Briefing

EU Legislation in Progress

European Parliament

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First edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

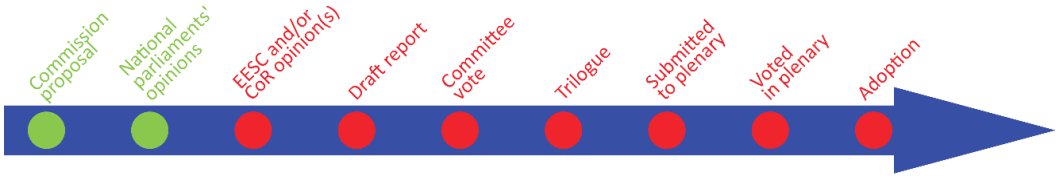
Please note this document has been designed for on-line viewing.

Common rules for the internal electricity market

On 30 November 2016, the European Commission presented a legislative proposal for a recast directive on the internal market for electricity, as part of a comprehensive legislative package entitled 'Clean Energy for all Europeans'. The proposed directive would oblige Member States to ensure a more competitive, customer-centred, flexible and non-discriminatory EU electricity market with market-based supply prices. It would strengthen existing customer rights, introduce new ones and provide a framework for energy communities. Member States would have to monitor and address energy poverty. The proposal clarifies the tasks of distribution system operators and emphasises the obligation of neighbouring national regulators to cooperate on issues of cross-border relevance.

The proposal has been referred to the European Parliament's Committee on Industry, Research and Energy (ITRE).

Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast)	
COM(2016) 864, 30.11.2016, 2016/0380(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')	
Committee responsible:	Industry, Research and Energy (ITRE)
Rapporteur:	Krišjānis Kariņš (EPP, Latvia)
Shadow rapporteurs:	Zdzisław Krasnodębski (ECR, Poland) Kaja Kallas (ALDE, Estonia) Cornelia Ernst (GUE/NGL, Germany) Claude Turmes (Greens/EFA, Luxembourg)
Next steps expected:	Initial discussions in committee



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Introduction

Electricity markets[1] in the EU are faced with serious challenges, such as the transition towards a low-carbon energy system, the cost-efficient integration of variable renewable energy sources, the trend towards decentralised renewable energy production, the evolving role and stronger participation of energy customers (both households and industrial customers) and the requirement to ensure the security of supply in the short and long term efficiently and at affordable costs.

In order to stimulate competition and reward innovation in services, products and technologies, electricity markets should be open to new participants. Moreover, they should provide the right signals to investors in order to ensure that the necessary long-term investments will be made in the most cost-effective way. Concerns about a lack of investment in electricity generation capacity to meet peak demand have prompted several Member States to introduce capacity payments.

In order to address the challenges in the electricity market, the European Commission presented a legislative package on 30 November 2016. It consists of a communication entitled 'Clean Energy for all Europeans', eight legislative proposals and a number of reports and communications. With respect to the electricity market, the package comprises five legislative proposals and three reports.[2] The bundling of these legislative proposals into a single package aims to ensure their mutual coherence.

The proposed directive is focussed on the role of customers in the electricity market and aims to establish a more competitive, customer-centred, flexible and non-discriminatory EU electricity market with market-based supply prices. It would strengthen and expand the rights of individual customers and energy communities, giving them the right to engage in demand response, self-production, self-consumption, storage and sale of electricity. The proposal also sets a framework for the market participation of aggregators and local energy communities; introduces an obligation for Member States to monitor and address energy poverty; clarifies the roles and responsibilities of market participants and regulators; and lays out provisions on electro-mobility and energy storage.

Existing situation

Today's liberalised internal energy market for gas and electricity, established to encourage competition on wholesale and retail markets, came into existence by means of three consecutive legislative packages, adopted in the 1990s, and then in 2003 and 2009. For the electricity market, these are Directive 96/92/EC on the common rules for the internal electricity market, Directive 2003/54/EC, enabling new electricity suppliers to enter Member States' markets and allowing customers to choose their electricity supplier, and Directive 2009/72/EC, which further liberalised the market by unbundling supply, generation and

1 The EPRS briefing Understanding electricity markets in the EU provides an introduction to EU electricity markets.
2 Proposal for a directive on common rules for the internal electricity market (COM(2016) 864), proposal for a regulation on the internal electricity market (COM(2016) 861), proposal for a revised regulation on the European Agency for the Cooperation of Energy Regulators (COM(2016) 863), proposal for a new regulation on risk preparedness in the electricity sector (COM(2016) 862), proposal for a revised Renewable Energy Directive (COM(2016) 767), evaluation of the electricity market design and security of supply (SWD(2016) 413), report on sector inquiry on capacity mechanisms (COM(2016) 752), and report on energy prices and costs in Europe (COM(2016) 769).

networks, providing market access to third parties and increasing the transparency of retail markets. Other aspects include the obligation for Member States to ensure the provision of a universal service to all households and mechanisms for regulatory oversight, in particular through cooperation amongst energy regulators, and the establishment of an Agency for the Cooperation of Energy Regulators (ACER) through Regulation (EC) No 713/2009. ACER started work in March 2011 and is mainly responsible for promoting cooperation between national regulatory authorities, monitoring progress in the implementation of the 10-year network development plans and monitoring the internal markets in electricity and gas.

