

## Electricity Directive

*Informal EURELECTRIC input on the Council position REV 3 from 29 November 2017*

**Overall, EURELECTRIC welcomes the Council's proposed changes to the Commission proposal, particularly for the articles dealing with contractual rights, energy poverty and data format.**

### Regulated Prices

EURELECTRIC supports a complete phase out of regulated prices and remains fully supportive of the Commission's proposal. While we understand that several Member States would like to delay the phase out, we deeply regret that the Council now leaves it open for Member States to keep regulated prices in place as long as they deem it necessary<sup>1</sup>. Nevertheless, we welcome the proposed safeguards to limit the impact of public intervention on wholesale market price setting. Finally, we would welcome clarification that Member States who have already phased out regulated prices should not re-regulate them.

### Billing / Disclosure of energy sources

EU and national requirements on energy bills are already extensive. Because of this, the bill is often overloaded with information and confusing for consumers. We think the best way to improve the existing framework is to make a clearer distinction between the energy bill (which should only contain key information such as consumption and price to pay) and billing information (which should contain all additional information about consumers' profile and rights, as defined in Annex II) and could be provided in different ways (paper, telephone, apps, webpage, etc.) and at intervals depending on individual consumer preferences. In this regard, we welcome the Council's proposed definition of billing information. However, we would suggest to amend the Council's proposed wording for Recital 30 and Annex II as follows: *"Other information items should be available to final customers ~~in~~, with or signposted to within their bills"*.

As for the disclosure of energy sources, we think that it would be much clearer for consumers to receive information about one mix only (and not three as currently proposed). In addition, we think such information should primarily be communicated as billing information and not through the bill itself.

### Comparison Tools

We are worried by the Council's proposal according to which Member States may decide not to require verification of private Comparison Tools (CT) if a publicly run CT exists. Private CTs are market parties which need regulatory oversight like any other market player. Indeed, private CTs may rank energy offers/suppliers differently depending on the fees they get from them. If not properly regulated, they can mislead consumers, create distrust in the market and lead to consumer disengagement.

### Energy Communities

The Council's approach to Energy Communities is more pragmatic than the original proposal. We are in favour of energy communities being held responsible for imbalances they cause in the system. We further support that customer rights should be equal regardless of participation in an EC. However, for the avoidance of doubt, network charges (Art. 16 2bb) must account for network capacity reserved in addition to electricity fed from main grid to an energy community and vice-versa.

### Dynamic Pricing

We fully support the Council's proposal that suppliers should be able to offer dynamic price contracts, but only final customers who have a smart meter installed can request to have such a contract. However the dynamic pricing definition (Art. 2.11) imposing reflection of day-ahead and intraday spot prices is much too restrictive, retail markets need more diversity adapted to customers' needs by allowing the development of prices list based on day-ahead or intraday such as advanced forms of time-of-use and critical peak pricing. Independently of

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<sup>1</sup> As pointed out by ACER, *"Artificially low regulated prices (even without pushing them below costs) limit market entry and innovation, prompt consumers to disengage from the switching process and consequently hinder competition in retail markets. In addition, they may increase investor uncertainty and impact the long-term security of supply. Furthermore, regulated prices (even when set above costs) can act as a pricing focal point which competing suppliers are able to cluster around and at least in markets featuring strong consumer inertia can also considerably dilute competition."* (2015 ACER/CEER Market Monitoring Report, p.87)

that remark, we agree with the fact that the national regulatory framework enables electricity suppliers to offer a dynamic electricity price contract.

### Demand Response Aggregation

We support the Council proposal that aggregators shall be financially responsible for the imbalances they cause in the electricity system, however EURELECTRIC believes that the need to ensure the remuneration of energy following load shifting activation in Art. 17.3(db) is still not targeted. The word “*may*” must be replaced by “*shall*”, as currently it suggests that the compensation (i.e. payment of energy injected into the system) is optional, which should not be the case. The last sentence calling for taking account benefit when designing the compensation payment ignores the fact that in economic law, any arrival of a new efficient market actor leads to a price decrease, it doesn't means that this new market entrant must be paid to enter a market and rewarded for that.

### Task of TSOs & DSOs

- ) DSOs are requested to cooperate with the TSOs when procuring flexibility/balancing services in the market and to collaborate for the effective participation of market participants in the markets (Art. 31). EURELECTRIC calls for the same provision for the TSOs when procuring balancing services or services for congestion management and to define the technical modalities for the participation in the markets in close cooperation with the DSOs according to the article 182 of the guideline for system operators and to the article 53 of the recast of the Electricity regulation, and in line with all relevant provisions of EB GL. Those provisions are requested in article 41 of the recast of the Electricity Directive and article 5 of the recast of Electricity Regulation. We support the proposal for DSOs to procure non-frequency ancillary services in the market unless a regulatory authority identifies this process is economically not efficient.
- ) EURELECTRIC is concerned to see that more data management, cyber security and data protection tasks are given to TSOs. Data management, cybersecurity and data protection are traditional DSO tasks and overlaps will inevitably occur. TSOs have a role to play but should not be the only actors with such responsibility. Bearing in mind that cooperation between TSO and DSO is essential, we suggest to give the same responsibilities to the DSOs in the article 31 or to remove them from the TSO tasks. We note the same provisions on demand response; here we dispute the involvement of TSOs when such activities are linked to the final customer. We propose to remove the task ‘demand response’ from the list.

