PwC EMEA Energy & Infrastructure Legal Compass

Information on Current Developments in Energy Law

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News from Brussels and Strasbourg

European aid for the expansion of the electricity grid

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My mother (God rest her soul) thought me some wise lessons. One of them was that being a father you will have small problems when the kids are still small and big problems when they grow up. That is what we are seeing now in Europa. Europe is growing up and our problems are getting more serious than ever. In the European energy sector, we feel those growing aches the most. We need to learn to stand on our own energy feet and must strive for energy independence.

A necessary condition to be able to stand on our own energy feet is that we have an excellent energy infrastructure in Europe. In my own member state (the Netherlands) we are facing serious challenges. There is too little capacity on the electricity grid to be able to facilitate all demand and supply of electricity. The Dutch government and the system operators are doing all they can to invest in the needed expansion of the grid as soon as possible. But that is not an easy task to do. One of the challenges is that permitting takes too much time.

The European Commission is stepping in. In December 2025 the European Commission published the so-called European Grids package where they described the needed measures to work with a higher pace to build the optimal electricity grid and to speed up permitting. Member States must ensure that national authorities make sufficient technical, financial and human resources available for granting the permits. The permitting process should not take more than two years. In the permitting authority takes too much time, the permit shall be deemed to have been granted. Furthermore, member States must appoint one or more contact persons who can guide the system operators in the permitting procedures. The European Commission wants to limit the number of studies necessary for granting a permit. All necessary documents and studies must be submitted within three months after a permit application. After the expiry of these three months, the permitting authority may not request any additional information. The European Commission also wants members states to optimize permitting procedures to get a connection to the electricity grid for certain renewable energy projects (e.g. solar parks with associated storage). These projects need to get a permit within one to three months.

The discussion about speeding up the permit procedures remains a topical theme, partly in view of the need for a rapid roll-out of new electricity grids. The European Commission has come with an outstretched hand and has made proposals to speed up the procedures. It is now up to the member states to get it done.

ETS 2: Market Stability Reserve approved by EU Council of Ministers

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On 18 February 2026, the EU Council (at EU ambassadors level) adopted the Commission proposal on a targeted amendment of the market stability reserve (MSR) in the emissions trading system for buildings, road transport and other sectors (ETS 2). The proposal, which has been put forward by the EU Commission on 27 November 2025, shall adjust the MSR after various EU Member States had demanded a reform of this instrument.

The proposed amendments to the MSR aim to reduce the risk of imbalances between supply and demand expected with the launch of ETS 2 in 2028. The system in its entirety should also become more resilient to market shocks. The MSR, which was implemented in its original version through the Decision (EU) 2015/1814, is an instrument designed to control the supply of allowances in the EU Emissions Trading System. However, the amendments to the MSR now proposed by the EU Commission and supported by the EU Council (at EU ambassadors' level) solely affect ETS 2 and not ETS 1.

The Commission's proposal for an amendment of the MSR provides three key measures, which, however, do not affect the overall design of the control instrument. Firstly, the expiration of the MSR shall be extended beyond 2030. Secondly, the current release of allowances is proposed to be adapted more flexible to market conditions. Thirdly, the number of allowances to be issued should be doubled.

The three key measures to mitigate potential price increases in detail:
Initially, it was planned that the 600 million allowances held in the MSR would only be released until 31 December 2030. Thereafter, they would become invalid. With the proposed amendment this "expiration date" for the MSR is now intended to be abolished. Instead, the MSR will be extended beyond 2030 to improve both longer-term market predictability beyond 2030 and confidence among market participants.

Furthermore, a more gradual and responsive release of allowances from the reserve into the market is planned. In addition to the existing rule, whereby 100 million allowances are automatically released from the MSR if the total number of allowances on the market drops below a number of 210 million, allowances are to be released gradually if the total number of certificates on the market is between 210 and 260 million – in other words, there will no longer be a fixed threshold.

With this second key measure, the EU Commission aims to address the disadvantages of the automatic release of allowances, being that one extra allowance in the market could potentially lead to the release of 100 million extra allowances (so-called threshold effect). The now suggested more flexible release is intended to mitigate the volatility of the allowance price caused by the threshold effect.

