

## *Review of the Balance of Competences*

### **LEGAL ANNEX TO THE ENERGY REVIEW**

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#### **A BRIEF HISTORY OF THE EU TREATIES**

The Treaty on the European Economic Community (the EEC Treaty) was signed in Rome on 25 March 1957, along with the Treaty establishing the European Atomic Energy Community (Euratom) and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 there has been a series of treaties extending the objectives of what is now the European Union (EU) beyond the economic sphere. The amending treaties (with the dates on which they came into force) are:

- the Single European Act (1 July 1987), which provided for the completion of the single market by 1992;
- the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and
- the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.

Following these changes, there are now two main treaties which, together with the Euratom Treaty, set out the competences of the EU:

- The Treaty on European Union (TEU); and
- The Treaty on the Functioning of the European Union (TFEU).

#### **WHAT IS A DIRECTIVE AND HOW DOES THAT DIFFER FROM A REGULATION OR DECISION?**

A **directive** is a legislative act of the EU which requires Member States to achieve a particular result without dictating the means of achieving that result. Directives must be transposed into national law using domestic legislation. Usually there is a degree of flexibility as to how certain provisions are implemented and in some cases this will lead to differences in interpretation of provisions between Member States and the EU and for this reason there has been a growing trend for the EU to prefer regulations and decisions over directives.

A **regulation**, once in force, has immediate effect in a Member State's laws i.e. it becomes directly applicable in Member States without the need for national implementing legislation. Nevertheless it is frequently the case that some secondary legislation may be required to fully implement if, for example, new powers had to be given to regulators in order to ensure compliance by industry of a particular provision. In the event that a Member State's laws conflict, or potentially conflict with a regulation, they have to be removed.

A **decision** is a legislative act of the EU which is binding upon those to whom it is addressed. If a decision has no addressees, it binds everyone.

## THE EU LEGISLATIVE PROCESS

EU legal acts such as regulations and directives are generally adopted by "ordinary legislative procedure" (formerly known as the "co-decision procedure"). In most cases, only the European Commission can propose a new legal act, but it cannot become law unless it is jointly adopted by the Council (which is composed of ministers from each Member State) and the European Parliament. Under this procedure, the Council acts on the basis of qualified majority voting (QMV), where only a specified majority of votes is required and the share of votes of each Member State reflects its population size. The Treaties also set out a small number of cases where EU legal acts are adopted under different procedures (referred to as "special legislative procedures").

Some Treaty articles, such as those promoting free movement or prohibiting anti-competitive practices within the EU, are of direct effect in themselves. Other articles provide the legal base on which secondary EU legislation (regulations and directives) made by the European Parliament and Council can be founded. Secondary legislation may delegate power to the Commission to make further legislation (see articles 288 to 290 TFEU). Since the Treaty of Lisbon, EU tertiary legislation must be in the form of either delegated acts or implementing acts.

Delegated acts supplement or amend non-essential elements of secondary legislation. Controls over the Commission are provided through powers of the Council or European Parliament to revoke or object to particular delegated acts.

There are several types of procedure for the other type of tertiary legislation - implementing acts - but the most common is where the Commission can act with control provided by Member States in the form of an expert committee. In this case there are two mechanisms for adoption of an implementing act – the advisory procedure and the examination procedure. The advisory procedure gives minimal Member State control over the Commission; the examination procedure gives greater control to Member States and includes the use of an appeals committee if a qualified majority vote (QMV) by Member States delivers a negative opinion on the Commission's proposals. If under the examination procedure the committee of Member States gives no opinion (i.e. there is no QMV for or against the proposal) then the Commission can choose to adopt the measure (subject to certain

constraints). This can work in the UK's interest if we are in a minority in favour of a proposal, but equally works against us if we are in the minority against.

## OVERARCHING PRINCIPLES

### THE PRINCIPLE OF CONFERRAL

[Article 4\(1\) TEU](#) provides that the 'principle of conferral' is an overarching principle of EU law. In the first place, the principle of conferral means that competences which are not conferred on the EU remain with the Member States. Secondly, as [article 5 TEU](#) makes explicit, the principle means that the EU only has those competences which are conferred on it.

### THE EU'S SUBSIDIARY POWERS

[Article 352 TFEU](#) has been relied on by the EU legislature in many important areas in order to enact measures where competence could not be found in other articles of the TFEU or its predecessors.

It is clear that article 352 TFEU is not intended to be a 'blank cheque' for EU competence where the EU Treaties do not confer competence. For example, there are key safeguards built into article 352 TFEU, notably the requirement for unanimity in the Council, the requirement for draft measures proposed to be adopted under article 352 TFEU to be drawn to the attention of national Parliaments and the express reservation that article 352 cannot be a legal basis for harmonisation measures where other Treaty articles exclude such measures.

Accordingly, in the light of the reservation in [article 194\(2\) TFEU](#) to the effect that EU energy measures cannot affect a Member State's right to determine the conditions for exploiting its energy resources, or to choose between different energy sources, article 352 TFEU could not be used as a legal basis for EU measures on such matters.

## THE EU'S COMPETENCES

The EU must act within the limits of competence conferred on it by the Member States. Articles 3 to 6 TFEU set out the categories of exclusive, shared and supporting competences into which EU policies and actions fall. In the majority of contexts, competence is shared between the EU and the Member States; however there are certain areas where the EU has only a supporting competence and limited situations where its competence is exclusive.

### THE EU'S EXCLUSIVE COMPETENCE

[Article 3 TFEU](#) sets out areas for the EU's exclusive competences. In these fields, only the EU institutions have competence to adopt measures. The Member States have no legislative competence in these fields (other than, where necessary, to give effect in their domestic legal orders to EU measures).

Energy is not among the EU's exclusive competences. However, it is apparent that some exercises of exclusive competence by the EU will have an impact on energy matters. For example, the EU's exclusive competence over the customs union (article 3(1)(a) TFEU) and over the competition rules<sup>1</sup> necessary for the functioning of the internal market (article 3(1)(b) TFEU) will lead to measures which have a particular impact on the energy sector. The European Court of Justice (ECJ) has already decided a number of cases which make clear that the EU single market rules, such as article 34 TFEU rules on free movement of goods, have implications for matters such as state financial interests in energy industries and security of energy supply.<sup>2</sup>

### THE EU'S SHARED COMPETENCE

[Article 4 TFEU](#) provides for the competences which the EU shares with the Member States. Energy (article 4(2)(i) TFEU) is a shared competence.

According to [Article 2\(2\) TFEU](#), where the EU exercises competence in areas in which it has 'shared' competence with the Member States, the Member States are only able to exercise their competence to the extent that the EU has not already exercised its competence.

Whenever EU measures are proposed in areas such as energy, where the EU shares competence with the Member States, the principle of subsidiarity set out in [Article 5\(3\) TEU](#) must be respected. The EU will only be competent to legislate where the objective of the measure can be better achieved by EU rather than national measures and it is proportionate for the EU to act. When the EU legislature adopts directives, a provision is sometimes included which makes clear that the Member States are able to maintain in force or adopt domestic rules which are more favourable in terms of the objectives of the directive.<sup>3</sup>

### THE EU'S SUPPORTING COMPETENCE

[Article 6 TFEU](#) sets out the areas in which the EU has 'supporting' competence. Potentially relevant for present purposes are articles 6(a) and (b), which give the EU some interest in "the protection and improvement of human health" and "industry". The EU's interest in these matters will have some implications for energy law and policy in the UK.

## THE DEVELOPMENT OF EU COMPETENCE OVER ENERGY

One reason why energy was not expressly dealt with in the EEC Treaty was because in 1957, when the Treaty of Rome was agreed, the principal source of energy at that time was coal. The regulation of coal had been dealt with by the European Coal and Steel Community (ECSC) Treaty while the emergence of atomic

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<sup>1</sup> For example, State aid

<sup>2</sup> For example, Cases C-157, 158, 159, 160/94, the Energy Import-Export Cases, [1997] ECR I-5699

<sup>3</sup> For example, Article 1(3) of Directive 2010/31/EU on the energy performance of buildings

energy was governed by the Euratom Treaty. Beyond these areas, it is likely that the original six Member States considered that trade in other sources of energy, such as oil, would be covered by various areas of EU substantive law, such as the free movement of goods.

During the years that followed the founding of the EEC, other sources of energy, such as oil and natural gas, became increasingly important, while the infrastructure and technology of the energy industry increasingly permitted the possibility of EU cross-border trade in electricity and gas. During the 1980s, particularly in the UK, the energy industry started to be denationalised, with private investment and private ownership becoming central to its future. This led to the EU Commission promoting the need for EU substantive law to apply to the energy sector in all respects, notably the competition and state aid rules.

The first generation of electricity and gas directives, namely the Price Transparency Directive,<sup>4</sup> followed by the Electricity and Gas Transit Directives<sup>5</sup> and culminating in the first Electricity directive<sup>6</sup> and the first Gas directive,<sup>7</sup> providing common EU rules for the internal market in electricity and gas, have their origins in an EU Commission paper from 1988.<sup>8</sup> This paper stressed the need for transparency in the energy markets but also acknowledged that a gradual approach to market integration was required. The reasons for a gradual approach included the need to allow the newly denationalised energy industries to adjust to competition and to permit Member States to choose how to regulate their respective energy sectors, albeit within the limits of the four freedoms and EU competition law.

