

LEGAL ALERT

NEW EU RULES MOVE THE POWER MARKET SEVERAL STEPS FORWARD

The new rules on the electricity market design¹ signed off by the European Council this week, come as a response to the energy crisis and the high fossil fuel prices, which caused a spike in electricity prices and aim to improve security of supply and consumers' protection, reduce investment risk for companies and dependency on the price of fossil fuels and further promote renewable energy projects “[on the way to a carbon-free European Union](#)”.

From the rules approved, the following may offer interesting opportunities for investors and industry players:

- Member States are encouraged to create market conditions for a dynamic long-term **Power Purchase Agreement** (PPA) market, removing unjustified barriers and disproportionate or discriminatory procedures or charges and shall ensure, in a coordinated manner, that instruments, such as guarantee schemes at market prices to reduce the financial risks associated to off-taker payment breach, are in place and accessible to customers that face entry barriers to the PPA market and that are not in financial difficulty;
- Direct price support schemes for wind, solar, geothermal, hydropower without reservoir and nuclear energy should be structured as **two-way Contracts for Difference** (CfDs) or

¹ The new Power Directive will amend Directive (EU) 2018/2001, on the promotion of the use of energy from renewable sources, and Directive (EU) 2019/944, on common rules for the internal market for electricity, while the new Power Regulation that will amend Regulation (EU) 2019/942, establishing a European Union Agency for the Cooperation of Energy Regulators, and Regulation (EU) 2019/943, on the internal market for electricity. Both legislative acts have been previously approved by the European Parliament and are currently awaiting signature and publication.

equivalent schemes with the same effects. CfDs are agreements in which the government or a public entity guarantees the generator a fixed price per unit of energy generated. If the market price of energy falls below the agreed fixed price, the generator is compensated for the difference. Conversely, if the market price is above the fixed price, the generator returns the difference;

- Transmission and distribution system operators shall publish in a transparent manner **clear information on the capacity available for new connections** in their areas of operation with high spatial granularity, respecting public security and data confidentiality, including the capacity under connection request and the possibility of flexible connection in congested area;
- The regulatory authority shall develop a framework for transmission system operators and distribution system operators to offer the possibility of establishing **flexible connection agreements** in areas where there is limited or no network capacity availability for new connections;
- Transmission system operators may develop **forward hedging products**, including long-term transmission rights or equivalent measures, to allow market participants to hedge price risks, to be allocated in a transparent, market based and non-discriminatory manner through a single allocation platform;
- Member States shall define an indicative national objective for **non-fossil flexibility**, including the respective specific contributions of both demand response and energy storage to that objective and may apply non-fossil flexibility support schemes consisting of **payments for the available capacity of non-fossil flexibility**;
- The European Commission shall assess the possibility to use the Union renewable energy financing mechanism established pursuant to Article 33 of Regulation (EU) 2018/1999 to **organise Union-level renewable energy auctions**;
- Member States shall ensure that all customers are free to have **more than one electricity supply contract** or energy sharing agreement at the same time, and that, for that purpose, customers are entitled to have **more than one metering and billing point covered by the single connection point for their premises**;
- Member States shall ensure that the national regulatory framework enables suppliers to offer **fixed-term, fixed-price electricity supply contracts** and **dynamic electricity price contracts**;

- Member States shall ensure that all households, small enterprises and medium-sized enterprises, public bodies and, where a Member State has so decided, other categories of final customers have the right to participate in **energy sharing as active customers** in a non-discriminatory manner, within the same bidding zone or a more limited geographical area, as determined by that Member State;
- Regulatory authorities or an alternative independent competent authority designated by the Member States shall ensure that **suppliers have in place and implement appropriate hedging strategies**, to limit the risk of changes in wholesale electricity supply to the economic viability of their contracts with customers, while maintaining liquidity on and price signals from short-term markets;
- Member States shall ensure that **vulnerable customers and customers affected by energy poverty are fully protected from electricity disconnections**, by taking the appropriate measures, including the prohibition of disconnections or other equivalent actions;
- Member States may apply, a regional or Union-wide declaration of electricity price crisis by the Council, **temporary targeted public interventions in price setting for the supply of electricity** to small enterprises and medium-sized enterprises, including exceptionally and temporarily set a price for the supply of electricity which is below cost provided certain conditions are fulfilled.

[Morais Leitão's energy and natural resources team](#) is fully available to answer any questions you might have.

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