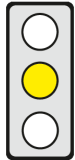


## KEY ISSUES

**Objective of the Directive:** Electricity consumers are to have more influence on the retail electricity market, and the internal electricity market will be protected against state intervention.

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



**Pro:** (1) The ban on electricity price regulation to prevent energy poverty, strengthens competition. Combating energy poverty is the task of social policy.

(2) Independent sources of information, for comparing electricity offers, support consumers when choosing their supplier.

**Contra:** (1) The fact that fixed term electricity supply contracts can be terminated prematurely by electricity consumers nullifies contractual security for electricity suppliers and makes planning an adequate electricity supply more difficult.

(2) The fact that electricity suppliers have to offer tariffs with dynamic electricity prices is inefficient where a critical level of demand for such tariffs is lacking.

## CONTENT

### Title

**Proposal COM(2016) 864** of 30 November 2016 for a **Regulation** of the European Parliament and of the Council **on common rules for the internal market in electricity** (recast)

### Brief Summary

#### ► Context and objectives

- Current regulation of the electricity market (“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 legislation aims to ensure free competition in the internal electricity market and 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 network 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 grid operators within the European Network of Transmission System Operators (ENTSO-E).
- This proposal for a Directive is part of a comprehensive energy package. This includes inter alia:
  - Recast of the Internal Electricity Market Directive [2009/72/EC; COM(2016) 864, this **cepPolicyBrief**],
  - Recast of the Internal Electricity Market Regulation [(EC)714/2009; COM(2016) 861, **cepPolicyBrief** to follow],
  - Recast of the ACER Regulation [(EC) 713/2009; COM(2016) 863].
- As a result of the increased share of renewable energy, electricity generation in the EU has become more variable, less predictable and more decentralised and therefore requires a more flexible demand side response.
- The Commission criticises the fact that intervention by Member States – which is often uncoordinated EU-wide – distorts competition on the wholesale markets and results in unnecessarily high electricity prices (p. 3).
- With this proposal for a recast of the internal electricity market Directive, the Commission wants to make electricity demand more flexible, restrict state intervention in the electricity market and strengthen the role of consumers vis à vis the electricity producers.

#### ► Market-based electricity prices and the avoidance of energy poverty

- Electricity suppliers will be free to determine the price at which they supply electricity to customers (new Art. 5 (1)).

- Member States must ensure that (new Art. 3)
  - cross-border electricity trade is not hampered by state intervention and
  - there are no “undue barriers” for market entry and market exit of electricity generators.
- Member States must establish criteria for measuring insufficient energy supply in households (“energy poverty”). They must continuously determine the number of households affected by energy poverty and report the figure to the Commission every two years. (new Art. 29)
- In future, Member States will no longer be permitted to intervene in pricing on the electricity market in order to prevent energy poverty but have to combat energy poverty “by other means” (new Art. 5 (2)).
- After entry into force of the Directive, existing state intervention in the electricity market, for the avoidance of energy poverty, can
  - be continued for up to five years insofar as it “pursues a general economic interest, is clearly defined, transparent, non-discriminatory and verifiable” (new Art. 5 (3));
  - be continued beyond five years where it is “strictly necessary for reasons of extreme urgency” and the Commission recognises that there is no reasonable alternative (new Art. 5 (4)).
- ▶ **Transparency and freedom of choice in the retail market**
  - Electricity customers must be free to choose their electricity supplier and able to switch within three weeks (Art. 4, new Art. 12 (1)).
  - Member States may permit electricity suppliers to charge switching fees to electricity customers if (new Art. 12 (2)–(4))
    - the electricity customer wishes to terminate fixed term supply contracts prematurely,
    - the electricity customer gains an advantage from the conditions attached to the fixed term and
    - the switching fees do not exceed the costs incurred by the electricity supplier as a result of the premature termination of the supply contract.
  - In order for them to be able to compare the various electricity offers, all electricity customers must have access, free of charge, to a “comparison tool” – e.g. internet portal – that is certified by an independent authority (new Art. 14 (1) and (2)).
  - The operator of a comparison tool only receives certification if (new Annex I)
    - the comparison tool is “operationally independent” of “interest in the electricity sector”,
    - its ownership structure is transparent,
    - the evaluation of electricity offers
      - is carried out according to objective criteria and up-to-date information and
      - if possible, includes all “significant” electricity offers.
  - The electricity supplier must issue an electricity bill to each customer at least once a year, free of charge (new Art. 18). The electricity bill must contain inter alia (Annex II):
    - the price to pay,
    - electricity consumption for the billing period,
    - the tariff name and
    - the contact details of the electricity supplier.
- ▶ **Active management of electricity demand by the consumer**
  - More active management of electricity demand by the consumer (“demand-side response”; see [cepPolicyBrief](#)) may allow for better management of fluctuations in the electricity supply.
  - Every electricity consumer is entitled (new Art. 11)
    - to have a supply contract from the electricity supplier with prices based on the time of day (“dynamic pricing”) and
    - to be informed by the electricity supplier of the opportunities and risks of such a contract.
  - Member States must in principle require the nationwide implementation of “smart metering” systems (amended Art. 19 (1) and new Art. 19 (2)). Electricity consumers must contribute to the costs of deploying smart metering “in a transparent and non-discriminatory manner” (new Art. 19 (4)).
  - Member States may decide against the nationwide deployment of smart metering if the costs involved are shown to exceed the benefit (new Art. 19 (2)). In this case, every electricity consumer is entitled to install a smart meter at their own cost within three months (new Art. 21 (1)).
- ▶ **Data management**
  - Electricity customers must have access, free of charge, to their consumption data and be able to decide themselves to which other companies – e.g. electricity suppliers, network operators and aggregators – such data is to be communicated (new Art. 23 (1) in conjunction with new Art. 24 (3)).
  - The company which manages the electricity consumption data must – with consent of the electricity consumer – allow other companies non-discriminatory access to the consumption data (new Art. 34).
  - The Commission will adopt an implementing act to determine a common data format and a common procedure for passing on electricity consumption data (Art. 24 (2)).
  - Member States must determine prices for access to data by other companies (new Art. 24 (3)).

