

# Fit for the consumer?

Do's and  
don'ts of flexible  
electricity contracts



**This report was prepared by The European Consumer Organisation (BEUC)  
and is based on an initial analysis by Anastasia Maxwell-Lawford.**

**We are grateful to the European Climate Foundation for its support and to Dutch consultancy  
TNO which provided preparatory work in this area.**

**Contact [energy@beuc.eu](mailto:energy@beuc.eu)**

**The report was designed by Idealogy.**

## CONTENTS

Executive summary .....	4
<b>I. Introduction .....</b>	<b>5</b>
1) What is demand response? And what's the difference between dynamic pricing and aggregation contracts?.....	5
2) Is demand response THE new deal for energy consumers? .....	7
<b>II. Demand response must be fair to consumers: a reality check .....</b>	<b>8</b>
1) What do we want to achieve? .....	8
2) What did we analyse? .....	9
3) What do we wish to highlight? .....	9
4) What are our conclusions and recommendations? .....	10
<b>III. What we found in the offers .....</b>	<b>12</b>
1) Tariffs and rewards .....	12
2) Data protection .....	18
3) Switching and Termination .....	21
<b>IV. Conclusion .....</b>	<b>24</b>
Annex I – Model provisions .....	25
Annex II - Methodology .....	28
Annex III – Assessment .....	30

## Executive summary

Flexible electricity offers are expected to become a reality for many consumers in the coming years. BEUC is pushing so that these offers are a win-win for the consumer and for the market. All consumers should be able to easily engage in and benefit from flexible offers while being sufficiently protected.

We carried out an analysis of dynamic tariffs and aggregation offers provided by 6 companies in 5 countries. These companies can be considered the frontrunners in offers of flexible electricity. We paid particular attention to clauses related to price calculation (tariffs and rewards), data protection and contract termination/switching.

Our analysis highlighted some good practices among providers of demand response offers. However, it also revealed a number of worrying clauses that are currently on the market and that should be eliminated from these new energy contracts. To further inspire companies in the preparation of the most consumer-friendly contracts possible, our analysis includes several recommendations and model provisions on privacy, switching, contract termination as well as information on tariffs. It also includes recommendations for authorities to ensure these offers deliver to consumers.

1. Several companies have good, although sometimes complex, information available on their pricing policies. Others make very unclear references to the market price and fail to specify what it is.
2. None of the contracts had data protection policies that would be acceptable from a consumer perspective. Companies should make much more effort to be fully GDPR-compliant.
3. We observed some rather old-fashioned contract terms and conditions – including clauses that could lock consumers in and which included unclear information and disproportionate termination fees.

Following our analysis, we contacted all companies and provided them with the opportunity to comment on our analysis. Nearly all companies reacted. Several of them engaged with us in a constructive way and acknowledged shortcomings in their offers. A few companies promised to change several clauses we found problematic which illustrates that this analysis is not only timely but that it is important for the development of flexible electricity offers.

## I. Introduction

### 1) What is demand response? And what's the difference between dynamic pricing and aggregation contracts?

The evolution of energy markets is contributing to the emergence of innovative business models and services across Europe. Some of these new services include smart technologies and aim at making energy consumption more **flexible** and **responsive** to wholesale price fluctuations. This development brings opportunities for household consumers in an increasing number of countries. These can be divided in two broad categories (see next page for graphics explaining these two categories):

- **Dynamic price contracts:** generally offered by traditional **suppliers**, they consist in offers reflecting (fully or to some extent) variable prices in wholesale markets. Consumers are therefore nudged to react to price signals and modulate their consumption according to the price fluctuations (i.e. to decrease energy consumption during peak hours and increase it during off-peak hours).
- **Aggregation contracts:** they are usually provided by new companies called **aggregators**<sup>1</sup> who can provide consumers with monetary incentives to reduce or increase their consumption when the grid needs it. An aggregator can set up an agreement with several consumers, based on which the company can temporarily reduce their electricity consumption when there is high demand for electricity. The company then sells this flexibility i.e. the 'avoided' electricity consumption on electricity markets. An aggregator could also be operating the reverse action and could increase the consumption of an electricity consumer when electricity prices are favourable.

These types of offers serve different purposes but are variations of the same concept: **demand response**. While dynamic contracts are based on the consumer's reaction to price signals (implicit demand response), aggregation entails the involvement of a new type of company directly managing the consumer's consumption (explicit demand response). These offers have a common feature (the core characteristic of demand response): **incentivising consumers to be more flexible in their electricity consumption**.

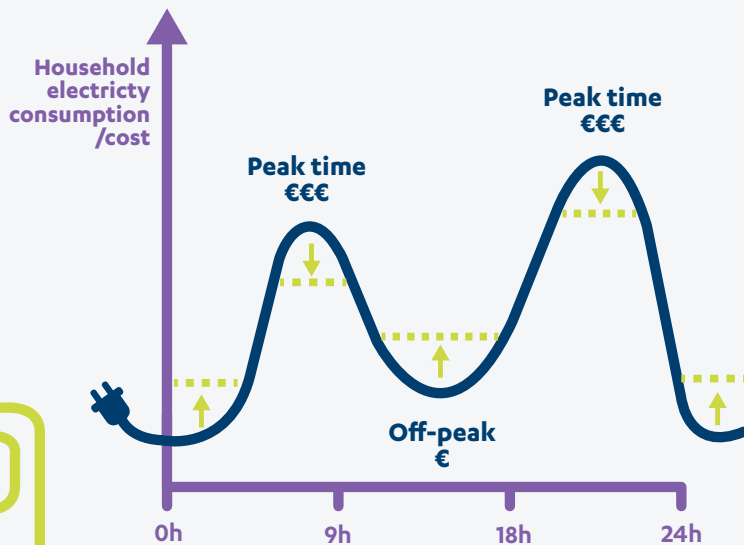
---

<sup>1</sup>For more details :  
[https://www.beuc.eu/publications/beuc-x-2018-010\\_electricity\\_aggregators\\_starting\\_off\\_on\\_the\\_right\\_foot\\_with\\_consumers.pdf](https://www.beuc.eu/publications/beuc-x-2018-010_electricity_aggregators_starting_off_on_the_right_foot_with_consumers.pdf)

# What is demand response?

Shifting some electricity consumption from peak to off-peak hours

## How?



### 1. DYNAMIC PRICING

The consumer responds to price signals



### 2. AGGREGATION

A company manages consumption for a group of households



## 2) Is demand response THE new deal for energy consumers?

Demand response contracts are a hot topic in Brussels at the moment. Their deployment in the years to come is seen as a major tool for consumers to save money on their electricity bill. The Clean Energy for All Europeans legislative package aims to open the door to these innovative services and new business models. Policy-makers seem to consider demand response offers to be THE solution for a consumer-centric energy market. They have invested a lot of resources into urging consumers to sign up for these new offers.

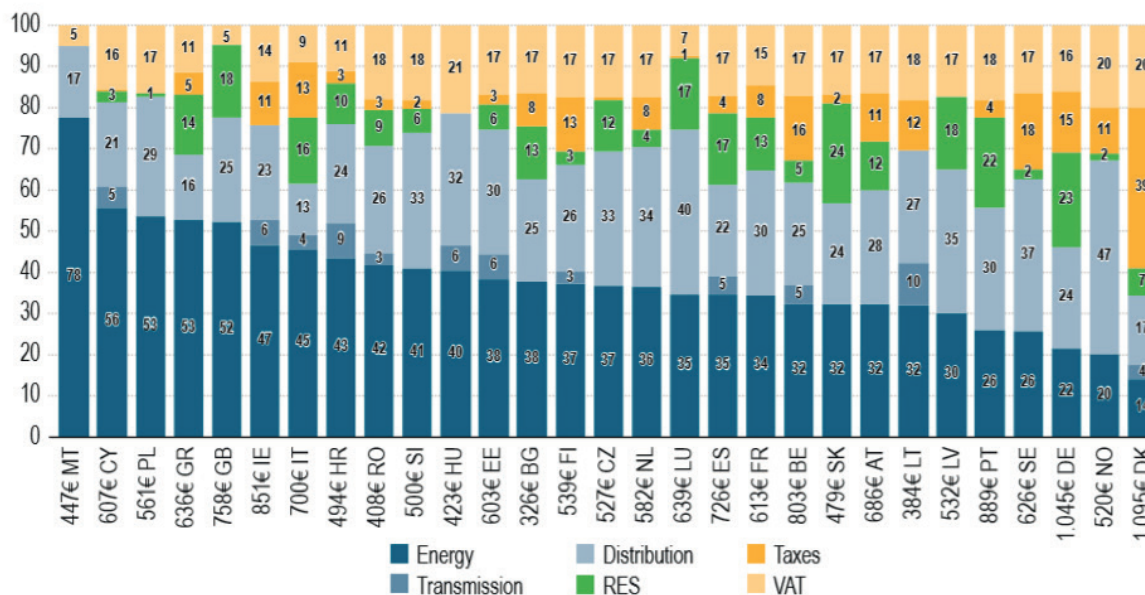
This needs a reality check, and, where appropriate, adequate safeguards.

First of all, given their novelty, all demand response offers need to be communicated in a clear and understandable way to consumers. We consider an analysis of the impact on different social groups, and if/how these groups can access the benefits of new deals together with close monitoring, key to assess whether they are adequate for different groups of household consumers.

Secondly, while both types of contracts need to be evaluated, particular attention should be paid to **dynamic offers** as they are becoming increasingly available. These offers link the price consumers pay for electricity to fluctuating wholesale prices over the day. Consumers are expected to manage their electricity, for example through smart devices, to consume most of their electricity when prices are low. In theory, this can indeed provide savings on the energy bill. However, these opportunities need to be mitigated by the following:

- Through demand response contracts, consumers can only reduce part of their energy bill: indeed, the price of electricity is only part of the total amount of the energy bill. In 2017, on average, in Europe, the cost of electricity represented only 35% of the total amount. The remaining 65% of households' energy bill consisted of other costs<sup>2</sup> and charges (like network costs, taxes, levies and other charges)<sup>3</sup>. While it is important to note that there are differences among EU Member States, variations in electricity prices influence only the consumption-sensitive elements of the billing.