Finally, the absolute number of allowances to be released to the market is planned to be doubled compared to the current configuration of the price control mechanism. The existing mechanism causes a release of 20 million allowances if the cost of carbon exceeds 45 EUR per tonnes CO_2 equivalent (in 2020 prices) during a period of two consecutive months. Instead, with the proposed MSR amendment, 40 million certificates are to be released in the future.

General objectives of the COM proposal and its evaluation:
The proposed measures are designed to significantly increase the price stability of CO_2 prices in ETS 2. The planned more flexible release mechanism is intended to mitigate the risks of severe price fluctuations in ETS 2 caused by the threshold effect of the MSR. Combined with the other key measures (extension of the validity of allowances beyond 2030 and double allowance supply), the MSR is therefore meant to serve as an effective instrument against high CO_2 prices in the sectors affected by ETS 2, particularly the building and transportation sectors. Irrespective of these measures, the total cap on available CO_2 allowances in the EU is reduced each year to incentivize decarbonization in accordance with the aims of the emissions trading systems on EU level.

With these amendments to the current MRD, the EU Commission is now seeking an additional mitigation of the ETS 2 regulations, also due to pressure from several EU Member States, after the start date of the emissions trading system for buildings and transportation sectors has already been postponed by one year from 2027 to 2028 in October 2025.

Following its adoption by the EU Council of Ministers, the proposed Decision to amend the MSR must now be adopted by the EU Member States and the European Parliament before it can enter into force. The European Parliament's position on the proposed MSR amendments is awaited by the end of April 2026. Once approved, the Decision will enter into force and can be immediately applied – an additional amendment of the EU Emissions Trading Directive is not required.

New EU Rules on Green Claims: What Companies Need to Know to Avoid Greenwashing Risks and Seize Sustainability Opportunities

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From September 2026, stricter regulations will apply in the EU for Green Claims - environmental marketing statements – but also Social Claims. The aim is to better protect consumers from misleading sustainability claims and increase legal certainty for companies. Green Claims must be clear, transparent, and scientifically verifiable to avoid greenwashing.

Companies have the opportunity to credibly communicate their sustainability efforts and strengthen their brand. However, risks include warnings, fines, and reputational damage if claims are vague or insufficiently substantiated.

Examples of prohibited green claims:

- "Climate neutral" without proof of actual CO_2 offset,
- "100% recyclable" if parts are not recyclable,
- Vague terms such as "green", "sustainable" without precise definitions or evidence.

Recommendations:

- Carefully review all green claims and substantiate them with scientific studies or recognized certificates,
- Communicate claims transparently and clearly,
- Ensure close cooperation between marketing, legal, and sustainability teams,
- Provide regular employee training,
- Adapt communication strategies early to minimize legal risks and maximize opportunities.

Companies should proactively prepare for the new rules to implement credible and legally compliant environmental advertising.

News from Member States

UK: National Security Regime

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The UK, on 4 January 2022, introduced a statutory regime for government scrutiny of acquisitions for the purposes of protecting national security in the UK, when the National Security and Investment Act 2021 (the "Act") and related legislation took effect.

The Act states that transactions (whether intra-group or otherwise) that are "closely linked" with any of the following 17 sectors, in which a certain level of control over an entity or asset is acquired, may require approval from the Chancellor of the Duchy of Lancaster in the Cabinet Office (the "CO").

- advanced materials
- advanced robotics
- artificial intelligence
- civil nuclear
- communications
- computing hardware
- critical suppliers to government
- cryptographic authentication
- data infrastructure
- defence
- energy
- military and dual-use
- quantum technologies
- satellite and space technology
- suppliers to the emergency services
- synthetic biology and
- transport.

The energy sector should therefore be alert to the potential application of the Act across a broad range of transactions, including those involving energy generation, transmission, distribution, and related infrastructure.

Entity Acquisitions: Approval is required where control of an entity (which includes a company, LLP, partnership, unincorporated association or trust or other body corporate) is acquired. "Control" in this context means that the acquirer:

i. increases its percentage of shares (or voting rights) held in the entity to more than 25%, 50% or at least 75%; or
ii. acquires voting rights that enable it to secure or prevent the passage of any class of resolution governing the affairs of the entity.

