendments to the provisions on inspections, allowing building automation and control systems to be used instead of regular inspections; and
- New requirement to use the primary energy metric (KWh/(m².y)) on EPCs and in Building Regulations—currently the UK uses an alternative metric relating to carbon dioxide emissions.

1.12 The Commission concludes that the proposed amendments “respect the principle of subsidiarity, and Member States will retain the same flexibility as today, allowing adaptation to national circumstances and local conditions (e.g. building type, climate, costs of comparable renewable technologies and accessibility, optimal combination with demand side measures, building density, etc.).”

Minister's Explanatory Memorandum of 20 December 2016

1.13 The Government agrees that the requirements of the Directive are in accordance with the EU's principle of subsidiarity.

1.14 The Minister considers that the proposal to move the requirement for national building renovation strategy from the Energy Efficiency Directive to the EPBD has no impact on business or consumers and limited impact on the Government.

1.15 The proposal to remove the requirement for analysis and consideration of high efficiency alternative systems for new and existing buildings should, says the Minister, result in some cost reductions for industry and home builders.

1.16 The Minister indicates that the Government will need to consider carefully the implications of the electric vehicle charging proposals "to ensure that they are proportionate and practical". He acknowledges that installation of charge point cabling when new homes are being built is significantly cheaper and easier than retrofitting.

1.17 The Government will also need to ensure the proportionality and practicality of the proposal that when a technical building system (e.g. built-in lighting, heating systems) is installed, replaced or upgraded the overall energy performance of the complete altered system is assessed, documented and passed on to the building owner. He explains:

"The proposal implies that the requirement to have an energy assessment, and lodge associated data on a database, could change from currently being on sale/rental of a building, to being every time a technical building system is altered. Currently the requirement is to update the assessment every 10 years. While the proposal could improve the accuracy of an assessment by ensuring an update when a building system is changed, it could also mean that a new assessment is required every time a fixed light fitting is changed or installed.

"The proposal potentially adds a burden on installers and associated costs could be passed onto home owners or landlords. Most installers and engineers are not accredited energy assessors and so currently could not undertake such an assessment. To meet the requirement installers and engineers would either need to be trained or an accredited energy assessor be employed after the work is complete, unless an alternative and more proportionate means of meeting the requirement was developed.

"If the solution was to train a wider range of professions to be able to undertake an energy assessment there would be an additional burden arising from the need for associated training, standards, guidance and auditing to prevent fraud. The cost of an assessment and residential EPC on sale or rent is currently around £50, this cost is usually borne by those receiving the assessment (ie the home owner or landlord). EPC costs for non-domestic buildings are usually higher, and could be well over £1000 if the building is large and complex (Note: the charges for EPCs are market led and are not set by Government)."

1.18 Regarding the proposed smartness indicator, the Government considers that this could support the transition to a smart energy system, but emphasises that more details are required on what it would cover and how it would be implemented. The Government would also want more clarity from the Commission on how it sees the smartness indicator interacting with whatever option is pursued through the work on smart appliances being taken forward under the Ecodesign Directive.

1.19 The Minister notes that a new requirement for Member States to create and maintain a national energy performance certificate database is implied in the proposals but that full details of the requirement are not set out. He adds that the UK has already implemented databases for England and Wales, Northern Ireland and for Scotland since 2007. Further clarity will be sought from the Commission on the database, particularly whether a single UK database would be required.

1.20 The Minister expresses concern about the possible cost of the proposal to require an Energy Performance Certificate to be produced before and after renovation supported by public finance. He notes that the energy saving from most common energy efficiency improvements are already well established.

1.21 The Minister expresses the Government's view of the proposals for heating and air conditioning inspection regimes (or the alternative of mandating buildings over a certain energy usage to have a building automation and control system) in the following terms:

“The EPBD currently allows for the use of an ‘equivalence report’ instead of the inspection regime for heating systems and the UK meets the requirement through this approach. For air conditioning systems the UK applies an inspection regime.

“The impact of the heating systems proposal is that the UK would need to either put in place a new heating system inspection, with the associated cost and compliance regime, or legislate for building automation and control systems (including retrospective mandating of these systems in existing buildings over the specified energy usage). For either the inspection or legislation approach it would also be challenging to identify buildings with the proposed energy use threshold particularly in buildings where energy supply is not under the control of one body. There is no legal mechanism in the UK that compels tenants to tell the landlord how much energy they are using for the landlord to calculate the aggregate primary energy use.

“The impact of the proposal for air conditioning systems is likely to be less onerous as a regime is already in place in the UK and the energy use threshold for inclusion in the regime is raised in the proposal so fewer buildings are likely to be included. However, the legislative alternative to the inspection regime would face the same issues on identification as outlined above and would require retrospective action on existing buildings.”

1.22 On the use of a primary energy metric in setting minimum energy performance standards, the Minister says:

“The proposed change to Annex I to the EPBD requires performance standards for the purposes of the Directive (new build and major renovation) to be expressed in terms of primary energy. This would mean the Government would mandate a primary energy requirement for new buildings instead of, or alongside, current carbon emissions requirements. Although it is relatively straight forward to calculate a primary energy target this could disincentivise the use of some technologies which are low carbon but poor efficiency, such as biomass heating systems.

“In relation to the EPC, it may mean less emphasis in the metrics on the cost of heating and more on energy reduction. This will mean efficient systems with more expensive fuels may get a better EPC rating.”

1.23 The Government will complete the standard checklist for analysis on EU proposals identifying the potential impacts of the proposals in the UK. This will be submitted to the Committees in due course. The Minister considers that the Commission may have underestimated the costs to businesses of the proposed changes.

1.24 Finally, explains the Minister, the Maltese Presidency will seek to agree a Council position in the first half of 2017, paving the way for discussions with the European Parliament under the Estonian Presidency in the second half of 2017.

Previous Committee Reports

None.

2 Energy Efficiency Directive

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive amending Directive 2012/27/EU on energy efficiency.
Legal base	Article 194(2) TFEU
Department	Business, Energy and Industrial Strategy
Document Number	(38340), 15091/16 + ADDs 1–13, COM(16) 761

Summary and Committee's conclusions

2.1 Explaining its proposals on energy efficiency, the Commission says:

“The cheapest energy, the cleanest energy, the most secure energy is the energy that is not used at all. Energy efficiency needs to be considered as a source of energy in its own right. It is one of the most cost effective ways to support the transition to a low carbon economy and to create growth, employment and investment opportunities”.

2.2 In 2014 the European Council agreed—as part of the “2030 framework”—to adopt an indicative EU-level target to reduce primary energy consumption by 27% by 2030 against a business-as-usual projection, a target that was to be reviewed by 2020 “having in mind” a target of 30%. The Council was clear that targets “will not be translated into nationally binding targets”.

2.3 The Commission proposes accordingly to update the existing Energy Efficiency Directive by:

- aligning energy efficiency targets with the EU 2030 climate and energy framework;
- extending beyond 2020 the energy saving obligation requiring energy suppliers and distributors to save 1.5% of energy each year from 2021 to 2030 with a view to attracting private investment and supporting the emergence of new market actors; to enable tailor-made policies that take account of national specificities, Member States can also meet this requirement through alternative measures having the same effect, such as energy efficiency support schemes; and
- improving metering and billing of energy consumption for heating and cooling consumers.

2.4 The Minister of State, Baroness Neville-Rolfe, indicates that the Government is still developing its negotiating position. Based on an initial assessment, the Government is concerned about the proposed targets. The Government believes that the Commission's proposal goes beyond the agreement reached at the October 2014 European Council.

2.5 **The Government highlights a range of concerns relating to the proposal, notably as regards the proposed approach to targets. On the EU-wide target, we note that the October 2014 European Council agreed to a 27% indicative target by 2030, but subject to a review before 2020, having in mind a target of 30%. The European Council was, however, silent as to whether a 30% target would be binding or indicative. Whether that was deliberate or not is unclear. Nevertheless, we urge the Government to recognise that lack of clarity in its advocacy of an indicative approach.**

2.6 **On the nature of any national targets, which the European Council stated should not be binding, the proposed amendments to Articles 1 and 3 are clear that national energy efficiency targets—expressed in terms of energy consumption, energy savings or energy intensity—should be indicative. The Government takes the view that the amendments to Article 7 make national energy saving targets binding. While we concur that this appears to be the intention of Article 7, we note that the current Directive includes similar provisions. We ask the Government to explain further its concerns and we also ask that the Government supply analysis of how the Article 7 energy savings targets relate to the provisions on EU-wide and national energy efficiency targets.**

2.7 **The nature of the targets will have a substantive impact on the Government's assessment of the impact of the proposal on the UK. We ask that the Government supply further details of its analysis once progress has been made. We would also welcome any early indication as to whether the Government's concerns might be shared by others.**

2.8 **We note that the Maltese Presidency intends to prioritise this proposal. We therefore look forward to the requested information as soon as possible.**

2.9 **There is a 12 month deadline for implementation by Member States following adoption of the legislation. We observe that the possible swift adoption means that implementation may be required before the UK has left the European Union.**

2.10 **We retain the document under scrutiny and draw it to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

Proposal for a Directive amending Directive 2012/27/EU on energy efficiency: (38340), [15091/16](#) + ADDs 1–13, COM(16) 761.

Background

2.11 The Commission has estimated that the current national and EU energy efficiency frameworks will lead to a reduction of approximately 23.9% in primary energy consumption by 2030. To redress this projected shortfall against the target of 27% agreed by the European Council, the Commission is proposing a number of amendments to the

Energy Efficiency Directive to ensure that the objectives of the 2030 framework are met. The bulk of the existing Directive has not been reviewed, and will not be amended, as the Commission consider that, with transposition only completed in 2014, it is too early to judge the effectiveness of many of its requirements.