Furthermore, Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity established a European network of transmission system operators for electricity (ENTSO-E).[3] Its tasks include elaborating rules (network codes) for the operation of the electricity transmission network and coordinating grid operation through the exchange of operational information and the development of common safety and emergency standards and procedures. ENTSO-E is also responsible for drafting a 10-year network development plan every two years, which is then reviewed by ACER.

The EU internal energy market is still facing some obstacles, notably persisting barriers to cross-border trade, insufficient competition in retail markets and weaknesses in consumer protection, as noted in the European Commission's evaluation of the EU's regulatory framework for electricity market design and consumer protection and a recent EPRS implementation appraisal. According to the European Parliament's third Cost of non-Europe report, a more physically integrated internal energy market in energy could deliver annual efficiency gains of at least €250 billion.

Directive 2009/28/EC (the Renewable Energy Directive) obliges Member States to open their power grids to energy from renewable sources, including priority grid access (priority dispatch). Other electricity-related EU legislation concerns the security of electricity supply, trans-European networks and the EU emissions trading system (emission allowances for fossil fuel-fired power plants). EU competition policy (state aid rules in particular) and tax policies are other important policy areas.

The European Parliament's starting position

In its resolution of 26 May 2016 on delivering a new deal for energy customers, the Parliament calls for empowering citizens (individually or collectively) to produce, consume, store or trade their own renewable energy, to actively engage in the energy market through customer choice, and to participate in demand response. It calls for addressing the causes of energy poverty, protecting customers from unfair practices and providing clear information to customers.

Parliament's resolution of 13 September 2016 on moving towards a new energy market design notes that the task of integrating a growing share of renewables and prosumers (active energy consumers that both consume and produce electricity) into the electricity markets, but also of encouraging demand response and storage, requires a combination of liquid short-term markets and long-term price signals. It calls for time-varying prices that reflect the scarcity of supply and provide incentives for storage and demand response, complemented by instruments aimed at mitigating revenue risk over 20-30 years and by a regulatory

3 The European network of gas transmission system operators (ENTSOG) was established by Regulation (EC) No 715/2009.

framework for prosumers focussed on self-production and local energy storage. The new market design should provide technical and market conditions for energy storage, including the introduction of smart grids and smart meters. Renewables should be integrated into the market and participate in balancing services, while support for mature renewables should be phased out. Market-based cross-border capacity mechanisms should only be allowed under certain conditions. The resolution emphasises the importance of regional cooperation and calls for ACER to be given additional competences.

In recent years, Parliament has adopted several resolutions related to energy markets: on making the internal energy market work (10 September 2013), on the energy union, on interconnection targets (15 December 2015), and on the renewable energy progress report (23 June 2016). To some extent, all have addressed issues relating to electricity market design.

Council and European Council starting positions

The conclusions of the March 2015 European Council on the energy union call for a more effective, flexible market design in combination with enhanced regional cooperation that should help integrate renewables and provide affordable energy to households and industry, while retaining the right of Member States to decide on their own energy mix. Public interventions should be compatible with the internal market.

The messages from the Council presidency on electricity market design and regional cooperation of 19 May 2016 conclude that measures are needed to improve market functioning and remove barriers to flexibility. It highlights regional cooperation, based on a bottom-up approach, as an important step towards a more integrated, effective and flexible internal market. It calls for more interconnections and sufficient transmission capacity within and across borders. In the June 2016 Transport, Telecommunications and Energy Council meeting, most Member States welcomed the presidency messages.

Proposal

Preparation of the proposal

After evaluating the performance of the current legislation (third energy package), the Commission services concluded that overall, it has increased competition within and across borders and strengthened the position of customers. However, they found that barriers to cross-border trade persist and interconnector capacities are under-utilised. With respect to retail markets, they concluded that competition could be improved significantly.

The Commission held three public consultations. The first (November 2012 – February 2013) concerned resource adequacy and security of supply. It was followed by consultations on electricity retail markets and end-customers (January–April 2014) and on electricity market design (July–October 2015). A total of 705 responses were submitted.