Asset Acquisitions: Approval is required where control of an asset (which includes land, tangible moveable property or intellectual property (ideas, information or techniques which have industrial, commercial or other economic value which are used in connection with activities carried on in the UK or the supply of goods or services to persons in the UK)) is acquired. "Control" in this context means the acquisition of a right or interest in an asset which gives the acquirer the ability to use the asset or direct or control how the asset is used (or use, direct or control it to a greater extent than before the acquisition).

Overseas entities and assets will be included within the remit of the Act if:

i. The entity carries on activities in the UK or supplies goods or services to UK persons, or
ii. The asset is used in connection with such activities or supply

The CO will consider the following three risk factors in assessing the transaction:
Target risk: Could the entity or asset being acquired be used in a way that poses a risk to national security?
Control risk: Could the type and level of control being acquired over the entity or asset pose a risk to national security?
Acquirer risk: Does the acquirer possess any characteristics that suggest there is, or may be, a risk to national security?

Sanctions

If a transaction completes without obtaining the requisite approval, the transaction will be legally void, with potential criminal liability (imprisonment of up to 5 years), a fine of up to £10 million (in respect of individuals) and up to the higher of 5% of worldwide turnover or £10 million (in relation to businesses). Where the person committing the offence is a body corporate, the officers of such body corporate will also be guilty if it is committed with their consent, connivance, or due to their neglect.

Timing: Should a notification be submitted, the CO will consider and respond within 30 working days either approving the transaction or stating that it will exercise its "callin" for review power to undertake a full national security investigation of the transaction.

For transactions that have not been notified, the CO may exercise its "call-in" for review power within six months from the date it becomes aware of the transaction.

There are ongoing consultations being undertaken in the UK related to the Act, and the legislation may continue to evolve. Please feel free to reach out to the PwC Legal UK team for further information.

SPAIN: New Rules Reshaping Electricity Market: Royal Decree 88/2026

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Spain has enacted Royal Decree 88/2026 of 11 February 2026, approving a comprehensive new framework for electricity supply, retail and aggregation activities. This regulation represents a significant overhaul of the Spanish electricity retail market, implementing EU Directive 2019/944 on common rules for the internal electricity market and updating the framework established under the Electricity Sector Law 24/2013. It introduces substantial new obligations for electricity retailers and expands consumer rights in ways that will require market participants to review and adapt their current practices.

Scope and Application

The new Regulation applies to electricity consumers, transmission and distribution network operators, the system operator, the market operator, retailers, direct market consumers, independent aggregators, storage facility operators, and renewable energy communities. It establishes the legal framework applicable to retail activities in the electricity sector, particularly retail, supply and aggregation activities, and the relationships between the various parties that participate in and/or carry out these activities.

Consumer Right to Multiple Retailers

One of the most innovative aspects of this regulation is the explicit recognition that consumers may now hold more than one supply contract simultaneously at the same supply point. This right is subject to two conditions: the consumer must have metering equipment capable of recording consumption data, and the consumer must sign the third-party network access contract directly with the distributor (rather than through a retailer). For supply points without consumption metering, simultaneous energy contracts with more than one retailer are not permitted.

Retailers with more than one supplier at a given supply point must be informed by the distributor when a supply suspension is requested.

Hybrid Consumer Model: Combining Retail Supply with Direct Market Participation

The Regulation expressly enables consumers to combine different forms of energy contracting. Consumers may contract part of their energy with a retailer while acquiring the remaining portion directly in the wholesale market, thereby acting partially as a direct market consumer. This combination of contracting methods shall not entail any additional cost for the consumer.

Consumers may also subscribe forward hedging instruments directly or indirectly with an electricity producer or storage facility, in which case their retailer is obliged to nominate such energy through a physical bilateral contract at no additional cost to the consumer.

