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Paris Climate Accord Implementation: European Union

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In December 2015, nearly 200 countries reached a historic agreement in Paris to limit greenhouse gas emissions in hopes of curbing global warming. Law360's Expert Analysis special series looks at the impact the agreement will have on policies in various regions and countries.

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EU leaders have characterized the Paris agreement of the COP21 on climate change as an "unprecedented historic success." Such satisfaction reflects their perception that the European Union played an active leadership role in COP21 building a "high ambition coalition" that pushed the most reluctant countries to agree to take action to limit the increase of global temperature "to well below 2°C [...] and to pursue efforts to limit the temperature increase to 1.5°C."

In practice, however, the Intended Nationally Determined Contributions (INDCs) submitted to date are estimated to only add up to holding the temperature increase to 2.7 C. It remains to be seen whether over the life of the Paris agreement, the contracting parties will implement additional measures to achieve the 1.5 C target.

Nevertheless, from the EU perspective, the agreement provides an international context that legitimizes a set of energy and climate policies that for the most part the EU would have implemented anyway. Indeed, perhaps to a larger extent than many other contracting parties, the EU views its climate change policies as part of a broader EU climate and energy package (so-called "Energy Union") that is defined by economic and geopolitical imperatives as much as environmental objectives.

This package is based on a political compromise among EU member states that was laid out in the European Council Conclusions of October 2014. The compromise has four pillars — decarbonization of the European economy, energy efficiency, a fully integrated energy market, and energy security and solidarity — and includes the following targets:

- A binding EU target of at least 40 percent domestic reduction of greenhouse gas emissions by 2030 compared to 1990. This target must be achieved with a reduction of emissions of 43 percent by industrial sectors covered by the EU

Emissions Trading System (ETS) and a 30 percent reduction by non-ETS sectors (e.g., housing, road transport), both compared to 2005 levels.

- A binding EU target of at least 27 percent for the share of renewable energy consumed in the EU by 2030. Unlike the agreed targets for 2020, the Council Conclusions of October 2014 do not set binding national renewable energy targets. Instead, they only state that the 27 percent target "will be fulfilled through Member States contributions guided by the need to deliver collectively the EU target without preventing Member States from setting their own more ambitious national targets and supporting them." Arguably, , individual member states will not be legally accountable for not achieving specific targets.

- An indicative (nonbinding) EU energy efficiency target of at least 27 percent by 2030 compared to projections of future energy consumption. However, this target must be reviewed by 2020 "having in mind an EU level of 30%."

- A minimum target of an interconnection between member states (i.e., possibility to transport electricity across national borders) of 10 percent of their installed electricity capacity production, by no later than 2020, at least for member states that have not attained a minimum level of integration in the internal energy market — i.e., the Baltic states, Portugal and Spain — and for member states that constitute their main point of access to the internal energy market.

The European Commission's view is that the Paris agreement does not require any significant changes to the above mentioned targets until the EU prepares its revised INDC after 2020. This is despite the fact that the targets agreed in October 2014 were intended as the EU's contribution to limit the increase of global temperature to a maximum of 2 C, whereas the Paris agreement calls "to pursue efforts to limit the temperature increase to 1.5°C." From an international perspective, this approach can be justified as it may be necessary to wait and see how other contracting parties implement the measures agreed at COP21. However, the tough political reality is that the current European Commission prefers to postpone the reopening of internal EU negotiations on the 2030 package to the next commission given the opposition of Poland and other member states and the current EU crises (e.g., refugees, Brexit).

Nevertheless, the Paris agreement should provide political impetus to many of the energy and climate legislative proposals that the European Parliament and Council are expected to consider in 2016 and 2017. Below, we outline the main initiatives.

Decarbonization

The European Parliament and Council are currently considering for adoption a proposed directive that would amend the EU ETS directive. Among other amendments, the proposal will increase the annual linear reduction of emissions from ETS sectors from the current factor of 1.74 percent to 2.2 percent as of 2021. This will amount to an additional emissions reduction of some 556 million tons over the next decade. The proposal will also require the parliament and council to agree on a transition to end the system of free allowances for utilities in Poland and other countries taking into account the political agreement of the European Council of October 2014 by which "Member States with a GDP per capita below 60% of the EU average may opt to continue to give free allowances to the energy sector up to 2030." The EU institutions will also have to address the trading distorting problem of carbon leakage

(i.e., industrial facilities relocating to third countries to avoid the costs of emission cap and trading); most likely they will continue to allocate a significant number of free allowances for industrial facilities of vulnerable sectors.

The proposed amendment to the ETS directive does not allow the use of international carbon credits. Nevertheless, during the next years, the commission will be looking for opportunities to link the EU ETS market with emission trading systems in third countries (e.g., China, South Korea). The implementation of the INDCs submitted by the different contracting parties in advance of COP21 suggest that there will be a significant increase of carbon emission markets around the world.