Figure 1: ACER's breakdown of incumbents' standard electricity offer for households in capital cities – November/December 2017 (%)



Source: ACER/CEER-Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2017 - Electricity and Gas Retail Markets Volume, 2018

<sup>2</sup> This analysis does not address network tariff design. For more information on this topic, please, see report 'Designing distribution network tariffs that are fair for different consumer groups' commissioned by BEUC and conducted by the Centre for Competition Policy, 2018, available at: [https://www.beuc.eu/publications/beuc-x-2018-099\\_designing\\_distribution\\_network\\_tariffs\\_that\\_are\\_fair\\_for\\_different\\_consumer\\_groups.pdf](https://www.beuc.eu/publications/beuc-x-2018-099_designing_distribution_network_tariffs_that_are_fair_for_different_consumer_groups.pdf)

<sup>3</sup> ACER/CEER-Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2017, published on 22 October 2018, available at: [https://acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/MMR%202017%20-%20RETAIL.pdf](https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/MMR%202017%20-%20RETAIL.pdf)

- Dynamic pricing models expose consumers to price peaks, that can be far beyond the average price that consumers traditionally expect to pay<sup>4</sup>. Where the consumer is not aware of these risks, or where they cannot adapt their consumption patterns, there is a risk of bill shocks that needs to be acknowledged. Provisions should be put in place to minimise such shocks, be it in terms of alerts, or in the possibility to switch swiftly or, where needed, limitations to the price variations possible.

Thirdly, **aggregation contracts** can help consumers save on their energy bills and improve the management of the whole electricity system. However, the regulatory framework, especially the recently adopted Electricity Directive at EU level, may not be enough as it provides only limited rights and protections for consumers when choosing an aggregator service. This includes not only information on these services and related benefits (including if these are adequate for a particular consumer) but also addressing situations when something goes wrong. The added value of these contracts should therefore be accompanied by a sound consumer protection regime. This is of crucial importance given the novelty of the concept of aggregation for electricity.

## II. Demand response must be fair to consumers: a reality check

Demand response can support new business models, help to integrate renewable energy sources in the energy system, contribute to a more efficient energy system and thereby bring benefits to consumers. However, badly designed and unfair contractual provisions could lead to further consumer headaches and potentially sweep away consumer benefits.

This survey is intended to provide a reality check against the mainstream narrative by policy makers and companies in the energy market that claims massive benefits for consumers who engage in demand response contracts. It is not enough to claim that such contracts are better for consumers. Facts are more important than words. We analysed several existing dynamic pricing and aggregation contracts that are already on the market to check their terms and conditions from a consumer perspective. The results highlighted some worrying shortcomings in some contracts that we wish to address here.

### 1) What do we want to achieve?

For reasons of accountability, our study refers to specific companies (there are not many offers on the market yet), but this should not be seen as a 'name-and-shame' exercise.

We rather offer to policy makers, regulators and companies an analysis of what, from the consumer perspective, is good, fair, unfair or illegal. We expect our findings to inspire more consumer-friendly contracts.

---

<sup>4</sup> For instance, some consumers in New Zealand recently experienced high electricity bills due to price surges in the wholesale markets. For some, the weekly bill topped \$300 (178 euro). When they wanted to switch, they realised at least one retailer refused to take them on as customers. More information is available at: <https://www.stuff.co.nz/business/industries/107899242/Surge-in-spot-power-prices-proves-stressful-for-Flick-Electric-customers?rm=m>



## 2) What did we analyse?

We checked offers on dynamic tariffs or aggregation on the websites of 6 companies in 5 countries<sup>5</sup>. Three of the companies offer dynamic price tariffs, whilst the other three offer aggregation services. One of the companies<sup>6</sup> told us that they were trialling the offers we analysed. Thus, at the time of the publication of this report, these offers are not available to new customers. Nevertheless, these recent trials are still useful as examples of different approaches. In the case of Eesti Energia, we analysed terms and conditions and the privacy policy in English while the company informed us that these terms and more details on their privacy policy are mentioned in the Estonian version which prevails. We consider this practice as very confusing for consumers, and consequently unfair.



Our analysis covered the information available on the companies' websites until November 2018. Any changes that took place later could not be taken into account.

Demand response offers can be complex. In our analysis, we did realise that it may be quite challenging for the consumer to get a full understanding of the offer as relevant pre-contractual information can be scattered on the website, in the terms and conditions or in privacy policy documents. We did not test apps provided by suppliers or aggregators.

In Annex I, we aim to provide some model provisions which should serve companies as an inspiration on how to clearly communicate about offers, how to design privacy-friendly demand response contracts and ensure consumers are not locked in these contracts. Annex II includes a detailed list of the different elements that we have analysed for each of these types of clauses and the methodology we used. Tables in Annex III provide a colour-coded system for assessment of the terms and conditions of the different contracts.

## 3) What do we wish to highlight?

This paper is not intended to be an exhaustive analysis of all contract terms. A more in-depth survey can be found in Annex III. Here we give a snapshot of what are the most worrying clauses that currently are on the market and that should be eliminated from these new energy contracts. At the same time, we flag the 'best in class', to inspire the preparation of the most consumer-friendly contracts possible.

We contacted all companies and shared with them our analysis to give them the opportunity to provide their feedback. Nearly all companies provided comments and several of them acknowledged shortcomings in their offers. We refer to companies' comments and indicate where changes are expected in relevant parts of the paper. A few companies promised to change several clauses we found problematic (particularly the Dutch aggregator, Jedlix) and we appreciate their open and constructive approach while engaging with us. This shows that analyses such as ours can make a difference on the market.

<sup>5</sup> Full survey is available on request. The analysed companies are: Jedlix, Voltalis, tiko, Octopus (where we look into two offers), easyEnergy and Eesti Energia.

<sup>6</sup> Octopus

#### 4) What are our conclusions and recommendations?

The most important conclusions of this analysis are the following:

<p><b>✗ Problem 1: consumers can easily get confused about tariffs – and have no tools to protect themselves against bill shocks</b></p> <p>Several providers/aggregators have good, although sometimes complex, information available on their pricing policies. Others make very unclear references to the market price (without specifying what reference market price is taken). However, none of the offers provide clear explanations of the risks linked to sometimes very sharp price increases. Only one offer provides a clear protection, with a price cap.</p>	<p>✓</p> <p>--&gt;</p>	<p><b>Response 1: recommendations on how to guide consumers along the pricing structure and potential risks linked to it.</b></p> <p>The presentation of tariff clauses can help consumers understand better how demand response works and whether this type of contract is beneficial to them. Also, it is important for a consumer-friendly demand response contract to foresee a procedure to alert the consumer when their consumption pattern deviates from a sustainable pricing model, and to offer solutions in case the consumer is running up large bills (payment roll out over several instalments for example). You will find recommendations in the chapter on tariffs and rewards</p>
<p><b>✗ Problem 2: GDPR compliance still work in progress</b></p> <p>None of the contracts had data protection clauses that would be acceptable from a consumer perspective. Several of them contained very worrying clauses, that are non-compliant with the General Data Protection Regulation (GDPR). While we expected this – due to our experience of low level compliance with GDPR in the year of its entry into application – we double-checked the clauses over time, but no changes were introduced in the course of 2018.</p>	<p>✓</p> <p>--&gt;</p>	<p><b>Response 2: model provisions to be designed to inspire privacy friendly demand response contracts</b></p> <p>GDPR compliance is a major condition for an acceptable roll out of demand response contracts that are very much based on customer data collection. In this context, there is also space for competition among providers to offer beyond GDPR compliance the most privacy friendly contract terms. You will find our proposals in Annex I.</p>
<p><b>✗ Problem 3: flexible electricity offers lack flexibility in switching and in contract termination</b></p> <p>Demand response offers are promoted as innovative services, often together with new, cleaner, smarter technologies. However, we observed that the contract terms and conditions are rather old-fashioned – they include clauses that can lock consumers in and include unclear information, disproportionate termination fees and other barriers to switching between contracts.</p>	<p>✓</p> <p>--&gt;</p>	<p><b>Response 3: model provisions to enable consumers to become active players in electricity markets</b></p> <p>Consumers still struggle to understand their energy contracts. With demand response offers and smart technologies, they are expected to become much more active in the market than in the past. Consumers should not only be incentivised to go for a demand response contract by lowering their energy bills, they can also be nudged if companies provide clear information and friendly terms and conditions that do not block them or punish them for being active consumers. You will find our proposals in Annex I.</p>

## Recommendations for providers of new electricity offers

### Offers

- ✓ Ensure marketing and communication materials provide clear and complete information on offers, including how the tariff and rewards levels are set. All information should be provided in the same place before the customer commits to the services.
- ✓ Inform consumers if flexible electricity offers are adequate for their consumption patterns, and look out for any signs of vulnerability.
- ✓ Inform consumers about the material necessary (eg. battery) to benefit from the offer.
- ✓ Provide clear, accessible and up-to-date tariff levels regularly. Communicate using mediums that work and at the moments that are most relevant to consumers.
- ✓ Evaluate frequently your tariffs and support consumers. Provide consumers with tools to save money, and to protect themselves against bill shocks. This should include the provision of additional services that are useful for optimising electricity consumption (eg. platform consumers can use to monitor their consumption in real time).
- ✓ Allow consumers to pay bills by instalments whenever the amount to be paid exceeds the average charged in the past.

### Privacy

- ✓ Ensure full compliance with GDPR, in particular:
  - Be clear what data is collected, who has access to that data, for which purposes it is used, how is it protected and for how long is it stored.
  - Design services following the principle of privacy by design and ensure that no more data than necessary is collected and that it is not kept for longer than necessary.
  - Respect consumer rights to access their data, request its deletion, correction and their portability.
- ✓ Promote and follow best practices in privacy protection that go beyond mere compliance with GDPR, such as:
  - Always ask for consent for the use of data for any marketing related practices, even if they could be considered a legitimate interest under GDPR.
  - Ensure that consumers can easily view and directly control which third parties have access to their data.
  - Ensure privacy related information is easily accessible and gathered in one single place, instead of scattered across the privacy policy, terms and conditions, etc, to make sure the consumer can get a good overview of how his/her data will be used and assess this prior to entering into any contract with the service.

### Switching

- ✓ Allow consumers to easily terminate the contract and switch.
- ✓ Limit termination fees. Early termination fees for a fixed term contract should be linked to an advantage that was given to the consumer (a discount, a promotion on the energy price). In such cases, energy companies should be obliged to demonstrate the real cost to be able to charge termination fees. The fee must be reasonable and proportionate to the advantage given to the consumer.
- ✓ Be clear about the duration of the contract and termination. In case of tacit renewal, the consumer should be able to terminate the contract monthly and free of charge after the agreed contract period.

## Recommendations for authorities

- ✓ Adapt consumer protection regulation to the needs of consumers in new electricity offers.
- ✓ Ensure vulnerable consumers are well protected.
- ✓ Supervise the market so that there are no unfair clauses for tariff changes.
- ✓ Ensure that offers are understandable, transparent and comparable.
- ✓ Monitor the impact of demand response offers and the occurrence of bill shocks.
- ✓ Ban clauses with a disproportionate or uncertain termination fee, discouraging consumers to change contracts.
- ✓ Ensure robust compliance and enforcement of relevant legislation (e.g. GDPR), in particular to prevent unlawful selling or sharing customers' data.
- ✓ Strengthen the cooperation among regulators, ADR bodies and other relevant authorities to work more efficiently across sectors. This requires better coordination and information sharing among relevant authorities especially where cross-cutting issues arise.