European Commission proposal

2.12 The key elements of the proposal are as follows:

- The subject matter and scope of the Directive are amended to add a reference to meeting the EU's 2030 energy efficiency target. In doing so, the Commission has proposed raising the 2030 target from 27% (the level agreed in 2014) to 30% and converting it from an indicative to a binding EU level target;
- The current provision requiring Member States to set national indicative energy efficiency targets for 2020 is extended until 2030;
- The current provision requiring Member States to meet a binding energy saving target by 2020 through deployment of either an obligation on energy suppliers or alternative measures or a combination of the two is to be repeated for 2030;
- Member States are required, in Article 7, to achieve cumulative end-use savings equivalent to 1.5% of annual energy sales to final customers (against an average over 2016–18) each year from 1 January 2021 to 31 December 2030. Member States may exclude various specified sales of energy;
- Further obligations beyond 2030 at ten-yearly intervals are anticipated;
- Clarifications to the criteria that energy efficiency obligation schemes and alternative policy measures must meet if savings generated are to count towards the energy-saving targets;
- New provisions applicable to the metering and billing of heating and cooling are introduced, with a number of new requirements. The requirement to provide customers with competitively priced individual meters would no longer be subject to the requirement that it is technically possible, financially reasonable and proportionate in relation to the potential energy savings. There is now an explicit requirement to publish the conditions of technical non-feasibility and non-cost effectiveness and a requirement to introduce transparent rules on the allocation of the cost of heating, cooling and hot water consumption in multi-apartment and multi-purpose buildings. This was previously optional (and not transposed in the UK). The Commission is also proposing that all new meters and heat cost allocators from 1 January 2020 must be remotely readable and by 1 January 2027 all meters and heat cost allocators, including existing meters and heat cost allocators must be remotely readable except where not cost-efficient;
- A new billing requirement has been introduced where, as of 1 January 2022, where remotely readable meters or heat cost allocators have been installed, billing information must be made available at least monthly. In addition, new provisions would also require additional information to be provided with bills—details of fuel mix, climate correction of comparisons in final energy consumption, and

comparisons with normalised users (which previously was optional)—while the existing requirements to provide specified advice on energy efficiency and other feedback to customers would be removed; and

- changes to Annex V of the existing Directive intended to add clarity to the criteria that energy savings must meet in order to count towards a Member State’s energy-saving obligation.

2.13 In its explanation of the proposal’s compliance with the principle of subsidiarity, the Commission says:

“The instruments on energy efficiency adopted at EU level reflect the growing importance of energy as a political and economic challenge and its close interrelation with the policy areas of security of energy supply, climate change, sustainability, internal market, and economic development. Because of market and regulatory failures, large amounts of cost-effective investments in energy efficiency will not take place, which will lead to a level of energy consumption in 2030 which is not in line with the agreement of the European Council of October 2014. To date, energy efficiency objectives could not be sufficiently achieved by Member States alone, and action at Union level is therefore needed to facilitate and support the uptake of activities at national level. The principle of subsidiarity is respected as Member States will retain the same flexibility as today in terms of selecting their policy mix and their approach to achieving the required savings by 2030, including how the savings are phased.”

Minister’s Explanatory Memorandum of 20 December 2016

2.14 The Minister reports that the Government is currently considering the detail of the proposal to determine its negotiating position. As set out below, she is able to share some initial views.

2.15 The Government agrees with the Commission that further action to deliver improvements in energy efficiency will have an important role to play in reducing greenhouse gas emissions, improving energy security, helping consumers manage energy bills and boosting competitiveness. In the UK, she says, such improvements in energy efficiency have a fundamental role in delivering the carbon savings required under the UK’s Carbon Budgets up to and including the recently agreed Fifth Carbon Budget (2028–2032) that will correspond with the period covered by this Directive.

2.16 The Government welcomes the Commission’s decision to restrict the scope of the re-draft of the Directive and agrees that it is too early to judge the effectiveness of the bulk of the provisions in the Directive given that transposition of the Directive only concluded in 2014.

2.17 The Minister expresses concern, however, that the proposed changes do not align with the approach agreed in 2014:

“[The Government notes that the proposed changes] are intended, *inter alia*, to adapt the Directive to implement the EU’s 2030 climate and energy framework. It is therefore of concern to the Government that the proposal

has seemingly ignored the agreement reached at the European Council in 2014 on the nature of the EU’s 2030 target for energy efficiency. Leaders agreed that the EU-level target would be an indicative one and that there would no binding national targets—the proposal as presented both puts the EU-level target on a binding footing and contains proposals for binding national energy-saving targets (Article 7).

“The Government considers that the imposition of these binding targets has the potential to divert Member States from the most cost-effective pathway to meeting their challenging greenhouse gas targets, raising costs for both consumers and businesses.

“The Government recognises that provisions in the existing Directive setting out the criteria which energy saving policies and measures must meet in order to count towards national energy saving targets were poorly drafted. However, the Government is concerned that in seeking to add clarity, the proposal may unduly constrain the measures that Member States may count towards both the existing 2020 target and proposed 2030 target.”

2.18 The Government agrees that there are important benefits in ensuring that consumers of heating and cooling have access to accurate, timely and useful metering and billing information to enable them to effectively manage their energy consumption and bills. However, says the Minister, “it will be important to ensure that the proposed requirements are technically feasible, capable of being delivered cost-effectively for suppliers, property owners or consumers, and are practically deliverable in the timescales envisaged in the Directive”.

2.19 On the timing of negotiations, the Minister reports the Maltese Presidency’s intention to prioritise negotiation of the proposal from January 2017 “with the aim of agreeing a general approach in June to pave the way for discussions with the European Parliament under the Estonian Presidency in the latter half of 2017”.

2.20 Finally, the Government will complete and submit to the Committees its own assessment of the impact of the proposal on the UK.

Previous Committee Reports

None.

3 EU Renewable Energy Directive

Committee's assessment	Legally and Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive on the promotion of the use of energy from renewable sources (recast)
Legal base	Article 194(2) TFEU
Department	Business, Energy and Industrial Strategy
Document Number	(38345), 15120/16 + ADDs 1–9, COM(16) 767

Summary and Committee's conclusions

3.1 Global power markets are changing. According to the International Energy Agency, renewable energy represented more than half of the new power capacity around the world in 2015. In 2030, according to the Commission, half of the EU's electricity generation will come from renewables.

3.2 This proposal would replace nationally binding 2020 renewables targets with an EU-wide target of 27% renewable energy by 2030, consistent with the October 2014 European Council agreement on the 2030 Framework for Climate and Energy. The Commission proposes that Member State 2020 target levels be the baseline for Member States' renewable energy share post-2020. Any Member States falling below their baseline would be required to pay into a Commission fund which will be used to finance renewable projects.

3.3 The proposal sets out a variety of measures to ensure that the EU target is met, including:

- new provisions on financial support for renewable electricity schemes, including gradual opening of those schemes to projects located in other countries;
- new measures to boost the share of renewable energy in the heating, cooling and transport sectors;
- extension of the current sustainability criteria for renewable fuels and liquids to biomass fuels in recognition of the problems that have been caused by an increasing amount of crop-based biofuels grown on food-producing land or in previously forested areas; and
- new provisions for renewable self-consumers, i.e. customers who consume electricity generated within their own premises, and renewable energy communities.

3.4 The Minister of State, (Baroness Neville-Rolfe), agrees that action needs to be taken at the EU-level, but she expresses concern that some of the detail of the proposal might be better left for national or regional authorities to manage. She points in particular to the provisions in respect of financial support to the renewables sector.

3.5 The Minister indicates that the Government is still considering its response but she highlights a range of additional concerns, which are set out below. These include a concern that a number of the measures may equate to de facto binding targets. The Minister promises to submit to the Committee the standard checklist for analysis identifying the potential costs and benefits of the proposal in the UK.

3.6 We note that the Minister agrees on the one hand that EU-level action is required in order to implement agreed EU-level objectives but, on the other, that the Government will consider whether some of the details of the proposal—notably on support schemes—are compatible with the principle of subsidiarity. We ask that she articulate any concerns more precisely, ensuring that she distinguishes between concerns surrounding subsidiarity and proportionality.

3.7 The Government is considering whether the proposals in respect of achieving targets are such that Article 192 ought to apply. Article 192 is an environmental policy legal base, providing that the Council should normally operate by qualified majority but that certain decisions should be taken unanimously, while only consulting the European Parliament. These include (Article 192(2)(c)) measures “significantly affecting a Member State’s choice between different energy sources and the general structure of its energy supply”. Could the Minister clarify whether the Government is specifically considering whether Article 192(2)(c) should apply?

3.8 The proposal is set to enter into force on 1 January 2021, by which time it is expected that the UK will have left the European Union. In that light, could she explain the basis on which the UK is approaching the negotiations: Is this purely in a business as usual manner, assuming that it will adopt the terms of the legislation? Alternatively, is the Government giving any consideration to approaching the negotiations from the perspective of a third country seeking to trade with the EU? If the latter, how might that influence the Government’s approach, particularly if it is anticipated that there will be any desire to export and import renewable energy? Would she expect the negotiations to cover any support scheme conditions that the EU might place on a third country wishing to trade in that manner?

3.9 We look forward to receiving the standard checklist for analysis identifying the potential costs and benefits of the proposal in the UK. We ask that, in writing to us, the Minister responds to the issues above and that she sets out any changes to the Government’s position. It would be helpful if she could explain her concerns that a number of the measures may equate to de facto binding targets more fully. We ask too that she set out any early indication as to whether the Government’s concerns might be shared by others.

3.10 We retain the document under scrutiny and draw it to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

Proposal for a Directive on the promotion of the use of energy from renewable sources (recast): (38345), [15120/16](#) + ADDs 1–9, COM(16) 767.

Background

3.11 The current Renewable Energy Directive, agreed in 2009, set a target for 20% of energy to be renewable across the EU by 2020. Member States were set individual binding targets for consumption of energy from renewable sources and a sector specific target to achieve 10% renewable energy in transport.

