Eurelectric Priorities for the Electricity Market Design Trilogues

Eurelectric position paper

November 2023

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:
- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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Markets & Investments Committee
Customers & Retail Services Committee
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Electricity Market Design Reform: Eurelectric's Key Asks for the Trilogues

The ongoing Electricity Market Design reform comes at a point where we see an urgent need for a significant roll-out of renewable and low-carbon technologies, and greater investment in the distribution system which supports them, to meet the ambitious decarbonisation targets needed for the energy transition. Visibility on and stability of the regulatory environment are key prerequisites for these investments to take place.

At the same time, the European electricity market's robust performance in maintaining competition despite high energy prices, its vital role in averting a more severe crisis, bolstered by cross-border trading that ensured European solidarity and security of supply, must be recognised and preserved.

In view of the trilogue negotiations, find below Eurelectric's recommendations to secure a deal aiming at protecting consumers from the volatility of short-term markets, solidifying a reliable investment framework, strengthening the effectiveness of power markets, and shoring up adequacy needs to maintain security of supply.

Strike the right balance between consumer protection & supply regulation to avoid unintended consequences on retail competition.

- **Ensure suppliers' resilience through stress tests:** The energy crisis revealed that a handful of rogue suppliers employed risky behaviours and did not hedge properly. Normalising hedging strategies, especially by tying them to specific hedging instruments (e.g., Power Purchase Agreements [PPAs]), is not the right policy tool to ensure the resilience and financial robustness of suppliers. Suppliers are the most well-placed to know how to hedge their portfolio based on their market's specificities. Instead, we would recommend empowering national regulatory authorities (NRAs) to be able to check suppliers' resilience against market shocks through stress tests & reporting requirements and support the Parliament's proposals in that regard **(Art. 18a Dir)**.
- **Allow suppliers to develop specific offers for specific consumers:** Eurelectric does not recommend making fixed-price products mandatory as a tool against high prices. Fixed-price products offer customers a long-term view of their energy costs. However, given the associated hedging costs, they do not guarantee the lowest price for customers and, if badly designed, may not always incentivise customers' demand flexibility. Such contracts should be tied to the right for suppliers to charge proportionate early termination fees to avoid that suppliers suffer a financial loss when trying to resell the hedged electricity or where they put the system out of balance and incur imbalance charges **(Art. 11 Dir)**.
- **Carefully assess the codification of a ban on disconnections**: While well-intended to protect vulnerable customers, such bans lead to issues like debt stacking for the customer and significant damage for suppliers if customers are not incentivised to pay their bills. Such provisions must be limited to vulnerable and energy-poor household customers, where these are not sufficiently secured by social policy measures, and not be extended to customers "at risk of energy poverty" or during the time of judicial proceedings as suggested by the European Parliament. These provisions need to be coupled with measures by the Member States to guarantee compensation for associated losses, as proposed by the European Parliament **(Art. 28a Dir)**.

Unlock investments needed to achieve our 2030 decarbonisation targets through a clear, predictable and technologically neutral regulatory framework.

