

European Commission's legislative proposal on common rules for the internal market in electricity

A EURELECTRIC position paper

April 2017

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

Carbon-neutral electricity by 2050

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets as** the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment to** ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

EURELECTRIC. Electricity for Europe.

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KEY MESSAGES

-)] **We welcome a future-oriented and market-based directive for European electricity consumers.** Market-based energy prices, low market entry barriers and protection of consumers through social policy are building blocks for well-functioning retail markets.
-)] **The proposals will generally bring about better protection and increased engagement of energy consumers in the market.** A certified comparison tool in each Member State will enhance transparency and choice. The clear distinction made between switching-related fees (forbidden) and early termination fees (allowed) is another positive step forward. However the directive is unlikely to improve consumer satisfaction with bills as the key issue of information overload due to regulation is completely overlooked.
-)] **The right level of subsidiarity should apply for the sake of retail markets' efficiency.** The Commission therefore rightly leaves it up to Member States to define criteria and policies to combat **energy poverty**. However, we do not support defining a common **EU data format** without prior CBA. It could indeed prove very costly in countries where a national data hub was already implemented as market actors would be required to upgrade all core IT systems, such as billing. Furthermore, on **smart metering** different countries are at different stages in the roll-out and any retroactive requirements must be avoided.
-)] **We regret that the 'elephant in the room' – rising retail prices due to increased taxes and levies - is not addressed.** Whilst the EC's cost & prices study recognised that taxes and levies are a major driver for rising retail prices, the package does not offer any tangible solution to address this crucial problem. It is urgent to make taxes and levies less of a burden on the final electricity bill. In addition, the current structure of network charges and levies needs an overhaul to mitigate further price increases and avoid unfair cross-subsidisation between consumers.
-)] **A stable regulatory framework providing a level playing field for all market players is key to stimulate sustainable innovation.** We support the right for consumers to generate and sell their electricity both individually and collectively. We also agree they should be able to have a smart meter and to ask for dynamic prices contracts. However, suppliers should not be obliged to offer such contracts. In addition, exempting demand response aggregators from their balancing responsibility and from paying sourcing costs is not consistent with the market principles outlined in the Clean Energy Package. Similarly, active consumers and members of energy communities should not be exempted from market obligations such as balancing responsibility and from paying cost-reflective network charges.
-)] **We support a regulatory framework that allows and incentivises DSOs to procure flexibility services through the market** and permits ownership and operation of storage only under certain circumstances. Similarly, NRAs should decide whether or not non frequency ancillary services should be market-based and we support the inclusion of this and flexibility solutions more generally in the network development plan to be produced on a cycle determined by the NRA.

) **Electrification is the key for transport decarbonisation.** We agree with the EC that the ownership and operation of electric vehicles' charging infrastructure is a market activity, while DSOs should be allowed to own, develop, manage or operate it for a limited time and under certain conditions. Furthermore, we welcome the fact that electro-mobility is considered as a load which may be taken into account by DSOs when developing their network development plans.

Retail Customers Committee
DSO Committee

Contact:
Sébastien Dolige, Advisor Retail Markets & Consumer Issues
sdolige@eurelectric.org

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Retail Pricing

The Electricity Directive addresses a number of highly relevant subjects that need to be tackled in order to ensure well-functioning electricity market and customer empowerment. Nevertheless, EURELECTRIC feels the urgency to underline a key issue that remained out of the scope of the Directive and the whole package: retail pricing.

The Commission's study on cost & prices study recognises that taxes and levies have been a major driver for retail prices while the energy component of the bill has been steadily declining. Between 2008 and 2015, policy support costs (levies) increased on average by 71% for households across Europe¹. Today, the weight of the taxes and levies' component equates the energy and supply's component on the bill of a residential consumer (about one third of the bill).

Moreover, another issue has been left unaddressed: the way regulated costs (network charges and levies) are charged to consumers is exacerbating the price increase. Most of these charges are volumetric: they are linked to the amount of energy consumed by consumers – despite the fact that the amount that needs to be recovered grids and policy costs is largely “fixed” (i.e. unrelated to consumption).

If these two issues are not tackled by the EU and Member States, retail prices will continue to rise and aggravate the customer vulnerability problem as well-off customers will decrease their demand from the grid. Furthermore, the deemed demand-side flexibility potential of 160 GW may not be tapped. It will not be able to materialise if customers are discouraged to invest in electric appliances with high “shiftable load potential” such as heating, cooling and electric vehicles. The uptake of those technologies is still uncertain. The fact that consumers in most European countries pay regulated charges mainly based on their consumption, i.e. kWh, even though the costs underlying these charges are largely independent of the volumes consumed, discourages consumers from investing in electric heating and cooling appliances. In addition, this contributes to increasing electricity prices for consumers who cannot cover part of their consumption, e.g. by self-generation. The continuously increasing tax burden, coupled to the fact that a number of other policy costs are financed by electricity, creates incentives to switch to other forms of energy at the expense of decarbonisation goals, and it blurs the benefits of dynamic pricing.

EURELECTRIC believes that addressing these regulatory inefficiencies is a prerequisite for a cost-efficient decarbonisation of the power sector and that this should become a priority of the EU energy policy reform. This reform should incorporate the following objectives:²

1. **Bring down the share of policy support costs in the electricity bill and finance decarbonisation in a less distortive way.**
2. **Charge regulated costs in an efficient way, progressively removing cross-subsidisation.**
Determining a detailed charging structure for both network tariffs and policy support costs that may still remain in the bill is a matter of subsidiarity. However, the EU legislation should allow suppliers to make alternative offerings to consumers that will provide flexibility to adapt to the changing uses of electricity, following these principles:
 -) A “tiered approach” to regulated charges: the NRAs shall define a set of tariff structures with different shares of capacity-based (KW) and energy-based (KWh) components based on consumers contracted capacity, consumption level and patterns.

¹ EC study on energy prices and costs in Europe, Staff working document (2016) 420 final

² See [‘Retail Pricing for a cost-effective transition to a low carbon power system’](#), EURELECTRIC 2016.

-) Different levels of granularity for regulated charges: these regulated charges may be conveyed with flat, time of use, peak pricing or dynamic options, depending on consumers' choice.

End-User Energy Prices

Topic	Article	Commission Proposal	EURELECTRIC's view
Market based supply prices	Art. 5 par. 1	Electricity prices have to be market-based and freely determined by suppliers.	Agree

Comment:

Phasing out regulated prices has been a long-standing policy request of EURELECTRIC and we welcome this provision. Indeed, retail price regulation is a serious obstacle to competition among electricity supply companies. It may reduce the incentive on companies to become more efficient and stifle the development of value-added services, including dynamic pricing³. In addition, regulated prices impede consumers from realising the true value of the energy they consume, therefore undermining the potential of demand response.

Well-functioning competitive markets are better equipped than top-down regulation to deliver cost-reflective and fair prices to consumers. We agree that it is crucial to come up with a clear roadmap to end-regulated pricing and are ready to provide feedback and lessons learned from countries where our members have successfully participated in implementing such phase out roadmaps, e.g. Ireland, Great Britain, Latvia etc.

Topic	Article	Commission Proposal	EURELECTRIC's view
Market based supply prices	Art.5 par. 2 and 3	Member States shall ensure the protection of energy poor or vulnerable customers in a targeted manner by other means than public interventions in the price-setting for the supply of electricity.	Agree
		Member States can maintain price regulation for energy poor or vulnerable consumers for 5 years after the entry into force of the Directive.	Disagree
		Such public interventions have to meet a number of criteria: pursue a general economic interest, be clearly defined, transparent, non-discriminatory, guarantee equal access for electricity companies to customers, etc.	Agree

³ Please refer to the 20162015 ACER Market Monitoring report

Comment:

We fully support the European Commission’s proposal to end regulated prices for vulnerable consumers. Protecting those consumers through price regulation is counterproductive as it does not take people out of broader poverty; the pricing methodology often lacks transparency; and it may increase energy costs for vulnerable and non-vulnerable consumers alike.

That said, we think the 5 years transition period could be shortened. Other more sustainable and targeted measures (e.g. via social policy) could be put in place or extended more quickly. In addition, suppliers shall be adequately compensated for any additional costs and obligations linked to public intervention in price setting during this transition period.

Last but not least, it seems important to recall that phasing-out regulated prices does not imply the end of flat prices or fixed payments, which suppliers can still propose to their customers.

Energy Poverty

Topic	Article	Commission Proposal	EURELECTRIC’s view
Energy poverty	Art. 28	The 3 rd package provision requiring Member States to define the concept of vulnerable Consumers - which may refer to energy poverty and to the prohibition of disconnection in critical times – is kept.	Agree
	Art. 29	Member States shall define a set of criteria for the purposes of measuring energy poverty.	Agree

Comment:

We are pleased to see that the European Commission leaves it up to Member States to define criteria and policies to combat energy poverty. Indeed, Member States’ situations differ greatly as far as employment, social security systems, climatic conditions, electricity consumption, building stock (structure, age, insulation), or energy retail prices are concerned. National governments are therefore in the best position to assess and address (energy) poverty with their own tools.

