

EUGINE Position paper

Clean energy for all Europeans (1/2) - Shaping a supportive market design

Annex - Amendments

1. Proposed electricity regulation

1.1. Recitals

Electricity regulation, recital 5, technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
In the past, electricity customers were purely passive, often buying electricity at regulated prices without any direct relation to the market. In the future, customers need to be enabled to fully participate in the market on equal footing with other market participants. To integrate growing shares of renewable energy, the future electricity system needs to make use of all available sources of flexibility, <i>particularly</i> demand response and storage. To achieve effective decarbonisation at lowest cost, it also needs to encourage energy efficiency.	In the past, electricity customers were purely passive, often buying electricity at regulated prices without any direct relation to the market. In the future, customers need to be enabled to fully participate in the market on equal footing with other market participants. To integrate growing shares of variable renewable energy and to offset the related various types of power generation variations, from short to long term flexibility needs , the future electricity system needs to make use of all available sources of flexibility, particularly demand response, flexible low-carbon generation and storage. To achieve effective decarbonisation at lowest cost, it also needs to encourage energy efficiency.
<i>Justification: Flexibility is needed for integrating the variable renewable energy sources (wind & solar) which are going to provide an ever-growing share of Europe's energy supply. This evolution leads to various types of variations in the energy system and thus various types of flexibility needs. To keep energy prices under control, the EU legislation should keep the door open to all technologies able to provide the various types of flexibility and let them compete on the market so that security of supply is ensured and flexibility costs are reduced. This includes flexible low-carbon generation, i.e. gas-fired power plants based on gas engines or turbines.</i>	

Electricity regulation, recital 30, phasing-out of capacity mechanisms	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
Main principles of capacity mechanisms should be laid down, building on the environmental and energy State aid principles and the findings of DG Competition's Sector Inquiry on capacity mechanisms. Capacity mechanisms already in place should be reviewed in light of these principles. In case the European resource adequacy assessment reveals the absence of any adequacy concern, no new capacity mechanism should be established and no new capacity commitments under mechanisms already in place should be made. The application of the State aid control rules pursuant to Articles 107 to 109 TFUE must be complied with at all times.	Main principles of capacity mechanisms should be laid down, building on the environmental and energy State aid principles and the findings of DG Competition's Sector Inquiry on capacity mechanisms. When establishing a capacity mechanism, a phasing-out strategy should be included and preference should be given to least distortive concepts like strategic reserves. An Emission Performance Standard should steer public funding towards less emitting and more flexible power plants. Capacity mechanisms already in place should be reviewed in light of these principles. In case the European resource adequacy assessment reveals the absence of any adequacy concern, no new capacity mechanism should be established and no new capacity commitments under mechanisms already in place should be made. The application of the State aid control

	rules pursuant to Articles 107 to 109 TFUE must be complied with at all times.
<i>Justification: In view of capacity mechanisms' distortive impact, each capacity mechanism should include a detailed phasing-out strategy with a deadline so that energy systems are reformed adequately and in due time before capacity mechanisms are removed. Moreover, most distortive types of capacity mechanisms like capacity payments should be replaced by least distortive concepts like strategic reserves whose capacities are kept outside the market. Finally, the Emission Performance Standard of 550g CO2 per kWh should avoid public funding for polluting power plants and should support clean and flexible gas-fired power plants, be they based on the gas engine or gas turbine technology.</i>	

1.2. Chapter I – Subject matter, scope and definitions

Electricity regulation, article 2, capacity mechanisms	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(u) 'capacity mechanism' means an administrative measure to ensure the achievement of the desired level of security of supply by remunerating resources for their availability not including measures relating to ancillary services;	(u) 'capacity mechanism' means a temporary administrative measure aiming at ensuring the achievement of the desired level of security of supply by remunerating resources for their availability not including measures relating to ancillary services;
<i>Justification: Definition of 'capacity mechanism' should be slightly reworded to become more balanced. Such schemes should remain temporary. Moreover, the "achievement of the desired level of security of supply" is only an objective of capacity mechanisms. There is no guarantee that security of supply will be achieved under any circumstances.</i>	