- **Define quantitatively focused and well-defined emergency crisis-triggering criteria** to avoid creating a *de facto* permanent crisis. It should be ensured that the Council is involved together with the European Commission in the triggering decision, as well as any decision regarding the prolongation of the state of crisis. Furthermore, the introduction of a wholesale price threshold (at least €180/MWh) could give predictability to market participants and reduce concerns over unexpected market interventions. Furthermore, we regret the exclusion of the year 2022 from the calculation of the average wholesale price level **(Art. 66a Dir)**.
- **Avoid locking in outdated solutions:** Crises are unexpected. Locking in some measures based on the past energy crisis is not efficient for addressing future crises. Introducing pre-defined measures such as the capture of inframarginal rents or a similar mechanism such as a "temporary relief valve" **(as proposed by the European Parliament in Art. 69 Reg)** must be avoided. Protecting vulnerable customers should always be addressed through social policy measures rooted in the existing legal framework and must not result in systemic market interventions of any kind.
- **Foster the implementation of long-term hedging opportunities for customers and market parties:** Direct price support schemes (i.e., contracts for difference [CfDs] or instruments with equivalent effect) and long-term contracts (i.e., PPAs) allow both consumers and producers to have stable contract prices and asset revenues respectively. These contracts should remain voluntary, technology-neutral, allocated on a competitive basis when possible, and should not be applied retroactively in a mandatory manner. Investments in existing energy generation infrastructure shall be facilitated through CfDs or similar mechanisms, exclusively for the purpose of repowering, capacity expansion, and the extension of the asset's operational life. Contractual innovation should be preserved when public support for new investments is needed **(Art. 19a & b Reg)**. Long-term contract design needs to be adequate to allow the different instruments to complement each other.
- **Facilitate the adoption and implementation of capacity markets where needed:** To ensure adequacy and security of supply, capacity mechanisms could be a core part of the market design. Member States should be able to freely choose whether to implement capacity mechanisms. We welcome the Council's proposal aiming at removing their temporary/last-resort nature and the European Parliament's concrete proposal to ease adoption and implementation **(Art. 22 Reg)**.

Boost needed investments in grid extension and digitalisation & unlock flexibility potential.

- **Ensure implementation of existing provisions:** Implementation of existing demand-side flexibility and aggregation provisions in the Electricity Directive (Art. 13, 15, 17, and 32) - including the accelerated roll-out of smart meters to all customers - is a no-regret option for lagging Member States. We agree with the Council's proposal to allow for the use of dedicated measurement devices, upon the consent of the System Operator, provided that it is interoperable with the main meter and that it meets technical requirements which will be defined in the Network Code on Demand Response **(Art.7b Reg)**. This will provide a bridge for Member States that have not yet deployed smart meters or whose main metering systems currently lack the telemetric capabilities needed to adequately promote the uptake of flexibility schemes.

- **Promote anticipatory investments:** Grids are the backbone of the energy system, but we are lagging on needed investments by 2050 which amount to a necessary increase of +84%. Removing national barriers to investing in grids is a key prerequisite. In the text, the provision on anticipatory investments in grids is pivotal, but further clarification about the regulatory treatment is needed to operationalise this possibility in practice and ensure SOs do not have financial disincentives as a result **(Art. 18(2) Reg)**. However, EU legislators should not require geographically differentiated tariffs to be implemented, as this should be left to the Member States.
- **Limit the use of peak shaving to emergency situations:** Peak shaving products could be a potentially distortive tool and the proposed limitation by co-legislators to emergency crises (i.e., tying this provision to Art. 66a Dir) is welcome. Such a tool shall be carefully assessed, as suggested by the European Parliament, subject to the condition of a positive impact assessment and expanded to all SOs, transmission and distribution system operators (TSOs and DSOs, respectively) **(Art. 7a Reg)**.
- **Consider all flexibility options in a market-based, technologically neutral way and in compliance with decarbonisation targets:** All flexibility options should be considered, with no preferential treatment to demand-response and storage. If necessary to cope with objective market failures and foster their development, flexibility options may benefit from a dedicated support instrument, which does not distort the functioning of existing markets, and must consider the remuneration already received from capacity mechanisms when applicable **(Art. 19e Reg)**.
- **Include the flexibility assessment in existing EU long-term scenarios:** To make the flexibility assessment an effective tool to further enhance flexible assets and services, it should be directly integrated into existing assessments like the European Resource Adequacy Assessment and the Ten-Year Network Development Plan **(Art. 19c Reg)**.

Foster the implementation of already existing provisions without complexifying the market design.