Topic	Article	Commission Proposal	EURELECTRIC’s view
Energy poverty	Art. 5 par 2	Member States shall ensure the protection of vulnerable customers in a targeted manner by other means than public interventions in the price-setting for the supply of electricity.	Agree

Comment:

We fully agree that the protection of energy poor or vulnerable customers should be done in a targeted manner by other means than public interventions in the price-setting for the supply of electricity. Protecting vulnerable consumers through price regulation is counterproductive as it does not take people out of broader poverty; the pricing methodology often lacks transparency; and it may increase energy costs for vulnerable and non-vulnerable consumers alike. In addition, as consumers who have energy debts are likely to have other debts (for instance water, rent, insurance), the best way to tackle the root cause of debt is via social – not energy – policy.

Specific measures can also be taken in the energy sector. For instance, energy efficiency investments can be a long-term effective solution for tackling energy poverty. However, such investments - or any other supportive measure like the prohibition of disconnection - should be financed through general taxation or public/private partnership and not be imposed to utilities

without a formal way of recovering these costs (including administrative costs). If financed through energy bills – as it is currently the case in several Member States - then the costs are distributed among consumers regardless of their ability to pay.

Topic	Article	Commission Proposal	EURELECTRIC's view
Energy poverty	Art. 28	Member States shall continuously monitor the number of households in energy poverty and shall report on the evolution of energy poverty and measures taken to prevent it to the Commission every 2 years.	Agree

Comment:

We support introducing a reporting from Member States to the European Commission every two years as this is in line with the need to guarantee support to (energy) poor customers while leaving the issue under national competency. Such a framework should however not lead to any excessive administrative burden for companies.

Basic Contractual Rights

Topic	Article	Commission Proposal ⁴	EURELECTRIC's view
Basic contractual rights	Art. 10 par.1b	<u>Suppliers</u> (it used to be “service providers”) shall notify their customers directly of any adjustment in the <u>supply price</u> (instead of “charges” previously) as well as of <u>the reasons and preconditions for the adjustment and its scope</u> (new), at an appropriate time no later than one normal billing period <u>before</u> (it used to be “after”) the adjustment comes into effect in a transparent and comprehensible manner (...). Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new contractual conditions or adjustments in the supply price.	Partially agree

Comment:

We generally support the European Commission’s intention to streamline existing provisions on consumer protection. However, some of the proposed changes would in our view deserve clarification:

- We are not sure to understand why the obligation to notify customers directly of any adjustment in the supply price would apply to suppliers only, as they are just one type of service providers. EURELECTRIC believes that information obligation towards consumers should be equally applicable to any service provider, be they supplier, aggregator, ESCO, etc. This is key in order to ensure a level playing field among market players and a high degree of protection to customers.
- Regarding the difference between “supply price” and “charges”, we believe there should be a clearer distinction between general consumer information and the consumer’s right to dissolve a contract: the latter should only apply when price changes are due to the supplier/service provider (and not in case of tax changes or network tariff evolution).

⁴ This new provision is in fact former Annex I on consumer protection of the 3rd directive with a few amendments

Furthermore, the right to dissolve the contract should not apply when the price change is the result of a formula which was agreed upon by the consumer when signing the contract, e.g. dynamic pricing offer.

- We do not think that the notification should be linked to the billing frequency. Invoice frequency varies between and within countries, depending on national regulation and consumer preferences. Besides, a price change could well occur in the middle of a billing period. What is key is that the notification is timely enough to allow consumers to switch if they wish to and that suppliers are free to decide how to communicate the notification (mail, app, bill...).

Topic	Article	Commission Proposal	EURELECTRIC's view
Basic contractual rights	Art. 10 par. 1d	Any difference in <u>charges related to payment methods</u> (it used to be "terms and conditions") shall reflect the relevant costs incurred by the supplier.	Partially agree

Comment:

We are not sure to understand the reasons for highlighting that "charges related to payment methods shall reflect the relevant costs incurred by the supplier". Indeed this is a general principle which does not apply only to payment methods.

Topic	Article	Commission Proposal	EURELECTRIC's view
Basic contractual rights	Art. 10 par. 1i	Member States shall ensure that customers are given adequate information on alternatives to disconnection sufficiently in advance before the planned disconnection. These alternatives may refer to sources of support to avoid disconnection, alternative payment plans, debt management advice or disconnection moratorium and should not constitute an extra cost to customers.	Partially agree

Comment:

We are not sure to understand what it is meant by saying that alternatives to disconnection should not constitute an extra cost to customers. Suppliers should have the right to charge the costs they incur for alternative payment plans. Otherwise, all other consumers would be paying for the costs caused by those who are not paying their bills.

Last but not least, we would like to highlight that, whilst any sector has its own characteristics, consumer protection legislation should - whenever possible - be horizontal rather than sector specific. Provisions on contract terms and complaint handling for instance are to a large extent already covered by Directive 93/13/EEC on Unfair Contract Terms and Directive 2013/11/EU on Alternative Dispute Resolution. Other detailed provisions on consumer protection stem from Directive 2011/83/EC on Consumer rights and Directive 2005/29/EC on Unfair Commercial Practices. We think there would have been merit to further link this article with the on-going Refit exercise of EU Consumer Law and ensure that all existing rules on consumer protection are consistent and fit for purpose. Indeed, the regulatory framework should not just cover all relevant issues, it should also make sure that regulatory interventions are introduced at the appropriate level, i.e. horizontal or sectorial, EU-wide or national.

Switching

Topic	Article	Commission Proposal	EURELECTRIC's view
Switching	Art. 12 par 1	Switching has to take place within 3 weeks (provided consumers respect contractual conditions).	Agree

Comment:

In a well-functioning retail electricity market, switching is a key tool in the hands of consumers. By shopping around for the best offer, consumers can exert competitive pressure on suppliers. It is therefore crucial to ensure that they are aware of this right and are not afraid of switching: consumers should e.g. have trust that they will not be cut off when changing supplier and will receive the right opening and closing bill.

We agree that the three week switching period is an appropriate timeframe at EU level. Most Member States comply with this requirement - some even decided to make it shorter – and we think it is high time that the European Commission takes legal action against those Member States that still fail to comply with it. It is important to bear in mind that the length of the switching period is linked to a number of safeguards that have been put in place specifically to protect customers, such as the 14-day cooling off period⁵. Shortening the switching period to less than 2 weeks whilst keeping the 14 day cooling off period – especially when smart meters are not yet rolled out (as this is the case in some countries) - can only lead to a low degree of system efficiency, creating consumer confusion and unnecessary administrative costs for companies.

Topic	Article	Commission Proposal	EURELECTRIC's view
Switching	Art. 12 par 2 and 3	The Commission introduces a distinction between switching related fees – which are forbidden – and contract termination fees – which Member States may allow suppliers to charge to customers willingly terminating fixed term supply contracts before their maturity.	Agree

Comment:

We fully agree that switching should be free and we welcome the distinction made between switching fees and termination fees for fixed term contracts. Many customers are on variable tariffs with no end date and these do not have termination fees. In contrast, early termination fees need to be allowable for fixed short term deals as they help cover the costs suppliers face when customers leave early. Such contracts can be cheaper because suppliers have more certainty about how many customers they have and how much energy to buy in advance. If early termination fees were banned or if their implementation was made more burdensome, it would create additional risks for suppliers (for instance clients, possibly through third-parties and automation, could switch contracts very often, thereby creating high administrative costs for suppliers). As a result, the prices of fixed term deals would be likely to go up to the detriment of customers.

⁵ Article 9 of DIRECTIVE 2011/83/EU

Topic	Article	Commission Proposal	EURELECTRIC's view
Switching	Art. 12 par 3	Such contract termination fees may only be charged if consumers receive a demonstrable advantage from these contracts.	Disagree
		In addition, fees shall not exceed the direct economic loss to the supplier of the customer terminating the contract.	Partially agree

Comment:

Demonstrating that a consumer receives a “demonstrable advantage” from a given fixed term supply contract will be very complex in practice. Indeed, suppliers do not know the future cost of electricity nor do they know the future consumption of customers. In our view, what is key is that, where fees may apply, they must be proportionate to the costs incurred by the current supplier, be clearly communicated to customers up-front, be included in the contractual conditions signed by the customer and be monitored/controlled ex-ante and ex-post by the national authorities.