Independent Aggregators and Demand Response Services

The Regulation provides a comprehensive framework for independent aggregators, recognising their fundamental role in demand response and the flexibility of the electricity system. Consumers may enter into aggregation contracts with a provider of their choice, distinct from their retailer, without requiring the retailer's consent. Independent aggregators have the right to participate in all electricity markets without the consent of other market participants, and specifically in balancing markets to provide demand response services.

Retailers are expressly prohibited from imposing any payments, penalties, or contractual restrictions on consumers as a consequence of their entering into aggregation contracts. Independent aggregators must file a responsible declaration before commencing activities and comply with extensive obligations, including informing consumers of contract conditions in a clear and simple manner, maintaining confidentiality of consumer data, and providing a free consumer service for complaints and enquiries. The aggregation model (centralised with programme correction and compensation) will be developed through further ministerial orders and resolutions.

Restrictions on Contract Modifications and Price Revisions

The Regulation imposes significant restrictions on retailers regarding the modification of contractual terms. Retailers are prohibited from unilaterally modifying contractual conditions or terminating contracts before their expiry. This addresses concerns previously raised by the Spanish National Commission on Markets and Trust (CNMC) regarding practices that undermined consumer protection in the sector.

Regarding price revisions, the Regulation establishes clear requirements. Any revision clauses in contracts must be transparent and comprehensible, and must include the parameters and formulas reflecting when conditions may be revised. Such revision clauses do not apply to fixed-price contracts. Consumers have the right to receive advance notice of at least one month before any contract modification takes effect, in writing and separately from their invoice, including information on their right to terminate the contract without cost upon receiving such notice. Similarly, consumers must be notified of any price revision arising from contractual conditions at least one month in advance, with clear explanation of the reasons, prior conditions and scope of the adjustment.

Consumers have the right to terminate fixed-price contracts without penalty if contractual clauses are modified. For individual consumers under the 2.0TD tariff segment without a fixed-price contract, there is an explicit right to terminate the supply contract and its extensions at any time without penalty, except in fixed-price contracts if terminated before the first extension, in which case the maximum penalty if damages are caused to the supplier may not exceed 5% of the estimated energy pending supply.

Key Retailer Obligations

Retailers face extensive new obligations under the Regulation, including requirements to:

- Provide consumers with a clear summary document before contract formalisation containing the main contractual conditions.
- Register and record all telephone calls related to contracting, regardless of who initiates the call.
- Refrain from unsolicited telephone advertising or contracting practices with individual consumers, unless expressly requested by the consumer.
- Offer dynamic price contracts if they serve more than 200,000 final consumers, with full disclosure of opportunities, costs and risks.
- Change of retailer must be completed in 10 days.

How PwC Spain is helping our clients

Our Energy team is actively advising retailers and consumers on the implications of this new regulatory framework. For retailers and aggregators, we are assisting with comprehensive compliance assessments to identify gaps between current practices and the new requirements, reviewing and adapting general terms and conditions, updating contracting processes and consumer communications, assessing new business models and assessing the degree to which Royal Decree 88/2026 conforms to both EU Directive 2019/944, which it seeks to transpose, and Law 24/2013 of the Electricity Sector. For consumers, including industrial users and large energy purchasers, we are advising on how to ensure that their new rights—including the possibility of multiple retailers and hybrid market participation—are properly reflected in their supply contracts.

AUSTRIA: Critical Infrastructure on the Frontline of Hybrid Risk

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Europe is entering a period of sustained geopolitical tension in which critical infrastructure is increasingly perceived as a strategic pressure point. Hybrid threat dynamics, technological disruption and deliberate interference are reshaping the operating environment for energy companies. Physical resilience is therefore moving beyond an operational safeguard and becoming a core leadership responsibility.

In this context, Austria is introducing the Critical Infrastructure Resilience Act (RKEG), implementing the EU Critical Entities Resilience Directive. The framework forms part of a broader European regulatory shift aimed at strengthening the robustness of infrastructure systems and raising expectations regarding preparedness, governance and risk transparency.

Why energy executives should act now

In Austria, approximately 400–600 organisations are expected to be formally designated as critical entities by the competent authority. Following notification, companies must implement resilience measures within nine months and will be subject to periodic reassessment. For energy groups managing complex asset portfolios and interconnected infrastructure networks, this represents a material increase in regulatory focus on physical security governance.