1.3. Chapter II – General rules for the electricity market

Electricity regulation, article 4, balancing responsibility	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	(3 bis new) Paragraph 2 shall not apply to aggregators bundling production from several generating installations.
<i>Justification: While a derogation for installations with an installed electricity capacity of less than 500 kW (and then 250 kW) may still be necessary to protect small generators, this derogation should not be passed on to aggregators combining electricity production from several small installations, otherwise competition on electricity markets would be adversely affected.</i>	

Electricity regulation, article 5, technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(2) Balancing markets shall be organised in such a way as to ensure effective non-discrimination between market participants taking account of the different technical capability of generation from variable renewable sources and demand side response and storage.	(2) Balancing markets shall be organised in such a way as to ensure effective non-discrimination between market participants.
<i>Justification: The proposed wording is contradictory: on the one hand 'non-discrimination' should be ensured, but on the other hand 'different technical capability' should be taken into account which could lead to a discriminatory approach. The contradiction must therefore be removed.</i>	

Electricity regulation, article 7, imbalance settlement period reduction	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(4) By 1 January 2025, the imbalance settlement period shall be 15 minutes in all control areas.	(4) By 1 January 2025, the imbalance settlement period shall be shorter than or equal to 15 minutes in all control areas.
<i>Justification: Market operators and market participants have to adapt to growing variations in electricity production from variable renewable energy sources (wind & solar): new requirements should fit in with even more dynamic trading needs and behaviors. Imbalance settlement periods should be reduced to maximum 15 minutes so that shorter periods than 15 minutes are possible where shares of electricity coming from variable renewable energy sources are very high.</i>	

Electricity regulation, article 9, price caps removal	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(1) There shall be no maximum limit of the wholesale electricity price unless it is set at the value of lost load as determined in accordance with Article 10. There shall be no minimum limit of the wholesale electricity price unless it is set at a value of minus 2000 € or less and, in the event that it is or anticipated to be reached, set at a lower value for the following day. This provision shall apply, inter alia, to bidding and clearing in all timeframes and include balancing energy and imbalance prices.	(1) There shall be no maximum limit of the wholesale electricity price unless it is set at the value of lost load as determined in accordance with Article 10. There shall be no minimum limit of the wholesale electricity price. This provision shall apply, inter alia, to bidding and clearing in all timeframes and include balancing energy and imbalance prices.
<i>Justification: Negative prices occur when highly inflexible power generation meets low demand (i.e. when costs for power producers of generating electricity and selling it at negative prices are lower than costs of shutting down power plants which request hours (e.g. coal power plants) or sometimes even days (e.g. nuclear power plants) to be stopped and then restarted. Negative prices provide very useful market signals for market participants to invest in more flexible technologies. As there is no need for a '-2000€' minimum limit (and no mention in the impact assessment), it should be removed.</i>	

Electricity regulation, article 9, actions against price restrictions	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(5) Where a Member State has identified a policy or measure which could serve to restrict price formation they shall take all appropriate actions to eliminate or, if not possible, mitigate the impact on bidding behaviour. Member States shall provide a report to the Commission by [OP: six months after entry into force] detailing the measures and actions they have taken or intend to take.	(5) Where a Member State has identified a policy or measure which could serve to restrict price formation they shall take all appropriate actions to eliminate or, if not possible, mitigate the impact on bidding behaviour. Member States shall provide a report to the Commission by [OP: six months after entry into force] detailing the measures and actions they have taken or intend to take. In view of ensuring full compliance with these provisions, the Commission may request additional measures, actions and reports.
<i>Justification: In case Member States are not taking all appropriate actions in due time, the Commission should be entitled to request additional measures, actions and reports, so that full compliance with the present article is ensured.</i>	

Electricity regulation, article 11, end of priority dispatch	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(5) Priority dispatch shall not endanger the secure operation of the electricity system, shall not be used as a justification for curtailment of cross-border capacities beyond what is provided for in Article 14 and shall be based on transparent and non-discriminatory criteria.	(5) Priority dispatch shall not endanger the secure operation of the electricity system, shall not be granted to aggregators , shall not be used as a justification for curtailment of cross-border capacities beyond what is provided for in Article 14 and shall be based on transparent and non-discriminatory criteria.
<i>Justification: While a derogation for installations with an installed electricity capacity of less than 500 kW (and then 250 kW and even 125 kW) may still be necessary to protect small generators, this derogation should not be passed on to aggregators combining electricity production from several small installations, otherwise competition on electricity markets would be adversely affected.</i>	