### III. What we found in the offers

#### 1) Tariffs and rewards

Tariffs, rewards and potential savings on energy bills are crucial elements of demand response arrangements. Consumers are already struggling to navigate the electricity market, so the broad range of new approaches and business models might make it even more confusing for consumers.

Each supplier might link their dynamic offers in many different ways, for instance by linking them to different wholesale market indexes. This makes it difficult for consumers to compare dynamic tariffs amongst themselves and with other market offerings, such as fixed term offers. They will be more advantageous if the consumer can shift consumption towards a low price period, but consumers might struggle to assess that.

The contracts proposed by some aggregators can vary even more in terms of products offered as well as with regards to the price and rewards system. Some aggregators offer a free service, where the consumer allows the company to manage the energy. The consumer is either compensated for it or gets savings – for example this is the case for Jedlix or Voltalis. Other models are based on a consumer paying for the equipment or subscription, then getting free electricity or direct payments.

The role of tariffs and rewards is particularly important:

- Tariffs and rewards will nudge consumers to move from traditional contracts to more flexible ones. The latter need to be transparent and clear for consumers to make the right choices.
- Information on tariffs and rewards that is timely, clear, easily accessible and provided with common standards will allow consumers to save money or gain comfort (or both).
- The consumer's investments in smart systems, renewable energy technologies or batteries will largely depend on tariffs that reward smartness and allow them to save money. Hence the benefits to the system will only materialise if the signals are right.

Despite tariff clauses being one of the most crucial aspect in a dynamic pricing contract, we found that they are often very complex, and do not explain the criteria based on which the price will vary. This can make it difficult for many consumers to engage in dynamic pricing. The level of clarity of the marketing material or further information in the supplier's websites varies radically.

As to the rewards offered to household consumers by aggregators, they often do not exist – the consumer's benefit is portrayed as saving on energy consumption and energy bills. Where rewards exist, they are often complicated to calculate and are subject to lots of restrictions and conditions. Some offers provide unclear or unfair clauses on the changes in rewards.

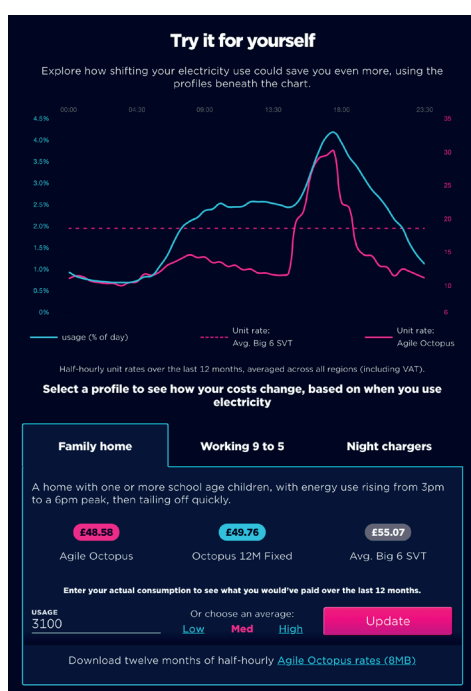
A summary colour-coded table of our analysis of the different contracts applicable to tariffs and rewards is available in Annex III. Here is a snapshot of the most striking clauses:

## a) Best practices

### ► Clear marketing and timely information

#### **Octopus – Agile (Dynamic tariff, United Kingdom):**

Octopus has a tariff with prices changing every thirty minutes called Agile. On its website, Octopus gives examples on the kind of consumers the Agile tariff is most suitable for. They present three different profiles and compare the costs of Agile with two other types of tariff, ie. ‘Family home: a home with one or more school age children, with energy use rising from 3pm to a 6pm peak, then tailing off quickly’ or ‘Working 9 to 5: A home that is typically empty during weekdays, with a sharp peak of energy use around 7pm, that tails off slower and later into the evening’ or ‘Night chargers: A home which is able to shift most of its energy use into the early hours when energy is cheap. For example: charging an electric vehicle, setting timers on washing machines and dishwashers, or using a storage heater.’



Screenshot from Octopus's dedicated site about Agile (<https://octopus.energy/agile/>)

Octopus provides, according to the website, regular and timely updates on the Agile tariff, and the unit rates are updated in an app every day at 4pm for the next 24 hours.

 **Octopus – Tracker (Dynamic tariff, United Kingdom):**

Octopus has also a tariff with prices changing every day called Tracker. Tracker provides the formula on the website and it is also sent through email once the contract has been finalised.

**North Scotland**

- Electricity standing charge: 21.106p per day
- Electricity unit charge:  $(W * 1.19) + 7.863$  p per kWh
- Gas standing charge: 14.373p per day
- Gas unit charge:  $(W * 0.036) + 1.164$  p per kWh

*Note: "W" refers to the wholesale cost (per kWh for electricity, per therm for gas) on a given day, and is the only price component to change daily. For changes to any other element of the formula, we'll let you know at least 30 days in advance. Use the formula above to calculate prices excluding VAT .*

Screenshot from Octopus's dedicated site about Agile (<https://octopus.energy/agile/>)

 **Tiko (Aggregator, Switzerland):**

Tiko offers an annual reward to consumers for allowing the company to use consumers' batteries (installed in their homes). Consumers must install a Sonnen battery at their own expense. Then the consumer pays an initial fee for the installation of the system that allows tiko to manage the battery and the photovoltaic system. On its website, tiko provides a clear indication of the expected cost and rewards (a yearly fixed level) for this offer.

tiko storage: the energy revolution uses the best technology, and it fits everyone needs

- All included : tiko equipment, award-winning optimization and visualization system
- Recommended price: CHF 750.-
- CHF 0.- monthly fees, CHF 0.- yearly fees...
- ... but up to CHF 275.-\* to reward you each year for your contribution to the network


Your yearly financial reward is proportional to your contribution to the tiko network and the size of your sonnen eco 8.0 battery.

Battery size (kWh)	2	4	6	8	10	12	14	16
Participation in the tiko network	Free							
Yearly financial reward in CHF	100	125	150	175	200	225	250	275

\* Depending of battery size : from CHF 100.- for a 2kWh battery to CHF 275.- for a 16kWh battery.

Screenshot of tiko website ([https://tiko.ch/page/product\\_storage/](https://tiko.ch/page/product_storage/))

► Giving consumers tools to avoid bill shocks

 **Octopus Agile (Dynamic tariff, United Kingdom):** The consumer is protected by 'Price Cap Protect' meaning that s/he will not pay more than 35p/kWh (including VAT).

## b) Worst practices

### ► Absent information on how the prices / rewards will be calculated



#### **Octopus Agile (Dynamic tariff, United Kingdom):**

In the terms and conditions or on the website, we could not find information that would allow to check how the price is calculated, as they do not seem to cover the Agile tariff. The website dedicated to Agile has an excel sheet with actual prices for the previous year from May 2017 to May 2018, showing different prices in 14 regions. But this is not user friendly and does not explain how the prices are calculated. The website informs the consumer on the upsides, for instance how many times a year the prices have been very low (“Over the last 12 months, unit prices dropped below 2p / kWh 31 times and below 0p / kWh 4 times.”) but fails to inform how many times a year it reaches the maximum or other more concrete information. It only states: “While price spikes are short-lived, typically lasting 30 minutes to an hour, they do happen...”. However, the pricing spreadsheet shows that in some regions, prices reached the cap up to 100 times in a year, with a continuous cap of 4h in a row.<sup>7</sup>

### ► No bill shock protection, including through alerts when prices are increasing

Only **Octopus Agile** provided bill shock protections (see best practices above). Below are examples of information provided which we find insufficient for consumers to act to avoid price hikes.



#### **easyEnergy (Dynamic tariff, Netherlands)**

EasyEnergy has no timely information that specifically draws attention to price peaks to avoid bill shocks or to protections against price rises.



#### **Eesti Energia (Dynamic tariff, Estonia):**

This offer suits you if “...you want to manage your consumption according to the price changes on the electricity exchange.” This is a tautological explanation, which is very generic and unhelpful for consumers to understand in what cases the management of consumption is easy or good for them.<sup>8</sup>

### ► Exposing consumers to risks through unfair modification of clauses



#### **Jedlix (Aggregator, Netherlands)**

Jedlix can adjust the calculating method for the reward, but no prior notice is required. Jedlix can also terminate the pay-out option, and no prior notice is required. This is stated in their terms and conditions: “The pay-out option of the reward can be terminated by Jedlix without prior notice. Previously accumulated savings is thereby retained”<sup>9</sup>

<sup>7</sup> Once we shared our findings with them, Octopus informed us that consumers could access the formula used to calculate prices once they start the sign-up process. They were shown the formula before committing to switch. They told us that the reason is that each of the 14 regions of Great Britain had a different pricing. Nevertheless, Octopus informed us that they now posted the formulas in a public forum dedicated to the tariff. We believe that the information on how rewards and prices are calculated should be transparent before starting the sign up, as this will allow the assessment and comparison of offers. The issue of regional prices (14 only) is easy to solve, for example by including formulas in a list or table as they did for Octopus’ Tracker, or by allowing consumers to input their post-code before informing of the tariff. The Agile tariff is on trial and does not accept new consumers. Thus, the action taken by Octopus to input the tariff in a public forum is enough at this stage..

<sup>8</sup> Once we informed them about our analysis, Eesti Energia told us that their app notifies the consumer of unusually high prices automatically. This feature appears to be a positive evolution towards reducing the risks of bill shock. However, we base our analysis in publicly available information, and the feature is not highlighted in the description.

<sup>9</sup> After we shared our analysis with companies, Jedlix informed us that it will change the clause to: “The pay-out option of the reward can only be terminated by Jedlix with 2 weeks prior notice. Previously accumulated savings is thereby retained.”

## c) Reasons for concern

### ► Unclear marketing information on tariff

#### **Voltalis (Aggregator, France):**

Voltalis manages consumers' appliances, whilst consumers benefit by saving on their energy bill (through lower consumption). The advantages in terms of savings are presented as a maximum percentage level of savings (up to 15%) on Voltalis' website.<sup>10</sup> This information is insufficient for consumers to understand the financial benefits of the contract, and to decide whether this contract is good for them.

#### **tiko (Aggregator, Switzerland):**

Tiko's website<sup>11</sup> and the T&Cs ("*Contribution to tiko's network*") give high level information on how they will use the battery. However, the information is insufficient for the consumer to have a clear understanding on how the battery and electric system will be used. And for what exactly he or she receives the amount of the reward. Although the website provides an indicative cost and reward, the T&C do not provide information on the level of rewards and how the reward is actually calculated.

