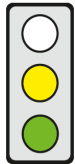


KEY ISSUES

Objective of the Regulation: Competition on the wholesale electricity markets is to be strengthened and cross-border power flows in the EU shall be increased.

Affected parties: Private and commercial electricity consumers, electricity suppliers and network operators



Pro: (1) The duty imposed upon the Member States to ensure that prices on the wholesale electricity markets are not manipulated by state intervention, strengthens competition between electricity producers.

(2) Uniform EU rules on the design of capacity mechanisms may reduce distortions of competition in the internal market.

Contra: Restricting participation in capacity mechanisms to power plants with low CO₂ intensity only leads to the saved CO₂ emissions being shifted to other industrial sectors.

CONTENT

Title

Proposal COM(2016) 861 of 30 November 2016 for a **Regulation** of the European Parliament and of the Council **on the internal market for electricity** (recast)

Brief Summary

► Context and objectives

- Current regulation of the electricity markets (“Electricity Market Design”) in the EU is based on the “Third Internal Energy Market Package” which consists of the Internal Electricity Market Directive [2009/72/EC], the Network Access Regulation [(EC) 714/2009] and the Regulation [(EC) 713/2009] establishing the EU Energy Agency (ACER) (see [cepCompass Climate and Energy](#), p. 46 et seq.). The provisions contained therein aim to ensure free competition in the internal electricity market as well as cross-border trade in electricity by (p. 3)
 - unbundling the formerly vertically integrated electricity companies, that not only produced and sold electricity but also controlled its transport to the consumers,
 - the right of access for all electricity suppliers to the electricity grids,
 - free choice of electricity supplier for electricity consumers,
 - the removal of barriers to the electricity trade within the EU,
 - market supervision by independent national regulatory authorities and
 - EU-wide cooperation between regulators within ACER and between national transmission system operators (TSOs) within the European Network of Transmission System Operators (ENTSO-E).
- This proposal for a Regulation is part of a comprehensive energy package which includes inter alia:
 - Recast of the Internal Electricity Market Regulation [(EC) 714/2009; COM(2016) 861, this [cepPolicyBrief](#)],
 - Recast of the Internal Electricity Market Directive [2009/72/EC; COM(2016) 864, see [cepPolicyBrief 09/2017](#)],
 - Recast of the ACER Regulation [(EC) 713/2009; COM(2016) 863].
- With this proposal, the Commission is aiming to strengthen competition on the wholesale electricity markets and increase cross-border power flows in the EU.
- It therefore wants to recast the Network Access Regulation [(EC) 714/2009] and at the same time
 - consolidate the rules on the cross-border trade in electricity in the EU,
 - press ahead with integrating renewables into the electricity markets and
 - simplify market access for new energy technologies - e.g. to control demand for electricity.
- The proposals for setting up regional operational centres and the EU association of distribution system operators (EU-DSO) are analysed together with the proposal to recast the ACER Regulation [(EC) 713/2009; COM(2016) 863].

► **Electricity markets and network access**

- Member States, regulatory authorities, network operators and power exchanges must ensure that compliance with uniform EU rules brings about the following situation on the wholesale electricity markets (new Art. 3 (1)):
 - prices are formed based on supply and demand and not by state intervention,
 - cross-border trade in electricity and physical power flows are not obstructed and
 - producers of electricity decide to enter or exit the market based on economic considerations and are not influenced by the state.
- Power exchanges must be able to offer "forward hedging products" for long-term protection against electricity-price fluctuations (hedging). Member States are not permitted to restrict the trade in hedging products on a regional basis. (new Art. 8 (3)).