1.4. Chapter III – Network access and congestion management

1.5. Chapter IV – Resource adequacy

Electricity regulation, article 18, phasing-out of regulatory distortions & technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<u>Resource adequacy</u> (1) Member States shall monitor resource adequacy within their territory based on the European resource adequacy assessment pursuant to Article 19. (2) Where the European resource adequacy assessment identifies a resource adequacy concern Member States shall identify any regulatory distortions that caused or contributed to the emergence of the concern. (3) Member States shall publish a timeline for adopting measures to eliminate any identified regulatory distortions. When addressing resource adequacy concerns Member States shall in particular consider removing regulatory distortions, enabling shortage pricing, developing interconnection, energy storage, demand side measures and energy efficiency.	<u>Resource adequacy and phasing-out of regulatory distortions</u> (1) Member States shall monitor resource adequacy within their territory based on the European resource adequacy assessment pursuant to Article 19. (2) Where the European resource adequacy assessment identifies a resource adequacy concern Member States shall identify any regulatory distortions that caused or contributed to the emergence of the concern. (3) Member States shall publish a timeline for adopting measures to eliminate any identified regulatory distortions by 1 January 2023 at the latest . When addressing resource adequacy concerns Member States shall in particular consider removing regulatory distortions, enabling shortage pricing, developing flexible generation , interconnection, energy storage, demand side measures and energy efficiency.
<i>Justification: This article is not only dealing with 'resource adequacy' but also with the key issue of 'regulatory distortions' which should be eliminated as soon as possible. As a consequence, the title should be adapted to include this second dimension. Furthermore, a deadline 'by 1 January 2023 at the latest' would help Member States to rapidly remove all regulatory distortions. Finally, to ensure technology neutrality and price competition lowering costs for consumers and businesses, all flexibility solutions should be promoted and be mentioned in the present article, not only three out of four.</i>	

Electricity regulation, article 23, capacity mechanisms

Text proposed by the Commission

Amendment

(3) Capacity mechanisms shall not create **unnecessary** market distortions and **not** limit cross-border trade. The amount of capacity committed in the mechanism shall not go beyond what is necessary to address the concern.

(3) Capacity mechanisms shall not create market distortions, **discriminate between technologies as well as between existing and new resources, undermine climate pledges of the Union** and limit cross-border trade. The amount of capacity committed in the mechanism shall not go beyond what is necessary to address the concern.

(3 bis) A termination date shall be defined for each capacity mechanism when established. A capacity mechanism shall not be applied beyond its predetermined termination date. Before a capacity mechanism is established, a phasing-out strategy shall be prepared to describe how residual adequacy concerns are to be addressed before it is removed.

(4) Generation capacity for which a final investment decision has been made after [OP: entry into force] shall only be eligible to participate in a capacity mechanism if its emissions are below 550 gr CO₂/kWh. Generation capacity emitting 550 gr CO₂/kWh or more shall not be committed in capacity mechanisms 5 years after the entry into force of this Regulation.

(4) Generation capacity for which a final investment decision has been made after [OP: entry into force] shall only be eligible to participate in a capacity mechanism if its emissions are below 550 gr CO₂/kWh. Generation capacity emitting 550 gr CO₂/kWh or more shall not be committed in capacity mechanisms 5 years after the entry into force of this Regulation. **The Commission is empowered to adopt a delegated act in accordance with Article 63 to define the calculation methodology to be applied. This methodology shall be stable, take into account both the electricity and heat generated and not apply to generation capacity using energy from renewable sources.**

(5) Where the European resource adequacy assessment has not identified a resource adequacy concern, Member States shall not apply capacity mechanisms.