#### **easyEnergy (Dynamic tariff, Netherlands):**

EasyEnergy offers only one tariff for electricity, and one for gas. According to its website, the consumer will pay the actual electricity price on the market (which changes every hour), and a fixed fee per month of 5 euro (per fuel). On the website, there are references to the other costs the consumer will pay: network, taxes and levies. One can find an explanation of such costs, in a document called *Tarievenblad*.<sup>12</sup> Although the values are provided, they remain quite unclearly explained in the document, and the references to these extras are inconsistently referred to across the website.

### ► Uncertainty on the changes in tariffs and rewards

#### **tiko (Aggregator, Switzerland):**

Tiko provides a fixed level reward per year, with a reference on the website. However, in the terms and conditions we could not find a reference to the reward. As section 12 covers the ability for consumers to switch when there are changes in terms and conditions, it is unclear if changes in rewards are covered by the clause. Similarly, it remains unclear for consumers whether rewards may change overtime.

## d) What do we expect?

**Suppliers and aggregators should ensure marketing materials and terms and conditions provisions are clear so that consumers can easily shop around.**

The information that suppliers and aggregators provide on offers must be clear, transparent, complete and easy to compare. Even the most motivated consumers might struggle to assess the different offers available to them. Third parties, such as consumer organisations, regulators or price comparison tools should also have access to complete information to support consumers in their choices. The Clean Energy package (and particularly revised Electricity Directive) includes provisions that consumers should be fully informed by the suppliers of the opportunities, costs and risks of dynamic electricity price contract and aggregators should fully inform customers of the terms and conditions of the contracts offered to them. At the same time, the horizontal legislation (especially the Consumer Rights Directive and the Unfair Commercial Practices Directive<sup>13</sup> apply).

<sup>10</sup> <http://www.voltalis.com/individual>

<sup>11</sup> [https://tiko.ch/page/product\\_storage/#theoffer](https://tiko.ch/page/product_storage/#theoffer)

<sup>12</sup> <https://www.easyenergy.com/media/1103/bijlage-c-tarievenblad-e-energy-stroom-en-gas.pdf>

<sup>13</sup> The unfair Commercial Practices Directive forbids providing misleading information about the price or the manner in which the price is calculated or to mislead consumers by omitting material information, such as the price (art. 7(4)(c)): 'the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable'.



For instance, for distance and off-premises contracts, the Consumer Rights Directive requires service providers to display

‘the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided.’

Consumers should receive clear information on different components of the final price (ie. including network charges, taxes, fees where relevant) and be able to easily access the price information. This includes information in the same way that they have access to the prices of a fixed level offer, they should have access to the formula proposed to set the price or rewards of a dynamic tariff (for instance, how is the dynamic tariff linked to the wholesale price? what index is it going to use?).

For instance, the Demand Side Response Code of Conduct in the UK sets rules by which aggregators must agree to abide by. According to this Code of Conduct, aggregators should clearly and directly identify which future prices are estimated and inform customers of assumptions (based on verifiable sources) used in pricing forecasts. Consumers should be also informed about any key sensitivities and associated, additional assumptions or potential changes to costs or benefits in any quote or sales materials.<sup>14</sup>

Indeed, before consumers enter the contract, they must be informed about potential financial risks and opportunities. The way these risks are best communicated will depend on nature of the offer. The information should give enough understanding on what will make consumers pay significantly more and how likely is it that the costs and benefits will substantially change over time.

### **Suppliers and aggregators should provide existing customers with regular, clear and accessible information on price and rewards.**

For rates that change according to the market, the supplier or aggregator should give as much predictability in the rate as possible. The rates should be made available as soon as possible, for the consumer to be able to adapt to them if they wish to do so. The applicable rate should be easily accessible by consumers in a variety of means, for instance on the supplier’s website and via an app.

Consumers should be provided with assistance to be able to understand the impact of demand response offers. This could be done for instance with projected bills based on actual energy use over a number of seasons before signing up to new deals. Consumers should have the advantages and disadvantages of new pricing structures clearly explained to them. This should include the impact of important lifestyle changes.

Data and automation make it possible for consumers to make the most of these offers. It should be simple for consumers to allow optimisation systems, such as an app or an algorithm in your car battery, to access price data.

### **Consumers should have the tools to protect themselves against bill shocks or non-payment of rewards.**

Suppliers and aggregators should provide safeguards against bill shocks. There is a range of ways suppliers can do this: through information (such as warnings of price hikes), price ceilings, or allowing switching without imposing penalties.

If the product gives out a reward for consumers, the aggregator cannot terminate that reward option without giving notice to the consumer. Similarly, some consumers will invest in equipment on the grounds that they will receive a specific reward. Changes in those rewards should be limited through the terms and conditions – otherwise ultimately the consumer will not get a return on their investment.

---

<sup>14</sup> Demand Side Response Code of Conduct (November 2018) is available at: <https://www.theade.co.uk/resources/publications/demand-side-response-code-of-conduct>

## 2) Data protection

Dynamic pricing and aggregation contracts collect enormous amounts of personal consumption data. These data are the cornerstone of the whole system, that allow for a more tailor-made energy provision. It is however crucial that the consumption data are protected, used in a privacy-friendly way and the consumer remains in control of their data. In the specific context of 2018 being the year that GDPR entered into application, we have paid particular attention to whether companies have adapted/modified the data protection clauses that they use in their contracts.

Overall, all companies need to overhaul their privacy terms. Many terms and conditions are blatantly in breach of GDPR.

### a) Best practices

#### ► Clarity about what type of data is shared, with whom it can be shared and for what purposes

##### **Jedlix (Aggregator, Netherlands):**

A listed number of information can be shared: car model, charging data and settings can be shared for research purposes. The consumer's postal code, city and country will not be shared with third parties (stated in Privacy Policy).

##### **Voltalis (Aggregator, France):**

Data that can be shared: data regarding the identification of the consumer's house/premises, the consumer's electricity consumption, his electricity supplier, and all other information necessary to the participation of the consumer's premises to the equipments and mechanisms used to optimise the electricity consumption. Data is exchanged between Voltalis and the managers of the public electricity networks (article 8, paragraph 4). Voltalis will also transfer data to RTE, the manager of the electricity transport network (article 8, paragraph 5). The networks managers can only use the data transferred for the needs of the electricity network (article 8, paragraph 6).

#### ► Right of the consumer to oppose the use of her/his data

##### **Voltalis (Aggregator, France):**

According to terms and conditions, the right to object seems possible for any use of data that does not relate to the provision or improvement of the service, in particular for the use of the data for marketing.

### b) Worst practices

#### ► Data shared with third parties that have no direct link with the service

##### **Octopus (Dynamic tariff, United Kingdom):**

Unspecified data is shared with third parties for it to be processed and also to comply with industry obligations. Certain data is also shared with credit reference agencies, third parties for marketing purposes and to complete purchases on the site.<sup>15</sup>

<sup>15</sup> Once we informed the company about our analysis, Octopus explained that they share personal information with credit referencing agencies to ensure that the customers they accept have suitable creditworthiness to pass their internal risk policies and to protect against fraud. Moreover, Octopus informed us that other third parties involved may be payment processing agencies or other payment providers. While there is no requirement under the GDPR to set out the precise details of those entities which the company shares personal data with, the Guidelines of the European Data Protection Board say that disclosing the actual list of recipients should be understood as the default obligation. Moreover, BEUC is not convinced that sharing the information with credit agencies is necessary for entering/performance of the contract.

▶ **Lack of clear information on what type of data are collected and/or shared**



**tiko (Aggregator, Switzerland)<sup>16</sup>:**

the aggregator does not provide detailed information about what data is collected (only payment behaviour and electrical consumption are mentioned). The company only states that it collects the data necessary for the supply and development of the tiko services, for the establishment and maintenance of a relationship between the customer and the aggregator, for the security and the operability of the tiko services and its devices, and for the issuance of the bills (section 6).

▶ **Consumer to pay for access to his/her data**



**easyEnergy (Dynamic tariff, Netherlands):**

If the consumer wants access to his personal data, he has to send a written request with a copy of his passport or identity card and will be charged for accessing his data (article 16.2). The consumer can request the rectification of information (article 16.3). The consumer can send an email or mail and will receive an answer within 4 weeks. Important to note: this law has been repealed by GDPR – the provider should update their terms and conditions, including providing consumers with access to their data free of charge.<sup>17</sup>

▶ **Lack of information on consumer's right to oppose that data are shared /limitation of that right**

Overall, several companies (see Annex III) do not mention this right in their contracts.

▶ **Lack of information on the right to delete data or to carry them on**

Overall, several companies (see Annex III) do not mention this right in their contracts or provide misleading information about the scope of this right (such as retroactivity).

▶ **Lack of clear information on duration of data storage**

Overall, several companies (see Annex III) do not mention at all this information in their contracts.

▶ **Lack of information about what happens in case of modification of privacy policy**

Overall, several companies (see Annex III) do not mention this information in their contracts.

<sup>16</sup> GDPR does not apply in Switzerland and therefore tiko's policy may not be in line. However, tiko is contracting with companies in the EU and those companies are subject to GDPR. tiko did not provide comments on our analysis

<sup>17</sup> After we shared our analysis with easyEnergy, the company acknowledged that it should provide the data free of charge and informed us that it will update its Terms and Conditions. easyEnergy also said that its customers have access to their data on a daily basis via online portal, free of charge.

## c) Reasons for concern

### ► Information on duration of data storage is too vague

#### **Jedlix (Aggregator, Netherlands):**

Data is not stored longer than necessary, for the purpose for which it was stored, or as long as it is required by law. After the termination of use of the app, data tracing back to the user is deleted unless there is a legal basis for Jedlix to store the information.<sup>18</sup> Some companies provide only vague information, for instance when there is reference to a ‘reasonable period’.

### ► Lack of clarity with regards to sharing data for marketing purposes

#### **Eesti Energia (Dynamic tariff, Estonia):**

The company is using the customers’ personal data for general marketing purposes and it has the right to pass the data onwards for marketing purposes to its partners, whose names and contact details are available on the company’s website.<sup>19</sup>

### ► Information on measures taken by the supplier to protect the consumer’s data are too vague (eg. in terms of notification of breach or compensation of damage)

#### **tiko (Aggregator, Switzerland):**

Tiko will take necessary measures to prevent unauthorised third parties from accessing its network but for security of devices all responsibility is passed on to consumer, even if the company also has remote access.