Since the 1990s, the ECJ has had a number of occasions to consider the application of EU substantive law to the energy sector. Historically, other provisions of TFEU were the legal basis for energy measures and it cannot be ruled out that they may provide additional or alternative legal bases for EU energy legislation and have a particular impact on the energy sector.

[Article 4 TFEU](#) confers shared competence on the EU in the field of energy. The nature and extent of this competence is dealt with in title XXI of the TFEU, under the heading “energy”. This title has one article, namely [article 194 TFEU](#), which provides:

- “(1) In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:
- (a) ensure the functioning of the energy market;
  - (b) ensure security of energy supply in the Union;
  - (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and

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<sup>4</sup> Directive 90/337/EEC on transparency of electricity and gas prices for industrial end-users

<sup>5</sup> Directives 90/547/EEC and 91/296/EEC

<sup>6</sup> Directive 96/92/EC

<sup>7</sup> Directive 98/30/EC

<sup>8</sup> [Working Document on the Internal Energy Market” COM \(88\) 238 \(1988\)](#)

- (d) promote the interconnection of energy networks.
- (2) Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.
- Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).
- (3) By way of derogation from paragraph 2, the Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, establish the measures referred to therein when they are primarily of a fiscal nature.”

The first paragraph of [article 194\(2\)](#) confers competence on the EU to adopt measures necessary to achieve the objectives in article 194(1) by ordinary legislative procedure. The scope of this competence is, however, restricted by the second paragraph of [article 194\(2\)](#), which prohibits the adoption of measures which “affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply”. Consequently, such measures could still only be adopted on the basis of other, non energy specific provisions, such as by unanimous decision of the Council in accordance with [article 192\(2\)\(c\) TFEU](#). This provision requires the measures in question to be based on the environmental objectives in [article 191 TFEU](#), not primarily on security of supply objectives.

[Article 194\(2\)](#) requires that EU measures “shall not affect” certain matters of national energy policy, while [article 192\(2\)\(c\)](#) requires Council unanimity for adoption of measures “significantly affecting” such interests. In other words, the competence to adopt measure in the security of supply interest by the ordinary legislative procedure under [article 194](#) would be more limited than the competence to adopt environmental measures under [article 192\(1\) TFEU](#).

The national competence reservation in article 194 TFEU is underlined by the thirty-fifth Declaration included in the Final Act of the Treaty of Lisbon. This states:

“Declaration on Article 194 of the Treaty on the Functioning of the European Union

The Conference believes that Article 194 does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article 347.”<sup>9</sup>

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<sup>9</sup> Article 347 TFEU permits Member States, after consulting each other with a view to protecting the EU single market, to take measures to deal with certain unforeseen events, such as dealing with serious internal disturbances, war and serious international tension constituting a threat of war.



## OTHER COMPETENCE BASES FOR ENERGY

### Article 122 TFEU

[Article 122 TFEU](#) makes it possible for the Council to decide appropriate measures in solidarity with Member States facing “severe difficulties in the supply of certain products, notably in the area of energy”.

According to ECJ’s case law, article 122 TFEU can only be relied on as a legal basis for a measure covering the energy sector if no other legal basis for the measure exists in the TFEU, under which the Parliament has a role.

### Article 114 TFEU<sup>10</sup>

Harmonisation measures which aim for high level of protection in the areas of health, safety, environmental protection and consumer protection have utilised [article 114 TFEU](#) as a legal basis for several energy measures.

### Articles 49 and 56 TFEU<sup>11</sup>

[Article 49 TFEU](#) prohibits restrictions on the right of establishment. The right of establishment which the TFEU confers extends to individuals and business associations of all types. Accordingly, energy companies benefit from the right of establishment.

The competence to adopt measures in order to ensure the right of establishment is conferred by [article 50 TFEU](#) and [article 53 TFEU](#).

[Article 56 TFEU](#) prohibits restrictions on the free movement of services. It also enables the Council and the Parliament, acting in accordance with the ordinary legislative procedure, to extend the freedom to provide services within the EU to third country nationals who provide services and who are established within the EU. Article 56 TFEU took its current form in this respect following the amendments made by the Single European Act (which allowed measures to be adopted by QMV rather than, as originally, unanimity) and the Lisbon Treaty extended the ordinary legislative procedure to proposed measures concerning third country nationals.

[Article 59 TFEU](#) confers competence on the EU to adopt measures which liberalise specific sectors of the market

### Article 352 TFEU

The Council can use [article 352 TFEU](#) (sometimes referred to as the broad ‘enabling clause’) to adopt measures in order to attain one of the EU’s objectives, but only where the existing Treaties have not provided the necessary powers to do so

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<sup>10</sup> See the [Single Market report](#) in semester 1 of the Review of the Balance of Competences

<sup>11</sup> See Call for Evidence on [Single Market: Services report](#) in semester 3 of the Review of the Balance of Competences

already, and so long as the measure concerned remains within the confines of the EU's existing competence. Given the express competence now conferred on the EU by [article 194 TFEU](#) and the limitations on that competence, in addition to the potential of a number of other Treaty articles to provide a legal basis for energy measures (as they have done in the past), it is to be expected that the scope for article 352 TFEU to provide a legal basis for energy measures will be very limited.

### **Articles 191 and 192 TFEU**

The EU's competence in the field of the environment has provided a legal basis for a large number of energy measures, notably in the field of renewable energy and energy efficiency. EU competence over the environment is provided for by [articles 191](#) and [192 TFEU](#) and is being addressed in the [Environment and Climate Change Call for Evidence and report](#) in semester 2. Competence in this field was first introduced by the Single European Act and thereafter enhanced by the Maastricht Treaty.

### **Article 107 TFEU**

The energy sector has been a frequent source of cases under the EU state aid rules ([article 107 TFEU](#)). Some of these cases have concerned aid granted to energy undertakings upon or following denationalisation and/or associated with unbundling, or various measures to support or encourage renewable energy sources, such as 'feed-in tariffs'.<sup>12</sup> The EU has sole competence in the field of state aid. The Commission has issued decisions, communications and guidelines in a number of areas, including coal, environmental protection and in the context of the EU Emissions Trading Scheme.

As part of the modernisation of the EU state aid policy, the Commission are reviewing the scope of the current Environmental Aid Guidelines to encompass energy issues – see [draft Energy and Environmental Aid Guidelines](#).

## **THE EXTERNAL DIMENSION**

The EU has legal personality.<sup>13</sup> It follows that it has the power to enter into treaties and agreements with third states and international organisations. In practice, this is part of the EU's significant competence in the field of external relations (which the EC and before that the EEC always had). This external competence arises either expressly from the TFEU or by implication, for example, in fields where the EU has internal competence and it is necessary for the EU to fulfil its functions also to have external competence in that field.

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<sup>12</sup> Case C-206/06 Essent Netwerk Noord, [2008] ECR I-5497 and Case C-379/98 Preussen Elektra [2001] ECR I-2099.

<sup>13</sup> Article 47 TEU



## THE DEVELOPMENT OF EU EXTERNAL COMPETENCE

Originally the TEC conferred on the EC only a limited express competence over external action. At first, express competence in the external field extended only to the common commercial policy<sup>14</sup> and association agreements with third states.<sup>15</sup> In addition, the ECJ found that the EU could 'succeed' to international agreements which had been ratified by all of its Member States.<sup>16</sup>

By the mid-1970s, the ECJ had established that whenever the EU exercises its external competence over a particular subject, its external competence becomes exclusive over that subject.<sup>17</sup> While that is straightforward in the areas in which the EU has been expressly conferred with external competence, matters are more difficult when it comes to the EU's implied external competence.

In a series of cases beginning with the ECJ's landmark judgment in *ERTA*,<sup>18</sup> it came to be established that the EU possessed an external competence which paralleled its internal competence.

The EU's external competence arises not only from powers expressly conferred on the EU by the Treaties but also impliedly, from the EU's internal competence.

[Article 216 TFEU](#) now provides for the EU's competence over external action.

In the light of the conferral of competence on the EU in the field of energy by [article 194 TFEU](#), the EU will have external competence in this field of energy where the conditions of [article 216 TFEU](#) are satisfied. The EU competence will be exclusive if the provisions of [article 3\(2\) TFEU](#) are satisfied.

Examples of how the EU has exercised its external competence in the field of energy include:

- **Energy Charter Treaty 1994**, which has a total of 54 signatories (including the EU and Euratom). The Treaty concerns trade in energy products, transit of electricity and gas supplies and protection of investments in the energy sector.
- **Energy Community Treaty 2006** between the EU and the Balkan states. The main aim of that Treaty is to extend EU energy and environmental rules into the energy markets of the Balkan states. At the outset, the EU is a party in its own right to this Treaty, signifying that the subject matter of the Treaty falls within the exclusive competence of the EU. In addition, the EU has concluded bilateral energy agreements with countries such as Russia.