Comparison Tools

Topic	Article	Commission Proposal	EURELECTRIC's view
Comparison tools	Art. 14,59(1z) and Annex I	Member States have to ensure that consumers have access, free of charge, to at least one tool comparing the offers of suppliers that meets the certification criteria, namely be operationally independent; clearly disclose their owners and those operating the tool; set out clear, objective criteria on which the comparison will be based; use plain and unambiguous language; provide accurate and up-to-date information and state the time of the last update; include an as complete a range of energy offers as practicable, etc.	Agree
		Comparison tools may be operated by any private or public entity.	Agree
		Member States shall appoint an independent competent authority responsible for certifying comparison tools.	Agree

Comment:

We fully support the obligation to establish comparison tools and the proposed certification criteria. Comparison tools (CT) exist in most markets, sometimes run privately, sometimes by a public authority like the NRA. Irrespective of the ownership of the tool, CTs will only be effective and used if they are trusted by consumers. This means that they should provide clear, impartial and transparent information about offers. They should be as exhaustive as possible and not just compare prices but also the quality of service and the main features of products (e.g. contract duration, payment options, source of electricity, availability of value added services, etc.). They should not mislead consumers, e.g. by hiding information, and should always disclose the potential fees/payments they receive from suppliers in case of a switch.

Regulatory oversight is crucial to guarantee that CTs comply with these principles. We agree that certifying CTs with e.g. a trust mark from the regulator can be a good solution to enhance

consumer's trust and incentivise them to use such tools. Such trust mark could be based on a code of conduct on key requirements for CTs to be elaborated by regulators in consultation with interested stakeholders. Monitoring and verification must be undertaken by a body such as the NRA, a statutory consumer body, the relevant Ministry or an external auditor. A key principle is that such verification should be carried out by a body that is structurally and financially independent from the CTs.

Finally, we want to remind that many CTs operate across several sectors: energy, financial services, telecoms, etc. The proposed criteria should therefore not be imposed on the energy sector alone. In our view, horizontal regulation should be preferred to – or at least aligned with - sector specific regulation.

Billing

Topic	Article	Commission Proposal	EURELECTRIC's view
Billing	Art. 18 and Annex II	Provisions from the Energy Efficiency Directive and the 3 rd Directive on billing and billing information are merged in the revised Electricity Directive.	Agree

Comment:

We welcome the European Commission's intention to streamline the existing provisions on billing and billing information from the Energy Efficiency Directive and the Third Electricity Directive. Merging them in a single article will certainly help clarify the current framework.

Topic	Article	Commission Proposal	EURELECTRIC's view
Billing	Annex II par. 2	The customers' price shall be broken down into three main components: energy and supply; network; and taxes, levies, fees and charges	Agree

Comment:

We fully agree that bills should be transparent, with a breakdown of cost components, including taxes and levies.

Topic	Article	Commission Proposal	EURELECTRIC's view
Billing	Art. 18 par. 7	Member States may lay down that, at the request of the final customers, the information contained in these bills shall not be considered to constitute a request for payment.	Disagree
	Annex II	The Commission presents a new list of minimum requirements for billing and billing information, including tariff name, duration of the contract, date of end of contract, deadline for sending an advance notice of cancelation if fixed contract, etc.	Disagree

Topic	Article	Commission Proposal	EURELECTRIC's view
	Annex II	Comparison of customers' current energy consumption with consumption for the same period in the previous year in graphic form; contact information for consumer organisations, energy agencies or similar bodies; comparisons with an average normalised or benchmarked customer in the same user category etc. have to be prominently displayed in or with bills.	Disagree

Comment:

We regret that the new framework lacks concrete proposals to improve consumer satisfaction with their bills. It is a fact that existing EU requirements on billing are extensive and often complemented by stricter provisions at national level. Because of this, the bill can be overloaded with information (several pages in some Member States) that are not necessarily useful to the consumer and may even be confusing. Such a prescriptive approach also has the unintentional effect of preventing innovative forms of communication with consumers that fully leverage what digital technologies can now deliver.

With this new article, the European Commission only proposes additional minimum requirements for bills. Some, in our view, are not even justified. For instance, bills are not meant to facilitate comparison by consumers, as implied in Art. 18 par.1. and foreseen in Annex II (where the current provision of the EED regarding the possibility to include comparisons wherever possible and useful has been transformed into an obligation). Customers should be enabled to make this kind of comparison through other tools than bills.

In addition, it completely misses the opportunity to amend several unclear and/or unnecessary provisions from the Energy Efficiency Directive. For instance:

- We do not think that “comparison of customers' current energy consumption with consumption for the same period in the previous year in graphic form, contact information for consumer organisations, energy agencies or similar bodies, etc.” should be prominently displayed in or with bills; it could also be provided through other channels and signposted with bills.
- Art 18 par.7 (“Member States may lay down that, at the request of the final customers, the information contained in these bills shall not be considered to constitute a request for payment (...)”) is confusing and contradicts par.3 and the broader goal of energy efficiency.
- Art 18.3 par.3 is unclear and would need some clarification: “Only when the final customer has not been provided a meter reading for a given billing interval may billing be based on estimated consumption or a flat rate”. By “flat rate”, do we mean a “fixed amount” or “the applicable contractual price”?

If we truly want to improve billing, we should:

- Keep in mind that the bill must remain clear and easily understandable;
- Understand that consumer needs are different and therefore give more room to suppliers to tailor bills and test innovative ideas;
- Acknowledge the potential of innovative forms of communication through digital technologies;

- Acknowledge that most complaints about bills are linked to rising prices (which are largely due to rising taxes and policy support costs) and estimated consumption (which will end once smart meters are rolled-out)⁶.

To allow this, regulation should be more principle-based and less prescriptive on what - or how - information is to be provided in energy bills. Regulation should also make a clearer distinction between a bill (which should only contain key information such as consumption and price to pay) and any other type of (billing) information (which could be much more detailed and be given at a different frequency than bills depending on consumer preferences). This confusion could have important consequences. For example, art. 18.4 requires that “billing information based on actual consumption shall be provided at least once a month”. There could be a risk to interpret this requirement as an obligation to send a paper bill at least once a month, which we understand is not the intention of the European Commission.

Moreover, consumers should always be allowed to choose the type of media they like best (e.g. paper, apps, email, personal webpage) to receive their billing information. Paper invoice should not be mandatory. We would thus suggest rephrasing art. 18.6 in a more general way to state that suppliers should be free to propose any type of media, while ensuring that the final customers are offered the option of a paper bill.

Member States and NRAs have room to learn from each other on good billing practices. General guidelines of Good Practice on billing by CEER would be way more helpful than building up additional EU standards. Competition should be allowed to operate in this field.

Disclosure of Energy Sources

Topic	Article	Commission Proposal	EURELECTRIC's view
Disclosure of energy sources	Annex II	<p>The provision from the 3rd Directive requiring suppliers to specify in bills the contribution of each energy source to their overall fuel mix is kept and strengthened.</p> <p>The Commission clarifies that the overall fuel mix means the fuel mix at national level, i.e. in the Member State where the supply contract has been concluded, but also <u>at the level of the supply undertaking if the supplier is active in several Member States</u>).</p> <p>On top of it, the Commission wants suppliers to specify in bills the contribution of each energy source to the electricity purchased by the customer in accordance with the supply contract (product level disclosure)</p>	Disagree

Comment:

In our view, the current system for providing consumers with information on the sources of electricity that they consume (or rather that they pay for through their bill since electrons cannot be physically tracked) could be improved, for instance by merging and streamlining rules defining

⁶ Evidence from countries where smart meters have been rolled-out and consumers are billed on actual consumption show a sharp decrease of complaints on billing.

guarantees of origin (RES Directive) and Electricity Disclosure (Electricity Directive)⁷. We regret that the European Commission did not use the opportunity to do it. This would indeed have clarified and simplified the legal framework.

The proposed model of including information about the product mix as well as the overall fuel mix of the supplier at national level (i.e. in the Member State where the supply contract has been concluded), and at the level of the supply undertaking (if the supplier is active in several Member States) is too complex and can only be misleading for consumers. In some Member States (e.g. Italy), suppliers are also obliged to include the national fuel mix (every four months) which means that four energy mixes would have to be included on all bills.

We think it would be much clearer for consumers to receive information about one mix only. This would be the product mix for green offers (backed by GOs) – and for any offer in general in those countries which have implemented full disclosure. Otherwise the supplier mix would be most adequate. We also think the European Commission should consider harmonising rules for calculating the residual mix across Europe.

In addition, whilst we agree that providing consumers with information about energy mixes is fundamental, we do not think that this should always be done through energy bills. Such information would primarily be part of the energy contract and could also be communicated as billing information through other means (e.g. digital apps) to those consumers who are interested in knowing more about them.