- **Ensure a level playing field between energy sharing and traditional suppliers:** Energy sharing should not create a professionally commercialised alternative to traditional supply where commercial energy sharers would not be held to the same regulations and standards as traditional energy suppliers. Therefore, the geographical limitation, the introduction of a sharing organiser, and the clarification of the allocation of costs associated with energy sharing by the European Parliament are necessary. Furthermore, energy sharing should also not introduce unnecessary and excessive obligations for DSOs **(Art. 15a Dir)**.
- **Reject inefficient and burdensome proposals for long-term contracts:** Long-term contracts are instrumental in shielding consumers from short-term volatility. Obstacles to long-term contracting must be avoided. The proposed Union PPA database must be rejected since it will only increase bureaucracy and administrative costs for market players and force them to disclose commercially sensitive data **(Art. 19aa Reg)**.
- **Implement quick wins to improve forward market liquidity before implementing untested solutions:** We oppose the idea of introducing virtual trading hubs until their relevance has been demonstrated by a positive impact assessment. We welcome the Parliament's proposals to address first quick wins to enhance and support forward market liquidity, such as longer maturities, more frequent auctions, and higher volumes of long-term transmission rights or

equivalent measures. The proposed impact assessment should be better defined in the Regulation, including an evaluation of the allocation of costs and risks and a proper stakeholder consultation. Moreover, additional actions aiming at improving the liquidity of the forward market such as participating in market-making activities should be organised on a voluntary basis **(Art. 9 Reg)**.

- **Reject disruptive solutions which will be detrimental to the entire market:** The proposed shift to unit-based bidding by the European Parliament would represent a major change for most EU Member States. Such a shift would result in a more costly and inefficient bidding process and would go against the principle of zonal market where any asset contributes to the balance of a bidding zone regardless of its location and type **(Art. 7.2 ca; Art. 7.2.f Reg)**.

ANNEX – Overview of Eurelectric's position per article

Topic	Preferred Position (Commission, Parliament, Council)	Explanations
Peak shaving *(Art. 7a - Reg)*	Mix of both institutions – see Eurelectric amendments	• Peak shaving products should be limited to emergency crisis (art. 66a). • It shall be carefully assessed, as suggested by the European Parliament, subject to the condition of a positive impact assessment and expanded to all system operators, TSOs and DSOs.
Dedicated Metering Services *(Art. 7b – Reg)*	Council	• Main meters complying with the Metering Instruments Directive (MID) should be the single point of reference for system operators for balancing & settlement. Dedicated measurement devices often overlook distribution losses, hindering comprehensive oversight by DSOs and causing issues in billing and data management.
Sharing of Order Books *(Art. 7.1 & 59.1(b)- Reg)*	Commission with some proposals from Parliament	• Remove parts introducing the notion of "undertaking" as it could be misinterpreted as applying to market participants holding shares in power exchanges. • Narrowed down the scope to the original Commission proposal and areas with clear benefits in sharing intraday liquidity, removing any reference to day-ahead market and potential barrier to local products trading.
Unit-Based Bidding *(EP: Art. 7.2 ca – Reg, Art. 7.2.f - Reg)*	Reject Parliament	• The unit-based bidding shift would represent a major change for most EU Member States and will result in a more costly and inefficient bidding process. Moreover, it would go against the principle of zonal market where any asset contributes to the balance of a bidding zone regardless of its location and type.
Forward Market Liquidity & Virtual Trading Hubs *(Art. 9 - Reg)*	Parliament	• Virtual hubs introduction should be considered only after a positive impact assessment. • We welcome that EP addresses first quick wins to enhance and support forward market liquidity, such as longer maturities, more frequent auctions, and higher volumes of long-term transmission rights or equivalent measures.
Grids anticipatory investments *(Art. 18.2 - Reg)*	Parliament	• The provision on anticipatory investments in grids is pivotal, but further clarification about the regulatory treatment is needed to operationalize this possibility in practice and ensure SOs do not have financial disincentives as a result.