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<sup>14</sup> Article 207(3) TFEU

<sup>15</sup> Article 217 TFEU

<sup>16</sup> Cases 21-24/72 *International Fruit Co. v. Produktschap* [1994] ECR 1219 (the EU assumed the Member States' responsibilities under the GATT)

<sup>17</sup> *Opinion 1/75 (Local Cost Standard)* [1975] ECR 1355

<sup>18</sup> *Case 22/70 ERTA* [1971] ECR 263 and *Opinion 1/75 (Local Cost Standard)* [1975] ECR 1355

- The **Energy Star Agreement** was concluded by the EU and USA under what is now article 207 TFEU pursuant to the EU's external competence under the common commercial policy. It was given effect in EU law by Council Decision 2006/1005/EC.

Further detail on the EU's relations with third states and international organisations in the field of energy and proposals for future action are contained in:

- the Commission's communication on [Security of Energy Supply and International Co-operation – 'The EU Energy Policy': Engaging with Partners Beyond Our Borders COM \(2011\) 1022 final](#); and
- The Commission's report on [Implementation of the Communication of Energy Supply and International Cooperation and of the Energy Council Conclusions of November 2011 \(2013\) 334 final](#).

## SECTOR SPECIFIC LEGISLATION

### ELECTRICITY AND GAS

EU competence developed over the electricity and gas sectors through the perceived need for market reform, liberalisation, cross border market access and greater integration of the electricity and gas markets of the Member States. It can also be said that the current structure of EU measures applying to electricity, gas and renewable energy sources are ultimately modelled on the aims of the first electricity measures introduced in the early 1990s.

#### Third Energy Package

The key EU legislation which now applies to the electricity and gas sectors is contained in the 'Third Energy Package' - this refers to a set of EU measures covering the electricity and gas sectors. It comprises the following measures:

- [Regulation \(EC\) 714/2009](#): the electricity cross-border market access Regulation;
- [Regulation \(EC\) 715/2009](#): the gas cross-border market access Regulation;
- [Directive 2009/72/EC](#): the third package electricity Directive;
- [Directive 2009/73/EC](#): the third package gas Directive; and
- [Regulation \(EC\) 713/2009](#): the ACER Regulation (establishing the Agency for the Co-operation of Energy Regulators).

The Third Energy Package takes its name from the fact that it is the third generation of EU measures applying to the electricity and gas sectors. These measures were first proposed by the EU Commission in September 2007, were adopted by the Council and the European Parliament in July 2009, and took effect in September

2009. They replaced the ‘Second Energy Package’,<sup>19</sup> which in turn, replaced the first generation of electricity and gas directives.<sup>20</sup>

All of the measures in the Third Energy Package have the common aim of further liberalising the energy markets of the Member States, making national energy markets more transparent, both for businesses and consumers, and reducing disparities between such markets so as to make cross border access easier.

### **Third Energy Package: Electricity Legislation**

The electricity measures under the Third Energy Package are:

[Regulation \(EC\) 714/2009](#). This Regulation governs conditions for access to the electricity network for cross-border exchanges in electricity. In particular, the Regulation aims to set fair rules for cross-border exchanges in electricity, thus enhancing competition with the internal market in electricity while “taking into account the particular characteristics of national and regional markets”. The Regulation requires the establishment of a compensation mechanism for cross-border flows of electricity, the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.

The Regulation further aims to facilitate the emergence of a well-functioning and transparent wholesale market with a “high level of security of supply in electricity”.<sup>21</sup> It also provides for harmonisation of the rules on cross-border exchanges in electricity.

[Directive 2009/72/EC: the Third Package Electricity Directive](#). This establishes common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provisions, with a view to improving and integrating competitive electricity markets in the EU.<sup>22</sup> The Directive also lays down rules relating to:

- (i) the organisation and functioning of the electricity sector;
- (ii) public service obligations;<sup>23</sup>
- (iii) open access to the market, including third party access to electricity transmission and distribution networks;<sup>24</sup>
- (iv) the criteria and procedures applicable to calls for tenders, the granting of authorisations and the operation of systems;
- (v) universal service obligations; and
- (vi) the rights of electricity consumers.

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<sup>19</sup> Largely contained in Regulation (EC) 1228/2003 and Directive 2003/54/EC for electricity, and Regulation (EC) 1775/2005 and Directive 2003/55/EC for gas

<sup>20</sup> Directive 96/92/EC (“the First Electricity Directive”) and Directive 98/30/EC (“the First Gas Directive”)

<sup>21</sup> Article 1(b)

<sup>22</sup> Article 1

<sup>23</sup> Article 3

<sup>24</sup> Article 32

Further, the Third Package Electricity Directive establishes the ground rules for competition and regulation of the electricity market at national level.

### **Third Energy Package: Gas Legislation**

The gas measures under the Third Energy Package are:

[Regulation \(EC\) 715/2009](#). This Regulation governs conditions for cross-border access to the natural gas transmission networks of the Member States. The Regulation provides for:

- (i) setting non-discriminatory rules for access conditions to natural gas transmission systems;
- (ii) setting non-discriminatory rules for access conditions to Liquification of Natural Gas (LNG) facilities and storage facilities; and
- (iii) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas.

The Regulation also provides for the setting of harmonised principles for tariffs (or the methodologies underlying their calculation) for access to the network (excluding storage facilities), the establishment of third-party access services and harmonised principles for capacity-allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.<sup>25</sup>

[Directive 2009/73/EC: the Third Package Gas Directive](#), provides for common EU rules for the internal market in natural gas. The Third Package Gas Directive was adopted on the same legal bases as the Third Package Electricity Directive and makes substantially equivalent provision for gas market regulation, universal service obligations, public service obligations and consumer protection. For example, articles 32 and 33 provide for third party access to transmission and distribution networks, LNG facilities and storage; and annex I of the Third Package Gas Directive has a similar (but not identical) set of provisions on smart metering to that contained in the Third Package Electricity Directive. Article 34 of the Third Package Gas Directive also governs rights of access for natural gas undertakings and eligible customers to upstream pipeline networks.

### **Third Energy Package: Consumer Protection and Public Service Obligations**

Among the key aims of the Third Energy Package is the enhancement of consumer protection in the energy field. In this regard, article 3 of the Third Electricity Directive and article 3 of the Third Gas Directive, providing for Public Service Obligations (“PSOs”) should be noted. These obligations relate to “security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection”. The Directives

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<sup>25</sup> Article 1

confer a wide margin on the Member States to adopt appropriate measures to ensure that PSOs are complied with, although both Directives require national measures to be notified to the EU Commission and they are subject to complying with general principles of EU law, such as proportionality, in order that PSOs do not become a disguised means of discriminating against cross-border interests.<sup>26</sup>

PSOs include universal service obligations for households and small businesses. The Third Package Directives confer on the Member States certain powers in order to ensure PSOs are complied with, for example, the national regulator may impose terms (in accordance with the Third Package Directives) which undertakings must accept in respect of some types of customer; designating a supplier of last resort in order to ensure universal service; and requiring safeguards to protect vulnerable customers. In relation to all PSOs, the Directives envisage that the particular conditions of PSOs will depend on national circumstances and may vary from state to state. More generally, annex I of each of the Third Package Directives provides a list of consumer protection measures which are part of the PSOs.

A further aim of the Third Energy Package is to encourage energy efficiency. For example, among the Third Package Directives provisions are requirements to implement intelligent metering systems (or smart metering).<sup>27</sup>

### **Third Energy Package: Market Regulation and Unbundling**

Since the first EU energy directives were adopted in the early 1990s, a central aim of EU law has been to achieve a legal and functional separation of entities operating in the electricity and gas fields. The familiar term for this process is “unbundling” - i.e. the separation of ownership of transmission systems from ownership of electricity generation, gas production and supply to break up vertically integrated companies and to open up competition in the market (and subject to a distinct scheme of regulation by an independent regulator).

While the UK has been in the vanguard of unbundling in the energy industry, it is clear that complete unbundling has still not been achieved in some Member States. For this reason, the implications of EU competition law under articles 101 and 102 TFEU continue to be especially relevant to the energy sector in so far as there continues to be vertical integration of some energy activities (i.e. where generation, transmission and supply of electricity are in the hands of one operator).

By way of an overview, the Third Energy Package measures contain the following provisions on unbundling and regulation in these energy markets:

- Electricity and gas transmission system operators (TSOs) should normally be subject to full ownership unbundling.<sup>28</sup> That is, all undertakings which perform functions as part of the transmission system should be in separate ownership and be independent of each other (such as by not having influence over another’s corporate board). However, this is subject to alternative models

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<sup>26</sup> Case C-256/08 Federutility et al v. Autorita per l’energia elettrica e il gas, [2010] ECR I-3377

<sup>27</sup> Annex I(2) of each of the Third Package Directives

<sup>28</sup> Article 9 of each of the Third Package Directives

provided in the Directives which, in effect, require only that separate legal persons are TSOs even if they are part of the same group. While the alternative models are treated as exceptions and are subject to safeguards contained in the Directives, the possibility of models which avoid full ownership unbundling reflects the fact that it was not possible to get agreement on a mandatory requirement for full ownership unbundling for TSOs.