Due to the inter-relations between the different proposals in the legislative package, the Commission produced a single impact assessment for four legislative proposals.[4] It is based on almost 30 studies and modelling tools, prepared mostly by external experts. The impact assessment compared a number of policy options for adapting the market design to an increasing share of renewables and to technological developments, for addressing investments in generation capacity, and for improving competition and services in retail markets. According to the impact assessment, the proposed legislation would establish a level playing field for different supply and demand-side resources, result in more competition and lower prices, more reliable electricity systems at a lower cost, and more efficient operation of the transmission and distribution systems. It expects indirect environmental benefits through the improved integration of renewables, and positive effects on health and well-being through the proposed measures on energy poverty.

The changes the proposal would bring

The proposed directive, which recasts[5] Directive 2009/72/EC, is focussed on the role customers play in the electricity market, whereas the proposed internal electricity market regulation (COM(2016) 861) concerns the wholesale market and grid operation. The proposed directive sets out some general principles that Member States would have to follow: the EU electricity market should be competitive, customer-centred, flexible and non-discriminatory. Member States should ensure that there are no undue barriers for market entry or market exit of electricity generators or electricity suppliers. Their national legislation should facilitate cross-border electricity flows, customer participation including demand response, investments in flexible energy generation, energy storage, and the deployment of electro-mobility and new interconnectors.

4 The impact assessment covers the proposals COM(2016) 864; COM(2016) 861; COM(2016) 863 and COM(2016) 862.
5 'Recasting' brings a legislative act and all the amendments made to it together in a single new act. The new legislative act passes through the full legislative process and repeals all the acts being recast.

Electricity prices should reflect actual supply and demand. Electricity suppliers should be free to decide the prices at which they sell electricity to customers, with limited possibilities for public price interventions; whenever made, such interventions should target energy-poor or vulnerable customers (see below).

Customer rights

The proposed directive clarifies and reinforces existing customer rights and introduces new ones. Aided by certified comparison tools, customers would have the right to freely choose a supplier or aggregator.[6] There should be no fees for changing the supplier, except in cases where a fixed-term contract that offers demonstrable advantages to the customer is terminated prematurely. Customers would be entitled to request a dynamic-price contract (based on prices in the spot or day-ahead market) and to engage in demand response, self-production, self-consumption, storage and sale of electricity, individually or through aggregators. Customers would have to be informed about the opportunities and risks of a dynamic-price contract. Member States would have to ensure that national regulators encourage customers to participate in organised markets and define the technical modalities for participation in demand response. The proposal updates the rules for out-of-court dispute settlement.

The proposal contains rules on clearer billing information. Bills should be clear, correct, concise and presented in a way that facilitates comparisons (following the requirements set out in Annex II of the proposal). Billing information should be provided at least twice a year, and at least once a month if meters can read remotely.

In order to let customers participate in the electricity market, Member States would have to ensure the roll-out of smart metering systems. As provided for by the existing legislation, Member States would not be required to implement smart metering if a cost-benefit analysis demonstrates that doing so would not yet be cost-effective. However, every customer would have the right to request a smart meter, which would have to be installed under fair and reasonable conditions within three months after the request.

Vulnerable customers and energy poverty

Member States would be obliged to offer targeted protection to energy-poor or vulnerable customers without public interventions in the setting of the electricity price. Price-setting for energy-poor or vulnerable-household customers would only be allowed under certain conditions for a five-year period after the entry into force of the proposed directive, and thereafter only in cases of extreme urgency. Customers faced with disconnection should be given adequate information about alternatives well in advance and free of charge. Alternatives can include sources of financial support, alternative payment plans, debt management advice or a disconnection moratorium.

6 The proposed directive defines an aggregator as 'a market participant that combines multiple customer loads or generated electricity for sale, for purchase or auction in any organised energy market'.

Member States would be required to define criteria for measuring energy poverty, monitor the number of households in energy poverty and include this information in their bi-annual energy and climate progress reports.[7]

Aggregators

Member States would have to ensure that aggregators can take part in the retail market without having to obtain the consent of other market participants or pay compensation to suppliers or generators. Moreover, they would have to set transparent rules assigning roles and responsibilities to all market participants; to establish rules and procedures for data exchange between market participants; and to provide for a conflict resolution mechanism.

Local energy communities

The proposed directive establishes a framework for local energy communities, which would have the right to engage in local energy generation, distribution, aggregation, storage and energy efficiency services. They would have access to all organised markets and would have the right to establish, lease and manage community networks.

Data exchange and data format

The proposal updates the rules on the exchange of data with suppliers and service provides, and introduces a common European data format, to be defined by the Commission. Distribution system operators (DSOs) would have to ensure non-discriminatory access to data from smart-metering systems.