What the new resilience regime requires

Affected entities must conduct structured risk analyses addressing natural hazards, intentional acts such as sabotage or espionage, technological dependencies and organisational vulnerabilities. Interdependencies with other infrastructure operators must also be systematically assessed. Based on these findings, companies are required to establish resilience plans defining crisis management arrangements, emergency procedures, business continuity approaches and the protection of critical assets. Further obligations include defining security-relevant roles, implementing access controls and reliability checks for key personnel, establishing incident reporting processes and introducing appropriate technical and organisational safeguards.

How PwC can support

PwC supports energy companies in assessing regulatory exposure and preparing for potential designation as critical entities. Our multidisciplinary teams assist in designing risk analysis approaches, identifying critical processes and developing resilience strategies aligned with EU and national requirements. We also help strengthen governance structures, crisis management frameworks and organisational readiness. In addition, PwC provides legal and strategic advice on drone detection and defence concepts, including the compliant deployment of technical countermeasures under telecommunications, aviation and security law.

Looking ahead

As geopolitical uncertainty and hybrid threats continue to shape the European risk landscape, strengthening physical resilience will remain a central management priority for energy companies. Early strategic action will help organisations enhance regulatory readiness while reinforcing operational robustness.

Protection of critical energy infrastructure

Hybrid threat scenarios are evolving rapidly. Energy infrastructure may be exposed to targeted disruption, drone-enabled surveillance or interference and cascading operational effects across interconnected European systems. Integrating physical protection measures into enterprise risk and governance frameworks is therefore becoming an essential leadership task.

POLAND: PLN 1 Trillion Investment Wave Meets a Regulatory Overhaul of the Energy Law

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The Scale: Energy Security Backed by Unprecedented Capital

Poland is entering the most capital-intensive decade in the history of its energy sector. At the recent PowerConnect Energy Summit, Prime Minister Donald Tusk announced a total planned investment of approximately PLN 1 trillion over the next ten years - including over PLN 220 billion in renewables and energy storage, PLN 234 billion in distribution networks and around PLN 160 billion in nuclear energy. The political framing is unequivocal: there is no national security without energy security, and no other EU Member State is currently undertaking energy system transformation at a comparable scale or pace.

The Problem: A Grid That Cannot Absorb What Is Being Built

The sheer volume of planned investments exposes a critical bottleneck. As the explanatory memorandum to the government's draft amendment makes clear, grid connection capacity is the single most important factor determining the pace of new generation growth in Poland. The current framework has allowed large volumes of capacity to be reserved by projects that are never built - so-called speculative blocking - while execution-ready investments queue for years. Available connection capacity has effectively become a scarce public good that is being misallocated.

The Reform: Project UC84 - The Anti-Blackout Package

The government's response is Project UC84, a comprehensive amendment to the Polish Energy Law, designed to remove regulatory barriers preventing the system from absorbing projects at unprecedented scale. The key mechanisms include: milestone-based connection agreements - automatic expiry if building permits are not obtained within set deadlines, applicable also to energy storage

- halved validity of connection conditions - from 2 years to 1 year, with operator right to re-verify conditions before signing the agreement
- doubled advance payments (from PLN 30 to PLN 60/kW) and a new non-refundable application fee (PLN 1/kW, capped at PLN 100,000) to discourage speculative filings
- expanded cable pooling - extended beyond RES to all installation types, including storage

- flexible and configurable connection agreements with a power guardian mechanism allowing operators to suspend injection or offtake upon capacity breach

For market participants — whether in renewables, storage, conventional generation or grid infrastructure - the practical imperative is clear: review existing connection agreements, reassess project timelines, and prepare for a regime where execution discipline is the price of grid access.

PORTUGAL: Commitment to the simplification of renewable energy licensing: extension of the exceptional regime and establishment of RAAsP

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Portugal has been pursuing a progressive legislative path in the field of energy transition, particularly with regard to the deployment of renewable energy projects, while safeguarding the protection of environmental and territorial values.