- In relation to Distribution System Operators (DSOs), the Third Energy Package only requires legal unbundling rather than ownership unbundling.<sup>29</sup> That is, distribution undertakings must be held by separate legal persons, even if they are ultimately owned by the same person. Again, this reflects the fact that it was not possible to get sufficient agreement between the Member States so as for EU law to require full ownership unbundling for DSOs.

### **Third Energy Package: National Regulatory Authorities**

A further important aspect of the Third Energy Package is the obligation on the Member States to have an independent National Regulatory Authority (“NRA”) responsible for the regulation of the energy sector.<sup>30</sup> Both Third Energy Package Directives ensure the independence of NRAs, for example, by a requirement to appoint regulators for fixed minimum terms. Each Member State’s NRA is responsible for monitoring the national market to ensure that EU rules are observed. To this extent, they have a similarity with national competition authorities.

The Third Energy Package Directives contain some rules which NRAs must follow, and NRAs have various powers including to promote renewable forms of energy. In addition, NRAs are required to collaborate in some fields with NRAs from other Member States on cross-border regulatory issues.

[Regulation \(EC\) 713/2009](#) establishes an EU Agency for the Co-operation of Energy Regulators (“the ACER Regulation”). The purpose of the Agency is to assist the NRAs in exercising the regulatory tasks performed in their respective Member States and, where necessary, to coordinate their action.

### **Third Energy Package: Comitology**

The Third Energy Package also makes provision for harmonisation of various technical specifications, market data, network codes, etc. through the use of tertiary legislation (known as “comitology”). In this way, the EU Commission is able to assist NRAs by ensuring that the applicable standards and requirements are aligned throughout the EU in accordance with the Third Package Regulations and Directives. In particular, the Third Package introduced a system for establishing binding European-wide network codes, to be developed with input from the Agency for the Cooperation of Energy Regulators (ACER), the European Network of Transmission

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<sup>29</sup> Article 26 of each of the Third Package Directives

<sup>30</sup> Article 35(1) of the Third Package Electricity Directive and article 39(1) of the Third Package Gas Directive



System Operators for Gas (ENTSO-G) and the European Network of Transmission System Operators for Electricity (ENTSO-E).

## **Security of Supply: Electricity and Gas Legislation**

There are two EU measures which address security of supply of electricity and gas respectively:

[Directive 2005/89/EC](#): **the Electricity Security of Supply Directive**. This Directive establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity. It aims to ensure an adequate level of generation capacity, an adequate balance between supply and demand and an appropriate level of interconnection between Member States for the development of the internal market. In addition, the Directive establishes a framework within which Member States are to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity.

[Regulation \(EC\) 994/2010](#):<sup>31</sup> **the Gas Security of Supply Regulation**. This Regulation provides for measures to safeguard security of gas supply.

The Regulation first establishes provisions aimed at safeguarding the security of gas supply by ensuring the proper and continuous functioning of the internal market in natural gas. The Regulation sets supply and infrastructure standards and it also allows for “exceptional measures” to be implemented when the market can no longer deliver the required gas supplies.

Further, the Regulation provides for a clear definition and attribution of responsibilities among natural gas undertakings, the Member States and the EU regarding both preventive action and the reaction to concrete disruptions of supply. Significantly, the Regulation provides transparent mechanisms, “in a spirit of solidarity”, for the coordination of planning for, and response to, an emergency at Member State, regional and EU levels.

## **Wholesale Energy Market Integrity and Transparency**

[Regulation \(EU\) 1227/2011](#): **the REMIT Regulation**. This Regulation is designed to ensure the integrity and transparency of the wholesale energy market. In particular, it establishes rules prohibiting abusive practices affecting wholesale energy markets which are intended to cohere and co-exist applicable to financial markets. These rules are designed to achieve the proper functioning of wholesale energy markets whilst taking into account their specific characteristics.

The Regulation also provides for the monitoring of wholesale energy markets by the EU Agency for the Cooperation of Energy Regulators – established pursuant to [Regulation \(EC\) 713/2009](#) - in close collaboration with NRAs and taking into account

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<sup>31</sup> This Regulation repealed Directive 2004/67/EC on security of natural gas supply

the interactions between the Emissions Trading Scheme and wholesale energy markets.

Subject to some savings concerning financial instruments, the Regulation applies to all trading in wholesale energy products

## **RENEWABLE SOURCES, ENERGY EFFICIENCY AND CARBON, CAPTURE AND STORAGE**

The EU legislation in the field of renewable sources of energy and energy efficiency must be understood in the light of the EU's promotion of environmental measures to tackle climate change and greenhouse gas emissions. Indeed, even the earliest measures, such as [Directive 92/42/EEC](#), setting efficiency requirements for certain new hot-water boilers were inspired by concerns for environmental protection.

The EU legislation in this field is part of a wider scheme of legislative measures aimed at addressing the relationship between energy use and generation, energy efficiency and climate change.

The key EU measures are:

- [Directive 92/42/EEC](#): providing for the efficiency requirements applicable to new hot-water boilers fired by liquid or gaseous fuels with a rated output of no less than 4 kW and no more than 400 kW.
- [Directive 2004/8/EC](#): **the Cogeneration Directive**,<sup>32</sup> providing for the promotion of cogeneration based on a useful heat demand in the internal energy market.
- [Directive 2006/32/EC](#):<sup>33</sup> concerning energy end-use efficiency and energy services. The main objectives of this Directive are to enhance the cost-effective improvement of energy end-use efficiency in the Member States, for example, by removing existing market disparities that impede the efficient end use of energy and creating the conditions for the development and promotion of a market for energy services and for the delivery of other energy efficiency improvement measures to final consumers.
- [Directive 2009/28/EC](#): **the Second Renewables Directive**,<sup>34</sup> providing for the promotion of the use of energy from renewable sources. The Directive's principal objective is to establish "a common framework for the promotion of energy from renewable sources" and is the principal piece of EU legislation on renewable energy.

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<sup>32</sup> The Cogeneration Directive is repealed by Directive 2012/27/EU (the Energy Efficiency Directive), with effect from 4 June 2014

<sup>33</sup> This Directive is repealed by Directive 2012/27/EU (the Energy Efficiency Directive), with effect from 4 June 2014

<sup>34</sup> This Directive repeals the First Renewables Directive (Directive 2001/77/EC) and Directive 2003/30/EC on the promotion of the use of biofuels and other renewable fuels for the purposes of transport.

- [Directive 2009/31/EC](#): **the Carbon Capture and Storage (CCS) Directive**. This Directive establishes a legal framework for the environmentally safe geological storage of carbon dioxide (CO<sub>2</sub>). It is part of the EU's scheme of measures designed to contribute to the fight against climate change.
- [Directive 2009/125/EC](#): this Directive establishes a framework for the setting of ecodesign requirements for energy-related products, with a view to encouraging the free movement of such products throughout the EU.
- [Directive 2010/30/EU](#):<sup>35</sup> This Directive concerns labelling requirements of energy-related products. The Directive establishes a framework for the harmonisation of national measures, particularly in relation to labelling and standard product information, on the consumption of energy and where relevant of other essential resources during use, so as to allow end-users to choose more efficient products. It applies to energy-related products which have a significant direct or indirect impact on the consumption of energy and, where relevant, on other essential resources during use but does not apply *inter alia* to second-hand products.
- [Directive 2010/31/EC](#): providing for the energy performance of buildings. This Directive is a codifying directive, repealing the first EU measure on this subject.<sup>36</sup> The Directive aims to promote the improvement of the energy performance of buildings within the EU, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness. In addition, it lays down requirements concerning various technical aspects of measuring and monitoring the energy performance of buildings.
- [Directive 2012/27/EU](#): **the Energy Efficiency Directive**. This Directive has its origins in the [EU's Energy Efficiency Plan 2011](#). It establishes a common framework of measures for the promotion of energy efficiency within the EU, in order to ensure the achievement of the EU's 2020 20% headline target on energy efficiency and to pave the way for further energy efficiency improvements beyond that date. It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020.

## OIL AND PETROLEUM

The oil and petroleum sector has so far been the subject of few EU measures. The main EU legislation which now applies to the oil sector is as follows:

- [Directive 94/22/EC](#): **The Hydrocarbons Licensing Directive**. This Directive imposes requirements on the Member States when they are issuing licenses for searching for, drilling for and producing oil and aims to ensure a

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<sup>35</sup> Replaced Directive 92/75/EEC

<sup>36</sup> Directive 2002/91/EC

competitive, non-discriminatory and transparent European market and further aims to improve the security of supply within the EU.

- [Directive 98/70/EC](#):<sup>37</sup> **the Fuel Quality Directive**. This Directive contains the environmental fuel quality specifications for petrol and diesel fuels in the EU. Its main focus is on sulphur and for petrol on lead and aromatics.
- [Directive 2009/119/EC](#)<sup>38</sup> This Directive codifies the pre-existing EU law concerning requirements on Member States to maintain minimum oil and petroleum supplies, along with related matters. The Directive has three main aims:
  - (i) to ensure a high level of security of oil supply in the EU through reliable and transparent mechanisms based on solidarity amongst Member States;
  - (ii) to ensure maintenance of minimum stocks of crude oil and/or petroleum products; and
  - (iii) to put in place emergency procedures to be used in the event of a shortage.
- [Directive 2013/30/EU](#). This Directive, enacted by the Council and the European Parliament on 12<sup>th</sup> June 2013 pursuant to article 192 TFEU establishes a scheme of regulation for the safety of offshore oil and gas operations.