European Commission proposal

Support schemes, markets and administration

3.12 For the renewable electricity sector the Commission proposes a framework for support schemes, highlighting the need for them to be in a form that is non-distortive to the functioning of the electricity market while minimising the costs to consumers, and integrated into the electricity market. It includes a gradual opening up of support schemes to cross-border participation.

3.13 There are changes to the way in which a Member State's share of energy from renewable sources is calculated, placing a cap on the contribution from crop-based fuels in the transport sector (see paragraph 3.16 below), not allowing electricity produced from new biomass to count towards the share and specifically including the production of electricity from self-consumers and energy communities.

3.14 Single contact points for permit granting for renewable energy plants and for transmission and distribution infrastructure would have to be established along with simplified permit granting processes for repowering existing renewable energy plant and for small-scale installations.

3.15 Member States would ensure that renewable self-consumers, and in certain circumstances SMEs/not-for-profit organisations, are able to self-consume renewable electricity and sell excess production without disproportionate procedures and charges. Remuneration received for electricity fed in to the grid should reflect market value. Member States would be required to take into account the specificities of renewable energy communities when designing support schemes.

Heating and Cooling

3.16 Member States would endeavour to increase the share of renewable energy supplied for heating and cooling (H&C) by one percentage point per year. Suppliers in the district H&C sector would be required to provide energy performance and renewable energy information to consumers. Consumers would be empowered to disconnect from systems that do not meet EU efficiency standards and Member States would provide measures to enable disconnection. Member States would enable access to district heating or cooling systems from third party renewable or waste heat sources, if systems have necessary capacity.

Biofuels, bioliquids and biomass

3.17 In the transport sector, the Commission proposals would replace the current 2020 target of 10% renewables in the transport sector with an obligation for fuel suppliers to include a minimum share of renewable and low-carbon fuels in the fuels they supply to the market from 1 January 2021 onwards. The Commission proposes that the share gradually increase from 1.5% share in 2021 to 6.8% in 2030. At the same time, a cap for crop-based fuels (such as maize) would be set, declining from 7% of transport energy in 2021 to 3.8% in 2030, whilst allowing Member States to set lower limits and distinguish between different types of biofuels.

Biomass for heat and electricity

3.18 The proposal would extend the scope of the existing sustainability criteria and greenhouse gas emission saving requirements for biofuels and biogas and introduce those requirements to the sourcing and use of biomass (such as wood pellets) and biogas for heat and electricity. This is to ensure that biomass production does not impinge on land that would otherwise have been used for food or lead to large-scale deforestation.

3.19 Criteria would mainly focus on the feedstock rather than the end use, i.e. whether the biomass is sourced from agricultural land or forestry, rather than whether it would be used in transport, heat or electricity.

3.20 The proposal would introduce common greenhouse gas (GHG) and sustainability criteria to solid biomass and biogas fuels used in electricity, heating and cooling, wherever in the world the fuels originate. The requirements would apply to solid biomass fuelled installations greater than 20 megawatts and for biogas installations greater than 0.5 megawatts. Member States would be able to set more stringent sustainability criteria where appropriate.

3.21 Cooperation would be strengthened between Member States, the Commission and the voluntary schemes used to certify the sustainability of biofuels, bioliquids and biomass fuels. There are also a number of technical changes and updates to definitions and accounting rules.

Minister's Explanatory Memorandum of 20 December 2016

3.22 The Minister explains that the Government is currently considering its response to the Commission proposal. In general, she says, the proposal requires substantial policy and regulatory development to ensure it is consistent with the Government's objective of providing clean, reliable, and affordable energy. The Government will complete the checklist for analysis on EU proposals identifying the potential costs and benefits of the proposal in the UK and will submit this to the Committee.

3.23 The proposal is not expected to be taken forward until the Estonian Presidency in the second half of 2017 at the earliest.

3.24 On the legal base, the Minister notes that the Government is considering whether the proposals in respect of achieving targets are such that Article 192 ought to apply. Measures under Article 192(2) are subject to unanimity and consultation of the European Parliament.

3.25 The Government agrees that EU-level action is required in order to implement the agreed EU-level objectives. It nevertheless has concerns that some of the detail of the proposals may be inconsistent with the principle of subsidiarity:

“While the UK Government agrees that action needs to be taken at the EU level in order to implement the EU objectives and ensure cross-border coordination, noting also the enhanced flexibility some of the proposals allow, the Government has some concerns over specific measures in the proposals. Most specifically, this relates to the potential for targets being set via supplier obligations. The Government will also consider whether the proposal in respect of renewable electricity support is compatible with the subsidiarity principle”.

3.26 The Minister goes on to observe that, in the conclusions of the European Council of 24 October 2014, it was agreed that no nationally binding targets for renewables would be set for the period to 2030. She says:

“While the recast of the Renewable Energy Directive no longer contains nationally binding targets, the UK Government will work to ensure that provisions in the proposal in relation to supplier obligations and other measures to increase renewable energy in the heating and cooling sector do not equate to de facto binding national targets”.

3.27 The Minister notes that the baseline for Member States’ share of renewable energy would be set at the level of the 2020 target (15% for the UK) and that, through the Governance Regulation, any Member States that fall below their baseline should pay into a Commission fund which will be used to finance renewable projects. She concludes that this proposal could have a currently un-quantified budgetary impact, which the Government will be examining carefully.

Support schemes

3.28 On designing support schemes, the Minister says that the UK adopts best practice in the form of Contracts for Difference. The Government recognises the benefits of publishing a forward look for support schemes, but would need to consider further any requirement to publish a schedule of support schemes with a three year forward look in respect of timing, capacity and budget. The Government will also consider the impact of the proposal on flexibility in respect of the design of present and future support schemes.

3.29 The Minister indicates that the concept of cross-border cooperation and mandatory gradual opening of support schemes to generation in other countries might be acceptable in principle, but that these are novel, complex projects, and require technical and regulatory solutions designed by Member States themselves. The Government will further consider the practical implications.

Heating and cooling

3.30 The proposal for Member States to endeavour to increase the share of renewable energy supplied for heating and cooling every year from 2020, expressed in terms of national share of final energy consumption, would involve new policy action in the UK, says the Minister, and the Government will further consider the impact of this proposal. The Government will seek to ensure that reporting requirements will not create additional administrative burden.

3.31 On District Heating and Cooling, the Minister says that—aside from the Heat Metering and Billing Regulations—the UK does not have any dedicated consumer protection regulation for customers of heat networks. Instead, a system of industry-led voluntary schemes is in place. Development of measures to allow customers to disconnect from systems that do not meet the EU definition of “efficient district heating and cooling” would require new policy development and regulation. The UK Government will need to examine the workability of such proposals on “a relatively immature UK heat networks market.”

3.32 Development of measures to ensure non-discriminatory access to district heating and cooling from renewable and waste heat sources would also require substantial policy and regulatory development, she says, and would require some assessment of the cost effectiveness of measures for the relatively small heat networks that are prevalent in the UK.

3.33 Proposals for electricity distribution system operators to assess the potential for district heating and cooling systems to provide balancing and other system services would increase administrative burden on Distribution Network Operators (DNOs). DNOs are only beginning to develop their capability in active system management, and this would again require some assessment of cost effectiveness. It is worth noting that some operators of heat networks already take part in the Capacity Market and Demand Side System Reserve initiatives via the Transmission System Operator.

Biomass

3.34 In the area of biomass, explains the Minister, the proposal includes significant detailed changes which could impact on the UK and in some areas impose costs. She identifies those areas in the following terms:

- “The proposed sustainability criteria for solid and gaseous biomass represent a tightening of the ambition on GHG [greenhouse gas] savings compared with the current UK approach—to apply to new installations greater than or equal to 20MW [megawatts]. Wastes and residues would be required to meet the GHG requirements where they are currently exempt, which could increase burden on some generators but would give greater certainty on GHG savings;
- “The UK Government will need to consider the implications and legal enforceability of the requirement to impose carbon accounting methodologies on countries not signatories to the Paris Agreement or LULUCF [Land Use, Land Use Change and Forestry] reporting requirements;

- “The prevention of new biomass electricity plants (greater than or equal to 20MW) from receiving support and counting towards the target will need to be considered in terms of how it affects Member States’ ability to decide on their own low carbon energy mix;
- “The government will further consider the efficiency requirements the proposal places on biomass and the impact this may have on the delivery of biomass Combined Heat and Power;
- “In terms of mixed consignments for biomass the proposal differs from the existing UK approach in that it allows wastes to be used as a means to lower the final GHG measure of a fuel, rather than require non-waste feedstocks to meet the GHG requirements on their own merits; and
- “The proposal would require the UK’s existing schemes that monitor sustainability requirements to report to the Commission, creating additional administration.”

Transport

3.35 In the transport sector, says the Minister, the objectives of the Commission proposal broadly align with UK policy objectives:

“The Government has been promoting the uptake of renewable and low emission fuels in a cost effective manner, while taking into account the sustainability characteristics of the fuels. This is to ensure these fuels deliver greenhouse gas emission savings that contribute to the UK’s domestic, EU and global carbon reduction commitments. However, the Government would need to consider how the Commission proposals would interact with the UK policy in detail and whether the Commission proposals would increase the costs of the existing and planned measures. The Government is currently consulting on changes to the Renewable Transport Fuel Obligations Order 2007, as amended, (RTFO Order), and the Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emission Regulations 2012 to implement the ILUC Directive 2015/1513. These consultations also set out the planned UK policy until 2030. The consultation outcome will further inform our stance on the Commission’s proposals.”

Previous Committee Reports

None.