## d) What do we expect?

Consumers must be able to be in control of their data and their rights under the GDPR must be fully respected. Consumers should not be tricked or forced into giving their data away. They must be able to access, modify, delete and carry their data with them under the conditions provided for by the GDPR. Consent to process data must be unambiguous, specific, informed and freely given, and it should be as easy to withdraw consent as it was to give it in the first place. Companies must be transparent and only process data lawfully, fairly and for specified, explicit and legitimate purposes. The data that is collected and used must be limited to the minimum necessary and in accordance with those purposes.<sup>20</sup>

We encourage companies to follow best practices in privacy protection that go beyond mere compliance with GDPR, such as being more precise when it comes to if and how the consumer can object to the sharing of his/her data with third parties and ensuring that consumers’ data is not shared with third parties or for marketing purposes without their consent. As energy consumption data can be used for profiling, consent should be used as the main basis for processing the data. We also expect that organisations must conceive their products and services in a privacy-friendly way from the get-go. The analysed contracts all contain complex data protection provisions, that can however only very partly be considered to be GDPR compliant.

<sup>18</sup> Once we informed companies about our analysis, Jedlix acknowledged that some clauses are too vague and informed us that it will change it as follows: ‘Data will not be stored longer than twelve months after the end of the contract with each end-user’ ; ‘After the termination of use of the app, data tracing back to the user is deleted within twelve months after the end of the contract with the end-user, unless Jedlix has been legally ordered to store the information by the competent authorities. Furthermore, Jedlix is legally obliged to retain personal data relevant for tax purposes for 7 years.’

<sup>19</sup> This analysis is based on information on processing of personal data, provided in Eesti Energia AS Standard Conditions of Electricity sales contract. After sharing our analysis with Eesti Energia, the company informed us that more information on their privacy policy is available in Estonian language while BEUC analysed only the shorter version that is available in English. Also, it is not clear what prevails in case there are discrepancies between the Terms and Conditions and the privacy policy.

<sup>20</sup> For instance, the French Data Protection Authority (the “CNIL”) published guidance regarding the conditions to be met by organizations in order to lawfully share personal data with business partners or other third parties, such as data brokers. The guidance focused, in particular, on such a scenario in the context of the GDPR and sets forth conditions for prior consent, identification of the partners, notification of changes to the list of partners, limit to further sharing without consent and notice that should be provided by the partners at the time of the first communication to the customer. The guidance is available at: <https://www.cnil.fr/fr/transmission-des-donnees-des-partenaires-des-fins-de-prospection-electronique-quels-sont-les>

### 3) Switching and Termination

Consumer mobility between service providers is crucial for the energy market to function properly. This is particularly true in the context of demand response contracts, as they might have specific elements that could lock the consumer into the contractual relationship, such as high termination fees, lack of interoperability, lack of data portability, etc.

Suppliers offering dynamic contracts have usually the same contract terms and conditions as for other, non-dynamic contracts. We observe some good practices, allowing consumers to terminate the contract rather easily, but at the same time, several suppliers and aggregators have alarming conditions with regards to long-term contracts, rules for contract modifications and related consumer rights, disproportionate termination fees and further barriers for consumers to switch.

#### a) Best practices

##### ► Consumers are not locked in the contract

###### **easyEnergy (Dynamic tariff, Netherlands):**

The supplier offers only non-fixed term contract with no termination fee.

##### ► After the signature of the contract, a cooling off/trial period is provided to the customer

###### **easyEnergy (Dynamic tariff, Netherlands):**

The consumer can cancel the contract within two weeks. For instance, *“After we have confirmed the contract, you can cancel it within 14 calendar days. You do not have to tell us why.”*

###### **Octopus (Dynamic tariff, United Kingdom):**

Section 6.1: *“You may cancel the contract via email or our website at any time within the 14 calendar days following the date of your online registration.”*

###### **Voltalis (Aggregator, France):**

Article 9: the withdrawal is free during the trial period (1 month).

##### ► In case the provider changes the conditions, the consumer is given prior notice and possibility to cancel the contract free of charge

###### **tiko (Aggregator, Switzerland):**

Section 12: *“In the case of a modification significantly to the detriment of the customer, the latter, commencing as of such date, may cancel the solution involved or his contractual relationship with tiko prior to the entry into force of the modification, without suffering financial consequences.”<sup>21</sup>*

<sup>21</sup> According to the Swiss law, in case the provider changes the conditions, the consumer is entitled to terminate his/her contract free of charge.



### **Eesti Energia (Dynamic tariff, Estonia):**

Article 7: *'The Seller has the right to change the Standard Conditions unilaterally or to introduce new Standard Conditions if such changes are caused by amendments to the law, major changes in the business environment or the product sold, better or additional opportunities for the Buyer to make use of the goods or services sold, or if it becomes necessary to make clearer the circumstances or business risks relating to the sale of goods or services. The notification about changes to the Standard Conditions or the introduction of new Standard Conditions shall be published by the Seller on its website and the Seller shall notify the Buyer of the changes or introduction of the New Standard Conditions at least 1 month in advance. If the Buyer does not accept the changes to the Standard Conditions or the new Standard Conditions, he or she shall have the right to terminate the Contract after informing the Seller within 1 month of receiving the notification of changes to the Standard Conditions or the introduction of new Standard Conditions.'*

## **b) Worst practices**

### ▶ Consumers are locked into disproportionately long fixed term contracts



### **Voltalis (Aggregator, France):**

Article 9: *'The contract is applicable after the written confirmation addressed to the adherent of his acceptance by Voltalis, for an undetermined period, with an initial period, if not mentioned otherwise, of 36 months starting from the installation of the Voltalis equipment, but the consumer can cancel the contract free of charge during a test period.'*<sup>22</sup>

### ▶ Consumers face clauses with uncertain termination fee



### **tiko (Aggregator, Switzerland):**

Section 10: *'If the customer cancels a service during the minimum term or the renewal term (prematurely), the customer shall remain liable for the charges up to the expiry of such minimum or renewal terms, under reservation of other provisions.'* It is important to note that the minimum term is not specified in terms and conditions.

## **c) Reasons for concern**

### ▶ Offers and contracts can be modified at any time



### **tiko (Aggregator, Switzerland):**

Section 12: *'tiko reserves the right to modify its tiko solution and the contractual documents at any time. tiko is to inform the customer as to the modifications in advance and in the appropriate manner (for example, by e-mail or in a newsletter).'*

### ▶ Consumers may face termination fees which are not clearly justified



### **Voltalis (Aggregator, France):**

Article 10: in case the customer withdraws from the contract before the end of the initial period (but after a 1-month trial period), Voltalis reserves the right to charge the customer a termination fee (150€), if the withdrawal took place in the first year of the contract. That amount is reduced by one third for each of the following years (100€ for the second and 50€ for the third year).<sup>23</sup>

<sup>22</sup> Once informed about our analysis, Voltalis explained its long-term contract as to reflect the risks fully borne by the aggregator investing on consumer site.

<sup>23</sup> Once informed about our analysis, Voltalis acknowledged that the consumer should remain free to terminate the contract but, at the same time, pointed out that there should be some protection for the aggregator who bears all the risk and cannot recoup its investment before several years of operation.

► **Conditions on when the provider can suspend the services are unclear**

 **Jedlix (Aggregator, Netherlands):**

*'User can temporarily stop using the service by disabling smart charging within the app. The user can request permanent discontinuation of the service by sending an email to support@jedlix.com. Not yet paid out balance expires at permanent discontinuation of the service. Jedlix reserves the right to terminate use of the app by the user at any time.'*

► **Consumers do not receive clear information if their contract will be automatically renewed**

 **tiko (Aggregator, Switzerland):**

Article 10: *'The minimum terms and renewal terms for the use of certain solutions may be set forth in other contractual documents.'*

 **Jedlix (Aggregator, Netherlands):**

It is not mentioned whether the contract can be automatically renewed.

**d) What do we expect**

**From the consumer perspective, the consumer should be made well aware of the duration of the contract (ie. the contract with no specific duration, with a possibility for the consumer to terminate at any moment or a fixed term contract).**

In cases where the contract was terminated orally, the supplier/aggregator must send immediately a confirmation on the durable medium to the consumer.

Termination fees should only apply in exceptional circumstances and they should be proportionate. As also set in the revised Electricity Directive, these fees should not exceed the direct economic to the supplier or aggregator of the customer terminating the contract, including the costs of any bundled investments or services already provided to the customer as part of the contract. The burden of proof of the direct economic loss shall be on the supplier or market participant engaged in aggregation and the permissibility of contract termination fees shall be monitored by the national regulatory authority, or any other competent authority.

The consumer should not be liable for the charges beyond the end of the minimum period if they terminate the service prematurely. If the supplier/aggregator terminates the contract, they should give a clear reason and a notice to the customer. Although the notice period may be set in the law, the consumer should be informed about this period. If the reason the supplier/aggregator terminates the contract is because of the consumer's fault, they should be given the possibility to correct their fault.

Regarding notification methods, even though a verbal notice might be easy, it is hard to prove so the consumer should receive the confirmation in writing.

The consumer and the supplier/aggregator should agree whether the supplier/aggregator has the ability to modify the contract. In case the supplier/ aggregator makes use of this ability to change the contract, the consumer should be given notice well in advance. They should also be given notice of any changes, not just the substantial modifications, or modifications that are to the consumer's detriment. This would push the supplier/ aggregator to be more transparent, and the consumer more aware of their rights and obligations. The consumer should be able to withdraw from the contract if they do not agree with changes (this should not be limited only to price changes).

The supplier/ aggregator should indicate per type of the contract (fixed or open-ended contract) how long it takes for the contract and the delivery to actually stop. The consumer should be able to move to a new supplier at any time, without having their current supplier stop the switch.

Aggregators/ suppliers should clearly explain in the contract under what conditions or in which cases they can suspend their service/ app.

The consumer should always be aware of what happens to their contractual relationship with the supplier. For instance, the consumer should be contacted before the contract comes to an end (at least 30 days prior notice). If the contract can be automatically renewed it has to be mentioned. The supplier should not be able to automatically transfer the consumer to a

different tariff once the previous one comes to end without the consumer's consent. The supplier should mention to which tariff the consumer will be transferred. If the supplier changes the contract automatically after the previous one ends, the consumer should have a cooling off period. In case of tacit renewal, the consumer should be able to terminate the contract monthly and free of charge after the agreed contract period.

## **IV. Conclusion**

Our analysis is a stock-check on where we are when it comes to the development of this new electricity market. It shows that while some provisions are positive and can be used as references for the furthering of this market, there are other clauses which need to be improved or removed altogether.

When conducting our analysis, we observed that it may be sometimes very challenging for the consumer to get a full understanding of the offer as relevant information can be quite complex and scattered on the website, in the terms and conditions or in privacy policy documents. To engage and benefit from these offers, consumers should be able to easily find all necessary information about the offer, their privacy should be well-protected, and they should not be locked into the contractual relationship by high termination fees for instance.

We hope that companies present or wishing to be present on this market reflect on our analysis. At the same time, we would like to encourage them to take on board our recommendations to contribute to the development of demand response offers that deliver to consumers.



## Annex I – Model provisions

Based on our findings that show shortcomings in companies' terms and conditions and how complex demand response offers can be, below we provide some model provisions which should serve companies as inspiration on how to design privacy-friendly demand response contracts and ensure consumers are not locked into these contracts. These provisions, taken as a whole, would from a consumer perspective, be best practices in demand-response contracts.