The Directive aims to prevent major accidents at offshore oil and gas installations, including pollution incidents such as followed the Gulf of Mexico incident in the USA. In this respect, the Directive dovetails into the Environmental Liability Directive.<sup>39</sup> The Directive is to be transposed by 19<sup>th</sup> July 2015.

## COAL

The coal industry in the EU was the first to be regulated by the founding community of the modern EU, namely the ECSC Treaty. The ECSC Treaty expired in 2002. After that, the coal sector became subject to the rules applicable under the TEC. Currently, the coal sector is subject to the same single market rules, such as the EU competition rules, as apply to other sectors of the energy industry.

Following the expiry of the ECSC Treaty, [Regulation \(EC\) 1407/2002](#) provided specific rules for state aid to the coal industry. That Regulation expired on 31 December 2010. The Council adopted [Decision 2010/787/EU](#) on state aid to facilitate the closure of uncompetitive coal mines. To this extent, specific state aid rules continue to apply to the coal sector.

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<sup>37</sup> As amended by Directive 2003/17/EC and Directive 2009/30/EC

<sup>38</sup> Replaced Directive 2006/67/EC (which itself codified earlier directives) with effect from 31 December 2012

<sup>39</sup> Directive 2004/35/EU

[Regulation \(EC\) 405/2003](#) provides for monitoring requirements of hard coal imports into the EU. Beyond these measures, the principal EU measure which is relevant to the coal sector is the CCS Directive ([Directive 2009/31/EC](#)).

## INFRASTRUCTURE

Articles 170-172 TFEU confer competence on the EU to introduce measures related to trans-European Networks (TENs). Competence on this subject was first introduced into the EC Treaty in 1992 by the Maastricht Treaty.

[Article 170\(1\) TFEU](#) expressly provides that the “Union shall contribute to the establishment and development of trans-European networks in the areas of...energy infrastructure”. Articles 170(1) and (2) provide that among the objectives of this EU activity are to help develop the internal market and achieve economic, social and territorial cohesion, to enable EU citizens, economic operators and communities to derive full benefit of the internal market, to promote “the interconnection and interoperability of national networks as well as access to such networks”. EU activity under this heading must take account of the need to link island, landlocked and peripheral regions with the central regions of the EU. [Article 172 TFEU](#) confers on the Council and the Parliament, acting under the ordinary legislative procedure, the power to adopt guidelines on trans-European networks, *inter alia*, identifying projects of common interest (“PCIs”), measures necessary to ensure the interoperability of the networks and measures to support PCIs identified through the guidelines.

[Regulation \(EU\) 347/2013: The TEN-E Regulation](#). This Regulation establishes guidelines for trans-European energy infrastructure and repeals Council Decision 1364/2006/EC and amends Regulations (EC) 713–715/2009. The TEN-E Regulation was published on 25<sup>th</sup> April 2013, came into force on 15<sup>th</sup> May and applies with effect from 1<sup>st</sup> June 2013, save that articles 14 and 15 shall apply as from the date of application of the relevant Regulation establishing the [Connecting Europe Facility \(CEF\)](#). [The CEF Regulation](#), which is the linked financing Regulation to provide funding for trans-European networks in the energy, transport and telecommunications sectors, is still under negotiation. Given that it is part of the Multi-Annual Financial Framework 7-year budget, it cannot be applicable until 1<sup>st</sup> January 2014.

The TEN-E Regulation establishes nine strategic geographic infrastructure priority corridors and three thematic areas that covers the domain of electricity, gas and oil interconnections and storage, LNG terminals, smart grids, EU wide electricity highways and carbon capture and storage transmission infrastructure.<sup>40</sup> The Regulation sets out conditions and the process for identifying projects of common interest on a biannual basis that are necessary to implement the priority corridors and areas and that have significant cross-border impact. It also facilitates the timely implementation of projects of common interest through streamlined planning processes and provides rules and guidance for the cross-border allocation of costs and risk-related incentives for projects of common interest. Finally, it determines the conditions for eligibility of projects of common interest for EU financial assistance.

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<sup>40</sup> Annex I

Although the EU has adopted these measures on energy infrastructure, they are without prejudice to the need to obtain consents from national authorities for energy infrastructure projects. In this regard, EU environmental legislation must be complied with. This is also apparent from the Third Electricity and Gas Directives: for example, article 7 of Directive 2009/72/EC provides that authorisations for new electricity generating installations must consider protection of the environment. Accordingly, the consenting process for new energy infrastructure must consider the [SEA Directive](#),<sup>41</sup> the [EIA Directive](#),<sup>42</sup> the [Habitats Directive](#)<sup>43</sup> and the [Wild Birds Directive](#).<sup>44</sup>

## TAX MEASURES

The EU's exclusive competence over the customs union can overlap with the competence which the EU shares with the Member States over the single market. This has a particular relevance for the field of taxation. Although direct taxation is a field in which the Member States' competence predominates, albeit subject to compliance with EU principles of free movement and non-discrimination which are integral to the EU single market, the EU shares competence with the Member States over indirect taxation and excise duties. The implications of this are clear from [article 113 TFEU](#), which confers limited competence on the EU to introduce measures which are necessary for the:

“harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.”

The EU has relied on article 113 TFEU to adopt measures governing energy taxation.<sup>45</sup> However, article 113 TFEU respects the significance of national competence in the field of taxation by requiring that measures adopted pursuant to it require unanimity among the Member States.

Examples of some EU tax legislation which apply to the energy sector include:

- [Directives 92/81/EEC](#) and [92/82/EEC](#) govern excise duties on mineral oils.
- [Directive 2003/96/EC](#): the **Energy Taxation Directive**, provides for minimum excise duties on electricity, gas and coal.
- Draft Directive before the EU Council and the European Parliament which proposes to amend the **Energy Taxation Directive**.<sup>46</sup> If enacted, the new Directive would restructure EU law on the taxation of energy products and electricity, in particular, by aligning the law with the EU's energy and climate

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<sup>41</sup> Directive 2001/42/EC

<sup>42</sup> Directive 2011/92/EU

<sup>43</sup> Directive 92/43/EEC

<sup>44</sup> Directive 2009/147/EC

<sup>45</sup> See [Directives 92/81/EEC](#) and [92/82/EEC](#) on excise duties on mineral oils and [Directive 2003/96/EC](#) on the taxation of energy products in the coal, gas and electricity sectors (“the Energy Taxation Directive” sometimes also referred to as the Energy Products Directive).

<sup>46</sup> [COM \(2011\) 169 final](#)



change objectives and adapting the existing framework to renewable energies.

## **NUCLEAR, PROTECTION FROM THE HARMFUL EFFECTS OF IONISING RADIATION AND THE EURATOM TREATY**

Nuclear energy (and radiological protection more generally) is the subject of its own treaty, the Treaty Establishing the European Atomic Energy Community (“[the Euratom Treaty](#)”). The European Atomic Energy Community (“the Euratom Community”) is an entity distinct from the EU, with its own legal personality,<sup>47</sup> its own objectives and decision-making process. Although the Euratom Community shares most of the EU’s Institutions (including the Council, Commission, European Parliament and the Court of Justice), the European Parliament has a more limited role under the Euratom Treaty (essentially consultative body status) than under the EU Treaties.

The Euratom Community’s mission statement is set out in article 1 of the Euratom Treaty as being:

“to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries”.

Article 2 sets out the key areas where the Euratom Community is to act and Chapters 1 to 10 of Title II of the Euratom Treaty provide more detail on the Euratom Community’s role and competences in relation to these areas. Competence is shared with the Member States in some areas, while in other areas it is exclusive. Unlike the TFEU, the Euratom Treaty does not explicitly state which competences are shared and which are exclusive.

The following paragraphs discuss the provisions made in Chapters 1 to 10, the Euratom Community’s residual power to act under article 203 and its relationship with the EU, highlighting conclusions of the ECJ, where relevant.

### **RESEARCH AND DEVELOPMENT**

Provisions on the promotion of research are set out in Chapter 1 and provisions on the dissemination of information are set out in Chapter 2 . The Euratom Treaty envisages a role for both the Euratom Community and the Member States in these areas and competence appears to be shared (in relation to research in particular, competence seems to be akin to supporting competence in TFEU terms).

### **HEALTH AND SAFETY**

Provisions on health and safety are set out in Chapter 3. Articles 30 and 31 provide for the establishment of basic standards for the protection of the health of workers

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<sup>47</sup> Article 184

and the general public against the dangers arising from ionising radiations. Article 32 permits the basic safety standards to be revised or supplemented.

These articles have provided the basis for a range of Euratom legislative measures related to radiological safety both in nuclear and non-nuclear sectors – these are listed in the table of key legislation at the end of this legal annex.