This year, the European Commission will also present a proposal for a new Effort Sharing Decision in order to reduce the emissions of the non-ETS sectors by 30 percent by 2030 compared to 2005 levels. The proposal must be in line with the principle that "[a]ll Member States will contribute to the overall reduction in 2030 with targets spanning from 0% to -40% compared to 2005" agreed in the European Council of October 2014. The proposal is also expected to provide specific rules to include the agricultural and forestry sectors within the EU's emission reduction efforts.

By this summer, the European Commission should also present a Communication on the Decarbonization of Transport that will consider how road transport can contribute to the EU's effort to reduce emissions by 30 percent. The communication is expected to focus on improvements in the energy efficiency of transport, management of road transport activity, and the electrification of vehicles and decarbonization of fuels. The communication's recommendations and the discussions that will follow will, not surprisingly, be affected by the recent Volkswagen scandal and the questions raised on diesel fuels and effective compliance.

Renewable Energies

In the area of renewable energies, the European Commission is expected to present a proposal to amend the EU Renewable Energies Directive by the end of this year. The commission's second renewable energy progress report for 2012-2013 of June 2015 shows that while almost all EU member states are on track to meet their 2020 renewable targets, some member states may need to take additional measures to fully achieve their specific target, as the target trajectory becomes steeper toward 2020.

A key issue that the commission's proposal should address is how to ensure a stable regulatory investment framework for renewables. According to the BNEF Clean Energy Investment Report of 2016, investment in renewable energy assets in the EU dropped by 18 percent in 2015 reaching its lowest level since 2006, mostly as a result of the EU member states' austerity measures.

The proposal will also have to find a way to ensure that the overall EU 27 percent target is achieved even if there will be no legally binding national specific targets. One possibility might be to include minimum shares of renewables in new buildings and other measures to increase renewable heating and cooling consumption in existing buildings and industry. The proposal should also consider how to empower consumers and "prosumers" of renewable energies. Much of the discussion on the proposal will again focus on the sustainability criteria of biofuels and bioliquids.

Energy Efficiency

This year, the commission will also engage in a limited review of the Energy Efficiency Directive in order

to align it with the 2030 27 percent targets and the establishment of a new governance of the EU Energy Union. The European Commission estimates that the EU is likely to miss the 2020 20 percent target of energy saving by 1-2 percentage points unless additional efforts are made to ensure the full implementation of the current Energy Efficiency Directive and related legislation. The commission has suggested that it may propose raising the 27 percent target for energy efficiency to 30 percent when it makes its proposal for a post-2020 Energy Efficiency Directive.

An important aspect of the review of the Energy Efficiency Directive will be the overlap and possible synergies between energy efficiency requirements and the emissions trading system (i.e., to what extent facilities subject to the ETS should also be subject to energy efficiency requirements).

Linked to the review of the Energy Efficiency Directive is a proposal to amend the Energy Performance of Buildings Directive that the commission is expected to present in 2017. Energy use in buildings represents about 40 percent of the EU's total final energy consumption and CO2 emissions. Among other things, the proposal will have to include mechanisms to significantly increase the currently low refurbishment rates of buildings in Europe (around 1.2 percent per year) in order to improve energy efficiency in the residential and tertiary sectors.

In February 2016, the commission presented a heating and cooling strategy intended to address the massive energy consumption of fossil fuel energy by buildings. Heating and cooling accounts for 50 percent of the EU's energy consumption. The strategy includes proposals to boost the energy efficiency of buildings, improve linkages between electricity systems and district heating systems to increase the use of renewable energy, and encourage the use of waste heat and cold generated by industry.

Energy Interconnection and Security of Supply

In 2016 and 2017, the EU is expected to achieve significant legislative and policy progress in the area of interconnection of gas and electricity networks and security of supply. Energy interconnection and security of supply are seen as key requirements to ensure that the transition to a decarbonized economy and the related access and market share increase of renewable energies are achieved in an efficient, nondisruptive and socially fair manner.

In particular, the 10 percent electricity interconnections target and the creation of true EU electricity grids are intended to allow an efficient integration of renewables in the EU's energy system. This constitutes a high priority given that 12 of the 28 EU member states, including three large member states (Italy, Spain and the United Kingdom) have an interconnection level well below 10 percent. The interconnection target will be reached mainly through the implementation of "Projects of Common Interest" financed by the EU and member states.

On Feb. 16, 2016, the European Commission also presented an energy security package that focuses on natural gas. Natural gas is presented as a bridge between more polluting fossil fuels and cleaner sources of energy with the least disruption.

The package includes a proposal for a gas supply regulation, a proposal for a decision on intergovernmental agreements in energy that would allow the commission to scrutinize ex ante agreements between the EU member states and third countries, and a strategy on liquefied gas (LNG) and gas storage.

The strategy for LNG is intended to promote the construction of LNG terminals and to remove barriers

to imports of LNG. Some may argue that it is intended to allow shale gas through the back door and to reap the benefits of its global production despite Europe's strong opposition to hydraulic fracturing.

Thus, the Paris agreement of December 2015 formally marks the beginning of two years of intense legislative activity in Brussels that will define Europe's Energy Union and the businesses operating in it for the next decades.

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