- Decree-Law No. 30-A/2022 of 18 April, adopted in the context of the European Commission's REPowerEU Communication, established exceptional measures for the simplification of administrative procedures applicable to the installation and commissioning of renewable energy power generation facilities, energy storage installations, Self-Consumption Production Units and their respective connection infrastructure to the Public Service Electricity Network.
- The key measures include:
  - The simplification of the environmental impact assessment (EIA) regime, and the reduction of the time limit for the issuance of sectoral opinions to 10 days - with tacit approval in the event of administrative inaction.
  - The waiver of the prior operating licence requirement by the Directorate-General for Energy and Geology (DGEG), and the introduction of a simplified urban planning regime based on prior notification..

1. The legislation, originally enacted with a two-year period of applicability, was subject to successive legislative amendments and its validity was extended, first, by Decree-Law No. 22/2024 of 19 March, until 31 December 2024, and subsequently, until 31 December 2026, by Decree-Law No. 116/2024 of 30 December, in order to ensure legal certainty pending the completion of the legislative process for the transposition of Directive (EU) 2023/2413 (RED III).

2. In practice, this exceptional regime brought about a substantial shift in the renewable energy project licensing paradigm in Portugal, significantly accelerating the project pipeline, although its transitional nature raises legitimate concerns regarding the regulatory stability of the sector.

The establishment of Renewables Acceleration Areas (RAAs) represents the transition from an exceptional regime to a potentially permanent and territorially differentiated regulatory model, under which the simplification of licensing procedures applies in a more targeted manner to areas previously identified as suitable and subject to strategic environmental assessment.

In Portugal, the process of identifying these areas was supported by a dedicated working group, established as early as 2022. More recently, the Council of Ministers of 19 March 2026 approved a Decree-Law consolidating the transposition of three European directives in the energy sector, formally establishing the Renewables Acceleration Areas (RAAs), within which projects benefit from shorter and simplified licensing procedures.

What to expect: regulation of the RAAs and the future of the licensing regime.

The coming months will be decisive for the definition of the permanent regime that will succeed Decree-Law No. 30-A/2022. Sector operators should closely monitor the publication and implementing regulation of the legislation establishing the RAAs, as well as the potential integration of the current exceptional measures into the permanent regulatory framework.

ROMANIA: Unlocking Grid Capacity: ANRE Moves to Prioritize Mature Renewable Projects

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Draft amendments to the Grid Connection Regulation introduce stricter milestones for ATR holders and aim to release capacity blocked by inactive projects.

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Key Takeaways for Investors

- Developers will need to demonstrate project maturity in order to maintain grid reservations.
- Grid capacity may be freed up as the Romanian Energy Regulatory Authority (ANRE) introduces mechanisms to withdraw ATRs for projects that do not progress.

Market Background

Romania has experienced a significant surge in renewable energy development in the last years, particularly in solar and wind projects. This growth has generated a large number of grid connection requests being approved, leading to increasing pressure on available capacity in both the transmission and distribution networks.

A considerable portion of grid capacity is currently reserved through grid connection permits (*Aviz Tehnic de Racordare – ATR*) issued for projects that have not seen any progress beyond the early permitting phases. This situation has lately created challenges for mature investors seeking to secure new grid access for viable projects, but also for the authority trying to free capacity from projects which have not progressing or stopped due to regulatory or financial grounds.

Against this backdrop, ANRE has initiated a reform of the Regulation on the connection of users to electricity networks, approved by ANRE Order no. 59/2013. The proposed amendments aim to ensure that reserved grid capacity is used by projects capable of moving toward construction and operation.

Proposed Amendments

Below is a summary of main amendments which are pursued by ANRE:

Topic	Proposed Amendments
Grid Connection Guarantee	Increase to 20% of the connection tariff (from 5% of the connection tariff presently). Applicable to projects with approved evacuation capacity above 1 MW. Applicable to projects for which the value of the grid connection guarantee value <u>has not been communicated</u> prior to the enactment of this proposed order.
Obligation to obtain the set-up authorization (*Autorizatia de infiintare*) within specific deadlines	1. For projects where the grid connection agreement has not been signed prior to the enactment of this proposed order, the set-up authorization must be obtained within: (a) 12 months from the conclusion of the grid connection contract and (b) 18 months from the issuance of the ATR.