The provisions on health and safety in the Euratom Treaty have been interpreted broadly by the ECJ on several occasions in order to give them “practical effect”.<sup>48</sup> Although Chapter 3 does not expressly refer to the safety of nuclear installations, the ECJ has held that the Euratom Community has competence in this area since “it is not appropriate, in order to define the Community’s competences, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation”.<sup>49</sup>

Articles 34 to 38 specifically mention components of the environment and the ECJ has held that the provisions of Chapter 3 “form a coherent whole conferring on the Commission powers of some considerable scope in order to protect the population and environment against the risks of nuclear contamination”.<sup>50</sup> However, the overarching purpose of any legislation made on the basis of articles 31 and 32 must be to give effect to the provisions in the Euratom Treaty on the health and safety of workers and the general public rather than protection of the environment on a stand-alone basis.

The ECJ has recognised that the Euratom Community shares competence with the Member States in the field of health and safety. On the one hand, Member States need to comply with the basic safety standards, Community frameworks and other Community requirements established on the basis of articles 31 and 32. On the other hand, the ECJ has said that the Community’s “activities in the field of health protection must observe the competences of the Member States defined, inter alia, in Title II Chapter 3 of the Euratom Treaty itself”.<sup>51</sup> Article 33 makes clear that it falls to the Member State to implement the basic standards which have been established by the Community “whether by legislation, regulation or administrative action” and take the “necessary measures with regard to teaching, education and vocational training”. Therefore Community legislation must not be so detailed as to leave no scope for implementation by the Member States. The Commission is permitted to make (non-binding) recommendations for harmonising national implementing measures.

## INVESTMENT AND JOINT UNDERTAKINGS

Chapter 4 places the Commission under an obligation to publish illustrative programmes indicating, for example, nuclear energy production targets and the types of investment required to meet those targets. It also requires persons and undertakings within the Member States to inform the Commission of certain industrial

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<sup>48</sup> Paragraph 78 of [Case C-29/99](#)

<sup>49</sup> Paragraph 82 of [Case C-29/99](#). See also paragraph 76

<sup>50</sup> [Case 187/87 Sarland and Others](#), paragraph 11, approved in paragraph 79 of [Case C-29/99](#)

<sup>51</sup> Paragraph 76 of [Case C-29/99](#)

activities taking place and for the Commission to discuss with those persons or undertakings the aspects of investment projects which relate to the objectives of the Euratom Treaty.

Chapter 5 makes provision for the establishment of joint undertakings with legal personality in areas of “fundamental importance to the development of the nuclear industry in the Community”.

## SUPPLIES AND PROPERTY OWNERSHIP

Chapter 6 provides for the equitable distribution of nuclear material<sup>52</sup> amongst the Euratom Community. To this end article 52(2)(b) establishes an agency with a right of option (to acquire, use and consume) all nuclear material produced in the Euratom Community and the exclusive right to conclude contracts relating to the supply of nuclear material (see articles 52(2)(b) and 64).

This right of option needs to be considered in light of the provisions in Chapter 8 on property ownership. Articles 86 and 87 specify that all special fissile materials are the property of the Euratom Community, but that Member States, persons and undertakings within the Community shall have an unlimited right to use and consume such materials (in accordance with the other provisions of the Euratom Treaty).

The Euratom Community has exclusive competence in these areas (this was confirmed in [Ruling 1/78](#)).<sup>53</sup>

## SAFEGUARDS

The safeguard measures are aimed at giving confidence that nuclear material is not diverted from its intended purpose (as declared by users) and the Commission is tasked with satisfying itself of this non-diversion (Chapter 7). In order to allow the Commission to satisfy itself of the matters set out in article 77, the operators of certain nuclear installations are obliged to supply the Commission with the basic technical characteristics of those installations to the extent necessary to allow the Commission to fulfill its obligations. The Commission must require records to be kept and is given powers of inspection in the Member States in relation to places, data and people to the extent necessary to ensure compliance with article 77. The competence conferred on Euratom by Chapter 7 appears to be exclusive.<sup>54</sup>

Although safeguards form an important part of global non-proliferation objectives, they should not be confused with “non-proliferation” itself, which is something that falls within the common foreign and security policy competence of the EU (TEU, Title V, Chapter 2).<sup>55</sup> See for example, EU Council decision 2013/391/CFSP of 22<sup>nd</sup> July

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<sup>52</sup> The Euratom Treaty is largely dedicated to regulating the control and use of “ores, source material and special fissile material”. These are terms as defined in article 197, but for ease of reference in this Legal Annex, they are referred to collectively as “nuclear material”

<sup>53</sup> See paragraphs 14, 18 and 27. The case was about whether there was Euratom competence to participate in the Convention on the Physical Protection of Nuclear Material

<sup>54</sup> Ruling 1/78, see paragraphs 22 and 23

<sup>55</sup> See [Foreign Policy Review](#) in semester 1 of the Balance of Competences Review

2013 in support of practical implementation of UN Security Council Resolution 1540 (2004) on non-proliferation of weapons of mass destruction and their means of delivery.

In addition, although there is no express provision in the Euratom Treaty, the ECJ's [Ruling 1/78](#) indicates that Euratom's activities can extend to the area of physical security in the nuclear field (and Euratom is a party to the IAEA Convention on the Physical Protection of Nuclear Material).

## **NUCLEAR COMMON MARKET**

Chapter 9 makes provision for a nuclear common market. These provisions include the abolition of customs duties, measures having equivalent effect and quantitative restrictions on imports and exports on the products listed in Annex IV to the Euratom Treaty (see articles 92 and 93). In addition, provision is made for the abolition of restrictions based on nationality affecting the right of Member State nationals to take up skilled employment in the field of nuclear energy (see article 96) or to participate in the construction of nuclear installations (see article 97). In common with the internal market provisions in the TFEU, the functioning of the nuclear common market is an area of exclusive competence for the Euratom Community.<sup>56</sup>

## **EURATOM AND EXTERNAL RELATIONS**

Part of the role of Euratom is to “establish with other countries and international organisations such relations as will foster progress in the peaceful uses of nuclear energy” (see Articles 1 and 2 of the Euratom Treaty).

Article 101 of the Euratom Treaty gives the Euratom Community the power to conclude agreements with States outside Euratom, the nationals of such States and international organisations “within the limits of its powers and jurisdiction”. This means that the Euratom Community has the authority to act externally on the matters in relation to which it has competence to act internally. Where the Community has exclusive competence to act internally, it has exclusive competence to act externally. Where the Community's internal competence is shared with the Member States, so is its external competence (and the Member States may therefore enter into their own external agreements so long as such agreements do not interfere with the effective operation of the Euratom Treaty).

The Commission is responsible for negotiating Euratom external agreements once the Council has agreed a negotiating mandate for the external agreements. The Council must also approve the conclusion of such agreements (acting by QMV).

## **ARTICLE 203**

In addition to the specific powers provided by the Euratom Treaty, article 203 makes provision for giving the Euratom Community power to act where, although the power

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<sup>56</sup> Ruling 1/78, paragraphs 15 and 18. That said, article 98, which deals with insurance contracts covering nuclear risks, appears to contemplate a role for both the Member States and Euratom

is not conferred by the Euratom Treaty, action is necessary for the attainment of one of the Community's objectives. The Council may take the appropriate measures acting unanimously on a proposal from the Commission, and after consulting the European Parliament. This provision is akin to that in article 352 TFEU.

### **MILITARY ACTIVITIES**

None of the provisions of the Euratom Treaty apply to the use of nuclear energy for military purposes.<sup>57</sup>

### **RELATIONSHIP BETWEEN EURATOM AND THE EU**

Subjects covered by the EU Treaties, for example the environment and energy, may also be relevant to the field of nuclear energy and radiological protection. Article 106a(3) of the Euratom Treaty states:

“The provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union shall not derogate from the provisions of this Treaty”.

This means that in the event of a conflict between the Euratom Treaty and the EU Treaties, the Euratom Treaty will apply. Further, where the Euratom Treaty makes specific provision, this should prevail over a more general provision in the EU Treaties. However, where there are no provisions on a particular subject in the Euratom Treaty, the EU Treaties can apply. Therefore there is some competence in the field of nuclear energy or radiological protection to be derived from the EU Treaties, but only where suitable provision is not made by the Euratom Treaty.<sup>58</sup>

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<sup>57</sup> This has been confirmed by the ECJ in two cases brought by the Commission against the UK (see Commission v UK [Commission v UK C-61/03](#) and [C-65/04](#))

<sup>58</sup> See for example Case C-490/10 Parliament v Council

## Key EU energy legislation

This table has been prepared solely for the purpose of supplementing the Call for Evidence on the Government’s Review of the Balance of Competences in the energy field. The Department of Energy and Climate Change has endeavoured to make it accurate and comprehensive but it is not intended to be relied on for any other purpose. Any comments will be welcome and may be sent to: [balanceofcompetence@decc.gsi.gov.uk](mailto:balanceofcompetence@decc.gsi.gov.uk)

### Competitiveness and growth – the Internal Energy Market

Key EU legislation	Treaty base	Description of legislation
<b>Electricity</b>		
<a href="#">Regulation 714/2009/EC</a> of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003	95 TEC [114 TFEU]	Third Energy Package – governs conditions for access to the electricity network for cross-border exchanges in electricity including the establishment of a compensation mechanism for cross-border flows of electricity, the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.
<a href="#">Directive 2009/72/EC</a> of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (“the Third Package Electricity Directive”)	47(2), 55, 95 TEC [53(2), 62, 114 TFEU]	Third Energy Package – Establishes common rules for the generation, transmission, distribution and supply of electricity, together with consumer protection provision, with a view to improving and integrating competitive electricity markets in the Community. Also lays down rules relating electricity sector, competition and regulation of the electricity market at national level.