It is a fact that in most EU countries, bills are already overloaded with information which is not always useful to the consumer. Piling up always more information elements on the bill can only lead to consumer confusion and disengagement. This has recently been acknowledged by ACER: *“Presenting too many different pieces of information on the bill might make it less accessible to the consumer, because of the plethora of details which are all presented at once at long intervals. When communicating with consumers, other communication channels may be at least as efficient as the bill, such as regular email or the consumer’s ‘my page’ on the supplier and/or DSO website”*⁸.

⁷ Today rules are split under three different Directives - 2009/28/EC, 2009/72/EC and 2012/27/EC.

⁸ ACER/CEER Annual Report on the Results of Monitoring the Internal Electricity and Gas Markets in 2015, Consumer Protection and Empowerment volume, November 2016, p. 33.

Dynamic Pricing

Topic	Article	Commission Proposal	EURELECTRIC's view
Dynamic pricing	Art. 2(11), 11	<p>“Dynamic electricity price contract” is defined as an electricity supply contract between a supplier and a final customer that reflects the price at the spot market or at the day ahead market at intervals at least equal to the market settlement frequency.</p> <p>Member States shall ensure that every final customer is entitled, on request, to a dynamic electricity price contract by his supplier and that final customers are fully informed by the suppliers of the opportunities and risks of such dynamic electricity price contract.</p> <p>Member States, through their National Regulatory Authorities, shall monitor and report annually, for at least a ten-year period after such contracts become available, on the main developments of such contracts including market offers, the impact on consumers' bills and specifically the level of price volatility, and on consumers' sensitivity to the level of financial risk.</p>	Agree with customer entitlement but disagree with supplier's obligation

Comment:

Dynamic pricing refers to retail electricity prices that pass through at least part of the wholesale price volatility to final end users. This can be achieved not only through real time pricing but also with advanced forms of time-of-use and critical peak pricing. Therefore, the definition of dynamic pricing should be extended accordingly. The “dynamism” of these options depends on the price interval and on how prices are set within each price interval. Dynamic pricing is possible as long as smart meters with minimum requirements that allow reliable consumption readings in specific time slots matching with market intervals are available. If metered individual consumption load curves based on smart meter readings (see section on smart meters) are used, a cohesive link between retail and wholesale markets can be established, thus allowing for active consumers' behaviour.⁹

As it is already the case in a number of markets (mostly Nordic and some Baltic countries), advanced forms of dynamic pricing are likely to further develop in other parts of the EU in the near future. They will be more suitable/ necessary as the system moves to higher shares of RES with limited predictability and as smart metering roll-outs move forward. Offering dynamic electricity prices is also interesting for retailers as it provides them opportunity to reduce their hedging costs. There should not be any legal barriers to offer every final customer a dynamic electricity price contract if a customer chooses so, neither any obligation on all suppliers to offer such a product. In the same way, as it should be left to customers to choose a dynamic pricing offer or not, retailers should also be able to decide if and how to include those offers in their product portfolio. Imposing an obligation on some or all retail offerings contradicts various parts of the proposed directive, and will be detrimental to competition and innovation, as it could

⁹ Dynamic pricing in electricity supply, EURELECTRIC 2017 See [“Dynamic pricing in electricity supply”](#), EURELECTRIC 2017

create entry barriers for small suppliers. Any such obligation should be avoided to ensure coherence with the broader framework that advocates for complete market liberalisation.

Freedom of contract should be respected as a fundamental principle. Member States should remove any barriers that would prevent suppliers dynamic electricity price offers.

The directive should also clarify that only customers who already have a smart meter installed or have requested an installation according to art. 21 (i.e. not as a part of national deployment) are eligible for a dynamic pricing contract.

Last but not least, the proposed annual NRA report should also analyse the combined impact on consumers' bills of dynamic pricing and sales and purchases from an aggregation contract that customers may sign in parallel.

Smart Metering

Topic	Article	Commission Proposal	EURELECTRIC's view
Smart metering	Rec. 31, 40, 42, 43 – Art. 2(18-19), 19 - 21 – Annex III	Member States shall ensure the implementation of smart metering systems. Their cost-benefit analysis shall consider the methodology recommended by the EC. Member States that proceed with the deployment of smart meters shall adopt and publish the minimum functional and technical requirements for smart metering, in line with the EC recommendation for minimum functionalities, ensuring interoperability and connectivity with consumer energy management platforms. When Member States proceed with smart metering deployment, they shall ensure that all final customers contribute to the associated costs of the roll-out, for example by reflecting these expenses in the network tariffs.	Agree
	Art. 2(20) & 20(a)	Smart meters should accurately measure the actual consumption and provide customers with information on actual time of use. That information shall be made easily available and easy to understand to final customers at no additional cost and at near real time. Art.2 (20) defines “near real time” as “usually down to seconds”.	Disagree

Comment:

European countries are at different stages of deployment of smart meters for residential electricity customers. Where the national CBA is positive, their installation will further improve efficiency, quality of service, dynamic pricing offers and other services. The proposal implies that Member States having rolled-out smart meters that do not comply with the outlined functionalities (defined in art. 20 and Annex III) by the time the legislation comes into force will need to upgrade them. We believe however that as long as the meters deployed corresponded to the rules in application at the time of their deployment, no stranded costs should arise.

Parties rolling out smart meters (DSOs in the majority of Member States) have already selected and purchased their systems for the delivery and visualisation of information to be provided to customers and other market parties designated by the customer. There are two types of data:

-) “Raw” consumption data: this consists only in real time consumption data (kWh) that can be read straight from the meter and not (yet) processed or validated by the meter management system. It can be used for in-home displays, home energy management systems, smart devices installed by service providers but also e.g. for triggering and measuring demand response actions etc. It does not include any historical data, price information etc. This data can be provided to customers close to real-time, but it cannot be provided in a matter of seconds without any additional cost.
-) Validated data: this data is provided to the customer’s supplier, the BRP and other market parties designated by the customer (for billing, balance settlement for demand response actions and other purposes related to energy markets) via nationally decided communication channels. This can include historical data and other relevant data. Based on the characteristics of the meter, the transmission technology and the data management model in place, this data cannot usually be provided near to real time as now defined in Art. 2(20). This data can currently be provided one day after the delivery of electricity. Shortening this time period would require an extremely fast and costly data exchange and communication system and processes which could as a result lead to a negative CBA. In countries where the roll-out will be finalised when the Directive enters into force and where the meters are not in line with the new provisions, this requirement will potentially create significant extra costs for final consumers.

If the cost for a systematic, large scale, roll-out of smart meters that allows close to real time reading resolution and transmission is considered prohibitive, the market should be allowed to provide alternative solutions **beyond-the-meter** to empower the customers and foster the development of demand side response. Multiple service providers have developed hardware for this purpose and have already offered it to customers as an additional service in most European markets. If grid companies have to offer real time information on electricity use to customers for free, there will be no market for this kind of services. A free of charge service will likely be very basic and will not necessarily be customer/user friendly. Therefore, we believe that article 20 (a) is inefficient.

Topic	Article	Commission Proposal	EURELECTRIC’s view
Smart metering	Art. 20(g)	Smart meters shall enable customers to be metered and settled at the same time as the resolution of the imbalance period in the national market takes place.	Disagree

Comment:

This provision is closely linked to the requirement for ISP harmonisation, foreseen for 1 January 2025 (art. 7(4) of the Electricity Regulation). While EURELECTRIC in principle supports ISP harmonisation by this deadline (see our response to the Electricity Regulation for more details), the costs incurred in countries that have already rolled out smart meters and adjacent settlement systems by that date need to be considered. In particular, this provision should take into account the functionalities already implemented in smart metering systems to avoid inefficient additional costs for smart metering and related communication system upgrade.

Therefore, Member States should decide on a voluntary basis to apply this functionality when rolling out smart meters for retail consumers. The current roll-outs will already substantially improve the link between wholesale and retail markets.

Where smart meters for customers with a different metering interval are already rolled out, it is more cost-efficient to 'split' the metered values into 15 min. intervals (i.e. mostly splitting hourly data from smart meters in four intervals) than to replace the smart meters before the end of their lifetime.

In any case, in countries where smart meters are not rolled out, adapting the 15 min ISP at wholesale level into retail settlement period with longer intervals will require to profile the annual/monthly/... electricity consumption to allow linking wholesale and retail markets.

Topic	Article	Commission Proposal	EURELECTRIC's view
Smart metering	Art. 20(b)	Smart meters and data communication should comply with relevant EU security legislation having due regard of the best available techniques for ensuring the highest level of cybersecurity protection.	Agree

Comment:

Ensuring the highest level of cyber security, as requested by art. 20 (b), is possible at the time of meter setting, which will normally be in operation for 10-20 years. As a consequence, it will prove to be very costly to keep the meter systems at the highest up-to-date level of cyber security protection, and metering operators should recover these costs. Therefore, the level of cyber security of the metering system should be set at a level that takes into account both the consumers' interest for a constantly updated level of protection and the costs of the updates.