(5) Where the European resource adequacy assessment has not identified a resource adequacy concern **or the concern has become obsolete**, Member States shall not apply **or terminate** capacity mechanisms. **Capacity mechanisms are removed at the latest when their termination date is reached.**

Justification: To reduce financial and environmental costs caused by ill-designed capacity mechanisms, the present ‘design principles’ should be made more exhaustive, specific and restrictive, by including conditions related to technology neutrality and climate change. Moreover, a clear and stable calculation methodology for the emission performance standard foreseen under paragraph 4 is missing in the proposal of the Commission. It should be prepared by the European Commission via a delegated act supporting cogeneration and exempting renewable energies. Finally, it should be clear that existing capacity mechanisms should be stopped when the European resource adequacy assessment shows that the concern was satisfactorily addressed or at the latest when a predetermined termination date is reached.

1.6. Chapter V – Transmission system operation

1.7. Chapter VI – Distribution system operation

Electricity regulation, article 52, consultation of technology providers	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(1) While preparing possible network codes pursuant to Article 56, the EU DSO entity shall conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant stakeholders, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 50. That consultation shall also involve national regulatory authorities and other national authorities, supply and generation undertakings, system users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.</p>	<p>(1) While preparing possible network codes pursuant to Article 56, the EU DSO entity shall conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant stakeholders, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 50. That consultation shall also involve national regulatory authorities and other national authorities, supply and generation undertakings, technology providers, system users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.</p>
<p><i>Justification: Due to the key role of the various technologies for tomorrow's energy system, technology providers should be consulted as well.</i></p>	

1.8. Chapter VII – Network codes and guidelines

Electricity regulation, article 54, harmonisation by network codes & guidelines	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(2) The network codes and guidelines shall</p> <ul style="list-style-type: none"> (a) ensure that they provide the minimum degree of harmonisation required to achieve the aims of this Regulation, (b) take into account, where appropriate, regional specificities, (c) not go beyond what is necessary for that purpose and (d) be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade. 	<p>(2) The network codes and guidelines shall</p> <ul style="list-style-type: none"> (a) ensure that they provide the appropriate degree of harmonisation required to achieve the aims of this Regulation and reap the benefits of the internal market, (b) take into account, where appropriate, regional specificities, (c) not go beyond what is necessary for that purpose and (d) be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.
<p><i>Justification: Experience from the development process of the network code on requirements for generators has shown that the 'minimum degree of harmonisation' risks leaving numerous open questions to be solved at national level. It may not be sufficient to reap the benefits of the internal market and can, in the worst case, make legislation even more complex than before. As a consequence, the European Union needs an 'appropriate degree of harmonisation', instead of a 'minimum degree of harmonisation'.</i></p>	

Electricity regulation, article 56, amendments of network codes	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(4) The Commission is empowered to adopt, taking account of the Agency's proposals, amendments to any network code adopted under Article 55 as delegated acts in accordance with Article 63.	(4) The Commission is empowered to adopt, taking account of the Agency's proposals and after a public consultation on the proposed changes , amendments to any network code adopted under Article 55 as delegated acts in accordance with Article 63.
<i>Justification: As network codes may have a significant impact on the way energy systems are working, a consultation should be organised, not only for new network codes but also for amendments to existing network codes.</i>	

Electricity regulation, article 57, harmonisation by network codes & guidelines	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(5) Where appropriate, guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation may also specify [...]	(5) Where appropriate, guidelines providing the appropriate degree of harmonisation required to achieve the aim of this Regulation and reap the benefits of the internal market may also specify [...]
<i>Justification: Experience from the development process of the network code on requirements for generators has shown that the 'minimum degree of harmonisation' risks leaving numerous open questions to be solved at national level. It may not be sufficient to reap the benefits of the internal market and can, in the worst case, make legislation even more complex than before. As a consequence, the European Union needs an 'appropriate degree of harmonisation', instead of a 'minimum degree of harmonisation'.</i>	

1.9. Chapter VIII – Final provisions

Electricity regulation, article 63, capacity mechanisms	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
(2) The power to adopt delegated acts referred to in Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(11) shall be conferred on the Commission for an undetermined period of time from the [OP: please insert the date of entry into force].	(2) The power to adopt delegated acts referred to in Article 23(4), Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(11) shall be conferred on the Commission for an undetermined period of time from the [OP: please insert the date of entry into force].
(3) The delegation of power referred to in Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(11) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.	(3) The delegation of power referred to in Article 23(4), Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(11) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
[...]	[...]