Key EU legislation	Treaty base	Description of legislation
<b>Gas</b>		
<a href="#">Regulation (EC) 715/2009</a> of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005	95 TEC [114 TFEU]	Third Energy Package – Governs conditions for cross-border access to the natural gas transmission networks of the Member States. Sets harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network but not storage facilities, the establishment of third party access and facilitation of capacity trading.
<a href="#">Directive 2009/73/EC</a> of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (“the Third Package Gas Directive”)	47(2), 55, 95 TEC [53(2), 62, 114 TFEU]	Third Energy Package – Providing for common EU rules for the internal market in natural gas.
<b>Other Market Regulation</b>		
<a href="#">Regulation (EC) 713/2009</a> of the European Parliament and of the Council of 13 July 2009 establishing an agency for the cooperation of energy regulators (“the ACER Regulation”)	95 TEC [114 TFEU]	Third Energy Package – Establishing an EU Agency for the cooperation of Energy Regulators.
<a href="#">Regulation (EC) 1227/2011/</a> of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (“the REMIT Regulation”)	194(2) TFEU	Establishes rules prohibiting abusive practices affecting wholesale energy markets and monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators.

## Energy efficiency, renewables and other indigenous energy resources

Key EU legislation	Treaty base	Description of legislation
<b>Energy Efficiency and Renewable Energy</b>		
<a href="#">Directive 92/42/EEC</a> Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels	100a EEC [114 TFEU]	Providing for the efficiency requirements applicable to new hot-water boilers fired by liquid or gaseous fuels with a rated output of no less than 4kW and no more than 400 kW.
<a href="#">Directive 2006/32/EC</a> of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC	175(1) TEC [192 TFEU]	Enhancing the cost-effective improvement of energy end-use efficiency in the Member States.
<a href="#">Directive 2004/8/EC</a> of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC (“the Cogeneration Directive”)	175(1) TEC [192 TFEU]	Providing for the promotion of cogeneration based on a useful heat demand in the internal energy market.
<a href="#">Directive 2009/125/EC</a> of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products	95 TEC [114 TFEU]	Establishing a framework for the setting of Community ecodesign requirements for energy-related products with the aim of ensuring the free movement of such products within the internal market.
<a href="#">Directive 2010/30/EU</a> of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products	194(2) TFEU	Establishing a framework for the harmonisation of national measures on end-user information, particularly by means of labelling and standard product information, on the consumption of energy and supplementary information concerning energy-related products to enable end-users to choose more efficient products.

Key EU legislation	Treaty base	Description of legislation
<a href="#">Directive 2010/31/EU</a> of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings	194(2) TFEU	Promoting the improvement of the energy performance of buildings within the EU.
<a href="#">Directive 2012/27/EU</a> of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (“the Energy Efficiency Directive”)	194(2) TFEU	Establishing a common framework of measures for the promotion of energy efficiency within the EU in order to meet the EU 2020 20% headline target on energy efficiency.
<a href="#">Directive 2009/28/EC</a> of the European Parliament and the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (“the Second Renewables Directive”)	95, 175(1) TEC [114, 192 TFEU]	Providing for the promotion of the use of energy from renewable sources.
<b>Oil and Petroleum</b>		
<a href="#">Directive 94/22/EC</a> of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (“The Hydrocarbons Licensing Directive”)	57(2), 66, 100a TEC [56-62, 114 TFEU]	Imposes requirements on the Member States when they are issuing licenses for searching for, drilling for and producing oil. Aims to ensure a competitive, non-discriminatory and transparent European market and further aims to improve the security of supply within the EU.
<a href="#">Directive 98/70/EC</a> of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (“The Fuel Quality Directive”)	100a TEC [114, 192 TFEU]	Contains the environmental fuel quality specifications for petrol and diesel fuels in the EU.

Key EU legislation	Treaty base	Description of legislation
<a href="#">Directive 2013/30/EU</a> of the European Parliament and the Council of 12 June 2013 on the safety of offshore oil and gas operations and amending Directive 2004/35/EC	192(1) TFEU	Establishes a scheme of regulation for the safety of offshore oil and gas operations.
<b>Coal</b>		
<a href="#">Decision 2010/787/EU</a> : Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines	107(3)(e) TFEU	Facilitating the closure of uncompetitive mines in the context of State aid.
<a href="#">Regulation (EC) 405/2003</a> : Council Regulation of 27 February 2003 concerning Community monitoring of imports of hard coal originating in third countries	284 TEC [337 TFEU]	Establishing a system for monitoring of imports of hard coal originating in third countries.
<b>Carbon Capture Storage</b>		
<a href="#">Directive 2009/31/EC</a> of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 200/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006	175(1) TEC [192(1) TFEU]	Establishes a legal framework for the environmentally safe geological storage of carbon dioxide.

## Security of supply and infrastructure development

Key EU legislation	Treaty base	Description of legislation
<b>Oil Stocking</b>		
<a href="#">Directive 2009/119/EC</a> Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products	100 TEC [122 TFEU]	Codifies the pre-existing EU law concerning requirements on Member States to maintain minimum oil and petroleum supplies.
<b>Gas and electricity security of supply</b>		
<a href="#">Regulation (EC) 994/2010</a> of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (“the Gas Security of Supply Regulation”)	194(2) TFEU	Providing for measures to safeguard security of gas supply by ensuring the proper and continuous functioning of the internal market in natural gas.
<a href="#">Directive 2005/89/EC</a> of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment (“the Electricity Security of Supply Directive”)	95 TEC [114 TFEU]	Establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity.
<b>Trans-European Energy Infrastructure (TEN-E)</b>		
<a href="#">Regulation (EU) 347/2013</a> of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No. 1364/2006/EC and amending Regulations (EC) No. 713/2009, (EC) No. 414/2009 and (EC) no 715/2009	172	Lays down guidelines for trans-European energy infrastructure and addresses the identification of projects of common interest.

Key EU legislation	Treaty base	Description of legislation
<b>Information on investment projects in energy infrastructure</b>		
<a href="#">Regulation (EU, Euratom) 617/2010</a> Council Regulation of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No. 736/96	337 TFEU 187 Euratom	Establishes a common framework for the notification to the Commission of data and information on investment projects in energy infrastructure in the oil, natural gas, electricity, including electricity from renewable sources, and bio-fuel sectors, and on investment projects related to the capture and storage of carbon dioxide produced by these sectors

## EU external energy relations

<a href="#">Energy Charter Treaty 1994</a>
<a href="#">Energy Community Treaty 2006</a>
<a href="#">Decision No.994/2012/EU</a> of the European Parliament and of the Council of 25 October 2012 establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy

## Nuclear, Protection from the Harmful Effects of Ionising Radiation and the Euratom Treaty

Key EU legislation	Treaty base	Description of legislation
<b>Health and Safety (Title II, Chapter 3 of the Euratom Treaty)</b>		
<a href="#">Decision 87/600/Euratom</a> : Council Decision of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency	31 (the Euratom Treaty)	On the exchange of information following a radiological emergency.
<a href="#">Regulation 3954/87/Euratom</a> : Council Regulation of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs following a nuclear accident or any other case of radiological emergency	31 (the Euratom Treaty)	Lays down the procedure for determining the maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs which may be placed on the market following a nuclear accident or any other case of radiological emergency which is likely to lead to or has led to significant radioactive contamination of foodstuffs and feeding stuffs.
* <a href="#">Directive 89/618/Euratom</a> : Council Directive of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency	31 (the Euratom Treaty)	Defines at Community level, common objectives with regard to measures and procedures for informing the general public for the purpose of improving the operational health protection provided in the event of a radiological emergency.
<a href="#">Regulation 944/89/Euratom</a> : Commission Regulation (Euratom) of 12 April 1989 laying down maximum permitted levels of radioactive contamination in minor foodstuffs following a nuclear accident or any other case of radiological emergency	Council Regulation (Euratom) No 3954/87 (and having regard to the Euratom Treaty)	Lists the minor foodstuffs pursuant to Article 7 of Regulation (Euratom) No.3954/87.