Topic	Article	Commission Proposal	EURELECTRIC's view
Entitlement to a smart meter	Art. 21	Where smart meters are not rolled out, every customer is entitled to have a smart meter with the same functionalities as above. Customers should be informed about the benefits that it can realistically help attain and any associated costs that he would bear. The installation should be completed no later than 3 months after the customer's request.	Partially agree

Comment:

For the above mentioned reasons, EURELECTRIC supports that in case of a selective roll-out based on consumer entitlement (art. 21), the functions and interoperability of smart meters installed on an individual basis shall reflect technical and economic feasibility at the moment of installation. For example, among the other functionalities required by art. 21 (that apply by analogy to art. 22), costly updates of IT systems for selective smart meters roll outs would not be realistic and would discriminate against customers who have not asked for this option. However, it has to be clarified that in a selective roll-out, the same functionalities as in massive roll outs cannot all be available to customers at reasonable costs. Furthermore, a 3 months' timeframe is rather short. In addition, the text/interpretative note should clarify what happens if a customer who required an installation or an upgrade of a smart meter moves house.

Aggregation and Demand Response

Topic	Article	Commission Proposal	EURELECTRIC's view
Aggregation	Art. 2(15 & 16), 13	'Aggregator' is defined as a market participant who combines multiple customer loads or supplied electricity for sale, purchase or auction in any organised energy market. 'Independent aggregator' is an aggregator that is not affiliated to a supplier or other market participant.	Generally agree, but provisions should be amended.
Aggregation	Art. 13 (4)	Member States shall ensure that final customers are entitled to receive all relevant demand response data or data on supplied and sold electricity at least once per year.	Disagree

Comment:

EURELECTRIC fully supports the objective that generation, storage and demand response should compete on a level-playing field, including non-discriminatory participation of aggregators in the market.¹⁰

However, the newly introduced definitions in Art. 2 for "independent aggregator"/"aggregators" need clarification as the intention of this distinction and its consequences are unclear. As commented below, "aggregators" and "independent aggregators" should not be exempted from rules applicable to other market participants, including balance responsibility.

As the action of aggregators will have an impact in the customers' bill, customers should have this information as close to receiving their bill as possible. In order to encourage more participation of consumers in the market, this information should be more frequent.

¹⁰ See ["Designing fair and equitable market rules for demand response aggregation"](#), EURELECTRIC 2015.

Topic	Article	Commission Proposal	EURELECTRIC's view
Aggregation and demand Response	Art. 17	<p>(17.3) Member States have to ensure that, where a customer wishes to conclude a contract with an aggregator, he shall not need the consent of his supplier. National regulatory frameworks shall ensure (a) the right for each aggregator to enter the market without the consent from other market participants, (b) the existence of transparent rules that assign clear roles and responsibilities to all market participants, (c) the existence of transparent rules and procedures for data exchange between market participants to ensure easy, equal and non-discriminatory access to data while fully protecting commercial data, (d) the absence of any requirement that aggregators should pay compensation to suppliers or generators; (e) a conflict resolution mechanism between market participants.</p> <p>(17.4) To ensure that balancing costs and benefits induced by aggregators are fairly assigned to market participants, Member States may exceptionally allow compensation payments between aggregators and balancing responsible parties. This should limited to situations when one market participant induces imbalances on another market participant resulting in a financial cost and be subject to the approval of the NRA, followed by a monitoring by ACER.</p>	Disagree
	Art. 17.5	Member States shall ensure access to and foster participation of demand response.	Agree

Comment:

We observe a few inconsistencies that contradict the general objectives of the Directive (i.e. the establishment of a level playing field in the market) and are not objectively justified. Exempting independent aggregators from normal wholesale and retail market disciplines regarding imbalance settlement (art. 17.4) and deeming aggregators immune from claims for remuneration of energy following load shifting activation (art. 17.3 (d)) adds distortions to free price formation rather than removing them. This would mean that other participants in the market would bear the costs of demand-side response activation, with a danger to see end-consumer bills increase. It would also introduce regulatory uncertainty where a regulatory framework for third party aggregation has been already introduced.

In art. 17.4, imbalances compensation payment between Balance Responsible Parties (BRPs) and aggregators is phrased as an exception rather than a general rule. The current market model is based on the central role of BRPs. BRPs are financially responsible for keeping their own position (sum of their injections, withdrawals and trades) balanced over a given timeframe, the Imbalance Settlement Period (ISP). The remaining short and long energy positions in real-time are described as the BRPs' negative and positive imbalances, respectively. The draft Internal Market Regulation (Art. 4.1) clearly states that all market participants must take financial responsibility for the imbalances they cause in the system. Art. 5.2 of the draft Regulation insists that balancing markets must be organised in such a way as to not discriminate between market participants. That would not be the case if one category of participants in the provision of ancillary services to TSOs will be given special immunity rights for the cost of imbalances as proposed by art. 17.4.

Deeming aggregators immune from claims for compensation following load DSR activation, as proposed in art. 17.3 (d), risks misinterpretation and undermining the overall efficiency of the market. Any market participant willing to trade electricity must bear the costs related to procuring this electricity and bear the balancing responsibility. When generators sell electricity, they must produce it. When traders sell electricity, they must buy it from another market participant. When a consumer contracts a third-party aggregator to make use of its consumption flexibility, the third-party aggregator diverts energy through a demand response activation to make it available to the wholesale market (i.e. the TSO or another market participant). The energy that is not consumed by the end-customer but diverted by the third-party aggregator is still sourced by the supplier of the activated customer. Therefore, this electricity has to be paid for. If a third-party aggregator makes use of energy even though they did not produce or buy this electricity, other market participants are bearing the costs of demand-side response activation. This would represent a hidden subsidy for aggregators and would thus constitute a clear discrimination between market participants, in contradiction to the principle of property rights. The proposal should make clear that any such free-riding is avoided and ensure that the same rules apply to all market players, including active consumers, local energy communities or all aggregators.

Last but not least, transparent rules and procedures for data exchange, not only between market participants but also with system operators for reasons of security of supply should be considered, while fully protecting commercial data.

Active Consumers / Self-Consumption

Topic	Article	Commission Proposal	EURELECTRIC's view
Active consumers / self-consumption	Art. 2(6), 15	<p>Active customers are defined as a customer or group of jointly acting customers who consume, store or sell electricity generated on their premises, including through aggregators, or participate in demand response or energy efficiency schemes provided that these activities do not constitute their primary commercial or professional activity.</p> <p>Member States have to ensure that active consumers:</p> <p>(a) are entitled to generate, store, consume and sell self-generated electricity in all organised markets either individually or through aggregators without being subject to disproportionately burdensome procedures and charges that are not cost reflective;</p> <p>(b) are subject to cost-reflective, transparent and non-discriminatory network charges accounting separately for the electricity fed into the grid and the electricity consumed from the grid in line with article 59 .</p> <p>The energy installation required for the activities of the active customer may be managed by a third party for installation, operation, including metering and maintenance.</p>	Some provisions should be amended

Comment:

The definition of active customers (as well as that of 'renewable self-consumer' in art. 2(a) of the Renewables Directive) should be clarified. 'Their premises' could be interpreted as to mean that

the provisions apply to different assets owned by the same consumer in different locations and result in a positive discrimination. Instead, the definition should clearly refer to generation and consumption of electricity behind the grid connection point.

All new market actors (active consumers and also local energy communities) should participate in the market in a fair way, being responsible for the costs they contribute to induce, taking into account the timing of injections and withdrawals that should not be offset against each other. Any kind of positive discrimination at the expense of other parties must be avoided. Therefore, we welcome the requirement to charge network tariffs separately for the offtake from the grid and injection to the grid (art. 15) separately and the reference to cost-reflectiveness of such network tariffs. However, we think the provisions should be made clearer, so as to explicitly prevent net metering on any longer period than the settlement time, and not only for network charges but also for the remaining elements of the customers' bill, i.e. system costs & levies (policy support costs).

In addition, 'avoiding disproportionate charges that are not cost-reflective' should not be interpreted as to allow positive discrimination for prosumers. An amendment of the proposal and/or an interpretative note would help clarify these points. It should be noted that, in fact, the main charges that are not cost reflective in the electricity bill are taxes and levies financing public policies. The Directive should also clearly state that policy costs and levies charged on national energy consumers should be met by all consumers regardless of the network (public, private or a local energy community) they are connected to. In order to avoid social inequality, self-consumption should not lead to increased grid charges and levies for the remaining customers. Designing the requirements on active customers should be done in a way that does not constitute any state aid.

Finally, we agree that energy installation for the activity of active customers (beyond the meter) could be managed by third parties provided that it is clarified that metering activity should still be performed by the party that in each Member State is responsible for metering.