## Main Changes to the Status Quo

- ▶ New: In principle, Member States are no longer permitted to intervene in the electricity prices for socio-political reasons.
- ▶ New: All electricity customers must have access to an independent “comparison tool”, free of charge, with which they can compare the electricity tariffs of the various suppliers.
- ▶ New: Common EU minimum requirements for electricity bills.
- ▶ New: Consumers can require their electricity supplier to provide a tariff with dynamic consumer prices.

## 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 for the trading of electricity and operation of the grid (p. 10).

## Policy Context

In its Guidelines on State Environment and Energy Subsidies 2014-2020 (2014/C 200/01, “State aid Guidelines”; see [cepStudy](#)), the Commission set out the criteria under which it considers state intervention in the electricity markets to be consistent with the internal market under the law on state aid. 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: Krišjānis Kariņš (EVP, LV)
Federal Ministries:	Economic Affairs and Energy (leading)
Committees of the German Bundestag:	Economic Affairs and Energy (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

## Formalities

Legislative competence:	Art. 194 TFEU (Internal Market)
Type of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

**The ban on electricity price regulation to prevent energy poverty strengthens competition** because intervention by Member States in the pricing of the electricity suppliers unduly restricts competition on the retail electricity market. **Combating energy poverty is the task of social policy.** Instead of keeping the electricity prices low by way of state regulation, the level of electricity costs for poorer households should be taken into account by the social policy of the Member States, e.g. by bringing social benefits into line with electricity price increases.

### Impact on efficiency and individual freedom of choice.

The requirement that all consumers can choose their electricity supplier themselves, increases freedom of choice and promotes competition among the electricity suppliers. **The fact that electricity supply contracts can be terminated prematurely and without reason by the electricity customers** goes too far, however, because it **nullifies contractual security for electricity suppliers** and thus **makes planning an adequate electricity supply more difficult.** In addition, compliance with a contractual period of e.g. one year does not excessively restrict the electricity customer’s freedom of choice.

**Independent sources of information for the comparison of electricity offers** – such as the comparison tools proposed by the Commission – **support consumers when choosing their supplier**. This strengthens competition among the electricity suppliers.

The nationwide deployment of smart meters is the prerequisite for a more flexible demand-side response which may allow for better management of fluctuations in the electricity supply. Member States should, as the Commission suggests, be permitted to decide against the nationwide deployment of smart meters on the basis of a cost-benefit analysis. A contribution to the costs by the consumers is, as stated by the Commission, only justified to the extent of the benefit which comes from the installation of smart meters.

Dynamic electricity prices based on the time of day may increase the willingness of electricity customers to make their consumption more adaptable to price fluctuations on the wholesale market. **The requirement that electricity suppliers have to offer tariffs with dynamic electricity prices is, however, inefficient where a critical level of demand for such tariffs is lacking** because where demand is low, the electricity suppliers' revenue will be insufficient to cover the costs of introducing the tariff. If demand for such tariffs increases in future, competition among the electricity suppliers will mean that they will be offered without any legal requirement.

**Impact on growth and employment**

Negligible.

**Impact on Europe as a Business Location**

Negligible

## Legal Assessment

**Legislative Competency**

Unproblematic. The EU is entitled to issue energy policy measures in order to secure the functioning of the energy market, to guarantee security of energy supply, to promote the interconnection of energy networks as well as to support energy efficiency, energy savings and the development of new and renewable energy sources (Art. 194 TFEU).

**Subsidiarity**

Unproblematic. EU action is justified for the creation of an internal electricity market.

## Conclusion

The ban on electricity price regulation to prevent energy poverty strengthens competition. Combating energy poverty is the task of social policy. The fact that fixed term electricity supply contracts can be terminated prematurely and without reason by electricity customers nullifies contractual security for electricity suppliers and makes planning an adequate electricity supply more difficult. Independent sources of information for comparing electricity offers support consumers when choosing their supplier. The fact that electricity suppliers have to offer tariffs with dynamic electricity prices is inefficient where a critical level of demand for such tariffs is lacking.