<p><a href="#">Regulation 770/90/Euratom</a>: Commission Regulation (Euratom) of 29 March 1990 laying down maximum permitted levels of radioactive contamination of feeding stuffs following a nuclear accident or any other case of radiological emergency</p>	<p>Council Regulation (Euratom) No 3954/87 (and having regard to the Euratom Treaty)</p>	<p>Lists the maximum permitted levels of radioactive contamination of food stuffs.</p>
<p>*<a href="#">Directive 90/641/Euratom</a>: Council Directive of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas</p>	<p>31, 32 (the Euratom Treaty)</p>	<p>Supplements Directive 80/836/Euratom by optimising at Community level operational protection arrangements for outside workers performing activities in controlled areas.</p>
<p><a href="#">Decision 2007/530/Euratom</a>: Commission Decision of 17 July 2007 on establishing the European High Level Group on Nuclear Safety and Waste Management</p>	<p>135 (the Euratom Treaty)</p>	<p>Establishes the European High Level Group on Nuclear Safety and Waste Management.</p>
<p>*<a href="#">Directive 96/29/Euratom</a>: Council Directive of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation ("The Basic Safety Standards Directive")</p>	<p>31, 32 (the Euratom Treaty)</p>	<p>This is now the framework Euratom basic safety standards directive. It provides, inter alia, for minimum safety standards for the protection of workers and the general public against radiation from nuclear activities falling within the scope of the Euratom Treaty.</p>
<p><a href="#">Decision 2007/530/Euratom</a>: Commission Decision of 17 July 2007 on establishing the European High Level Group on Nuclear Safety and Waste Management</p>	<p>135</p>	<p>Establishing a European High Level Group on Nuclear Safety and Waste Management.</p>
<p>*<a href="#">Directive 97/43/Euratom</a>: Council Directive of 30 June 1997 on health protection of individuals against the dangers of ionizing radiation in relation to medical exposure and repealing Directive 84/466/Euratom</p>	<p>31 (the Euratom Treaty)</p>	<p>Supplements Directive 96/29/Euratom and lays down the general principles of the radiation protection of individuals in relation to the exposure in medical treatment.</p>

Key EU legislation	Treaty base	Description of legislation
<p><a href="#">*Directive 2003/122/Euratom</a>: Council Directive of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources</p>	<p>31(2) , 32 (the Euratom Treaty)</p>	<p>Prevents exposure of workers and the public to ionising radiation arising from inadequate control of high-activity sealed radioactive sources and orphan sources and to harmonise controls in place in the Member States by defining specific requirements ensuring that each such source is kept under control.</p>
<p><a href="#">Directive 2009/71/Euratom</a>: Council Directive of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations</p>	<p>31, 32 (the Euratom Treaty)</p>	<p>Establishing a Community framework in order to maintain and promote the continuous improvement of nuclear safety and its regulation, as well as to ensure that Member States provides for appropriate national arrangements for a high level of nuclear safety to protect worker and general public.</p>
<p><a href="#">Directive 2011/70/Euratom</a>: Council Directive of 19 July 2011 establishing a Community framework for responsible and safe management of spent fuel and radioactive waste</p>	<p>31, 32 (the Euratom Treaty)</p>	<p>Establishing a Community framework for ensuring responsible and safe management of spent fuel and radioactive waste to avoid imposing undue burdens on future generations.</p>
<p><a href="#">Commission Recommendation 2000/473/Euratom</a>: Commission Recommendation of 8 June 2000 on the application of Article 36 of the Euratom Treaty concerning the monitoring of the levels of radioactivity in the environment</p>	<p>36, 124 (the Euratom Treaty)</p>	<p>Monitoring the levels of radioactivity in the environment.</p>
<p><a href="#">Commission Recommendation 2004/2/Euratom</a>: Commission Recommendation of 18 December 2003 on standardised information on radioactive airborne and liquid discharges into the environment from nuclear power reactors and reprocessing plants in normal operation</p>	<p>124 (the Euratom Treaty)</p>	<p>Standardising information on radiation discharges from nuclear power facilities.</p>

Key EU legislation	Treaty base	Description of legislation
<a href="#">Commission Recommendation 90/143/Euratom</a> : Commission Recommendation of 21 February 1990 on the protection of the public against indoor exposure to radon	33 (the Euratom Treaty)	Protecting of the public against indoor exposure to radon.
<b>Safeguards (Title II, Chapter 7 of the Euratom Treaty)</b>		
<a href="#">Regulation 302/2005/Euratom</a> : Commission Regulation of 8 February 2005 on the application of Euratom safeguards	77, 78, 79, 81 (the Euratom Treaty)	Providing safeguards to any person or undertaking setting up or operating an installation for the production, separation, reprocessing, storage or other source materials.
<a href="#">Recommendation C(2005) 5127</a> : Commission Regulation of 15 December 2005 on guidelines for the application of Regulation (Euratom) No 302/2005 on the application of Euratom safeguards	37 (the Euratom Treaty)	Providing guidelines on Regulation 302/2005/Euratom.
<a href="#">Recommendation C(2009) 785</a> : Commission Recommendation of 11 February 2009 on the implementation of a nuclear material accountancy and control system by operators of nuclear installations	77, 124 (the Euratom Treaty)	Provides guidance on the reference characteristics of an operator's nuclear material accountancy and control system complying with the legal obligations of Regulation (Euratom) No 302/2005.
<b>Research and Development (Title II, Chapter 1 of the Euratom Treaty)</b>		
<a href="#">Regulation 1908/2006/Euratom</a> : Council Regulation of 19 December 2006 laying down the rules for the participation of undertakings, research centres and universities in action under the Seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2007 to 2011)	7, 10 (the Euratom Treaty)	Lays down rules for the participation of undertakings, research centres and universities in action under the seventh Framework Programme of the European Atomic Energy Community and for the dissemination of research results.

Key EU legislation	Treaty base	Description of legislation
<p><a href="#">Council Decision 2006/970/Euratom</a>: Council Decision of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)</p>	7 (the Euratom Treaty)	Adopts the Seventh Framework Programme (i.e. a multiannual framework programme for nuclear research and training activities) for the period from 1 January 2007 to 31 December 2011.
<p><a href="#">Council Decision 2006/977/Euratom</a>: Council Decision of 19 December 2006 concerning the specific programme to be carried out by means of direct actions by the Joint Research Centre implementing the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011)</p>	7 (the Euratom Treaty)	Adopts a specific programme related to the direct actions in research and training activities to be carried out by the Joint Research Centre for the period from 1 January 2007 to 31 December 2011.
<b>Investment and Joint Undertakings (Title II, Chapter 4 and 5 of the Euratom Treaty)</b>		
<p><a href="#">Regulation 2587/1999/Euratom</a>: Council Regulation of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community</p>	41 (the Euratom Treaty)	Defining investment projects, including decommissioning installations and projects for new installations for nuclear reactors, in accordance with Article 41 Euratom.
<p><a href="#">Regulation (EC)1209/2000</a>: Commission Regulation of 8 June 2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community</p>	41 (the Euratom Treaty)	Sets out the obligation to communicate to the Commission the investment projects referred to in Article 41 of Euratom, including investment projects relating to new installations and also to replacement or conversions.

Key EU legislation	Treaty base	Description of legislation
<p><a href="#">Regulation 1352/2003/Euratom</a>: Commission Regulation of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community</p>	41, 42, 43, 44 (the Euratom Treaty)	Amends the communications requirements set out in Regulation (EC) No 1209/2000.
<p><a href="#">Decision 2007/198/Euratom</a>: Council Decision of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it</p>	47, 48 (the Euratom Treaty)	Establishing a European Joint Undertaking for ITER and the Development of Fusion Energy a period of 35 years starting on 19 April 2007.
<b>Supply (Title II, Chapter 6 of the Euratom Treaty)</b>		
<p><a href="#">Regulation 66/2006/Euratom</a>: Commission Regulation of 16 January 2006 exempting the transfer of small quantities of ores, source materials and special fissile materials from the rules of the chapter on supplies</p>	2(d), 74, 77, 124, 161 (the Euratom Treaty)	Exempts categories from the provisions of Chapter 6 of Title II as regards ores and uranium and thorium source materials
<p><a href="#">Decision 2008/114/Euratom</a>: Council Decision of 12 February 2008 establishing Statutes for the Euratom Supply Agency</p>	54 (the Euratom Treaty)	Adopts the Statutes of the Euratom Supply Agency, as set out in the Annex
<b>External relations (Title II, Chapter 10 of the Euratom Treaty)</b>		
<p><a href="#">Decision 1998/819/Euratom</a>: Commission Decision of 29 April 2004 amending Commission Decision 1999/819/Euratom of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom) with regard to the Declaration</p>	101 (the Euratom Treaty)	States a new Declaration by the European Atomic Energy Community pursuant to Article 30(4)(iii) of the Nuclear Safety Convention.

Key EU legislation	Treaty base	Description of legislation
<p><a href="#">Decision 2007/513/Euratom</a>: Council Decision of 10 July 2007 approving the accession of the European Atomic Energy Community to the amended Convention on the Physical Protection of Nuclear Material and Nuclear Facilities</p>	<p>101 (the Euratom Treaty)</p>	<p>Approves the accession of the European Atomic Energy Community to the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, as amended by the Final Act signed on 8 July 2005.</p>
<p><a href="#">Decision 2007/614/Euratom</a>: Council Decision of 30 January 2007 concerning the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research</p>	<p>101 (the Euratom Treaty)</p>	<p>Approves the Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research.</p>
<p><a href="#">Regulation 300/2007/Euratom</a>: Council Regulation of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation</p>	<p>203 (the Euratom Treaty)</p>	<p>States that the Community shall finance measures to support the promotion of a high level of nuclear safety, radiation protection and the application of efficient and effective safeguards of nuclear material in third countries.</p>

\*Directives marked with an \* are expected to be replaced by a new Basic Safety Standards Directive