<p>(6) A delegated act adopted pursuant to Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(11) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.</p>	<p>(6) A delegated act adopted pursuant to Article 23(4), Article 31(3), Article 46(4), Article 55(1), Article 56(1) and (4), and Article 59(11) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.</p>
<p><i>Justification: The European Commission should be empowered to adopt a delegated act in accordance with Article 63 to define the stable calculation methodology to be applied.</i></p>	

2. [Proposed electricity directive](#)

2.1. [Recitals](#)

<p align="center">Electricity directive, recital 5, technology neutrality</p>	
<p align="center"><i>Text proposed by the Commission</i></p>	<p align="center"><i>Amendment</i></p>
<p>(5) The Communication from the Commission of 15 July 2015 'Launching the public consultation process on a new energy market design'³¹ highlighted that the move away from generation in large central power plants towards de-centralized production from renewable energy sources and decarbonized markets requires an adaptation of the current rules of electricity trading and changes to the existing market roles. It underlined needs to organise electricity markets in a more flexible manner and to fully integrate all market players – including renewable energy producers, new energy service providers, energy storage and flexible demand.</p>	<p>(5) The Communication from the Commission of 15 July 2015 'Launching the public consultation process on a new energy market design'³¹ highlighted that the move away from generation in large central power plants towards de-centralized production from renewable energy sources and decarbonized markets requires an adaptation of the current rules of electricity trading and changes to the existing market roles. It underlined needs to organise electricity markets in a more flexible manner and to fully integrate all market players – including renewable energy producers, new energy service providers, energy storage and both flexible supply and demand.</p>
<p><i>Justification: The Commission's communication of 15 July 2015 is equally talking about flexibility from the supply and demand sides (see its pages 3 and 7). Moreover, 'flexible supply' from flexible generation is at least as important as 'flexible demand' and 'storage' as source of flexibility: flexible generation is currently providing the bulk of the flexibility needed by Europe's energy system. EU legislation should be technology neutral and not pick and choose certain technologies. To reduce energy prices for consumers and businesses, legislation should be open to all efficient flexibility technologies and let them compete so that flexibility costs are reduced.</i></p>	

Electricity directive, recital 42, technology neutrality

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(42) Distribution system operators have to cost-efficiently integrate new electricity generation especially generating installations using renewable energy sources and new loads such as heat pumps and electric vehicles. For this purpose distributions system operators should be enabled and incentivised to use services from distributed energy resources such as demand response and energy storage, based on market procedures, in order to efficiently operate their networks and avoid costly network expansions. Member States should put in place appropriate measures such as national network codes and market rules, and incentivise distribution system operators through network tariffs which do not create obstacles to flexibility or to the improvement of energy efficiency in the grid. Member States should also introduce network development plans for distribution systems in order to support the integration of generating installations using renewable energy sources, facilitate the development of storage facilities and the electrification of the transport sector, and provide to system users adequate information regarding the foreseen expansions or upgrades of the network, as currently such procedure does not exist in the majority of Member States.</p>	<p>(42) Distribution system operators have to cost-efficiently integrate new electricity generation especially generating installations using renewable energy sources and new loads such as heat pumps and electric vehicles. For this purpose distributions system operators should be enabled and incentivised to use services from distributed energy resources such as flexible generation, demand response and energy storage, based on market procedures, in order to efficiently operate their networks and avoid costly network expansions. Member States should put in place appropriate measures such as national network codes and market rules, and incentivise distribution system operators through network tariffs which do not create obstacles to flexibility or to the improvement of energy efficiency in the grid. Member States should also introduce network development plans for distribution systems in order to support the integration of generating installations using renewable energy sources or providing flexibility to the grid, facilitate the development of storage facilities and the electrification of the transport sector, and provide to system users adequate information regarding the foreseen expansions or upgrades of the network, as currently such procedure does not exist in the majority of Member States.</p>
<p><i>Justification: Distributed and flexible generating installations, like engine-based cogeneration power plants running on biogas and generating electricity and heat in a very energy-efficient way, are playing a key role to integrate renewable energy sources and increase energy efficiency. EU legislation should be technology neutral and not pick and choose certain technologies. Flexible generation should therefore be added in this recital. To reduce energy prices for consumers and businesses, legislation should be open to all efficient technologies and let them compete so that energy costs are reduced.</i></p>	