4 EU Electricity Market Design

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	(a) Proposal for a Regulation on the internal market for electricity (recast); (b) Proposal for a Regulation establishing a European Agency for the Cooperation of Energy Regulators (recast); (c) Proposal for a Directive on common rules for the internal market in electricity; (d) Proposal for a Regulation on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC.
Legal base	(a) Article 194(2) TFEU (b) Article 194(2) TFEU (c) Article 194(2) TFEU (d) Article 194 TFEU
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (38346), 15135/16 + ADDs 1–11, COM(16) 861; (b) (38347), 15149/16 + ADD 1, COM(16) 863; (c) (38348), 15150/16 + ADD 1, COM(16) 864; (d) (38349), 15151/16 + ADD 1, COM(16) 862

Summary and Committee's conclusions

4.1 Market design is the set of rules establishing the principles and details for participation in, and oversight of, the energy market. The European Commission considers that EU electricity market design needs to respond to the changing nature of the electricity market, notably the increasing volume of renewable energy. The Commission also observes that the wholesale electricity market does not always respond to demand and that, in most parts of the EU, electricity retail markets suffer from persistently low levels of competition and consumer engagement.

4.2 The Commission summarises its response to these problems as follows:

“The present electricity market design initiative thus aims to adapt the current market rules to new market realities, by allowing electricity to move freely to where it is most needed when it is most needed via undistorted price signals, whilst empowering consumers, reaping maximum benefits for society from cross-border competition and providing the right signals and incentives to drive the necessary investments to decarbonise our energy system. It will also give priority to energy efficiency solutions, and contribute to the goal of becoming a world leader in energy production from renewable energy sources, thus contributing to the Union's target to create jobs, growth and attract investments”.

4.3 It has accordingly proposed amendments to the Regulation and Directive covering the internal electricity market as well as the Regulation governing ACER (the Agency for the Cooperation of Energy Regulators) and a new linked Regulation on risk-preparedness in the electricity sector. We consider these four proposals together in this Chapter.

4.4 The Minister of State, (Baroness Neville-Rolfe), considers that the various proposals are largely in line with the direction of UK policy, although closer examination will be necessary for the UK to assess the full implications of the proposals. Across the four proposals, concerns include: the provisions on capacity mechanisms (i.e. the financial support that EU Member States grant to electricity producers to safeguard security of electricity supply); the arrangements for regional cooperation; the strengthened role of ACER; consumer price regulation; and the potentially prescriptive nature of rules on risk-preparedness plans.

4.5 This is a complex set of proposals to which we expect to return once the Government has had a further opportunity to assess their full implications. We agree with the Minister's initial concerns about the way in which the provisions on capacity markets and regional cooperation would function in practice.

4.6 When the Minister reverts to us, we ask that she sets her response more clearly in the context of the UK's departure from the European Union. Given that none of these proposals are being prioritised, it seems unlikely that the legislation will be in force by the time the UK has left the EU. The revised Regulation on the internal energy market will not enter into force until 2020. In that light, could the Minister explain the basis on which the UK is approaching the negotiations: is the UK approaching the negotiations purely in a business as usual manner, assuming that it will adopt the terms of the legislation? Alternatively, is the Government giving any consideration to approaching the negotiations from the perspective of a third country?

4.7 We see little explicit provision in any of the legislation for third country access to the electricity market. The exception is in the ACER Regulation, where third countries would be allowed to participate in the Agency as long as they have concluded an agreement with the Union and have adopted and are applying Union law in the fields of energy, environment and competition. What is the Government's view of this provision, which appears to be very broad? Should the UK wish to trade electricity with the EU post-Brexit, could it do so without participating in ACER and without participating in the internal energy market? These are factual questions to which we consider it is reasonable to expect an answer, although we accept that the ultimate nature of the energy relationship between the EU and the UK will need to be resolved as part of the withdrawal negotiations.

4.8 We look forward to receiving the standard checklist for analysis identifying the potential costs and benefits of the proposal in the UK. We ask that, in writing to us, the Minister responds to the issues above and that she sets out any changes to the Government's position. We ask too that she sets out any early indication as to whether the Government's concerns might be shared by others.

4.9 We retain the documents under scrutiny and draw them to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

(a) Proposal for a Regulation on the internal market for electricity (recast): (38346), [15135/16](#) + ADDs 1–11, COM(16) 861; (b) Proposal for a Regulation establishing a European Agency for the Cooperation of Energy Regulators (recast): (38347), [15149/16](#) + ADD 1, COM(16) 863; (c) Proposal for a Directive on common rules for the internal market in electricity: (38348), [15150/16](#) + ADD 1, COM(16) 864; (d) Proposal for a Regulation on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC: (38349), [15151/16](#) + ADD 1, COM(16) 862

Background

4.10 The Commission observes that both the European Council and the European Parliament have repeatedly stressed that a well-functioning integrated energy market is the best tool to guarantee affordable energy prices, secure energy supplies and to allow for the integration and development of larger volumes of electricity produced from renewable sources in a cost efficient manner.

4.11 The current electricity market design is based on the rules of the “Third Energy Package”, adopted in 2009. These rules have subsequently been complemented by legislation against market abuses and implementing legislation concerning electricity trade and grid operation rules. The EU internal energy market is built on well-established principles, such as the right of access for third parties to electricity grids, free choice of suppliers for consumers, robust unbundling rules, the removal of barriers to cross-border trade, market supervision by independent energy regulators, and the EU-wide cooperation of regulators and grid operators within the Agency for the Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators for Electricity (ENTSO-E).

4.12 New developments have led to fundamental changes in European electricity markets. The share of electricity generated from renewable energy sources has steeply increased. This shift towards renewable energy will continue as it is a key condition to fulfil the Union’s obligations under the Paris Agreement on climate. The physical nature of renewable energy—more variable, less predictable and decentralised than traditional generation—requires an adaptation of market and grid operation rules to the more flexible nature of the market. In parallel, argues the Commission, “state interventions, often designed in an uncoordinated manner, have led to distortions of the wholesale electricity market, with negative consequences for investments and cross-border trade”.

4.13 Significant changes are also taking place on the technological side. Electricity is traded almost European-wide through so-called “market coupling”, jointly organised by power exchanges and transmission system operators. Digitalisation and the rapid development of internet-based metering and trading solutions enable industry, businesses and even households to generate and store electricity, as well as participate in electricity markets via so-called ‘demand response’ solutions. The electricity market of the next decade is likely to be characterised, argues the Commission, by more variable and decentralised electricity production, an increased interdependence between Member States and new technological opportunities for consumers to reduce their bills and actively participate in electricity markets through demand response, self-consumption or storage.

Commission proposals

Overview

4.14 Measures are proposed to encourage the development of short-term markets to allow renewable energy to be traded more easily across borders. This is necessary as most generation from renewables can only be accurately predicted shortly before its production. The creation of short-term markets will improve the ability of market participants to balance the grid and provide back-up generation at times of high demand and shortfalls in renewable generation.

4.15 Interventions undertaken by Member States to respond to the challenges posed by variable generation have prevented electricity prices from reflecting scarcity and have consequently reduced the incentive for future investment in generating capacity. National market rules which distort price signals, including price-caps, should be reviewed.

4.16 Changes in technology, in particular the development of smart meters and smart grids, have also created opportunities for demand response potential to reduce the need for back-up generation, by enabling consumers to change their consumption in response to changing prices. Consumer access to fit-for-purpose smart technology and electricity supply contracts which are linked to wholesale electricity prices are essential to facilitate consumer participation in electricity markets. Consumers can also be encouraged to reduce their electricity bills by introducing common rules for self-generation. Finally, measures to encourage and facilitate switching between providers should also boost consumer engagement.

4.17 Provisions to combat rising levels of fuel poverty form an important part of the Commission's electricity market design proposals. Member states will be required to measure and regularly monitor energy poverty on principles designed at EU level.

4.18 A coordinated assessment of the European energy system's ability to provide sufficient generation is necessary to determine the measures that need to be taken to ensure security of supply. Security of supply can be managed more reliably and at a lower cost in an interconnected market than at a purely national level. In order to minimise distortions to the internal market, capacity mechanisms (i.e. the financial support that EU Member States grant to electricity producers to safeguard security of electricity supply) should only be introduced where this assessment shows them to be necessary.

4.19 Greater coordination between Transmission System Operators (TSOs) (such as the UK's National Grid) is proposed on the grounds that this can lead to significant improvements in market functioning and cost reductions. It is proposed to set up Regional Operation Centres in which TSOs would take decisions on issues which can be resolved more effectively at a regional rather than a national level, including capacity calculation for interconnectors and risk preparedness measures.

4.20 In order to improve the effectiveness and speed of decision making on cross-border issues, the Commission proposes to strengthen the powers of the Agency for the Cooperation of Energy Regulators (ACER) for those cross-border issues that require a regional response.

Regulation on the internal energy market (document (a))

4.21 The draft Regulation sets out the overarching legal principles to govern the market. All market participants would aim for system balance (i.e. sufficient energy of the necessary quality) and would be financially responsible for imbalances they cause in the system. Member States would be able to provide exceptions for small renewable generators and demonstration projects. All market participants would have access to the balancing market. Market operators would be required to allow market participants to trade energy as close to real time as possible. There are further provisions on pricing and dispatch, designed to increase flexibility in the market.

4.22 The Commission proposes changes to bidding zones (areas within which electricity can be freely traded without capacity constraints) so that they would no longer be defined by national borders but by “long-term structural congestions” in the transmission network. The aim is to maximise economic efficiency and cross-border trading while maintaining security of supply.

4.23 Capacity would be allocated only by auction. TSOs would not be able to limit the volume of interconnection capacity in order to solve congestion or to manage cross border flows, except where necessary for maintaining operational security or where it was beneficial to economic security at a national level.

4.24 There are new principles and rules on “resource adequacy”. Member States would be required to monitor resource adequacy within their territory based on a European resource adequacy assessment. The European Network of Transmission System Operators for Electricity (ENTSO-E) would carry out this assessment annually for approval by ACER. Member States would be required to address any resource adequacy concerns revealed by this assessment, including by removing regulatory distortions, enabling shortage prices, developing interconnection, energy storage, demand side measures and energy efficiency. Member States would only be allowed to introduce capacity mechanisms where these measures cannot resolve the problem.