Long-term contracts – PPAs *(Art. 19a - Reg)*	Council	• PPAs shall remain a technologically-open voluntary long-term contracting mechanism for both existing and new generation assets. • The proposed ad-hoc article on a Union database by the Parliament risks of substantially increasing bureaucracy and administrative costs for market players, and to public disclose commercially sensitive data which would be against competition rules.
Long-term contracts – CfDs (Art. 19b - Reg)	Council including the Parliament proposal to allow for equivalent mechanisms	• We welcome the Council's approach preserving voluntary participation of market participants as well as that provisions on CfDs focus on new power-generation facilities. Thus, limiting the possibility of a mandatory retroactive application on existing assets. Furthermore, it provides detailed design criteria applying to all CfDs - e.g. preventing distortive effects on dispatch, operation and trade (cf. Art.19b - 1a). While mandating the Commission to assess compliance with State Aid rules and the above-mentioned criteria. • Additionally, Member State shall have sufficient flexibility on the allocation of revenues (or equivalent in financial value) to reduce electricity costs for final customers. • However, we welcome the reference to contractual innovation in the Parliament's position stressing the importance of including not only CfDs but also equivalent mechanisms.
Flexibility provisions *(Art. 19c&e - Reg)*	Parliament with some proposals from Council	• We would welcome an economic system-wide assessment to address flexibility needs and ultimately secure adequacy in the most cost-efficient way. Flexibility solutions should be compared against all the alternatives. Considering this, we welcome the Parliament's proposal charging ACER to draw up a report at the Union level and the use of national reports as a feed-in to the ERAA, TYNDP, and NDPs (cf: Art.19c & Art. 19d). • While Parliament's proposal is appreciated for referencing hydropower as a flexibility asset, the Council's version is praised for simplifying the article and allowing for alternative measures to achieve flexibility targets (cf: Art. 19e). Eurelectric advocates to maintain technological neutrality for economically efficient flexibility services. However, flexibility support schemes should not

		distort the functioning of existing markets and must consider the remuneration already received from capacity mechanisms when applicable.
Emergency measures *(EP: Art. 69 – Reg, Council: Art. 66a(8))*	Reject Parliament & Council	• Introducing pre-defined measures such as the capture of inframarginal rents or a similar mechanism such as a "temporary relief valve" must be avoided. • Avoid extending the cap on inframarginal rent until 30th June 2024 (as foreseen in the Council General Approach).
Fixed-price products *(Art. 11 + Art. 12.3 – Dir)*	Council + Eurelectric amendment to address early termination fees	• Proposed derogation to fixed-price products obligation is welcome. Such contracts offer customers a long-term view of their energy costs, but given the associated hedging costs, they do not guarantee the lowest price for customers. • Such contracts should be tied to the right for suppliers to charge proportionate early termination fees to avoid that suppliers suffer a financial loss. This crucial point remains to be addressed in Trilogues. See our amendment proposal on Art. 12.3.
Ensure a level playing field between energy sharing & traditional suppliers *(Art. 15a - Dir)*	Mix of both institutions but mostly Parliament – see Eurelectric amendments	• Energy sharing should not create a professionally commercialised alternative to traditional supply, therefore it should be geographically limited. • Energy sharing should also not introduce unnecessary and excessive obligations for DSOs. • The obligations should be such that they are suitable and possible to implement for the different metering, balance settlement and information exchange methods of the Member States.
Supplier Hedging Obligations *(Art. 18a - Dir)*	Parliament	• Suppliers are the most well-placed to know what instruments are the best to hedge their portfolio based on their market's specificities. • Instead of hedging obligations, Eurelectric welcomes the EP proposals to check suppliers' resilience against market shocks through stress tests & extending the list of hedging instruments beyond PPAs.
Ban on disconnections *(Art. 28 - Dir)*	Council & Reject Parliament	• Such provisions must be limited to vulnerable and energy-poor household customers, where these are not sufficiently secured by social policy measures. • It should not be extended to customers "at risk of energy poverty" as suggested by the European Parliament.

Emergency crisis-triggering criteria *(Art. 66a – Dir)*	Mix of both institutions -see [Eurelectric amendments]	• Include the Council in the triggering decision. • Include the proposed 180 EUR/MWh threshold for wholesale price criteria by the Parliament. • Keep the criteria (c) on the overall impact on the economy. • Remove the prolongation of the Council Regulation (EU) 2022/1854.
Capacity markets *(Art. 22 – Reg, EP: Art. 69 - Dir)*	Mix of both institutions – see [Eurelectric amendments]	• Council's proposal aiming at removing their temporary/last-resort nature is welcomed. • European Parliament's concrete proposal to smooth adoption and implementation is appreciated.

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

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