Electricity directive, recital 5, technology neutrality

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(5) The Communication from the Commission of 15 July 2015 'Launching the public consultation process on a new energy market design'³¹ highlighted that the move away from generation in large central power plants towards de-centralized production from renewable energy sources and decarbonized markets requires an adaptation of the current rules of electricity trading and changes to the existing market roles. It underlined needs to organise electricity markets in a more flexible manner and to fully integrate all market players – including renewable energy producers, new energy service providers, energy storage and flexible demand.</p>	<p>(5) The Communication from the Commission of 15 July 2015 'Launching the public consultation process on a new energy market design'³¹ highlighted that the move away from generation in large central power plants towards de-centralized production from renewable energy sources and decarbonized markets requires an adaptation of the current rules of electricity trading and changes to the existing market roles. It underlined needs to organise electricity markets in a more flexible manner and to fully integrate all market players – including renewable energy producers, new energy service providers, energy storage and both flexible supply and demand.</p>

Justification: The Commission's communication of 15 July 2015 is equally talking about flexibility from the supply and demand sides (see its pages 3 and 7). Moreover, 'flexible supply' from flexible generation is at least as important as 'flexible demand' and 'storage' as source of flexibility: flexible generation is currently providing the bulk of the flexibility needed by Europe's energy system. EU legislation should be technology neutral and not pick and choose certain technologies. To reduce energy prices for consumers and businesses, legislation should be open to all efficient flexibility technologies and let them compete so that flexibility costs are reduced.

2.2. [Chapter I – Subject matter and definition](#)

2.3. [Chapter II – General rules for the organisation of the sector](#)

Electricity directive, article 9, need for flexibility	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(2) Having full regard to the relevant provisions of the Treaty, in particular Article 106 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for electricity undertakings of the Union to national consumers. Public service obligations which concern the price setting for the supply of electricity shall comply with the requirements set out in Article 5.	(2) Having full regard to the relevant provisions of the Treaty, in particular Article 106 thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, flexibility , regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for electricity undertakings of the Union to national consumers. Public service obligations which concern the price setting for the supply of electricity shall comply with the requirements set out in Article 5.
<i>Justification: Flexibility has become a key issue for ensuring electricity security of supply when electricity demand and supply (especially from variable renewable energy sources, wind & solar) are not perfectly matching. It therefore makes sense to allow Member States to impose specific requirements for making the energy system much more flexible, to the advantage of consumers and businesses.</i>	

2.4. [Chapter III – Consumer empowerment and protection](#)

2.5. [Chapter IV – Distribution system operation](#)

Electricity directive, article 31, technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(5) Each distribution system operator shall procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system according to transparent, non-discriminatory and market based procedures, whenever it has such a function. Unless justified by a cost-benefit analysis, the procurement of non-frequency ancillary services by a distribution system operator shall be transparent, non-discriminatory and market-based ensuring effective participation of all market participants including renewable energy sources, demand response, energy storage facilities and aggregators, in particular by requiring regulatory authorities or distribution system operators in close cooperation with all market participants, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of all market participants.</p>	<p>(5) Each distribution system operator shall procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system according to transparent, non-discriminatory and market based procedures, whenever it has such a function. Unless justified by a cost-benefit analysis, the procurement of non-frequency ancillary services by a distribution system operator shall be transparent, non-discriminatory and market-based ensuring effective participation of all market participants including renewable energy sources, flexible generation, demand response, energy storage facilities and aggregators, in particular by requiring regulatory authorities or distribution system operators in close cooperation with all market participants, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of all market participants.</p>
<p><i>Justification: ‘Flexible generation’ is at least as important as ‘demand response’ and ‘storage’: it is providing the bulk of the flexibility needed by the energy system. EU legislation should be technology neutral and not pick and choose certain technologies. To reduce energy prices for consumers and businesses, legislation should be open to all efficient flexibility technologies and let them compete so that flexibility costs are reduced.</i></p>	