### 1) Data protection clauses/ information

#### ► Types of data processed, purposes, legal basis

We will provide comprehensive and clear information regarding which types of personal data we process, for what purposes and the GDPR legal basis on which we rely.

We will clearly state and explain which data is necessary for the provision of the service and why. If we process data for legitimate interest purposes, we will clearly explain the legitimate interest pursued.

#### ► Consent

We request your consent for any use of data that is not strictly necessary for the provision of our services. In particular, we will request your consent for sharing data with third parties for purposes which are not strictly necessary for the provision of our services.

When we request your consent, it will always be for specific, legitimate purposes that are properly communicated and explained to you. Also, we will separate any consent request from the general agreement to the terms and conditions of our service.

It will be as easy to withdraw consent as it was to give it.

#### ► Your rights

We will provide you clear information about your data protection rights as set out in Chapter III of the GDPR. Notably:

- Right of access – You have the right to have access to your personal data and to obtain a copy free of charge.
- Right to rectification – You have the right to obtain the rectification of the data if it is inaccurate.
- Right to erasure – You have the right to obtain the erasure of the data.
- Right to restriction of processing – If you believe the data we have is inaccurate or that we are processing it unlawfully, you have the right to request that we stop using it until problems are resolved.
- Right to data portability – You have the right to receive your data in a commonly used format, so you can take it somewhere else.
- Right to object – You have the right to object to the use of your data in certain circumstances (e.g. when we are using data for purposes we consider to be in our legitimate interests). You can object to the use of your data for marketing purposes at any time.
- Right to lodge a complaint – If you believe your rights have been violated, you have the right to lodge a complaint with your national Data Protection Authority (include contact details).

The information will include a summary of what the right entails and how the data subject can take steps to exercise it.

#### ► Sharing of data with third parties

We will clearly inform you if we intend to share your data with third parties, specifying what data is shared, for which purposes and the list of third parties with whom it is shared (or at least the categories of third parties).

We will request your consent for sharing data with third parties for purposes which are not strictly necessary for the provision of our services.

### ▶ Data Storage

We will not store data for longer than necessary in relation to the purpose for which it was collected.

We will clearly communicate the period for which the personal data will be stored to the customer. If that is not possible, he will be given the criteria used to determine that period. These criteria will allow the customer to get a meaningful indication regarding for how long the data might be stored.

### ▶ Security

We apply the following measures to ensure that your data is protected (include indicative list).

You will be notified without undue delay of any data breach that compromises your data. We will inform you of the nature of the breach and also provide you with all the necessary instructions to mitigate/prevent any risks or damages as a result of the breach.

### ▶ Modifications to the privacy policy / data protection practices

Any changes will be notified sufficiently in advance to you. You will have the right to terminate the contract if you are not happy with the modifications.

## 2) Switching and termination

### ▶ Minimum period

The duration of the contract shall be mutually agreed upon between both parties.

### ▶ Test period

You may cancel the contract via email or our website at any time within the 14 calendar days following the date of your online registration.

### ▶ Termination fee

Contract termination is in principle free of charge.<sup>24</sup>

### ▶ Agg./supplier end contract as sanction

We reserve ourselves the right to terminate the contract unilaterally if you materially breach the contract, upon the condition that you have been allowed a reasonable time to correct the breach after you have been informed about it in writing at least 30 days in advance.

### ▶ Termination procedure & notification period

You may end this contract by giving us 30 days' notice, which you should communicate to us via email, via our website or by post. The notice period might be shortened upon our mutual agreement.

---

<sup>24</sup> Termination fees could only be allowed for fixed term contracts with suppliers and aggregators. When considering the early termination fee, this fee should be clearly communicated, reasonable and proportionate to an advantage that was given to the consumer (a discount, a promotion on the energy price). In such cases, energy companies should be obliged to demonstrate the real cost to be able to charge termination fees.

► **Modifications to contract**

Any changes to your contract or its terms and conditions will be notified to you 30 days before their entry into force. If you don't accept these changes you have the right to terminate your contract within the next 30 days, which shall be communicated to us via email, via our website or by post.

► **Contract automatically renewed**

A month before the end of your contract we will send you an offer for a new price at which we can renew your contract. If the offer is acceptable to you, you will be renewed automatically.

## Annex II - Methodology

### ► How did we assess the offers?

We first did a legal check. Lots of different legislation applies to energy contracts: some are specific for the energy sector<sup>25</sup>, some are horizontal and apply to all types of consumer transactions, such as the Unfair Contract Terms Directive, the Consumer Rights Directive or the General Data Protection Regulation. For the latter, we have checked the websites of the companies in question, as many companies struggled to become GDPR compliant by the May deadline, and we wanted to be sure to take the most updated version of the terms into consideration.

In this context, it is important to highlight that currently, energy suppliers are subject to this combination of sector specific and horizontal legislation, while aggregators only are subject to horizontal legislation. The Clean Energy for All Europeans package is introducing some rules for aggregators but these may not be sufficient.

### ► How to read the table?

The **green** boxes indicate contract terms that in our analysis are consumer friendly. Not only do they comply with the relevant consumer law, they also provide consumers with a friendly deal.

The **amber** boxes indicate contract terms that in our analysis might comply with consumer law depending on case law but which, in combination with other terms present, raise eyebrows and should not be promoted.

The **red** boxes indicate contract terms that in our analysis, are unfair to consumers or illegal.

## 1) Analysed questions:

### a) Tariff and Reward:

#### ► Tariff

- What is the model of the tariff?
- How is that tariff communicated to the consumer? And how often?
- What information does the consumer receive from the supplier/aggregator? How and how often is it communicated to him?
- Is the supplier/aggregator transparent on how the tariffs are calculated?
- Is the supplier/aggregator transparent about the potential risks related to the model of the tariff?
- What are the consequences if the consumer does not pay his charges?
- Does the supplier/aggregator offer an equipment? Does it affect the tariff?
- What are the consequences in case the consumer relocates?
- Can the supplier/aggregator modify the tariff? Is the consumer notified?

---

<sup>25</sup> Third Energy Package, such as Directive 72/2009. Moreover, the recently agreed revised Electricity Directive (under the Clean Energy for All Europeans package) sets conditions which suppliers and aggregators need to follow when offering demand response offers.

► **Reward**

- What kind of reward is planned in the contract?
- What are the requirements for the consumer to be eligible for a reward?
- Is the supplier/aggregator transparent on how the reward is calculated?
- What are the consequences on the reward if the consumer does not respect his obligations? Or if the contract is terminated?
- What are the consequences on the reward if the consumer relocates?
- Can the supplier/aggregator modify the calculation method, or the requirements for the reward? Is the consumer notified?

## 2) Data protection:

- Consumer's consent
  - Is the consumer's consent required before the supplier/aggregator collects his data?
  - How is the consumer's consent given?
- Collecting data
  - What type of data is collected, and what for?
  - How is data collected?
  - Can the consumer oppose the processing of his data?
- Sharing data
  - What type of data is shared, and what for?
  - With whom is the data shared? Is the consumer's consent specifically required in this case?
  - Can the consumer oppose the supplier/aggregator who shares his data?
- Storing data
  - What type of data is stored?
  - For how long is the data stored?
  - Can the consumer ask to delete the data stored?
  - Can the consumer access his data which is stored?
- Other
  - What happens in case modifications are done to the Privacy Policy?
  - What are the measures taken by the supplier/aggregator to protect the consumer's personal data?
  - What about data portability?

## 3) Switching and Termination:

- Is there a minimum period?
- Will termination fees apply if the consumer terminates the contract?
- Is there a cooling off period during which the consumer will not face financial charges if he cancels the contract?
- Can the supplier/aggregator terminate the contract as a sanction?
- How does the consumer notify the supplier when terminating the contract?
- How long is the notification period?
- Can the supplier/aggregator modify the contract? Is the consumer notified of the changes? And does he have the possibility to cancel the contract if he does not agree with the changes?
- Are there any obligations the consumer has to respect after the contract is terminated?
- How long does it take for the contract to end?

## Annex III – Assessment

### PRICE

	Tariff model	Clear communication of tariff for marketing	Regular Information on tariff	Transparency of the tariffs	Information and protection against risks (incl. bill shocks)	Modification of tariffs
<b>Jedlix Netherlands Aggregator</b>	Free app	Website, Google Play and Apple Store all communicate about the app being free.	No regular updates needed	Not relevant	Not relevant	Not relevant
<b>Votalis France Aggregator</b>	Free of subscription. Equipment and installation free, re-payment if early termination.	Website communicates on the offer being free of cost.	No regular updates needed	Not relevant	Not relevant	Not relevant
<b>tiko Switzerland Aggregator</b>	Consumer pays for installation of the equipment, no other tariff.	Estimated costs for equipment on website – the final costs are stated as depending on quote from the person installing the equipment.	No regular updates needed	Not relevant	Not relevant	Consumer will get notified of changes + possibility to cancel contract before changes come into force.
<b>Octopus Energy United Kingdom Energy supplier</b>	Tracker Tariff: Changes every day, linked to market prices.	No clear explanation on how much can the price change in practice. Some comparisons are given with other tariffs. For now, the tariff is not open to all consumers – only on waiting list – which might explain the limited information on the tariff.	Updated tariffs provided via an app, but unclear what time the update will take place.	The price structure is communicated via email and there is an explanation on the website.	Not mentioned. <sup>26</sup>	The FAQ states that consumers can switch free of charge, even the next day.
<b>Octopus Energy United Kingdom Energy supplier</b>	Agile Octopus: Electricity prices change every 30 min, linked to market prices.	A website provides estimates depending on consumption and energy profile. It also has a series of graphs illustrating the prices.	Updated tariffs provided via an app every day at 4pm. SMS warnings are given when prices go below zero.	The T&C available on the website does not cover Agile tariff. No information on the tariff structure either.	Agile has a price cap of 35p/kWh. However, no notifications are given to signal a hike of prices	Unclear, as no reference to T&C. The UK has strong rules on modification of tariffs, but unclear if this will be part of T&C

<sup>26</sup> Once informed about our analysis, Octopus told us that their modelling show “negligible risk” of bill shocks. Their response, and site information, focuses on average yearly prices, but this rely on average consumption. Though the daily wholesale prices are less volatile than the half-hourly prices, it is still possible for high prices to appear. Consumers would still benefit from better information, alerts or protection, to help avoid bill shocks.

