

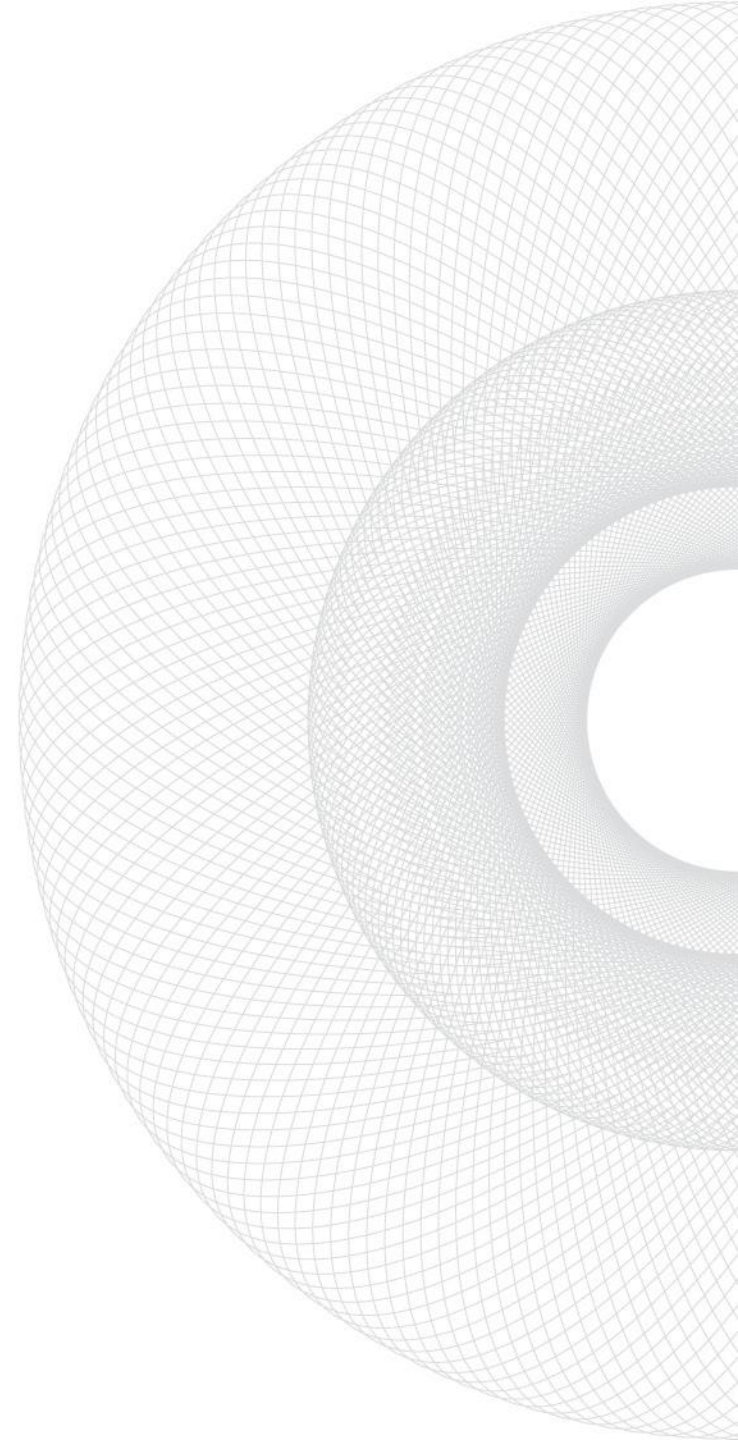
ENERGY LAW NEWSLETTER

EU's Energy Policy: Latest Developments*

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The Energy Policy Conclusions of the European Council

The European Council has adopted guidelines to foster the EU's competitiveness and manage the challenge of high energy prices and costs

The European Council (the “**Council**”), which consists of heads of state or government of Member States of the European Union (the “EU”), discussed in its 22 May 2013 meeting the major energy policy issues affecting the EU. The Council agreed on a series of guidelines, set out in the **Conclusions** published after the meeting, in the following fields:

- management of **energy prices**,
- **facilitation of investments** in energy,
- completion of **the internal energy market**,
- **diversification of energy supplies**, and
- enhancement of **energy efficiency**.

There is no doubt that the issues discussed by the Council will permeate the EU's energy policy in the coming months and they might also have a direct impact on the market participants. In its Conclusions, the Council makes it clear that some of the challenges they face cannot be solved by Member States only, but **must also be addressed at the EU level**.

The Council dealt extensively with the problem of **diminishing energy investments, which affects all Member States** and asked the European Commission (the “**Commission**”) to **develop an action plan to facilitate energy investments**. The Council also discussed in detail the issue of **high energy prices** and further requested the Commission to prepare a study analyzing the reasons for price increases.

In this newsletter, we draw attention to some energy policy issues discussed by the Council that may be relevant to participants in Europe's energy markets.

Antecedent

On 21 May 2013, on the eve of the Council's meeting, **CEOs of eight leading European energy companies submitted a joint statement** to the EU heads of state, drawing attention to the serious situation facing the European energy market and proposing measures **to revitalize the EU's energy policy**.