### Storage ownership

EURELECTRIC supports the new amendments made by the Council related to the ownership of energy storage facilities by network operators aiming to prevent distortion of competition and to eliminate the risk of discrimination. We are pleased with the clarification that DSOs may, by way of derogation, be allowed to own energy storage facilities when they are used for the sole purpose of ensuring a secure and reliable operation of their networks but not for balancing nor congestion management and when the regulators have granted their approval. EURELECTRIC disagrees with the exception for TSOs to be able to invest in new batteries storage facilities with a final investment decision until 2023 when the entry into force of the current directive is before. We also disagree with the avoidance of a public consultation to assess the market for fully integrated network components given to the DSOs. The requirements of art.36 should be aligned to those of article 54.

## Electricity Regulation

### *Informal EURELECTRIC input on the Council position REV3 from 30<sup>th</sup> November 2017*

#### Energy Market functioning and Network Codes

- Regarding Art. 5 on Balancing:
  - EURELECTRIC supports that ultimately with more product convergence, the settlement of both standard and specific balancing products shall be based on marginal pricing, pay as cleared, unless impossible due to non-comparable products. For this last case, market parties shouldn't have to face distortions (Art. 5.4).
  - In addition, the provision limiting 40% of balancing capacity procurement to one day and the rest to one month (and maximum 3 months after derogation) leaves no space for specific products for longer period. Procurement on multiple auctions with various lead times seems to be the most relevant design.
- The impact of the bidding zones' reconfiguration on market efficiency, liquidity and the long-term value of existing assets should be considered with due care. We welcome the decision-making process involving the EC and affected Member State (Art. 13.4a-f). Indeed this process is based on an assessment of all available solutions to solve structural congestions on equal footing (TSO coordination, use of remedial actions, grid investments, etc.) before a more impacting bidding zone reconfiguration is considered. We welcome that the supranational intervention is only used as a last resort solution in case of disagreement between affected MS and/or if the TSOs do not comply with the 75% of thermal capacity of each interconnecting line. (Art.13.4f). Suggested deadlines seem however quite long.
- Increasing the availability of commercial capacity across borders is crucial to allow further market integration. EURELECTRIC is therefore fully supportive of the EC original proposal for Art. 14, which is reflective of ACER Recommendation 02/2016, forcing TSOs to explore the most efficient congestion management options from a system perspective.
  - We strongly support the introduction by the Council of clear provisions on sharing of re-dispatching and countertrading costs, including a "polluter pays principle" (Art. 14§11). This is a must to ensure TSOs get the right financial incentives and economic signals to maximise cross-border capacities in a cost-efficient way. Unscheduled flows should not be the only "polluter" considered though.
  - We are concerned by the provisions of Art. 14.7a that allows TSOs to allocate part of the cross-border capacity to accommodate for unscheduled flows, including loopflows. This is against the spirit of ACER Recommendation 02/2016. This provision, as well as the last sentence of Art. 14.11, should be removed. If Article 14.7a is maintained, it should be modified as follows to ensure that this provision is subject to a cost-efficiency test: *"Based on ~~a proposal~~ **evidence of increased overall social welfare presented** by all transmission system operators of a capacity calculation region, the relevant national regulatory authorities [ ] shall approve [ ] the level of percentage of total available cross-zonal capacity, which has been calculated in accordance with the capacity calculation methodology, to take account of cross-zonal unscheduled flows to the extent that could be expected [ ] without structural congestions in a bidding zone. [ ]*
  - Even if we welcome the Council's intention, the proposed minimum threshold of 75% of the thermal capacity of each interconnecting line (Art. 14.7.c) needs to be clarified: Does it refer to physical capacity? This proposal may indeed go beyond what is practically feasible. We should avoid pushing for hard number and rather keep the initial spirit of the EC proposal, based on ACER Recommendation 02/2016, which aims at optimising cross-border capacity in a cost-efficient way, taking into account the n-1 criterion.
  - Last but not least, on art 14.4, it should be ensured that the possibility to introduce (national or regional) ID auctions is subject to the restrictions foreseen in CACM guideline.
- In relation to the proposed list of the Network codes/Guidelines, we would like to point it out that although EURELECTRIC may consider as a good option to have a network code for DSO congestion management drafted by the EU DSO entity, we disagree with a network code that gives financial rules for imbalances related to the article 17. Compensation rules must remain under NRA scrutiny. EURELECTRIC is pleased to see that the Council has kept the removal of the network code on harmonisation of distribution tariffs. At the same time, related to Art.53-57, EURELECTRIC stresses NCs/GLs should be technology neutral. Topics already addressed in existing NCs/GLs should not be covered by new NCs/GLs hence no new NC/GL has to be written if finally unnecessary. At last, involvement of ENTSO-E and the forthcoming planned EU DSO entity in relation to the NCs/GLs should be on an equal footing.