<b>EasyEnergy</b> <b>Netherlands</b> <b>Energy supplier</b>	Flexible tariff, based on market prices with electricity prices changing every hour.	The supplier's websites give an explanation on the tariff, with minimum and maximum range. It gives some historical daily prices but this is insufficient for the consumer to assess if it is good for them and their consumption profiles.	The consumer can check the tariffs every day – update at 1pm.	A document on the website includes the calculating method. However, it is not written in a consumer-friendly way.	Only a reference to typical range of wholesale prices	Consumer can terminate the contract at any time at no extra cost.
<b>Eesti Energia</b> <b>Estonia</b> <b>Energy supplier</b>	Exchange Package.  Depends on the exchange price, with changes every hour available for those consumers with a smart meter.	No clear explanation on how much the tariff may vary, only some information on its logic.	An app offers the next day prices. Unclear the time of update will take place, and whether alternative means of information exist	A high-level formula is provided: "100% exchange price + margin + monthly fee". It is unclear how much each element costs. This is insufficient to make an estimate based on own consumption or their prices. <sup>27</sup>	Not mentioned in T&C/website <sup>28</sup>	The seller must inform of a change of contract 30 days in advance (article 2.3). If the consumer does not accept the changes to the price, s/he has the right to terminate the Contract after informing the Seller of this at least 21 days before the new price comes into force (article 8.5).

#### REWARD (INCLUDING SAVINGS) – AGGREGATORS ONLY

	Reward model	Requirements to receive reward	Transparency of the reward	Consequence on the reward if obligations not respected	Modification of the reward
<b>Jedlix</b> <b>Netherlands</b> <b>Aggregator</b>	The consumer will get a bonus after each charging session s/he allows Jedlix to charge when is best for the network.	Bonus given only if the consumer's supplier is a sustainable energy supplier and a partner of Jedlix. Consumer needs to request the reward After charging session, consumer can see provisional bonus.	The elements affecting the calculating method are described in the Terms and Conditions, but no formula is provided.	After permanent discontinuation of Jedlix's service the balance that the consumer has not yet claimed, and Jedlix not yet paid, will expire. Other pay-outs expire after 12 months.	Jedlix can adjust the calculating method, but no prior notice is required. Jedlix can also terminate the pay-out option, and no prior notice is required. <sup>29</sup>
<b>Voltalis</b> <b>France</b> <b>Aggregator</b>	No material reward is planned by the supplier. Savings can be achieved	n/a	Voltalis' website explains that the benefits to consumers come through savings on energy consumption. Only a reference to the highest estimate of savings is made (15%). This information is insufficient for consumers to understand the financial benefits of the offer, and thus to compare to other options available to the consumer.	n/a	n/a

<sup>27</sup> Once informed about our analysis, Eesti Energia clarified that the margin for each client depends on its amounts of consumption and its consumption profile. We consider that consumers should understand how this margin is calculated. They should also understand how it relates to their consumption. This will help them decide if the tariff is worth for them, and compare it to other options. Similarly, the monthly fee should be clearly defined

<sup>28</sup> After sharing our analysis with Eesti Energia, the company informed us that their app notifies the consumer of unusually high prices automatically. This feature appears to be a positive evolution towards reducing the risks of bill shock. However, we base our analysis in publicly available information, and the feature is not highlighted in the app description. In the description of notifications of Eesti's website only a notification on high consumption is explained.

<sup>29</sup> After sharing our analysis with Jedlix, the company told us that the clause would be changed to: "The pay-out option of the reward can only be terminated by Jedlix with 2 weeks prior notice. Previously accumulated savings is thereby retained."

<p><b>tiko</b></p> <p><b>Switzerland</b></p> <p><b>Aggregator</b></p>	<p>Yearly financial reward for being part of the network.</p>	<p>Being part of the tiko network for a minimum of 3 years. Some information, but insufficient, on how tiko will use the battery of the client (indicated in article "Contribution to tiko network" in T&amp;C, and tiko's website)</p>	<p>The amount of the reward depends on the size of the battery. In marketing materials the reward mechanism is clearly explained. However not such clarity is provided in the T&amp;C.</p>	<p>If the consumer stops contributing before the end of the minimum period (3 years) or leaves the device disconnected after tiko's request to remedy the situation, tiko can bill him the difference between the price of a tiko solution with contribution and the price of a tiko solution without contribution.</p>	<p>The tiko T&amp;C do not refer to the reward or its method of payment. It does mention that if tiko modifies contractual documents, the consumer will be informed in advanced and in the appropriate manner. The consumer may cancel the contract prior to the entry into force of the modification, free of charge (section 12).</p>
---	---	---	--	---	---

**DATA PROTECTION**

	Is the consumer's consent requested for purposes beyond the provision of the service?	How is consent given?	What data is collected?	How is data collected?	Can consumer oppose data processing?	What data is shared?	With whom is data shared?	Can consumer oppose sharing data?
<p><b>Jedlix</b></p> <p><b>Netherlands</b></p> <p><b>Aggregator</b></p>	<p>In T&amp;Cs: "user authorizes Jedlix to process personal data".<sup>30</sup></p>	<p>Not mentioned</p>	<p>In Privacy Policy: list of personal data collected</p>	<p>While using the app, or charging the car</p>	<p>Not mentioned in T&amp;C<sup>31</sup></p>	<p>Privacy Policy lists information that is shared.</p>	<p>With third parties for research purposes but no clear explanation<sup>32</sup></p>	<p>Not mentioned<sup>33</sup></p>
<p><b>Voltalis</b></p> <p><b>France</b></p> <p><b>Aggregator</b></p>	<p>Data seems to be used only for purposes related to the provision of the service. It also seems to be used for marketing purposes but only by the company itself in the framework of its services and right to object to this use is clearly mentioned.</p>	<p>Unclear, since wording in contract indicates that the consumer authorises use of data which could be misinterpreted for consent, whereas the data is used for the provision of the service and consent should not be required in such situation.</p>	<p>Data necessary for identification of the customer and his/her house, electricity consumption, electricity provider, and other data necessary for the service.</p>	<p>Provided by consumer when s/he adheres to contract and while using the service</p>	<p>Yes, right to object seems possible for any use of data that does not relate to the provision or improvement of the service, in particular for the use of the data for marketing</p>	<p>Listed in T&amp;Cs: identification of property, consumption usage, electricity supplier, other information necessary to participation of the consumer's premises to equipment and mechanisms used to optimise electricity consumption.</p>	<p>With managers of public electricity networks, RTE (manager of electricity transport network)</p>	<p>Specific right to object in relation to sharing of data not mentioned, only general right to object which should cover sharing of data which is not related to the provision of the service</p>

<sup>30</sup> Once informed about our analysis, Jedlix informed us that for the processing of personal data for the provision of its services, Jedlix relies on the performance of a contract with the data subject as a legal basis under the GDPR. Jedlix will amend its T&C's and will refer to its (amended) privacy policy as available on the website

<sup>31</sup> Jedlix informed us that it will amend its privacy policy and include all data subject rights. Furthermore, it will also provide a link in the T&C to the applicable privacy policy.

<sup>32</sup> Jedlix informed us that it will include a more detailed list of parties with whom personal data will be shared in the policy provided to the data subject.

<sup>33</sup> Jedlix informed us that all personal data that will be shared, will be shared for the performance of a contract.



<p><b>tiko</b> <b>Switzerland</b> <b>Aggregator</b></p>	<p>According to terms and conditions, the consumer “agrees” that her/his data is processed for multiple purposes. Consent for the use of data for marketing purposes within the Swisscom group is bundled in the agreement</p>	<p>Not mentioned</p>	<p>Not clear. The purposes for which the data is collected seem well defined and it is stated that only the data necessary for those purposes is collected. But there is no detailed information about what data is actually collected, only payment behaviour and electrical consumption are mentioned.</p>	<p>Not mentioned</p>	<p>Only possibility to prohibit use of data for marketing purposes is mentioned</p>	<p>Data linked to consumer’s consumption and data concerning payment behaviour</p>	<p>Not sufficiently specified (third parties and cooperation partners)</p>	<p>Not mentioned</p>
<p><b>Octopus Energy</b> <b>United Kingdom</b> <b>Energy supplier</b></p>	<p>Confusing information. Terms and conditions say data will not be processed without consent but also says data will always be necessary to provide the company’s product and services. Then privacy policy lists a series of purposes (notably marketing related purposes) for which the company relies on legitimate interests for processing data.</p>	<p>Not mentioned</p>	<p>Detailed information is provided in the privacy policy, but this seems to relate only to activity associated with the website. Terms and conditions do not contain detailed info about which data is collected for the provision of the service or other purposes.</p>	<p>When it comes to the website, it is automatically collected when visiting the website and also collected from third parties but no detailed information in terms of data collected when using the services.<sup>34</sup></p>	<p>Yes, for marketing purposes and for the purpose of making the supplier’s website more tailored to the consumer’s needs. The consumer can also object data processing based on legitimate interest.</p>	<p>Unspecified data is shared with third parties for it to be processed and also to comply with industry obligations. Certain data is also shared with credit reference agencies, third parties for marketing purposes and to complete purchases on the site. If the company is sold, all data is transferred to new owner<sup>35</sup></p>	<p>Information is not specific enough. With Octopus’s subcontractors involved in the purchase process + to new owner of the business + share payment record with credit reference agencies<sup>36</sup></p>	<p>Yes</p>
<p><b>easyEnergy</b> <b>Netherlands</b> <b>Energy supplier</b></p>	<p>Consent required to read smart meter. The company also states that it collects data for social media while it also states that data will never be processed outside the EU which seems contradictory.</p>	<p>Company requests consent.</p>	<p>Personal data, necessary for easyEnergy to supply electricity + for billing</p>	<p>Through info provided by consumer and through smart meter + also through third parties</p>	<p>Can withdraw consent + oppose processing for marketing purposes</p>	<p>Personal data in order for third parties to help easyEnergy fulfil the contract + with other third parties which is too broad</p>	<p>With third parties but this is written in a vague way that could go beyond (no mention that these data should not be shared by that third party with another third party)</p>	<p>Yes</p>

<sup>34</sup> Once informed about our analysis, Octopus told us that this relates to cookies and associated data practices across Octopus website. Indeed, the problem BEUC points out is that there is no information about data collection related to the service itself, the information that can be found relates to the use of the website.

<sup>35</sup> After sharing our analysis with Octopus, the company informed us that, as part of their onboarding process, they share personal information with credit referencing agencies to ensure that the customers have suitable creditworthiness to pass their internal risk policies and to protect against fraud. Other third parties involved may be payment processing agencies or other payment providers

<sup>36</sup> In their feedback on our analysis, Octopus pointed out that there is no requirement under Article 13 of the GDPR to set out the precise details of those entities which Octopus Energy shares personal data with. Where Octopus does share personal data, they set out the circumstances where this may happen and the categories of recipients. However, we are not convinced that sharing the information with credit agencies is necessary for entering/performance of the contract.