4.25 Capacity mechanisms must not create unnecessary market distortions nor limit cross-border trade. Member States must ensure that foreign capacity has as equal an opportunity to participate in capacity mechanisms as domestic capacity. Member States should also not be allowed to prevent capacity located in their territory from participating in capacity mechanisms in other Member States. ACER would be responsible for the approval of technical parameters for the participation of capacities located in other Member States as well as operational rules for their participation. These conditions would apply to existing capacity mechanisms.

4.26 All TSOs would be required to establish regional operational centres (ROCs) covering regions defined by ACER. Functions to be performed by ROCs would include: coordination of capacity calculation; security analysis; restoration plans; and outage planning. ROCs would also calculate the maximum entry capacity available for the participation of foreign capacity in capacity mechanisms. The Commission would be given a power to adopt delegated acts concerning the geographical area covered by each regional cooperation structure.

4.27 Distribution System Operators (DSOs) (such as UK Power Networks) would be required to establish an EU DSO entity within 20 months of the Regulation entering into force. Tasks would include: coordination and planning of transmission and distribution networks; integration of renewable generation; and development of demand response.

4.28 The Commission may adopt delegated acts relating to the establishment of network codes or guidelines in a number of areas including curtailment of generation, re-dispatch of generation and demand, distribution tariff structures and cyber security.

Directive on the internal energy market (document (c))

4.29 A number of new arrangements for pricing are proposed. Member States would be prevented from regulating the level of retail electricity prices and would have to ensure the protection of energy poor or vulnerable consumers by means other than price-setting. As an exception, Member States would be allowed to intervene in price setting for the energy poor or vulnerable customers for a period of five years after the entry into force of the Directive. Member States would be able to set prices after this time for vulnerable customers for reasons of extreme urgency. All customers would be entitled, on request, to dynamic electricity price contracts (contracts between a supplier and final customer that reflect the price on the wholesale market or day ahead market).

4.30 Amendments are made to boost and facilitate switching between energy suppliers. Customers would be able to change supplier within three weeks without having to pay any switching-related fees. Member States would be able to choose to permit suppliers to charge contract termination fees but these would have to be proportionate. Customers would have access, free of charge, to at least one price comparison tool which meets criteria set by the Commission.

4.31 Customers would be entitled to generate, store and consume energy without being subject to disproportionate procedures and charges that are not cost reflective. Local energy communities would be entitled to own, establish or lease community energy networks and demand-side response providers would be able to participate in the electricity market in a non-discriminatory manner.

4.32 Smart meters would be rolled-out to at least 80% of consumers within eight years of a positive cost-benefit assessment by Member States or by 2020 for those Member States that have initiated deployment before the entry into force of the Directive. Smart meters would be required to meet European standards. Information from smart meters would be available to customers at no additional cost and at near-real time.

4.33 Member States would be required to measure and monitor energy poverty and report to the Commission on measures taken to prevent it every two years.

4.34 Member States would ensure that their regulatory frameworks allow and incentivise Distribution System Operators (DSOs) to procure services to improve the efficiency of distribution systems. These services would include renewable energy sources, demand response and aggregators. DSOs would be required to:

- submit development plans every two years to the regulatory authority containing investment plans for the next five to ten years and demonstrating the use of demand response, energy efficiency and energy storage; and

- cooperate on a non-discriminatory basis with the connection of private vehicle recharging points to distribution systems.

4.35 Each TSO would be required to cooperate closely with neighbouring TSOs as part of its responsibility to ensure that demand is met for the transmission of electricity reliably and efficiently. They would also be required to adopt a framework of cooperation between regional operational centres. Member States would be able to assign certain responsibilities to TSOs other than the one that owns the transmission system concerned.

4.36 National regulatory authorities would be required to consult closely with regulatory authorities in neighbouring countries in carrying out the tasks specified in the Directive. Their objectives would include measuring the performance of TSOs and DSOs in relation to the development of a smart grid that promotes energy efficiency and integration of electricity from renewable sources.

4.37 National regulatory authorities in the geographical area where a regional operational centre is established would be required to discharge, in close coordination with each other, a number of duties including approval of procedures and budgets, as well as monitoring activity.

4.38 The Commission would be empowered to adopt delegated acts, subject to consultation with Member States, in a number of policy areas covered by the Directive. These would include the geographical area covered by each regional cooperation structure and the establishment and amendment of network codes.

ACER (Agency for the Cooperation of Energy Regulators) (document (b))

4.39 The proposed changes to the role and responsibilities of ACER largely reflect the proposed amendments to electricity market design. The Commission proposes that the role and responsibilities of ACER be strengthened in the following ways:

- ACER would be required to approve the terms and conditions or methodologies for the implementation of network codes and those guidelines which require approval by all regulators or all regulators in a region;
- ACER would be required to approve and amend the methodology and assumptions that would be used in bidding zone reviews;
- ACER would, at its own initiative, be able to make recommendations to assist regulatory authorities and market players in sharing good practice (currently it may only do so in accordance with its work programme or at the request of the Commission);
- in disputes between national regulatory authorities, ACER would be able to arbitrate on the terms and conditions for access and operational security or methodologies with relevance to cross-border trade or other regulatory issues with cross-border relevance;
- ACER would monitor the performance of Regional Operational Centres in close cooperation with national regulatory authorities and the European Network of Transmission System Operators for Electricity (ENTSO-E);

- ACER would approve and amend, where necessary, proposals by ENTSO-E for methodologies related to the European resource adequacy assessment and specifications for cross-border participation in capacity mechanisms; and
- ACER would monitor potential barriers to cross-border trade, state interventions preventing prices from reflecting scarcity and security of supply issues in close cooperation with national regulatory authorities and ENTSO-E.

4.40 The Commission also proposes some administrative changes, including:

- ACER's Administrative Board to elect its Chairman and Vice-Chairman by a two-thirds majority (currently they are simply appointed) and decisions of the Board to be adopted by a simple majority (currently by a two-thirds majority); and
- The Board of Directors and its sub-committees to vote by a simple majority (previously a two-thirds majority).

4.41 The Agency is open to the participation of third countries “which have concluded agreements with the Union and which have adopted and are applying Union law in the field of energy and in the fields of environment and competition.” In those circumstances, arrangements shall be made to specify the nature, scope and procedural aspects of the involvement of those countries in the work of the Agency, including provisions relating to financial contributions and to staff.

Risk-preparedness Regulation (document (d))

4.42 The proposed Regulation sets out what Member States should do to prevent and manage crisis situations and how they should cooperate with each other to this end, especially by providing common methods for assessing risks, by bringing more comparability and transparency to the preparation phase and during an electricity crisis, and by ensuring that even in the crisis electricity is delivered where it is needed most. It also provides a framework for a more systematic monitoring of security of supply issues via the Electricity Coordination Group. It contributes to the Electricity Market Design package by ensuring that, even in crisis situations, priority is given to market-based measures and that markets can work as long as possible.

4.43 The European Network of Transmission System Operators (ENTSO-E) must submit to ACER a proposal for a methodology for identifying the most relevant crisis scenarios at regional level, after consultation with stakeholders. These scenarios must be based on risks such as rare and extreme natural hazards, consequential hazards including fuel shortages and malicious attacks and include elements such as the interaction and correlation of risks across borders and the ranking of risks according to their impact and probability.

4.44 On the basis of that methodology, once approved, ENTSO-E must identify the most relevant crisis scenarios for each region and submit them to the Electricity Coordination Group (a committee of Member State officials) for consultation. Member States must identify the most relevant crisis scenarios at national level and these must be consistent with the regional scenarios.

4.45 ENTSO-E must submit to ACER a proposal for a methodology for assessing short-term adequacy, after consultation with stakeholders. This must cover elements such as the probability of the occurrence of a crisis.

4.46 The competent authority in each Member State must establish a risk- preparedness plan, after consulting stakeholders. Before adopting a plan, the competent authority must submit a draft to the competent authorities of the other Member States in the region and to the Electricity Coordination Group for consultation. Each national plan must also include regional measures to ensure that crises with cross-border impact are properly prevented and managed. These measures must be agreed within the region and include measures such as mechanisms to share information and cooperate within the region and regional load shedding plans.

4.47 Where there is reliable information that an event may occur that is likely to result in a significant deterioration of the electricity supply in a Member State, the competent authority must give an early warning to the Commission and the Electricity Coordination Group, and provide information on the measures planned or taken to prevent a crisis and the possible need for assistance from other Member States. Where a crisis occurs, the competent authority must inform the Commission and the Electricity Coordination Group. In both cases, the actions set out in the risk preparedness plan must be followed as far as possible. Non-market measures may be activated in a crisis only if all market-based options have been exhausted. Where necessary and possible, Member States must offer each other assistance to prevent or mitigate a crisis and be compensated for any assistance provided.

Minister's Explanatory Memoranda of 20 December 2016

4.48 The Government submitted separate Explanatory Memoranda on each of the four proposals covered in this Chapter. In each instance, the Government promises to submit to the Committees in due course its standard checklist for analysis identifying the potential costs and benefits of each proposal in the UK. It is also noted that negotiations are not expected to begin until the Estonian Presidency in the second half of 2017.

Legal base

4.49 The Explanatory Memorandum for document (d) indicates that the legal base of that proposal is Article 194(2) whereas the proposal itself cites Article 194. We understand that the more general citation of Article 194 alone is a mistake on the part of the Commission and no doubt this proposal will be brought into line with the others in the course of the legislative procedure.

Regulation on the internal energy market (document (a))

4.50 The Minister notes that a number of the Commission's proposals accord with UK policy but closer examination, in collaboration with stakeholders, will be necessary for the UK to assess the full implications of the proposal. She identifies the Commission's intention for Distribution System Operators to play a more active role in network planning as being consistent with UK policy for Distribution Network Operators (DNOs).

4.51 On capacity mechanisms, the Minister says:

“The proposals concerning capacity mechanisms will require detailed scrutiny; in particular we will need to assess the implications of the proposed emissions limits. We support the participation of interconnectors in capacity mechanisms, but will have to further consider the practicalities of extending this to the participation of cross-border generating capacity. We would need to consider very carefully any transfer of decision making on aspects of management of capacity mechanisms from the UK to ENTSO-E and ACER.”