The joint statement points out that the EU **lacks the visible long-term energy policy and regulatory certainty that is conducive to energy investments**. While expressing their commitment to the EU's objectives, the companies stressed that **certain EU and national energy policies failed to achieve them**. They insisted that it was not too late to revise the EU's energy policy and provide a foundation that effectively supports its implementation.

Facilitating energy investments

According to the Council, **significant investments** in new and intelligent energy infrastructure **are critical** in order to secure an affordable and sustainable energy supply.

Such investments should be primarily financed by market participants. The existence of **a well-functioning carbon market** and a **predictable energy policy framework post-2020** will be critical to establishing a favourable investment climate.

In this regard, the Council welcomed the **Green Paper** on a 2030 framework for climate and energy policies recently published by the Commission.

The Council, among other actions, requested the Commission to take the following measures **to facilitate energy investments**:

- **Review the state aid rules relevant to the energy market to ensure** that Member States can facilitate energy and environmental investments on a level playing field and in a targeted manner;
- Present guidance **on efficient and cost-effective support schemes for renewable energies and on ensuring adequate generation capacities**; and
- Provide measures to boost the financing of energy investments, such as the **use of structural funds, project bonds and the enhanced support of the European Investment Bank**.

You can find our main remarks in relation to the above on the next page.



Kinstellar remarks:

*The priorities formulated by the Council may be the telltale sign of **a major change in the EU's energy policy**. Obtaining state aid for energy investments could become easier following **the Commission's review of state aid rules relevant to the energy market**.*

Relaxing those rules may facilitate the provision of state guarantees in connection with energy investments. In addition, in relation to the possible establishment of the capacity market, the era of long-term power purchase agreements with state guarantees may return, though not without a price: an increase in state aid may incite Member States to be more involved in the regulation of energy markets.

*The wording of the Council's Conclusions shows that it is all too aware that existing market conditions and the regulatory environment **hinder the financing of major energy investments**. The Council's aim is to expand the current EU financing measures and facilitate the future application of project bonds. In this respect we note that a recent analysis by ENTSO-E also singles out the financing difficulties of network infrastructure investments.*

*The Council's Conclusions also **anticipate the revision of the current renewable energy support scheme** and its possible amendment. The requirements of **cost-efficiency and network safety** in relation to renewable energies are mentioned more than once, which may imply that such requirements will be enforced to a greater extent once the support scheme is amended.*

Completion of the internal energy market

The Council notes that the completion of the internal electricity and natural gas market, which was an objective of the EU's third energy package, has slowed down in recent years. It therefore emphasizes the importance of swiftly adopting the **unified network codes** and the **national plans on smart metering and smart grids**.

According to the Council, the implementation by Member States of related EU legislation, such as the Directive on the promotion of renewable energies and the Regulation on security of gas supply, is also a priority. Finally, the Council calls on the Commission to provide guidance in relation **to capacity regulation mechanisms and the problem of unplanned electricity flows**.

You can find our main remarks in relation to the above on the next page.



Kinstellar remarks:

*The wording of the Conclusions suggests that the Council deems it necessary to assess the issues in connection with **capacity markets**. Taking into consideration the current electricity market price levels and the lack of new, non-weather dependent generating capacities, in our view it may not be excluded that the EU adopts some specific measures in relation to these issues in the near future.*

*The **development of smart grid systems**, the commencement of **smart grid demonstration projects** and on this basis taking the necessary **decisions at member state level** are all considered by the Council to be a priority matter. As many of the members states still has further obligations in order to fulfil EU requirements, with respect to these issues governmental actions could also be adopted if the Conclusions of the Council are considered.*

Management of high energy prices

In its Conclusions, the Council acknowledges that high energy prices and costs constitute an important **competitiveness issue**, which not only affect Member States, but also have an **impact at the EU level**. Nevertheless, the Council also emphasises that when analysing this issue, due account must be taken to the fact that **energy prices have a fundamental role in the financing of energy projects**.

The Council calls the Commission to look at the issue of the contractual linkage between **gas and oil prices**, and to prepare an analysis on the composition and **drivers of energy prices and costs in Member States with a focus on households, SMEs and energy intensive industries**. The Commission is expected to complete this analysis **by the end of 2013**.

Kinstellar remarks:

*Identifying the issue of **oil-indexed gas prices** and envisaging the revision of this oil-indexed price determination method could fundamentally change the way the EU gas market operates. Such a change would have a major impact also on the operation of the electricity market. A lively debate on the issue of oil-based gas prices had recently emerged between prominent experts in the field (S. Komlev v. J. Stern). With a bit of an exaggeration it may be stated the Council has now brought this discussion to the European energy policy arena.*

*The Council's Conclusions in relation to energy efficiency measures may indicate that, depending on the Commission's findings, **specific actions such as price regulation** (e.g. for households, SMEs and energy intensive industries) could potentially be adopted, perhaps as early as next year.*



Diversification of energy supply and energy efficiency measures

The Council deems it crucial to further intensify the diversification of Europe's energy supply and the development of indigenous resources to ensure the security of supply. To this end, the Council considers that **renewable energy sources should continue to be deployed**, emphasizing however the need for **cost-effectiveness and grid stability**.

Finally, the Council is of the view that energy efficiency measures can contribute significantly to the sustainable reduction of energy prices and costs, and calls on Member States to properly implement the **Directive on energy efficiency**.

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