It should be also clarified that aggregating households which according to the RES directive (art. 21 (1c)) would not be subject to BRP obligations should not allow the aggregator to be exempted from the BRP responsibility (see also EURELECTRIC comments on the proposal for a Renewables Directive and on the proposal for an Electricity Regulation).

Energy Communities

Topic	Article	Commission Proposal	EURELECTRIC's view
Energy communities	Art 2(7),16	The text defines Local energy communities (LEC) Member States shall provide an enable regulatory framework for LECs.	Clarification is needed

Comment:

As for art. 15 on active customers, we believe that any kind of positive discrimination of energy communities at the expense of other consumers and actors in the energy system must be avoided. All market actors including customers of local energy communities should participate in the market in a fair way, being responsible for the costs they contribute to induce, taking into account the timing of injections and withdrawals. Network, policy costs and levies charged on national energy consumers should be met regardless of the network (public, private or a local

energy community) they are connected to. Energy communities' members should also not be exempted from their responsibilities with regard e.g. to balancing (as described above for active consumers) and discrimination between Local Energy Communities (LECs) and other parties in the energy system should be avoided. Where LECs are already acting as DSOs for historical reasons, they should face the same responsibilities and obligations as other DSOs.

Recital 30 notes that LECs *"should be allowed to operate on the market on a level-playing field without distorting competition"*. However, the text contains several ambiguities that could lead to misinterpretation during transposition to national legislation and positive discrimination of LECs at the expense of other customers and market participants:

- J According to the proposal, local energy community can buy, sell, generate, aggregate and store electricity while at the same time serving as a DSO following the provisions of Chapter IV, which cannot undertake these activities. While recognising that in some countries LECs already act as DSOs for historical reasons, we think that as a general principle, where customers are already served by the public grid, the creation of a new LEC should be deeply examined to avoid an inefficient duplication of network investments whose costs would be recovered from the existing customer base.
- J Furthermore, there are questions regarding the establishment of LECs: how can a LEC can be formed/constituted within what is effectively an existing DSO network? Would existing assets have to be transferred from the incumbent DSO to a constituting LEC? What provisions would be made to ensure cost recovery of existing assets and potential new assets to establish the connection point with the new LEC?
- J Art. 16 (2) (g) states that Member States shall provide an enabling regulatory framework to ensure that *"where relevant system users that are not shareholders or members of the local energy community connected to the distribution network operated by a local energy community shall be subject to fair and cost-reflective network charges (...)"*. Does this mean that customers will pay network charges only if they leave a LEC or that they pay lower charges as a member of a LEC? Similarly, according to art. 16(h) 'Member States shall ensure that *"where relevant LECs are subject to appropriate network charges at the connection point between the community network and the distribution network outside the energy community"*. This could be misinterpreted as that members of LECs may not be subject to cost-reflective network charges and it would create issues concerning system cost recovery and unfair cross-subsidisation. Members of LECs must pay network charges to the DSO they are connected to. Furthermore, consumers in LECs should also pay taxes and levies as all other customers connected to public networks.
- J While we agree that *"shareholders or members of a LEC shall not lose their rights as household customers or active customers"* (art. 16(2b)), the practical implications of these provisions need to be clarified. Even if a LEC remains a DSO for the customer who may be switching (i.e. no parallel networks), there will be a need for rules on the correct metering, billing etc. of the customer's connection point(s) and rules/regulatory framework upon the use of LEC infrastructure ("lease of last mile"). It should be clarified whether LECs cover a specified area (if they were virtual communities), in which case even more questions would arise. Additionally, could LECs, if having to act effectively as DSOs actually face less stringent obligations than incumbent DSOs?

The same concerns apply to ‘renewable energy communities’ defined by art. 22 of the Renewables Directive which by default are also LECs as per art. 16. Overall, the two concepts (and the differences between them) need important clarifications and possibly interpretative notes.

Data Management

Topic	Article	Commission Proposal	EURELECTRIC's view
Data management	Art. 23 par. 2 and 3	The Commission does not recommend any specific data management model. Member States shall authorise/certify the party(ies) managing data.	Agree
	Art. 34	In countries where DSOs are involved in data management, compliance programmes shall include specific measures to exclude discriminatory access to data from eligible parties. Member States shall also take all necessary measures to ensure that vertically integrated companies do not have privileged access to data for the conduct of their supply activity.	Agree

Comment:

We agree with the European Commission that there is no ‘one size fits all’ model applicable in all European countries for meter data management. This could be done in a centralised or decentralised way by different parties, e.g. DSOs, TSOs, or third parties. Decisions on the best approach to follow should be taken at national level by NRAs. However, we agree that it is fundamental to set common principles at EU level to ensure that data handling is done in a neutral, non-discriminatory, transparent, cost-efficient, and secure way.

Topic	Article	Commission Proposal	EURELECTRIC's view
Data management	Art. 23 par. 1 and 2	Eligible parties (incl. suppliers, TSOs/DSOs, aggregators, ESCOs) should have access to customer’s data after their explicit consent in a non-discriminatory manner.	Partially agree
	Art. 23 par. 1	Such data shall include metering and consumption data as well as data required for switching.	Agree

Comment:

Regardless of the data management model adopted, DSOs and suppliers - who respectively provide network services and supply electricity to customers - should have unrestricted access to their customers’ metering and consumption data. This is indeed necessary to guarantee a secure network management and fulfil their contractual obligations (billing, switching etc.). For any other purpose or any additional service, we fully agree that access to metering and consumption data should only be possible after the explicit consent of the customer.

It is important to remind that the General Data Protection Regulation (EU 2016/679) introduces significant obligations and compliance provisions for suppliers, distribution system operators and other entities controlling or processing personal data (metering and consumption data identifiable to a certain individual is considered as personal data). In our view, the Electricity Directive should not impose stricter obligations on energy companies than the GDPR without sound justification.

Topic	Article	Commission Proposal	EURELECTRIC's view
Data format	Art. 24 par. 1	Member States shall define a common data format and a transparent procedure for eligible parties to have access to the data.	Agree
	Art. 24 par. 2	The EC shall determine - by means of an implementing act - a common European data format together with non-discriminatory and transparent procedures to access the data that will replace the national data format and procedure adopted by Member States.	Disagree
	Art. 24 par. 3	No additional costs shall be charged to final customers for access to their data. Member States shall be responsible for setting the relevant costs for access to data by eligible parties. Regulated entities which provide data services shall not profit from that activity.	Agree

Comment:

The proposed allocation of responsibility between the Commission and Member States is not very clear to us. Why would Member States set up a national data format (par. 1) if they then have to adopt a common data format defined by the Commission (par. 2)? What is the proposed timeframe? If the aim of the Commission is to target those Member States which have not yet started to work on a national data format, then we think it should spell it out clearly.

We are also not sure to understand what the Commission is trying to achieve with a common EU data format. Whilst we fully support the data portability provision stemming from the General Data Protection Regulation (EU) 2016/679), we do not think that the Commission should try and regulate data exchange between market parties within Member States. If the aim is to facilitate cross-border retail markets, then many other issues would need to be looked at and harmonised, as experience from the Nordic countries and their project to create a common Nordic retail electricity market has shown: roles and responsibilities of market players, business processes, consumer rights, tax regimes, etc. Data format would come almost last in the list.

It is also worth recalling that several Member States have just implemented a national data hub (e.g. Denmark, Italy) or are about to do it (e.g. Finland, Sweden, Norway, Belgium, France, etc.). It would be very costly if a new data format would be introduced just after the implementation of a national data hub, requiring market actors to upgrade all core systems (such as billing, customer relationship management, etc.) once again.

Overall, we think that these provisions should not be introduced without sound and transparent cost/benefit analyses at both national and European level. Setting EU principles/guidelines could be as efficient as setting a common data format but at lower costs.

Last but not least, whilst we agree that where DSOs are responsible for managing data, they should not profit from that service, we would welcome further clarification as to what the Commission means with "data services" as this is not clearly defined. For instance, a DSO that makes available data to final customers through the metering infrastructure faces investments and operational costs that should be treated like investments and operational costs in other network activities.

Cyber Security

Topic	Article	Commission Proposal	EURELECTRIC's view
Cyber Security	Recital 38, Art. 20(1/b),	Independently of the data management model, it is important that Member States (...) ensure the highest level of cybersecurity and data protection (Rec. 38). The security of the smart metering systems and data communication is ensured in compliance with relevant European Union security legislation having due regard of the best available techniques for ensuring the highest level of cybersecurity protection.	Agree

Comment:

This proposal is in line with our position to foster the cyber security mind set and to ensure the highest level of cybersecurity and data protection.