4.52 The Government also has concerns about the proposals for Regional Cooperation Centres for transmission operation, noting that they will require careful consideration. While the Government agrees that regional cooperation is important, the Government “would want to carefully assess options for the most effective means in which it would be undertaken.”

4.53 Finally, the Minister identifies the greater use of delegated acts by the Commission as another matter requiring close examination “given the reduced influence of Member States in this procedure.” She notes that this concern is shared by a number of other Member States.

Directive on the internal energy market (document (c))

4.54 The Minister confirms that the proposed amendments to the Directive are substantially in alignment with the UK’s policy direction. Nevertheless, the Government will need to scrutinise the detail of the proposed changes closely in consultation with stakeholders. For the negotiations, she says, a key element will be the extent to which it is appropriate for the Commission and the other EU institutions to act in the area of retail and distribution and how much should be the responsibility of Member States.

4.55 The Minister observes that many of the proposed measures, particularly relating to active participation by consumers in electricity markets, are already being taken forward in the UK. She adds that enabling more active, informed and empowered energy consumers is a key objective of the UK’s strategy to drive suppliers to improve their consumer offers.

4.56 On smart metering, the Minister says:

“We are already making substantial progress in rolling out smart meters, with an objective of providing all domestic consumers and small businesses with smart meters by the end of 2020. Smart meters will enable consumers to switch energy suppliers more easily and quickly and take more control of their energy consumption. However, after assessing the costs and benefits of a smart meter rollout in Northern Ireland, the Northern Ireland Executive has decided not to proceed. We therefore have concerns about the cost implications for Northern Ireland of ensuring that every customer can have a smart meter upon request”.

4.57 The Minister identifies in the following terms a number of areas where the UK requires clarification and may have concerns:

“These include the proposals for limiting the use of regulated prices. For example, the CMA has identified a significant consumer detriment in the GB energy market and recommended a price cap for Pre-Payment Meter (PPM) customers, who are among those least able to bear the cost of energy and have less access to competitive prices. We note that the proposal allows for the protection of vulnerable consumers by a transitional price regulation. We also note that Member States would still be able to apply public intervention in price setting for vulnerable household customers for reason of extreme urgency. We would like to understand further how the Commission will define extreme urgency. The implications would also have to be carefully considered for Northern Ireland which has regulated end consumer prices in view of the lack of competition due to the natural constraints of its small retail market”.

4.58 Finally, the Minister identifies the greater use of delegated acts by the Commission as another matter requiring close examination “given the reduced influence of Member States in this procedure”. She notes that this concern is shared by a number of other Member States.

Agency for the Cooperation of Energy Regulators (ACER) (document (b))

4.59 The Minister indicates that the UK needs to consider the revisions to the Regulation carefully, in collaboration with stakeholders, in order to assess the full implications.

4.60 She notes that the proposed approach would give ACER additional competence on issues of cross-border relevance, in particular monitoring the performance of regional operational centres and approving the methodologies and calculations in relation to European resource adequacy assessments carried out by ENTSO-E. She adds:

“ACER would also play a more active role in the agreement of network codes which are currently concluded between national regulators. This more coordinated regional approach could lead to efficiencies and greater security of supply but we will need to consider carefully the proposed decision-making framework to ensure that national transmission system operators retain sufficient influence over regional decisions”.

4.61 On the proposed administrative changes, she says:

“Similarly, the proposals concerning ACER’s organisational structure could lead to efficiencies and faster decision making, but we will need to consider closely any changes which could constrain the influence of national regulatory authorities. For example, we have concerns that the proposed change from a two-thirds majority to a simple majority for decision making by ACER’s Board of Regulators could reduce the influence of national regulatory authorities”.

Risk-preparedness Regulation (document (d))

4.62 The Minister considers the requirements in this draft Regulation to be broadly consistent with the UK's existing resilience arrangements. The impact on the UK is therefore expected to be "relatively modest." She adds:

"The strengthening of obligations on the management of regional security risks could benefit the UK if future investment in interconnection takes place as planned. As interconnection increases, so will the potential for incidents in mainland Europe having an impact on the UK. However, we would not want the Regulation to prescribe the risk preparedness plans in detail, but rather keep the requirements at the level of principles. This would enable us broadly to maintain our existing and well-developed national approach".

Previous Committee Reports

None.

5 Energy Union Governance

Committee's assessment	Legally & Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Regulation 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.
Legal base	Articles 192(1) and 194(2), TFEU
Department	Business, Energy and Industrial Strategy
Document Number	(38352), 15090/16 + ADDs 1–5, COM(16) 759

Summary and Committee's conclusions

5.1 The October 2014 European Council agreed that a reliable and transparent [energy] governance system without any unnecessary administrative burden would be developed to help ensure that the EU meets its energy policy goals, with the necessary flexibility for Member States and fully respecting their freedom to determine their energy mix. Some basic elements of that system were agreed, as we have set out in the Background section below.

5.2 Through its proposal, the Commission aims to give legal effect to the will of the European Council. The draft legislation aims to streamline existing planning, reporting and monitoring obligations and requires Member States to submit plans and reports to the Commission.

5.3 The Minister of State, (Baroness Neville-Rolfe), explains that the Government is still formulating its position. She adopts an initially cautious approach and sets out a number of considerations which the Government will take into account, as we have summarised below. She adds that negotiations are not expected to start during the first six months of 2017 under the Maltese Presidency. The Government is preparing its own impact assessment.

5.4 The potential implications of this proposal are far-reaching. Any streamlining of reporting obligations in order to reduce burdens on business and on administrations is welcome. The most contentious aspect of the proposal relates to action that the Commission might recommend should it identify matters that it considers require action on the part of Member States. This is at the heart of the Government's concern about possible expansion of the Commission's competence. Equally, it must be recalled that all 28 Member States have agreed that some form of energy governance system

is required. We ask the Government what assessment it took, when it agreed to the October 2014 European Council Conclusions, of the possible form of a new governance system and its impact? How could any governance system function without giving the Commission some form of role in assessing Member State policies and making recommendations?

5.5 We note that negotiations on this important proposal are not expected to begin immediately. It seems possible that the negotiations will not be concluded until the UK has withdrawn from the European Union. In that light, could the Minister explain the basis on which the UK is approaching the negotiations:

- Is the UK approaching the negotiations purely in a business as usual manner, assuming that it will adopt the terms of the legislation?
- Is the Government giving any consideration to approaching the negotiations from the perspective of a third country?
- Once it has withdrawn, are there existing mechanisms for the UK to access the internal energy market, should it wish to do so, without participating in the governance mechanism?
- Does the Government intend to include third country engagement in the governance mechanism as part of the negotiation on this proposal?

5.6 If the Government considers that answers to these questions would prejudice wider Brexit negotiations, we ask it to explain the reason for its assessment. We look forward to receipt of the Government's Impact Assessment and to responses to the above issues in due course. We ask too that the Minister sets out any early indication as to whether the Government's concerns might be shared by others.

5.7 We retain the document under scrutiny and draw it to the attention of the Committee on Business, Energy and Industrial Strategy.

Full details of the documents

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: (38352), [15090/16](#) + ADDs 1–5, COM(16) 759.

Background

5.8 The October 2014 European Council agreed that the new energy governance system should:

- “build on the existing building blocks, such as national climate programmes, national plans for renewable energy and energy efficiency. Separate planning and reporting strands will be streamlined and brought together;

- “step up the role and rights of consumers, transparency and predictability for investors, inter alia by systematic monitoring of key indicators for an affordable, safe, competitive, secure and sustainable energy system; and
- “facilitate coordination of national energy policies and foster regional cooperation between Member States.”

5.9 The November 2015 Energy Council reiterated the need for a governance mechanism, recognising that it would be an essential tool for the efficient and effective construction of the Energy Union.

European Commission proposal

5.10 The Commission’s proposal envisages the establishment of a reporting system focussed on the five aspects of the Energy Union:

- Decarbonisation—towards the target of a 40% reduction in GHG emissions;
- Renewables and energy efficiency—focussed on the binding 27% EU wide target on the share of renewable energy consumed in the EU by 2030, and the proposed 30% binding EU-level target on Energy Efficiency;
- Energy security—particularly the diversification of energy sources and reducing dependency on imports from third countries;
- Internal Energy Market—particularly interconnectivity and market integration; and
- Research, innovation and competitiveness.

5.11 The proposals set out a system under which:

- each Member State would set out a ten year national plan covering the period 2021–2030, submitting a draft to the Commission by 1 January 2018 and a finalised version by 1 January 2019;
- this plan could be updated after five years (although only to increase rather than reduce ambition) and would include detailed trajectories for national emissions, the percentage of renewable energy in the energy mix and the level of energy efficiency achievement. The trajectories in the national plans must be sufficient to achieve their national and, collectively, the EU level targets;
- Member States would be required to cooperate with each other on a regional basis both to meet the targets and objectives set out in their national plan and to identify opportunities for regional cooperation in the process of drafting their plans;
- once produced, Member States would report biennially against the different measures in their national plans;
- the Commission would have the right to make recommendations either to the EU as a whole or to individual Member States. They could make specific recommendations either on the draft or final versions of the national plan; or

on the basis of the reporting from a Member State. Where recommendations are made, Member States should take the utmost account of them and set out in their next progress report how those recommendations have been taken into account;

- the multiple existing reporting systems and requirements would be consolidated, abolished and/or amended, with the aim of producing one single reporting system; and
- Member States would be required to set out their objectives related to decarbonisation with a 50 year perspective.

5.12 The draft proposal sets out specific measures which the Commission may take in 2023, if it concludes that the performance of the EU as a whole gives rise to concerns that it may not achieve its 2030 targets. In particular, Member States may be required to take measures to:

- adjust the share of renewable energy in the heating and cooling sector;
- adjust the share of renewable energy in the transport sector; and/or
- make a financial contribution to an EU level fund contributing to renewable energy projects. Powers are delegated to the Commission to set up and manage such a fund and any measures taken should take into account early contributions to the targets.