Electro-mobility

Member States would be required to establish a regulatory framework to facilitate the connection of electric vehicle recharging points to the distribution network. DSOs would only be allowed to own, develop, manage or operate recharging points if no other entity has expressed interest in an open tendering procedure, and subject to approval from the regulator. Member States would have to re-assess at regular intervals whether third parties would be able to own, develop, manage or operate the recharging points, in which case the operations of the DSOs would be phased out.

Distribution system operators

The proposal clarifies the tasks of DSOs, which include, notably, the integration of electric vehicles, data management and the procurement of network services to ensure flexibility. Such flexibility services can improve the efficiency of distribution networks by eliminating the need for costly network upgrades. DSOs would be required to draw up network development plans containing the planned investments for the

7 Under the proposed governance regulation (COM(2016)759), Member States would have to submit Integrated national energy and climate progress reports to the Commission every two years. These would assess progress in terms of meeting their national energy and climate plans for the period 2021-2030.

next five to ten years. The national regulator should consult system users on the network development plan, and publish the results of the consultation process.

The proposed directive would prohibit DSOs from owning and operating storage facilities, except in cases where no other parties have expressed an interest, or where the storage facility is necessary for fulfilling the DSO's obligations, and subject to the approval of the regulator. Member States would have to re-assess, at regular intervals, whether third parties would be able to own, develop, manage or operate the storage facilities, in which case the operations of the DSOs would be phased out.

Transmission system operators

Transmission system operators (TSO) would have to set up a framework for cooperation and coordination between regional operating centres, which are introduced in the proposed internal electricity market regulation (COM(2016) 861) related to it. They would have to cooperate with neighbouring TSOs and take into account the functions performed by the regional operating centres.

TSOs would have to ensure that the procurement of balancing services[8] is transparent, non-discriminatory and market-based, and ensures the effective participation of all market participants including renewable energy sources, demand response, energy storage facilities and aggregators.

TSOs would be prohibited from owning, managing or operating energy storage facilities and from controlling assets that provide ancillary services.[9] Derogations may apply under the same conditions that apply to the involvement of DSOs with energy storage facilities.

National energy regulators

The proposal would oblige national energy regulators to cooperate with neighbouring regulators and with ACER, where issues of cross-border relevance are concerned. National regulators would have to ensure that interconnector capacities are made available. They would have new tasks in the oversight of regional operating centres[10] and other entities performing functions at regional level.

8 'Balancing services' ensure that electricity supply is equal to demand in or near real-time.
9 The proposed directive defines an 'ancillary service' as a service necessary for the operation of a transmission or distribution system, including balancing.
10 Regional operating centres are new entities introduced in the proposal for a regulation on the internal electricity market (COM(2016) 861). They would be involved in the coordination of the cross-border electricity grid operation.

Views

Advisory committees

The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) have been consulted on the proposal and may give their opinion.

In January 2016, the EESC adopted an opinion on energy market design that called for a careful balance between the market and regulation, as well as for new approaches to pricing that reflect the true overall cost, including negative external effects. It emphasises the importance of ensuring the active involvement of consumers in production and local and regional marketing and envisages a decentralised grid made up of interconnected 'production and supply islands'.

National parliaments

The proposal has been passed to the national parliaments. The deadline for the submission of reasoned opinions on the grounds of subsidiarity was 27 January 2017, and none has been submitted.

Stakeholders' views[11]

Eurelectric, representing the European electricity industry, generally welcomes the Commission's proposals, but regrets that policy support costs, which increase customers' electricity bills, are not addressed. European energy regulators also welcome the proposals, which they consider well aligned with the regulators' position.

BEUC, which represents European consumers, welcomes the provisions on clearer information for customers and the proposed limitation of switching fees, but warns that the proposed new principles for support schemes for renewable energy generation may discourage customers from investing in such energy, as they would have less clarity about how their investment would perform.

11 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analyses'.

Legislative process

The proposal has been referred to the European Parliament's Committee on Industry, Research and Energy (ITRE). Other Parliament committees – on Economic and Monetary Affairs (ECON) and on Internal Market and Consumer Protection (IMCO) – have been invited to give opinions, while the Legal Affairs Committee has been invited to give its opinion on whether use of the recast technique is appropriate.

References

EP supporting analyses

A New Deal for energy customers, EPRS, January 2016.

Energy Union: key decisions for the realisation of a fully integrated energy market, European Parliament, DG IPOL, April 2016.

Understanding electricity markets in the EU, EPRS, November 2016.

Electricity 'Prosumers', EPRS, November 2016.

Overview of the internal energy market design legislation, EPRS Implementation Appraisal, January 2017.

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Re-powering markets: Market design and regulation during the transition to low-carbon power systems, International Energy Agency, February 2016.

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