## RES Integration

- Whilst we recognise the effort to lower the thresholds proposed by the EC, there is no need to incentivise the development of new exemptions from balancing responsibility or new priority of dispatch provisions based on the size of the projects or the type of technologies (Art. 4, 11). In order not to damage the investment environment in the sector, the existing exemptions should however be kept. Market participants may be incentivized to voluntarily accept new responsibilities against compensation.
- In Art. 12, it is necessary to change “redispatching” for “countertrading and redispatching” in the title and first subsections of the article. This would ensure that countertrading can be considered on an equal footing with redispatching, at least for congestions on critical network elements under scrutiny of the RSCs.
- We call for a more flexible use of re-dispatch in order to decrease congestions in the electricity grid with a high penetration of intermittent renewables. Concretely, we recommend allowing distribution network operators to plan for economically efficient limited redispatching up to 5% of “annual produced energy” instead of “installed capacity” (as currently proposed in the text – cf. Art. 12.4.a). This would allow distribution system operators more flexibility and therefore improve efficiency of curtailment where underpinned by a positive cost-benefit analysis. The current proposal impairs more efficient curtailment methods implemented in some Member States and removes the operator’s ability to apply appropriate, more flexible grid and market-related operational measures. These are currently allowing for a more cost-efficient usage of European networks – to the benefit of the consumer.

## Capacity Mechanisms and adequacy assessment

- We welcome the Council’s approach toward resource adequacy assessment ensuring that European adequacy assessment takes into account national assessment and specificities (Art. 19 & 19.a). We support the Council’s proposals to combine and compare different geographical scopes (national and European adequacy assessments) before implementing security of supply measures.
- We support the proposed compromise for the new scope of the EPS implementation (Art. 23.4), although EURELECTRIC reiterates that an EPS coupled with capacity mechanisms does not support cost-effective decarbonisation, increases costs for consumers and creates risks of security of supply and gas import dependency.
- When designing capacity mechanisms, Member States shall include a provision which would ensure economic viability of the assets required to secure the desired level of adequacy.
  - EURELECTRIC welcomes the deletion of the proposed limitation for the duration of capacity contracts that was in the Council REV2 (Art. 23.3.f) as it was going i) against the objective of capacity markets to provide investment signals for firm capacity needed to ensure SoS (generation, demand response, storage) and ii) not allowing operators to cope properly with the industrial constraint linked to maintenance cycles for existing assets. There is no one size fits all approach to assessing what contract lengths are needed to attract different types of investments.
  - In the same way, we are concerned about the fact that MS should include a provision to phase out capacity mechanisms within 4 years (Art.23.5.a) that tend to a stop-and-go approach. It is crucial to ensure sufficient visibility to market participants on future revenues.
- Finally, we welcome the Council’s move toward cross-border participation in strategic reserve “*where technically feasible*” (Art. 21.1), as all capacity mechanisms should be open to direct cross-border participation.

## ROCs

An approach where TSO coordination aims at optimising regional welfare is a prerequisite to achieve the Internal Energy Market. The framework proposed shall ensure:

- Ambitious and transparent coordinated capacity calculation resulting in the allocation of the optimal volume of cross-border transmission capacity to the market (Art. 14)
- A fully transparent and systematic reporting when TSOs derogate from ROC (or their future name) instructions. Therefore, we fully support the Council’s approach asking for TSOs to transparently report the detailed reason why they opt out (Art.38.2a).
- A greater facilitating role given to ROCs on balancing capacity sizing and procurement (Art. 34 paragraph 1);
- An enhanced regional governance framework for Member States and NRAs (Art. 7 ACER Regulation).

## EU DSO Entity (Art 49-55)

EURELECTRIC is concerned on how the Council has reduced the implications and the responsibilities of the EU DSO Entity in comparison to the original ambition of the European Commission. As proposed here, the EU DSO Entity is no longer responsible for convening the drafting committee for distribution codes and to submit proposals. EURELECTRIC strongly opposes assigning responsibility to ENTSO-E for any distribution code related. ENTSO-E and the EU DSO entity should be treated on a non-equal footing. Furthermore, we advise against defining the structure and the voting process of the EU DSO Entity in EU legislation. Such details should be established in the statutes analogue to how it was done for ENTSO-E. Enshrining operational principles in legislation may lead to complex and time-intensive legislative review should the need for modification arise.