Tasks of DSOs

Topic	Article	Commission Proposal	EURELECTRIC's view
Tasks of DSOs	Art. 31	Operating, maintaining and developing under economic conditions a secure, reliable and efficient electricity distribution; no discrimination; information to users; Member States to give priority to renewable generation; procurement of non-frequency ancillary services; this shall especially be market-based ensuring effective participation of all market participants including renewable energy sources, demand response, energy storage facilities and aggregators.	Partially agree
Tasks of DSOs	Art. 31.6	It has been deleted from the former article the point 6, concretely art 31(6) where it was stated that DSO is responsible for balancing the distribution system.	Disagree

Comment:

In general, the recast of the regulation and directive makes good progress towards reflecting the new and extended role of DSOs. The EC acknowledges an "increase of responsibilities" for DSOs. Such an increase of responsibilities should be codified in the directive, acknowledging that each DSO is responsible for the operation of its own distribution system. This is mentioned in art. 31 (1), however we would like to see the same proposal as we see for the task of TSOs in art. 40 (1) (d) of the same Directive. Therefore, we would welcome a more specific sentence for the secure, reliable and efficient operation of its distribution system, as it would strengthen and underline the role of DSOs as active system managers. Each DSO shall be responsible for managing electricity

flows on the system, taking into account exchanges with other interconnected systems. To that end, the distribution system operator shall be responsible for ensuring a secure, reliable and efficient electricity system.

EURELECTRIC notes that whereas some non-frequency ancillary services will (and should) be provided by the market, some others such as voltage control devices will likely not be. EURELECTRIC thus believes that it should be left to NRAs to decide ultimately what should be market-based or not, depending on local circumstances, taking into account technical and economic aspects. However, and in line with the emergency and restoration Network code for emergency situations and in order to not endanger the safety of the network, DSOs must act (in real time) in a way that prioritises the security of the network.

In general, we would like to stress the crucial role of DSOs for system stability and integrity, as well as market facilitator in the ongoing energy transition. Balancing the local grid becomes a focal point with the central grid as exchange, creating further complexity and affecting the overall coordination of the distribution system, which might impact operation, quality and cost of the service. Therefore, a more active and integrated management by the DSOs is key.

Topic	Article	Commission Proposal	EURELECTRIC'S view
Tasks of DSOs in flexibility	Art. 32.1	Member States to implement a regulatory framework including congestion management. Enable DSOs to procure services from resources such as distributed generation, demand response or storage and consider energy efficiency measures. DSOs shall define standardised market products for the services procured ensuring effective participation of all market participants including renewable energy sources, demand response, and aggregators.	Agree
	Art. 32.2	The network development plan shall be submitted every 2 years to the regulatory authority and shall contain the planned investments for the next five to ten years. It shall also demonstrate the use of demand response, energy efficiency, energy storage facilities or other resources that distribution system operator is using as an alternative to system expansion. The regulatory authority shall consult all current or potential system users on the network development plan.	Disagree

Comment:

We welcome the initiative to propose a regulatory framework that allows and incentives DSOs to procure flexibility services which may complement or obviate the need to upgrade or replace electricity capacity and which supports both the efficiency and secure operation of the distribution system. Similarly, we welcome the definition of standardised products by DSOs for the services procured. These services should be defined in such a way that electric vehicles can offer their flexibility services in this flexibility market – which also means that infrastructure able to modulate the charging process has to become the standard. We do also agree with the provision to foresee the adequate remuneration to DSOs for the procurement of flexibility services.

Regarding the network development plan, we welcome the initiative to describe the grid needs and how DSOs will address them, including through flexibility solutions when they are available and economically efficient. However, we do not agree with the 2 years cycle proposed for the submission of such a plan. EURELECTRIC considers that it is up to the Members States to decide about the period of time for the network development plan considering the situation of the already deployed distribution network infrastructure. We do not agree with an imposed consultation, conducted by the NRA, of all current or potential system users on the network development plan. In case of a consultation process, we wonder about the value of the responses considering that the network plan is a specific task of the DSOs and that they are better knowledgeable on their own network developments. However, we believe that the exchange of information between the DSO and market participants should be ensured. For example, DSOs should be encouraged to make information about the free capacity available to market participants: they then can invest in new loads (like for example charging stations) where no network reinforcement is needed. Where free capacity is scarce, market parties can try to contract customers. This can help DSOs to solve congestion management problems on a market-based solution.

Therefore, it is inappropriate to define a harmonised consultation process for DSOs' development plan at EU level given the large number of national specificities. The appropriate mode and standard of any such consultation should be decided by the NRA and national governments, and not imposed by the EC.

Electro-Mobility

Topic	Article	Commission Proposal	EURELECTRIC's view
Definition of a recharging point	Art. 2 (27)	'Recharging point' means an interface that is capable of charging one electric vehicle at a time or exchanging a battery of one electric vehicle at a time.	Agree, but the definition should include a reference to the AFI Directive, where recharging points are defined in greater detail.

Comment:

It is crucial to have a coherent and uniform definition of recharging points throughout all relevant legislation. The Electricity Directive shall be in line with the existing definition in the AFI Directive, which distinguishes between normal power charging (up to 22kW) and high power charging (offering electricity transfer to an electric vehicle with 22kW or more).

Furthermore, the AFI Directive makes it clear that "devices with a power less than or equal to 3,7 kW, which are installed in private households or the primary purpose of which is not recharging electric vehicles, and which are not accessible to the public" are not regarded as a recharging point. This clarification is important, because otherwise the definition given above ("interface that is capable of charging one electric vehicle at a time") would apply to almost any plug there is. Annex II of the AFI Directive also specifies a number of standards for connectors.

Topic	Article	Commission Proposal	EURELECTRIC's view
Ownership of Electro mobility; charging infrastructure	Art. 33	Member States may allow DSOs to own, develop, manage or operate recharging points for electric vehicles only if the following conditions are fulfilled: a) other parties, following an open and transparent tendering procedure, have not expressed their interest; b) the regulatory authority has granted its approval.	Agree, but clarification on cost recovery by DSOs needed.

Comment:

We support the European Commission's quest for opening up the EV charging market. However, in cases where DSOs are engaged in the roll-out of the necessary charging infrastructure, it should be guaranteed that they can recover the costs incurred, also and notably if the activity of the DSO on this field is phased out. This is especially of importance for DSOs in those countries that currently have opted for a roll-out of charging infrastructure with the help of DSOs.

It should be made clear that DSOs in any case are only owning and technically operating the charging infrastructure as an extension of their regulated role. The commercial operation of the charging stations should always be done by market participants.

Remuneration of DSOs

Topic	Article	Commission Proposal	EURELECTRIC's view
Remuneration of DSOs	Art. 32.1, 59.4	Member States shall provide the necessary regulatory framework to allow and incentivise DSOs to procure services in order to improve efficiencies in the operation and development of the distribution system. DSOs shall be adequately remunerated for the procurement of such services in order to recover at least the corresponding expenses, including the necessary information and communication technologies expenses, including expenses which correspond to the necessary information and communication infrastructure.	Agree

Comment:

We must set the right regulatory framework for DSOs to become active network managers. DSOs must be granted the necessary financial resources to comply with the challenges arising from the development of the distribution system, characterised by a rise in distributed electricity generation, the increasing number of active customers (see Art. 15) and the appearance of new market participants such as aggregators (see Art. 13). All these players use the distribution grid, and the DSO has to ensure not only their "physical" integration but also the organisational management (allocating energy to balance groups, running business processes, etc.). This can be done by incentivising NRAs to give DSOs appropriate incentives to implement the necessary innovative initiatives that support the transformation of the DSOs' business models. Distribution remuneration should duly incentivise DSOs for the synergies offered by the distribution network with other services (e.g. telecommunications). The implemented specific regulatory mechanisms should deliver a predictable and stable outcome and should include incentives for both CAPEX

and OPEX aimed at guaranteeing adequate remuneration for investments and timely cost recognition, including for costs related to new activities required by regulation.

Unbundling of Distribution System Operators

Topic	Article	Commission Proposal	EURELECTRIC's view
Unbundling of distribution system operators	Art. 35	When the DSO is not part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not related to distribution.	Agree

Comment:

The current unbundling rules are fit for purpose and we support them. Therefore, we are pleased to see that the European Commission is not planning further changes to the unbundling requirements at this stage. This article will keep ensuring transparent and independent decision making and an equal treatment of all DSO stakeholders.

