

## The Consumer Voice in Europe

Ref.: BEUC-X-2017-133

17 November 2017

Dear Energy Attaché,

**Re: BEUC's recommendations on proposals revising the Electricity Directive and Electricity Regulation**

I write on behalf of BEUC, The European Consumer Organisation, in view of the Council discussions on the revision of the Electricity Directive and the Electricity Regulation and the latest texts prepared by the Estonian Presidency.

We welcome several proposals included in the latest draft (REV2) such as ensuring consumers get up-to-date information on their consumption through smart meters and reducing the switching time to 24h in coming years. However, we are concerned about a number of proposals in the draft text which may slow down the decarbonisation of the energy sector and limit, or even block, consumer engagement in future electricity markets.

We would like to provide you with our most important concerns and recommendations for further negotiations of the proposed Directive and Regulation:

- **Make the basic tools available, transparent and consumer friendly**

Offers, contracts and bills are the principal tools through which consumers get informed about and engage with the electricity market. Consumers' trust in the market relies on the transparency and user-friendliness of these tools. With regards to bills and billing information (Article 18 and Annex II, Electricity Directive), the European Commission proposal for the minimum requirements for bills and billing information goes in the right direction while allowing innovative solutions in the presentation of this information. **Weakening the Commission's minimum requirements, lowering the frequency of bills and billing information and providing important information only upon the consumer's request may result in increasing consumer dissatisfaction.**

**Comparison tools should be transparent, available to all households and certified** (Article 14, Electricity Directive). Bundled products and services as well as offers from third parties such as aggregators should always be featured on the comparison tools so that consumers can compare them with other offers on an objective and comprehensive basis.

**Switching is a key indicator of a competitive market.** While shortening the switching process to 24h is welcome, at the moment consumers wanting to switch can come across undue termination charges. Consumers should not only be informed in advance about such fees but Article 12 (Electricity Directive) should also **safeguard that fees do not exceed the actual costs incurred by the supplier.**

**The roll out of new technologies such as smart meters** (Article 19, Electricity Directive) **should deliver benefits to consumers and be properly monitored.** At the same time, the costs of the roll out should be fairly distributed among all stakeholders that benefit from the roll out. **The security of the smart metering systems and data communication** (Article 20, Electricity Directive) **should not be limited for reasons of costs or proportionality** as this would open the door to all kinds of interpretations. The risks associated with the device should be taken into account and the best available techniques should be applied according to the risks. As consumers should have full control over their data, their **explicit consent should be required to use their data** (Article 23, Electricity Directive) and the reference to other legal bases for processing data foreseen by the General Data Protection Regulation should be deleted. Otherwise, it would be possible for companies to use consumers' data without their consent, notably by claiming that they have a legitimate interest to do so. In addition, from a competition perspective, regulated entities should not profit from providing data services.

**Consumers should always have access to speedy and effective complaint handling procedures** and to an independent mechanism such as an energy ombudsman in order to address any possible disputes with their energy providers. Article 26 (Electricity Directive) should not only safeguard consumers' right to out-of-court dispute settlement but should also **extend alternative dispute resolution to new market actors and bundled offers and ensure mandatory energy traders' participation** in out of court dispute resolution systems.

- **Provide consumers with new tools and not with new risks in flexible electricity markets**

The principles underpinning the introduction of flexible electricity markets should be balanced. They should **support consumer engagement as well as promote competition between the market participants.** Therefore, price comparison tools should include new types of tariffs and offers in order to help consumers choose the most suitable to them (Article 14, Electricity Directive). Contracts should be free of undue termination fees that could impede consumers' engagement with the market (Article 12). Dynamic price contracts and aggregation offers can deliver benefits to consumers but they could potentially be highly complex and risk creating new consumer liabilities. Transparency is a prerequisite for consumer trust in future electricity markets. **The on-going revision is a once-in-a-decade opportunity to proactively address loopholes in consumer rights that could arise from the entry of new types of companies and offers to the market.** Like suppliers, new market entrants should also bear the responsibility to provide consumers with clear contracts (Article 10, Electricity Directive) and regular information about the service provided (Article 13, 18 and Annex II, Electricity Directive). Market participants should take steps to identify consumer groups that are likely to benefit. National Regulatory Authorities should monitor the distributional impacts of new tariffs and energy services and modify protections as required (Article 11, Electricity Directive).

- **Create enabling framework for self-consumption**

The European Union aims to put consumers at the centre of the energy transition. **With more competitive costs for small scale electricity generation and batteries, consumers can become more active in the electricity market.** This can increase competition, innovation, decentralisation, but also bring new investments and increase security of supply. For that to

happen, an overall enabling framework for self-consumption is needed. Currently, each Member State has different frameworks and visions and want the European legislation to adapt to those. This risks watering down the new proposed rights for self-consumers across Europe (Article 15, Electricity Directive), potentially with damaging consequences in some countries such as Spain. The current draft text is proposing to make exemptions to the **balancing responsibility for small generators up to 50kW** (Article 4, Electricity Regulation; Article 15, Electricity Directive). **This very low threshold will affect apartment buildings** for most cities in Europe. But these renewable energy installations are for self-consumption, and they feed very small amounts of electricity into the grid. Self-consumers will find it much more difficult to meet their balancing responsibilities as wholesale markets are complex and intermediary aggregators do not exist yet. Similarly, individual self-consumers will find it difficult to participate in the dispatching markets without intermediaries (Article 11, Electricity Regulation). Due to the limitations self-consumers face, this will not be a level playing field but will rather put self-consumers at a disadvantage.

- **Design fairer and smarter electricity networks**

Consumers pay hundreds of euros a year for electricity distribution and transmission. In view of the high impact on consumers budgets, but also quality of supply, network tariffs should be calculated by the National Regulatory Authorities in a transparent way and the methodology should be open for consultation (Article 59, 60, Electricity Directive). **Tariffs should reflect the costs and benefits of those connected to the grid and incentivise flexibility** (Article 16, Electricity Regulation). This should be based on robust cost-benefit analyses without the EU legislation pre-determining a preferred tariff structure as these balances might depend on local conditions. **Tariffs must be fair and not penalise those who cannot be flexible in consuming electricity.** The Agency should monitor the tariff evolution and ensure fairness (Article 16, Electricity Regulation). No locational charges should apply for household consumers, including those who wish to self-generate as they cannot change where they live.

**The neutral role of Distribution System Operators (DSOs) should be safeguarded.** Member States should incentivise DSOs to improve efficiencies in the operation and development of the distribution system, reform the network to facilitate decarbonisation and ensure accountability that investments deliver value for money. While the current draft gives powers to the European Entity for Distribution system operators (Articles 50, 51, Electricity Regulation), we are concerned about insufficient oversight of this entity by the Agency.

- **Ensure security of supply at the lowest costs for consumers**

Several Member States put in place, or are planning to introduce, capacity mechanisms which aim to improve security of supply. If not well-designed, these national mechanisms can artificially push consumers' electricity bills up, for a long period of time. Reasons to introduce capacity mechanisms must be scrutinised (Article 23, Electricity Regulation). **These mechanisms should only be a temporary measure of last resort, limited in time and accompanied by a clear exit strategy.** At the same time, the need for capacity mechanisms should be coordinated at the EU level and based on an accurate regional resource adequacy assessment. Therefore, current discussion on the national resource adequacy assessments and its role **risks undermining the importance of the European adequacy assessment** (Article 18, Electricity Regulation).

Thank you very much for taking these recommendations into account in the ongoing debate and final negotiations.

I remain at your disposal should you require any further information.

Yours sincerely,

Monika De Volder  
Energy Team Leader