► **Definition of bidding zones**

- Bidding zones – also known as price zones – are market areas in which the balancing of the total supply and demand for electricity gives rise to a uniform wholesale electricity price.
- Bidding zones will be designed in such a way as to avoid structural congestion in their transmission networks which may restrict power flow (new Art. 13 (1)).
- The bidding zones generally correspond to the territories of the Member States. One exception is currently the joint bidding zone of Germany and Austria.
- The EU Energy Agency (ACER) and several transmission system operators (TSOs), or the regulatory authorities of a bidding zone, may review the geographical definition of an existing bidding zone ("bidding zone configuration") [Regulation (EU) 2015/1222, Art. 32 (1)].
- Prior to the review, participating transmission system operators must submit a proposal for the methods to be used [Regulation (EU) 2015/1222, Art. 32 (4)]. ACER must approve the proposed methods and may require amendments [new Art. 5 (3) ACER Regulation as amended by COM(2016) 863].
- On conclusion of the review of a bidding zone configuration, the TSO must [new Art. 13 (3) in conjunction with Regulation (EU) 2015/1222, Art. 32 (4)] submit a proposal on whether to amend or maintain the bidding zone configuration.
- Based on the TSO's proposal, the Commission adopts a decision to maintain or amend the bidding zone configuration (new Art. 13 (4)).
 - Prior to adopting its decision, the Commission must consult the "relevant stakeholders" – electricity producers, electricity traders, transmission and distribution network operators (new Art. 13 (7)).
 - The Commission must justify any deviations in its decision from the TSO's proposal (new Art. 13 (5)).

► **Capacity mechanisms**

- ENTSO-E must carry out an annual assessment of whether existing power plant capacity is sufficient to ensure the supply of electricity in the EU for the next ten-year period (Art. 19 (1)).
- Building on this, Member States must (new Art. 18)
 - monitor power plant capacity within their territory and
 - eliminate any "regulatory distortions" preventing adequate electricity production.
- Member States may – where necessary to ensure adequate electricity supply – support power-plant capacity by way of "capacity mechanisms" which comply with EU state aid rules [new Art. 23 (1); see also Working Paper SWD(2013) 438, see [cepPolicyBrief 17/2014](#)].
- Capacity mechanisms remunerate the provision of secure power-plant capacity irrespective of the actual amount of electricity produced by the power plant (see [ceplinput 15/2015](#)).
- In this regard, Member States must comply with the following "principles":
 - Capacity mechanisms must not create "unnecessary" distortions of competition on the ordinary electricity markets or limit cross-border trade in electricity (new Art. 23 (3)).
 - Capacity mechanisms must be open to power plants in other Member States where these are connected via a power line directly to the Member State which operates the capacity mechanism (new Art. 21 (1)).
 - Member States are not permitted to prohibit power plants located in their territory from participating in the capacity mechanisms of other Member States (new Art. 21 (3)),
 - Power plant operators can participate in several capacity mechanisms (new Art. 21 (5)).
- ENTSO-E must develop a proposal for the methods to be used to assess the adequacy of the electricity supply and to define the technical specifications for cross-border participation in capacity mechanisms (Art. 19 (2) and Art. 21 (10)). ACER must approve the proposed methods and may require amendments [new Art. 10 (3) ACER Regulation as amended under COM(2016) 863].
- Member States who introduce a capacity mechanism after entry into force of the Regulation must do this on the basis of a national "reliability standard". This reflects the desired level of security of the electricity supply in the Member State and is determined by the national regulatory authorities in accordance with a uniform EU method. (new Art. 20 (1) and (2) in conjunction with Art. 19 (5))
- Power plants with a CO₂ emissions intensity of 550 gr CO₂/kWh or more must cease participation in capacity mechanisms by no later than 5 years after the entry into force of this Regulation (new Art. 23 (4)).

► Establishment of network codes

- Every three years, the Commission issues a priority list containing the areas of regulation in which uniform EU network and electricity market rules ("network codes") are to be adopted (Art. 55 (2)).
- The Commission requests ACER to develop a non-binding framework guideline on the prioritised areas of regulation and submit it to the Commission for assessment (Art. 55 (3)).
- The Commission then commissions the electricity network association that is primarily affected by the respective area of regulation – ENTSO-E for the TSOs or the EU-DSO for the DSOs – to prepare a draft network code based on the framework guideline and submit it to ACER. ACER submits the revised draft to the Commission. (Art. 55 (8) to (10))
- On this basis, the Commission adopts a delegated act to define the respective network code (Art. 55 (1)).

Main Changes to the Status Quo

- Until now, the participating Member States have made the decision on whether to maintain or amend the bidding zone; in future this will be done by the Commission.
- New: the concrete rules on when and how to introduce capacity mechanisms.

Statement on Subsidiarity by the Commission

The creation of an internal electricity market cannot be achieved on the basis of fragmented national provisions but requires common EU rules in the areas of electricity trading and operation of the grid (p. 11).