5.13 For energy efficiency, the legislative proposal sets out that if in 2023 the Commission concludes that collective progress is insufficient then it will take measures by the year 2024. These may include measures to improve the energy efficiency of products, buildings and transport.

5.14 The proposals also include a requirement that Member States must not fall below their 2020 target share of energy from renewable sources (15% for the UK) at any point from 2020 onwards. Those countries which do fall below their 2020 target at any point are obliged to make up the gap by making a contribution to the above Commission-managed fund supporting renewable energy projects.

Minister’s Explanatory Memorandum of 20 December 2016

5.15 The Government agrees that there is a rationale for action to be taken at the EU level in order to implement the EU’s identified objectives. The Government is concerned, though, that there is potential for the Commission “to extend its competence with respect to a Member State’s responsibility for its own energy mix and national plans”. The UK will therefore seek to ensure that “reporting and Commission monitoring is closely linked to the achievement of the high level strategic EU 2030 objectives and does not constitute an increase in Commission competence”.

5.16 The Minister reports that the Government is currently considering its response to the Commission proposal and will take into account a number of considerations:

- the need for the retention of Member States’ scope to adopt their own measures towards commonly agreed objectives, rather than “more intrusive and legally binding intrusions into a Member State’s energy policy such as e.g. binding obligations within the Renewable Energy or Energy Efficiency Directives”;
- the balance between a system that is “robust enough to provide sufficient assurance on the achievement of the strategic objective” while not giving the Commission “power to set actual or de facto nationally binding targets which would contravene the intent of the 2014 European Council conclusions on the 2030 climate and energy framework”;
- the need to avoid unnecessary burdens where effective frameworks—such as the UK’s Climate Change Act 2008 and the subsequent carbon budgets—already exist;
- the extent of any increased reporting burden on Member States when weighed against any reduction arising from the removal of existing reporting requirements;
- the extent to which the new reporting system and Commission recommendations “might be used to encroach on UK competence to determine its own energy mix”;
- the impact of any “measures that might be taken were the Commission to consider that the EU was in danger of not meeting its objectives”; and
- the proposal that Member States pay into an EU fund if their share of renewable energy falls below their 2020 national target.

5.17 The Minister notes that negotiations on the proposal are not expected to commence under the Maltese Presidency during the first six months of 2017.

Previous Committee Reports

None.

6 Clean Energy for all Europeans

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Communication from the Commission: Clean Energy For All Europeans
Legal base	—
Department	Business, Energy and Industrial Strategy
Document Number	(38356), 15172/16 + ADDs 1-2, COM(16) 860

Summary and Committee's conclusions

6.1 The Commission is proposing a wide package of measures designed to give effect to the EU's Energy Union Strategy—one of the Commission's priority initiatives:

“This package presents an opportunity to speed both the clean energy transition and growth and job creation. By mobilising up to an additional 177 billion euro of public and private investment per year from 2021, this package can generate up to 1% increase in GDP over the next decade and create 900.000 new jobs. It will also mean that on the average the carbon intensity of the EU's economy will be 43% lower in 2030 than now, with renewable electricity representing about half of the EU's electricity generation mix.”

6.2 The package of legislative and non-legislative measures pursues three main goals: putting energy efficiency first; achieving global leadership in renewable energies; and providing a fair deal for consumers.

6.3 The legislative proposals cover energy efficiency, renewable energy, electricity market design, security of supply and governance. The non-legislative, supporting measures include initiatives on clean energy innovation, building renovation and investment.

6.4 The Minister of State, (Baroness Neville-Rolfe), notes that the Government is considering the respective initiatives and has set out its emerging views in the separate Explanatory Memoranda submitted on each of the documents. The Government is supportive of the Commission's direction of travel but has concerns about some of the detail, including the move to introducing binding energy efficiency targets.

6.5 This document is a helpful summary of a wide package of documents. As the Government has submitted separate, more detailed, Explanatory Memoranda on each of the measures under this Clean Energy package, we will pursue our scrutiny through those documents and release this overarching Communication from scrutiny.

6.6 In doing so, we draw the document to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

Communication from the Commission: Clean Energy For All Europeans: (38356), [15172/16](#) + ADDs 1–2, COM(16) 860.

Background

6.7 In October 2014 the European Council agreed on the 2030 climate and energy policy framework for the EU setting an ambitious economy-wide domestic target of at least 40% greenhouse gas emission reduction for 2030. This will implement the 2030 energy and climate framework as agreed by the European Council following the international climate agreement in Paris.

6.8 The Commission has already brought forward various proposals to implement the EU's target to reduce greenhouse gas emissions by 2030. In 2015, it presented a proposal to reform the EU Emissions Trading System (ETS) to ensure the energy sector and energy intensive industries deliver the emissions reductions needed. In summer 2016, the Commission brought forward proposals for accelerating the low-carbon transition in the other key sectors of the European economy. The latest package presents the key remaining initiatives required to fully implement the EU's 2030 climate and energy framework notably on renewables and energy efficiency.

Commission Communication

Putting Energy Efficiency first

6.9 The Commission proposes to raise the EU's existing **2030 energy efficiency target** from 27% to 30% and to change it from an indicative to a binding EU-level target. The Commission also proposes that the current requirement for Member States to set an indicative energy efficiency target for 2020 be extended to 2030.

6.10 Amendments are proposed to the **Energy Performance of Buildings Directive** to accelerate building renovation rates and improve information for investors and consumers. The revised Directive would also require installation of charging points for electric vehicles in a range of new and existing buildings as part of the delivery of the EU's low emission mobility strategy.

6.11 The Commission has also adopted a **European Buildings Initiative** intended, in cooperation with the European Investment Bank, to unlock an additional €10 billion (£8.56 billion) of public and private funds by 2020 for energy efficiency and renewable energy in buildings and to deliver a large-scale pipeline of bankable projects to boost the EU construction industry.

6.12 The Communication emphasises the continuing role of **Eco-design standards and energy labelling** in delivering energy and resource savings for consumers and business opportunities. The Commission has adopted a new **Eco-design Working Plan** for the period 2016–19.

Achieving global leadership in renewable energy

6.13 The Commission notes that the European Council set a target of at least 27% for the share of renewable energy in 2030. The Communication outlines how amendment of the existing Renewable Energy Directive together with new proposals on electricity market design would provide a regulatory framework that allows a level playing field for all technologies. Market rules are to be adapted to help manage electricity from variable renewable sources and ensure that renewables can participate fully in the electricity market. The proposals are also intended to reward flexibility in the market for generation, demand or energy storage.

6.14 The Commission considers that market revenues may not fully cover the high capital costs of renewables, especially emerging technologies. The proposed **Renewable Energy Directive** would therefore set out principles that would apply to support for renewable energy after 2020 to ensure that where subsidies are needed they are cost-effective and minimise market distortions. The Renewable Energy Directive is also intended to encourage Member States to increase the share of renewable fuels in heating, promote the development of advanced alternative fuels for transport and extend existing EU sustainability criteria to cover all types of bioenergy.

Providing a fair deal for consumers

6.15 The Commission proposes to reform the energy market to empower consumers, enabling them to have greater control of their energy choices. This will include proposals for providing consumers with better information through access to smart meters, clear bills, and easier switching between suppliers.

6.16 The Communication also highlights the Commission's second biennial report on energy costs and prices. This report highlights that wholesale electricity prices are at their lowest for 12 years and that gas prices have fallen by 50% since 2013 and oil prices by 60% since 2014. However, retail electricity prices have risen by 3% a year since 2008 and retail gas prices by 2% with the Commission identifying rising network costs and government taxes and levies as key factors.

6.17 The Commission also highlights the growing problem of energy poverty with the lowest-income households in the EU spending close to 9% of their total expenditure on energy in 2014, a 50% increase over the past decade. The proposals on energy efficiency outlined above ask Member States to take energy poverty into account when designing policy measures. Member States would also be required to monitor and report on energy poverty under the Energy Union governance process.

Cross-cutting and facilitating measures

6.18 The Communication highlights **the Regulation on the Governance framework for the Energy Union** that is intended to support delivery of the EU's climate and energy framework.

6.19 To facilitate delivery of all three of the goals outlined above, the Commission has also adopted an initiative on accelerating clean energy innovation to improve the regulatory, economic and investment environment for innovation in clean energy technology and systems.

6.20 The Commission will examine how best to support the transition in regions heavily dependent on coal and other fossil fuel based industries and provide platforms for sectors and workers to adapt their skills to the needs of the clean energy transition, focussing particularly on renewable energy and the construction sector.

6.21 The Commission also intends to step up EU action to remove inefficient fossil fuel subsidies in line with international commitments, including conducting a REFIT (Regulatory Fitness and Performance Programme) evaluation of the EU framework for energy taxation.

6.22 An Annex, on “Boosting the clean energy transition” summarises the actions the Commission will take in the short-term to promote the development of new skills, support adjustment in affected sectors and regions, utilise EU funding streams, support research, innovation and competitiveness, create the right environment and conditions for the deployment of advanced digital networks and services in the energy sector, and work effectively with international, regional and local partners.

Minister’s Explanatory Memorandum of 20 December 2016

6.23 The Minister notes that the Government is currently considering the detail of the proposals in the package to determine its negotiating positions. Each of the proposals will have policy implications for the UK, she says. These are set out in more detail in the individual explanatory memoranda submitted on the respective proposals.

6.24 She summarises the Government’s overall approach in the following terms:

“The Government shares the Commission’s view that further action to deliver improvements in energy efficiency will have an important role to play in reducing greenhouse gas emissions, improving energy security, helping consumers manage energy bills and boosting competitiveness. Nevertheless, the Government is concerned that the Commission has proposed binding targets for 2030 in conflict with the agreement at European Council in 2014 that there would be no binding targets for energy efficiency.