Ownership of Storage Facilities

Topic	Article	Commission Proposal	EURELECTRIC's view
Ownership of storage facilities	Art. 36	DSOs shall not be allowed to own, develop, manage or operate energy storage facilities. Member States may allow distribution system operators to own, develop, manage or operate storage facilities only if the following conditions are fulfilled: no other party is interested following an open and transparent tendering procedure, DSOs to fulfil its obligations under this regulation and NRA granted approval. Public consultation performed by the regulators in order to re-assess the potential interest of markets parties to invest, develop, operate or manage energy storage facilities. Member States shall ensure that DSOs activities in this regards are phase-out in case third parties are able to do it.	Partly agree

Comment:

Storage is one amongst the many new technologies which are approaching commercial and technical readiness for mainstream deployment in the grid. In this sense it is but one technology item of the potential new DSO's 'toolkit' which can be used to assist the DSO operate and plan more 'flexibly'. Storage also holds promise for promoting active consumerism and realising other forms of value for market participants, grid operators and retailers. It is likely that a stand-alone business case for storage would be constructed from a synthesis of these benefits and a market originated deployment would be the ordinary course when the technology becomes mature.

Focusing on the DSO's perspective, it is important to recall that DSOs are under regulatory supervision and required to adopt new technology as it becomes proven and cost competitive. It is also important to recall that DSOs have urgent operational issues presently on-hand due to the widespread incidence of mainly variable distributed generation. In the fullness of time – and the

DSOs are actively working on this – the DSO foresee that ‘flexibly’ would be conceptualised as a fungible service and storage and other technologies can make offerings. Such commercial arrangements do not yet exist and have to be designed, tested and integrated into the DSOs regulatory framework.

For this article, EURELECTRIC proposes an amendment below which is a simple adjustment to the normal course of the DSOs business in cooperation with the NRA and does not require a tender to be undertaken by the NRAs, nor does it require the Member State to provide a derogation from EU law. Any tender or market test would be undertaken by DSOs. There is a presumption that there would be a market test carried out but it is also practical and does not call for a market test on every occasion (which could be costly and time consuming in certain circumstances) but such an exception would require the explicit agreement of the NRA. It is worth nothing that all of the above would be conducted in an open and transparent manner and DSOs and NRAs could be held to account.

European Commission's proposal	EURELECTRIC proposal
<p>1. Distribution system operators <i>shall</i> not be allowed to own, develop, manage or operate energy storage facilities.</p> <p>2. <i>By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate storage facilities</i> only if the following conditions are fulfilled:</p> <p>(a) other parties, following an open and transparent tendering procedure, have not expressed their interest to own, develop, manage or operate storage facilities;</p> <p><i>(b) such facilities are necessary for the distribution system operators to fulfil its obligations under this regulation for the efficient, reliable and secure operation of the distribution system;</i></p> <p><i>And</i></p> <p>(c) the regulatory authority has assessed <i>the necessity of such derogation taking into account the conditions under points (a) and (b)</i> of this paragraph and has granted its approval.</p> <p>3. Articles 35 and Article 56 shall apply to distribution system operators engaged in ownership, development, operation or management of energy storage facilities.</p> <p>4. Regulatory authorities shall perform at regular intervals or at least every five years a public consultation in order to re-assess the potential interest of market parties to invest, develop, operate or manage energy storage facilities. In case the public consultation indicates that third parties are able to own, develop, operate or manage such facilities, Member States shall ensure that distribution system operators' activities in this regard are phased-out .</p>	<p><i>1. Energy storage facilities shall be owned, developed, managed or operated by markets participants.</i></p> <p>2. Distribution system operators <i>may be allowed</i> to own, develop, manage or operate storage facilities <i>if such facilities are necessary for the distribution system operator to fulfil its obligations under this regulation for the efficient, reliable and secure operation of the distribution system</i> only if the following conditions are fulfilled:</p> <p>(a) other parties, following an open and transparent tendering procedure (<i>under NRA supervision</i>), have not expressed their interest to own, develop, manage or operate <i>cost-effective</i> storage facilities <i>or for alternatives flexibility services;</i></p> <p>() ;</p> <p>or;</p> <p>(b) the <i>NRA</i> has assessed <i>that there is no necessity to apply the condition under point (a)</i> of this paragraph and has granted its approval.</p> <p>3. Articles 35 and Article 56 shall apply to distribution system operators engaged in the ownership, development, operation or management of energy storage facilities.</p> <p>4. Regulatory authorities shall perform at regular intervals or at least every five years a public consultation in order to re-assess the potential interest of market parties to invest, develop, operate or manage energy storage facilities. In case the public consultation indicates that third parties are able to own, develop, operate or manage such facilities, Member States shall ensure that distribution system operators' activities in this regard are phased-out <i>with compensation on fair and reasonable terms.</i></p>

Closed Distribution Systems

Topic	Article	Commission Proposal	EURELECTRIC's view
Closed distribution systems	Art. 38	This is a system which distributes electricity within a geographically confined industrial, commercial or shared services site and does not supply household customers, as a closed distribution system. There is a new statement: 'closed distribution systems shall be considered as distribution systems for the purpose of the Directive'.	Needs clarification.

Comment:

We need clarification on the new statement whose consequences are not clear.

EURELECTRIC agrees that closed distribution systems should be bound by the same responsibilities as DSOs their connected customer towards the system. In particular, it should be avoided that customers under closed distribution systems are given implicit advantages compared with the rest of the customers connected to the main network (not under closed distribution systems), such as tariff exemptions on network costs, taxes and levies based on net-metering.

Combined Operator

Topic	Article	Commission Proposal	EURELECTRIC's view
Combined operator	Art. 39	Art. 35(1) shall not prevent the operation of a combined transmission and distribution system operator provided that operator complies with Art. 43(1), or 44 and 45, or Section 3 or falls under Art. 66(2).	Needs clarification.

Comment:

The article needs some clarifications, it is not really clear whether a combined operator need to be ownership unbundled or not and whether it goes under the authority of an ITO as any TSOs.

Tasks of TSOs

Topic	Article	Commission Proposal	EURELECTRIC's view
Tasks of TSOs	Art. 40	<p>To that end, TSOs shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response and energy storage, <u>insofar as such availability is independent from any other transmission system with which its system is interconnected.</u></p> <p>TSOs shall ensure that the procurement of balancing services and, unless comforted by a CBA, non-frequency ancillary services, <u>ensures effective participation of all market participants including renewable energy sources, demand response, energy storage facilities and aggregators, in particular (...)</u>"</p>	

Comment:

TSOs should be allowed to procure demand response (DR) and storage connected to its own grid. However, TSOs can only procure DR and storage that are not connected to its own grid only after a validation procedure and an acceptance of the DSO (e.g. based on schedules to be accepted).

The procurement of balancing services and non-frequency ancillary services should be managed by DSOs and provided by distribution system connected agents through DSO management. Therefore, there must also be a reference to this possibility in the paragraph.

If a CBA is used to argue for the non-market based procurement of non-frequency ancillary services, the CBA must be based on socio-economic efficiency considerations. Further, the CBA shall be based on transparent principles creating a level playing field for potential bidders. The CBA and the resulting decision should be subject to regulatory approval.

It is important to ensure that the full demand of TSO is procured, without any possible exceptions. TSOs must establish market places where commercial market participants feel comfortable investing and where the prices can be discovered – they need to know that there will be an on-going procurement of the services and products they provide, even if prices are not known in advance. It corresponds to how the day-ahead market works: market participants invest in power stations because they know that there is a market for electricity, even if they do not know the price they can earn. Without certainty on the fact that the TSO will procure their full demand, it will be difficult for commercial market participants to invest in assets to deliver these products and services.

To implement the above, we suggest adding a new bullet (c) to Art. 40, 4: 'closely reflects the need for all products and services for the system.'

Topic	Article	Commission Proposal	EURELECTRIC's view
Decision-making powers regarding the connection of new power plant to the transmission system	Art. 42	The transmission system operator shall not be entitled to refuse the connection of a new power plant or energy storage facility on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission system.	Agree

Comment:

We are in line with the proposal as power plants and storage sites might be connected to the DSO grid and the TSO has to handle the energy (flow).

Independence of the Transmission System Operator

Topic	Article	Commission Proposal	EURELECTRIC's view
Independence of the TSO	Art. 47.3	The vertically integrated undertaking and its subsidiaries performing functions of generation or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of generation or supply, nor receive dividends or any other financial benefit from that subsidiary.	Disagree

Comment:

The proposed text redrafts the article about the ownership of TSOs. Our understanding is that this proposal should be a semantic clarification, but due to the proposed change the meaning of the text becomes equivocal (it can also be interpreted in a way that extends the ban on the ownership in the ITO to vertically integrated undertakings). In order to avoid an interpretation that is not coherent with the ITO model, we recommend keeping the original text. EURELECTRIC recommends keeping the wording "of the vertically integrated undertaking".

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



Union of the Electricity Industry - EURELECTRIC aisbl
Boulevard de l'Impératrice, 66 - bte 2
B - 1000 Brussels • Belgium
Tel: + 32 2 515 10 00 • Fax: + 32 2 515 10 10
VAT: BE 0462 679 112 • www.eurelectric.org
EU Transparency Register number: 4271427696-87