	2. For projects where the grid connection agreement has been signed prior to the enactment of this proposed order, there will an obligation to obtain the set-up authorization within 12 months from the enactment of these proposed order.
ATR expiry and consequences	Failure to obtain the set-up authorization within the above deadline will result in the expiry of the ATRs, automatic termination of the grid connection agreement and the enforcement of the financial guarantee. The withdrawal of the set-up authorization by ANRE produces the same effects, as of the date of the withdrawal decision.

What This Means for Renewable Energy Investors

The proposed amendments signal ANRE's intention to strengthen discipline in the grid connection framework and ensure that scarce network capacity is allocated to projects capable of reaching construction and operation.

For renewable energy developers, the implications are particularly relevant, as developers may need to demonstrate concrete progress to maintain grid reservations. Projects that remain inactive may lose their ATRs, potentially unlocking grid capacity in congested areas.

Investors and developers should closely monitor the outcome of the public consultation process and assess the potential impact of the new rules on both existing ATRs and future grid connection strategies.

SWEDEN: Current issues concerning gaseous fuels from the perspective of Swedish excise taxation

The Landwärme Ruling

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In December 2022, the EU General Court annulled Sweden's state aid approval concerning tax exemptions on biogas and biopetroleum gas (Case T-626/20, *Landwärme v Commission*). Following this ruling, the European Commission undertook a comprehensive investigation to ensure that Sweden's state aid mechanisms did not result in overcompensation.

At the end of 2024, the Commission concluded that the Swedish tax exemptions were compliant with EU state aid regulations. However, during the interim period, the Swedish Tax Agency prohibited eligible parties from claiming these tax exemptions through deductions on excise returns or reimbursement requests. This approach is highly unusual given the structure of the Swedish legal system.

Although the tax exemptions for biogas and biopetroleum gas were reinstated in spring 2025, the situation remains unresolved for many eligible entities. The administrative burden remains considerable, notably regarding certification and compliance documentation. The interim period, combined with unclear government communication, has created significant operational challenges. For a more detailed analysis, we recommend the article published in *Svensk Skattetidning* by F. Jonsson and M. Gren.

Transition of Tax Base from Quantity to Energy Content (kWh)

Effective 1 July 2026, the excise duty on gaseous fuels in Sweden will transition from a quantity-based tax base to a system based on energy content, measured in kilowatt-hours (kWh). This change aims to eliminate current distortions in pricing and administrative reporting caused by the existing quantity-based measurement system. Since the market increasingly manages gaseous fuels and reporting requirements based on energy content, this adjustment is expected to simplify administration and compliance significantly.

However, the transition will present notable challenges for energy companies. There will be no transitional period: the new tax base and revised tax returns will come into immediate effect on 1 July 2026. Entities will continue to face a substantial administrative workload to maintain appropriate records and documentation for accurate tax filings. Moreover, the existing variability in fuel reporting (weight, volume, etc.) further complicates compliance.

We anticipate an adjustment period during which errors may be frequent, and many companies might encounter difficulties in adapting their systems and documentation to the new requirements.

Broadened Definition of Biogas

Simultaneously with the tax base revision, the Swedish government is updating the definition of biogas. Advancements in biofuel development and the introduction of new fuel types into the market have rendered the current definition in the Swedish Energy Act insufficient. Since this definition currently leads to inconsistent tax treatment of various biogenic gases, a more inclusive and general definition will be codified in the tax legislation.

Going forward, biogas will be defined as gaseous fuels produced from biomass, providing a more coherent framework for taxation and regulation.

This development is welcomed by the industry and consumers alike. Nonetheless, classification challenges persist across fuel types, especially regarding biogenic fuels. Discrepancies between tax legislation and other regulatory frameworks can result in adverse consequences. A significant issue remains with the Swedish Tax Agency's current position on not accepting foreign bio-certificates, which complicates classification and compliance procedures.

At present, there is no indication that the broader biogas definition will substantially alleviate these classification challenges.

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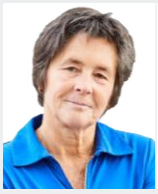

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