Policy Context

The EU has developed numerous net codes and guidelines based on the existing Network Access Regulation [(EC) 714/2009] which contain rules for the integration of the European electricity markets. In order to increase transparency and provide legal certainty, the Commission wants to include the main rules on the functioning of the internal electricity market in the Internal Electricity Market Regulation which it is now proposing.

In its Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01, "Staid Aid Guidelines"), the Commission set out the criteria under which it considers the introduction of capacity mechanisms to be consistent with the internal market under Staid aid law. Its "Strategic Framework for an Energy Union" also pursues the aim of preventing distortions of competition on the internal electricity market and strengthening the role of electricity consumers [COM(2015) 80, see [cepPolicyBrief](#)].

Legislative Procedure

30 November 2016	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Energy (leading)
Committees of the European Parliament:	Industry, Research and Energy (leading), Rapporteur: Krisnjanis Karins (EVP, LV)
Federal Ministries:	Economic Affairs and Energy (leading)
Committees of the German Bundestag:	Economic Affairs and Energy (leading), European Union Affairs; Legal Affairs and Consumer Protection; Environment
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of the Member States which make up 65% of the EU population).

Formalities

Legislative competence:	Art. 194 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (Ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The duty imposed upon Member States, regulatory authorities, network operators and power exchanges, **to ensure that prices on the wholesale electricity markets are formed on the basis of supply and demand and not manipulated by state intervention, strengthens competition between electricity producers** in the internal market and therefore makes electricity production in the EU cheaper over all.

Impact on Efficiency and Individual Freedom of Choice

Bidding zones must be designed in such a way as to avoid structural congestion in their transmission networks which may obstruct the physical balancing of supply and demand within the bidding zone. **The proposed simplification of – in particular cross-border – changes to the bidding zones**, including the Commission's right to take direct action, **helps to overcome congestion in transmission networks**. The Commission's right to take direct action to amend or maintain existing bidding zones, even against the will of the affected Member States, is appropriate because they do not, at least in some cases, have sufficient incentive to agree to an amendment of the bidding zone where this gives rise to electricity price increases.

Remunerating the provision of power-plant capacity by way of capacity mechanisms on the one hand boosts the attractiveness of investment in new power plants and increases security of the electricity supply. On the other hand, such remuneration may be used improperly to give domestic power plants an advantage over foreign plants which is contrary to the internal market. **The proposed binding "principles" on the use and design of capacity mechanisms, which are uniform across the EU, may at least reduce the risk of distortions of competition in the internal market**. Of particular importance is the ban on any general exclusion of foreign power plant operators from taking part in capacity mechanisms.

A capacity mechanism should – as the Commission requires – only be introduced where it is necessary in order to achieve the reliability standard selected by the Member State. National – rather than uniform EU – reliability standards are also appropriate because the preferences of Member States as regards the security of their electricity supply may differ.

No restrictions based on climate policy should be applied when selecting the power plants to take part in a capacity mechanism because the electricity sector is in any case part of the EU-Emissions Trading System (ETS, see [cepCompass Climate and Energy](#), p. 10 et seq.), which defines the overall quantity of CO₂ emissions of all participating plants and reduces it year by year. **Restricting participation in capacity mechanisms to power plants with low CO₂ intensity**, as required by the Commission, does not result in a reduction in the overall quantity of CO₂ emissions in the ETS but **only means that CO₂ emissions, saved during electricity generation, are shifted to other power plants or industrial sectors**.

Impact on Growth and Employment

Negligible.

Impact on Europe as a Business Location

Negligible.

Legal Assessment

Legislative Competency

Unproblematic. The EU can adopt measures to safeguard the functioning of the energy market and to ensure security of the energy supply (Art. 194 TFEU).

Subsidiarity

The creation of an internal electricity market has a cross-border element. EU-wide rules on the trade in electricity, network operation and the introduction and design of capacity mechanisms are not therefore in breach of the principle of subsidiarity. This applies in particular to the proposed rule that the final decision on the definition of bidding zones be made at EU level rather than national level.

Conclusion

The duty imposed upon the Member States to ensure that prices on the wholesale electricity markets are not manipulated by state intervention, strengthens competition between electricity producers. The proposed simplification of – in particular cross-border – changes to the bidding zones helps to overcome structural congestion in transmission networks. Uniform EU rules on the design of capacity mechanisms may reduce distortions of competition in the internal market. Restricting participation in capacity mechanisms to low-emission power plants only means that the saved CO₂ emissions are shifted to other industrial sectors.