“Some of the proposed changes to simplify the Energy Performance of Buildings Directive are welcome but other proposals will need further consideration as there is a lack of clarity on how some would be applied, such as on electric vehicle infrastructure and on the implications of proposals on the assessment of technical systems and boiler and air conditioning inspections where we will need to ensure that they are proportionate and practical. The Government welcomes the publication of the Eco-design work programme and the Commission’s intention to launch a European Buildings Initiative (15172/16 ADD1) to drive investment in building renovation.

“The Government supports the EU level target of 27% for renewable energy agreed at the European Council in 2014. However, it will be important to ensure that provisions in the updated directive are consistent with the 2014 conclusions and do not translate into de facto binding national targets.

“The proposals on market design are broadly in alignment with our domestic policy direction. To move to a low-carbon economy whilst securing energy supplies at least cost to consumers, we need a more flexible electricity market in which all market players can play an active part on level terms, including renewable energy, the demand side and storage. The UK has already carried out similar market reforms, for example on capacity markets and low-carbon support. The Government will consider the extensive proposals in detail, with a particular focus on issues of competence, subsidiarity and proportionality. The proposals to increase the powers of the Agency for the Cooperation of Energy Regulators and the extensive use of delegated acts for substantive issues give cause for concern.

“The UK already has a strong record of promoting switching between energy suppliers. The Government shares the Commission’s view that smart metering will have an important role to play in providing consumers with information to enable them to understand and manage their energy consumption and bills effectively. We are already making substantial progress in rolling out smart meters, with an objective of providing all domestic consumers and small businesses with smart meters by the end of 2020. It will therefore be important that any updated EU requirements do not have any negative implications for the UK roll-out.”

Previous Committee Reports

None.

Annex:

Energy Prices and Costs in Europe²

The Commission published a Report on Energy Prices and Costs in Europe as part of the Clean Energy Package.

On electricity prices, the report found that EU average household and industrial prices increased between 2008 and 2015. The average household price increased at an annual rate of 3.2% between 2008 and 2015, and the average industrial electricity price increased at an annual rate of between 0.8% and 3.1% depending on the size of customer. There are differences at Member State and sector level across the EU. The two main drivers of the increases in electricity prices were network costs, and taxes and levies.

EU average household gas prices rose between 2008 and 2015, but the average EU gas prices paid by large industrial customers in 2015 are slightly below their 2008 levels. EU household gas prices have increased since 2008 by almost 2% a year driven mainly by increased network costs and general taxes. While prices have converged over this period, there still remains significant variation across Member States. The energy component of industrial gas prices is by far the largest single component and most prominent driver. Given this and the increased convergence in wholesale gas prices in Europe, there is relatively small variation in industrial gas prices across the EU.

The Report concluded that there is scope to further improve competition in retail energy markets in Europe. The report found that decreases in wholesale prices feed through only slowly and partially to retail energy customers, albeit faster for industrial customers.

The Minister of State, (Baroness Neville-Rolfe), emphasises that the UK Government is working to further improve competition in retail energy markets, “making the domestic supply market more competitive than it’s ever been, with over 40 suppliers”. The Government also recognises that high electricity costs can have implications for the international competitiveness for the most energy-intensive industries and has introduced a number of relief measures for those electro-intensive industries most at risk from international competition.

The Minister adds that the Government has been working to tackle energy poverty through its Big Energy Saving Network, Energy Company Obligation and Warm Home Discount.

Sector Inquiry on Capacity Mechanisms³

In April 2015 the Commission launched a sector inquiry into capacity mechanisms (the financial support that EU Member States grant to electricity producers to safeguard security of electricity supply). It had concerns that capacity mechanisms may unduly

2 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy prices and costs in Europe. 15068/16 + ADDs 1–13, COM(16) 769.

3 Report from the Commission: Final Report of the Sector Inquiry on Capacity Mechanisms. 15291/16 + ADD 1, COM(16) 752.

favour particular producers or technologies and may create obstacles to electricity trade across borders, in breach of EU state aid rules. The Commission published the Final Report of its inquiry alongside the Clean Energy Package.

The main conclusions of the Report are:

- There are legitimate concerns about future security of supply;
- Capacity mechanisms must be accompanied by appropriate market reforms, such as the removal of price caps and the participation of demand response in the market;
- The need for a capacity mechanism must be demonstrated;
- Capacity mechanisms must be fit for purpose and open to all capacity providers;
- The mechanism chosen must match the problem identified;
- The price paid for capacity must be determined in a competitive process rather than through an administrative procedure;
- Capacity mechanisms should also be open to providers in other Member States; and
- A number of existing capacity mechanisms are designed in a way that does not address all competition concerns.

The Minister of State, (Baroness Neville-Rolfe), welcomes the Report and notes that the GB Capacity Market appears to be being used as an example of best practice. She concludes that the recommendations all appear to be “consistent with or reconcilable to” the current GB Capacity Market model. The Minister also notes that all elements of the GB capacity framework are fully approved for state aid purposes.

As the first Member State with a capacity mechanism which allows cross-border participation through an interconnector, the UK welcomes the call for cross-border participation but notes the need for examination of how different models of participation would work in practice.

Accelerating Clean Energy Innovation⁴

The Commission published a Communication on Accelerating Clean Energy Innovation as part of the Clean Energy Package. Clean Energy Innovation is seen by the Commission as a key building block to achieving its wider energy policy goals, with the potential for delivering low carbon transition, jobs, growth, export opportunities and increased investment.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, and the European Investment Bank Accelerating Clean Energy Innovation. 15176/16 + ADD 1, COM(16) 763.

The Communication proposes a particular focus on four areas:

- Decarbonising the EU building stock by 2050;
- Reducing the costs and increasing the efficiency of renewable energy technologies, including improved integration into energy systems;
- Developing affordable and integrated energy storage solutions; and
- Developing electro-mobility and more integrated urban transport systems.

The tools to accelerate innovation are identified as:

- Clearer policy signals and regulatory frameworks;
- Financial instruments, including a new Innovation Fund and the Energy Demonstrations Projects scheme focused on first of a kind, commercial scale demonstration projects, which are essential but present a particularly high risk for private sector investors; and
- Research and Innovation, including the role of Horizon 2020.

The Commission notes that the EU must use its global leverage to ensure that it remains at the centre of global value chains. It also observes that citizens, cities, regions and Member States all have a crucial role to play in making clean energy innovation a reality.

The Minister of State, (Baroness Neville-Rolfe), notes that most of the work envisaged is already underway in the context of the EU's Strategic Energy Technology (SET) Plan, with its ten Key Actions and existing governance structures. She adds that the UK has been—and continues to be—a strong supporter of the SET Plan. The Government is therefore generally supportive of the direction of travel set out in the Communication.

Ecodesign working plan 2016–19⁵

The Commission published its Ecodesign Working Plan 2016–2019 alongside the Clean Energy Package.

The Plan sets out the Commission's working priorities under the Ecodesign and Energy Labelling Directives for 2016–19. It presents ongoing work and upcoming reviews of existing product-specific measures; it identifies additional product groups to be further examined (through studies, stakeholder consultation and impact assessment) with a view to informing possible Commission proposals for Ecodesign and/or Energy Labelling requirements; and it sets out how Ecodesign will contribute better to Circular Economy objectives.

Product groups on which further scoping studies will be launched include: electric kettles; hand dryers; lifts; solar panels and inverters; refrigerated containers; and high-pressure cleaners.

5 Communication from the Commission: Ecodesign Working Plan 2016–2019. 15288/16, COM(16) 773.

The Minister of State, (Baroness Neville-Rolfe), expresses the Government's support for the introduction of product specific regulations "as they help improve the sustainability of domestic and non-domestic energy-using products in particular by improving their energy efficiency, reducing GHG [greenhouse gas] emissions, delivering savings on energy bills, increasing energy security, and encouraging recycling".

She adds:

"The implementation of these two Directives saves consumers and businesses money on their energy bills and is a cost-effective way to achieve reductions in GHG emissions. From the measures agreed so far, it is estimated that on average UK households will save over £100 on their dual-fuel energy bills in 2020. We also estimate that these measures will be saving around 9 million tonnes of CO₂e [carbon dioxide equivalent] in 2020 and have a net benefit of £23bn to the UK over the period 2015 to 2030."

Formal Minutes

Wednesday 25 January 2017

Members present:

Sir William Cash, in the Chair

Richard Drax	Michael Tomlinson
Kate Hoey	Mr Andrew Turner
Craig Mackinlay	David Warburton
Mr Jacob Rees-Mogg	

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 6.24 read and agreed to.

Resolved, That the Report be the Twenty-ninth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 1 February at 10.00am

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Alan Brown MP](#) (*Scottish National Party, Kilmarnock and Loudoun*)

[Geraint Davies MP](#) (*Labour (Co-op), Swansea West*)

[Steve Double MP](#) (*Conservative, St Austell and Newquay*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Kate Green MP](#) (*Labour, Stretford and Urmston*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Craig Mackinlay MP](#) (*Conservative, South Thanet*)

[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)

[Dr Paul Monaghan MP](#) (*Scottish National Party, Caithness, Sutherland and Easter Ross*)

[Graham Stringer MP](#) (*Labour, Blackley and Broughton*)

[Michael Tomlinson MP](#) (*Conservative, Mid Dorset and North Poole*)

[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)

[David Warburton MP](#) (*Conservative, Somerton and Frome*)

[Mike Wood MP](#) (*Conservative, Dudley South*)

The following members were also members of the Committee during the parliament:

Peter Grant MP (*Scottish National Party, Glenrothes*), Nia Griffith MP (*Labour, Llanelli*), Rt Hon Damian Green MP (*Conservative, Ashford*), Kelvin Hopkins MP (*Labour, Luton North*), Calum Kerr MP (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*), Alec Shelbrooke MP (*Conservative, Elmet and Rothwell*), Kelly Tolhurst MP (*Conservative, Rochester and Strood*), Heather Wheeler MP (*Conservative, South Derbyshire*)