<b>Eesti Energia</b> <b>Estonia</b> <b>Energy supplier</b>	Not specified. Only states right to withdraw approval if company does not have right to process data without the consumer's approval. Consent is not requested to share data with partners for marketing purposes. And supplier reserves right to record any conversation with the consumer. <sup>37</sup>	Not mentioned in the English version of T&C/ privacy policy <sup>38</sup>	According to terms and conditions: details of the buyer and notifications from the buyer about the use of the services	Certain data is provided by the consumer. Supplier reserves right to record any conversation with consumer. Nothing specified beyond that in T&C/ privacy policy available in English. <sup>39</sup>	Can withdraw consent + can ask that processing is stopped	It is mentioned that data is shared with third parties, but which data is shared is not specified in T&C/ privacy policy available in English <sup>40</sup>	Data is processed by supplier + other persons authorized by supplier (listed on website)	General right to oppose to processing of data is mentioned but it is not specified that this applies to sharing of data with third parties
--	--	---	--	--	---	---	--	--

	<b>What data is stored?</b>	<b>For how long data is stored?</b>	<b>Can consumer ask to delete stored data?</b>	<b>Can consumer access his data?</b>	<b>Modifications of Privacy Policy?</b>	<b>Security measures to protect consumer data?</b>	<b>Data portability?</b>
<b>Jedlix</b> <b>Netherlands</b> <b>Aggregator</b>	Data regarding structure and transaction, historic charging schedules and charging sessions	No longer than necessary, or for as long as it is required by the law <sup>41</sup>	Yes, always	Yes + right to modify	Privacy Policy may be modified at any time. Consumer will be notified of any changes in the privacy policy through the application.	Data is stored at secured servers of a provider	Not mentioned <sup>42</sup>
<b>Votalis</b> <b>France</b> <b>Aggregator</b>	Not mentioned	Not mentioned	Not mentioned	Yes + right to modify	Terms and conditions include a general clause that if the conditions are modified substantially (not specific to the privacy policy), the consumer must be notified.	According to terms and conditions, processing is subject to protection measures required by law n°78-17 from 6th of January 1978.	Not mentioned

<sup>37</sup> In their feedback on our analysis, Eesti Energia informed us that they do not share consumer data beyond the provision of the service and that marketing information could be provided to consumers only in case prior consent for providing such information has been received. Consumer has always the right to decline from being recorded. The company also indicate that more information on their privacy policy is available in Estonian language while BEUC analysed only the English version which should include the same information. According to our analysis, the Terms and Conditions available in English state that the company has the right to share the information with third parties for marketing purposes and there is no information about what the rights of the consumer are. It is also not clear what prevails in case there are discrepancies between the T&C and the privacy policy

<sup>38</sup> In their feedback, Eesti Energia also explained that the consent can be given via telephone, via e-customer service area, via e-mail and in writing (by sending a letter). However, we did not find this information in the Terms and Conditions/ the privacy policy available in English.

<sup>39</sup> After sharing our assessment, Eesti Energia informed us that the company reserves the right to record any instructions given by the customers for fulfilling the contract and to be able to prove that such instructions have been given by the customer. The customer has the right to review their personal data and demand that the collected data be deleted where such a right is granted by provisions of the Personal Data Protection Act or any other legal act. The company says that more detailed information is available in Estonian version which was subject to this analysis. Also, it is not known if detailed information specify data collected while using the service.

<sup>40</sup> Once informed about our analysis, Jedlix told us that it will make the following change: 'Data will not be stored longer than twelve months after the end of the contract with each end-user' ; 'After the termination of use of the app, data tracing back to the user is deleted within twelve months after the end of the contract with the end-user, unless Jedlix has been legally ordered to store the information by the competent authorities. Furthermore, Jedlix is legally obliged to retain personal data relevant for tax purposes for 7 years.'

<sup>41</sup> Once informed about our analysis, Jedlix told us that it will make the following change: 'Data will not be stored longer than twelve months after the end of the contract with each end-user' ; 'After the termination of use of the app, data tracing back to the user is deleted within twelve months after the end of the contract with the end-user, unless Jedlix has been legally ordered to store the information by the competent authorities. Furthermore, Jedlix is legally obliged to retain personal data relevant for tax purposes for 7 years.'

<sup>42</sup> Jedlix also informed us that it will amend its privacy policy and include all data subject rights.

<b>tiko</b> <b>Switzerland</b> <b>Aggregator</b>	Not mentioned	Link between data and consumer is deleted after termination and only used anonymously afterwards but the data itself is not deleted	Not mentioned	The consumer can ask for information regarding stored data (which does not seem exactly the same as access to data)	Terms and conditions include a section on 'modifications of the tiko solution and of the general conditions for the tiko solution' but there is no specific reference to modification of privacy policy.	Necessary measures to prevent unauthorized third parties to access its network but for security of devices all responsibility is passed on to consumer, even if the company also has remote access	Not mentioned
<b>Octopus Energy</b> <b>United Kingdom</b> <b>Energy supplier</b>	Company mentions what data is collected in various circumstances, but unclear if all that data is kept. Also no specific details about what data is stored when using the service.	For as long as necessary for the storage to fulfil its purpose. Also, it gives some indications in terms of how they determine the appropriate retention period.	Yes	Yes + right to ask to correct inaccurate info	Modifications notified to consumer by email when relevant	Only information is that data is stored in secure servers	Yes
<b>easyEnergy</b> <b>Netherlands</b> <b>Energy supplier</b>	Mentioned in general terms: data needed for correct coupling of use and market prices and so that consumer gets complete insight in use and prices	For as long as it is necessary to fulfil the purpose of storing it, but no longer than allowed by the law	Yes, receives an answer within 4 weeks after sending his request	Yes, according to T&C the customer has to pay charges specified in a law + answer within 4 weeks of requesting access <sup>43</sup>	No notification if modification	Supplier operates regular control when sharing data with third parties + adopts protection measures but no mention of notification if breach	In certain circumstances, yes (but those circumstances are not specified)
<b>Eesti Energia</b> <b>Estonia</b> <b>Energy supplier</b>	Not mentioned <sup>44</sup>	Not mentioned	Yes, when the law allows it but there is no further information on when this is indeed allowed.	Yes + ask to correct inaccurate data	Not mentioned	Not mentioned in T&C <sup>45</sup>	Not mentioned

<sup>43</sup> EasyEnergy reacted to our analysis and acknowledged that it should provide the data free of charge and informed us that it will update its Terms and Conditions. easyEnergy also said that its customers have access to their data on a daily basis via online portal, free of charge.

<sup>44</sup> Once informed about our analysis, Eesti Energia told us that this depends from specific circumstances foreseen in the contract and applied law. We believe this information is not sufficient.

<sup>45</sup> In their feedback, Eesti Energia also told us that they regularly examine their security measures in order to meet its obligations stemming from the applied regulation to protect consumer data. However, we believe that more detailed information about how storage periods are determined and what security measures are used would be desirable.

## TERMINATION AND SWITCHING

	Minimum period?	Test period?	Termination fee?	Aggregator/ supplier end contract as sanction?	Termination procedure	Notification period	Modifications to contract	Contract automatically renewed?
<b>Jedlix Netherlands Aggregator</b>	Not mentioned	n/a	n/a	At any time	Request permanent discontinuation by email	Not mentioned <sup>46</sup>	Not mentioned <sup>47</sup>	Not mentioned <sup>48</sup>
<b>Voltalis France Aggregator</b>	Minimum 36 months	1 month	150euros in the 1 <sup>st</sup> year, 100 euros in the 2 <sup>nd</sup> year, 50euros in the 3 <sup>rd</sup> year <sup>49</sup>	In case of abusive use of equipment	Not mentioned	Not mentioned	Substantial changes are notified + 2 months to cancel	Contract concluded for undetermined period but minimum 36 months
<b>tiko Switzerland Aggregator</b>	It may be mentioned in other contractual documents	Test period not mentioned. Minimum term is not mentioned in the terms and condition.	Liable for the charges until the end of minimum term. Minimum term is not defined in terms and conditions.	If consumer does not pay charges (without prior notice) or if electrical installation causes disruption to tiko network (upon reasonable notice)	In writing	1 month	Changes notified + possibility to cancel before entering into force. The consumer will be informed about the modifications in advance and in the appropriate manner (for example, by e-mail or in a <u>newsletter</u> ).	Term of contract is unlimited
<b>Octopus Energy United Kingdom Energy supplier</b>	Not mentioned	14 days	No termination fee, but if moving to a new house without requesting Octopus to continue supplying energy to the new house, it is not clear whether termination charges will apply.	In 3 cases: material breach, charges not paid, supplier not licenced anymore (no mention of notification) <sup>50</sup>	Via email, via supplier's website, by post	If moving the house: notice within 28 calendar days of moving out)	Changes to consumer's disadvantage: 30 calendar days' notice but no mention of possibility to cancel	Not mentioned (only for fixed contracts)

<sup>46</sup> After sharing our analysis, Jedlix informed us that they will change their terms and conditions on this point. Instead "The pay-out option of the reward can be terminated by Jedlix without prior notice. Previously accumulated savings is thereby retained" they will use the following: "The pay-out option of the reward can only be terminated by Jedlix with 2 weeks prior notice. Previously accumulated savings is thereby retained".

<sup>47</sup> Jedlix also informed us that they will change their terms and conditions in order to introduce a 2 weeks notification period for any modifications to the contract.

<sup>48</sup> Jedlix informed us that they will make it clear to consumers that their contracts are indefinite and that the user can end it at any time with a two weeks notice.

<sup>49</sup> Once informed about our analysis, Voltalis wrote that while the consumer should remain free to terminate the contract, there should be some protection for the aggregator who bears all the risk and cannot recoup its investment before several years of operation.

<sup>50</sup> Once informed about our analysis, Octopus mentioned that they will take our comment, about the importance of notifying consumers in all circumstances when they end the contract, into account during the next revision of their terms and conditions.

<b>easyEnergy</b> <b>Netherlands</b> <b>Energy supplier</b>	Only non-fixed term contracts are offered	14 days	No termination fee	If consumer does not respect contract	Orally, in writing, in digital form	30 days (can be shorter if consumer and supplier agree)	30 days' notice for changes to terms and conditions + possibility to cancel	Only indefinite contracts are offered
<b>Eesti Energia</b> <b>Estonia</b> <b>Energy supplier</b>	Consumer and supplier negotiate duration	14 days	No termination fee	If consumer materially breaches the contract, but is given the chance to correct her/his fault	Orally, in writing, in digital form	1 month	Notified 1 month before entering into force + possibility to cancel	Supplier may give renewal proposal 1 month before end of contract: if consumer says nothing: automatically renewed

Published in April 2019 by BEUC, Brussels, Belgium.



The European Consumer Organisation

Bureau Européen des Unions de Consommateurs

Europäischer Verbraucherverband

Rue d'Arlon, 80 Bte 1, B - 1040 Bruxelles

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.



This report is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020)