Electricity directive, article 32, technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(1) Member States shall provide the necessary regulatory framework to allow and incentivise distribution system operators to procure services in order to improve efficiencies in the operation and development of the distribution system, including local congestion management. In particular, regulatory frameworks shall enable distribution system operators to procure services from resources such as distributed generation, demand response or storage and consider energy efficiency measures, which may supplant the need to upgrade or replace electricity capacity and which support the efficient and secure operation of the distribution system. Distribution system operators shall procure these services according to transparent, non-discriminatory and market based procedures.</p>	<p>(1) Member States shall provide the necessary regulatory framework to allow and incentivise distribution system operators to procure services in order to improve efficiencies in the operation and development of the distribution system, including local congestion management. In particular, regulatory frameworks shall enable distribution system operators to procure services from resources such as distributed generation, demand response or storage and consider energy efficiency measures, which may supplant the need to upgrade or replace electricity capacity and which support the efficient and secure operation of the distribution system. Distribution system operators shall procure these services according to transparent, non-discriminatory and market based procedures.</p>

<p>Distribution system operators shall define standardised market products for the services procured ensuring effective participation of all market participants including renewable energy sources, demand response, and aggregators. Distribution system operators shall exchange all necessary information and coordinate with transmission system operators in order to ensure the optimal utilisation of resources, ensure the secure and efficient operation of the system and facilitate market development. Distribution system operators shall be adequately remunerated for the procurement of such services in order to recover at least the corresponding expenses, including the necessary information and communication technologies expenses, including expenses which correspond to the necessary information and communication infrastructure.</p> <p>(2) The development of a distribution system shall be based on a transparent network development plan that distribution system operators shall submit every two years to the regulatory authority. The network development plan shall contain the planned investments for the next five to ten years, with particular emphasis on the main distribution infrastructure which is required in order to connect new generation capacity and new loads including re-charging points for electric vehicles. The network development plan shall also demonstrate the use of demand response, energy efficiency, energy storage facilities or other resources that distribution system operator is using as an alternative to system expansion.</p>	<p>Distribution system operators shall define standardised market products for the services procured ensuring effective participation of all market participants including renewable energy sources, flexible generation, demand response, and aggregators. Distribution system operators shall exchange all necessary information and coordinate with transmission system operators in order to ensure the optimal utilisation of resources, ensure the secure and efficient operation of the system and facilitate market development. Distribution system operators shall be adequately remunerated for the procurement of such services in order to recover at least the corresponding expenses, including the necessary information and communication technologies expenses, including expenses which correspond to the necessary information and communication infrastructure.</p> <p>(2) The development of a distribution system shall be based on a transparent network development plan that distribution system operators shall submit every two years to the regulatory authority. The network development plan shall contain the planned investments for the next five to ten years, with particular emphasis on the main distribution infrastructure which is required in order to connect new generation capacity and new loads including re-charging points for electric vehicles. The network development plan shall also demonstrate the use of flexible generation, demand response, energy efficiency, energy storage facilities or other resources that distribution system operator is using as an alternative to system expansion.</p>
<p><i>Justification: 'Flexible generation' is at least as important as 'demand response' for providing services for the efficient and secure operation of the distribution system. EU legislation should be technology neutral and not pick and choose certain technologies. To reduce energy prices for consumers and businesses, legislation should be open to all efficient technologies and let them compete so that electricity costs are reduced.</i></p>	

Electricity directive, article 36, technology neutrality

Text proposed by the Commission

Amendment

(2) By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate storage facilities only if the following conditions are fulfilled:

(a) other parties, following an open and transparent tendering procedure, have not expressed their interest to own, develop, manage or operate storage facilities;

(b) such facilities are necessary for the distribution system operators to fulfil its obligations under this regulation for the efficient, reliable and secure operation of the distribution system; and

(c) the regulatory authority has assessed the necessity of such derogation taking into account the conditions under points (a) and (b) of this paragraph and has granted its approval.

[...]

(4) Regulatory authorities shall perform at regular intervals or at least every **five** years a public consultation in order to re-assess the potential interest of market parties to invest, develop, operate or manage energy storage facilities. In case the public consultation indicates that third parties are able to own, develop, operate or manage such facilities, Member States shall ensure that distribution system operators' activities in this regard are phased-out.

(2) By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate storage facilities only if the following conditions are fulfilled:

(a) other parties, following an open and transparent tendering procedure, have not expressed their interest to own, develop, manage or operate storage facilities;

(b) such facilities are necessary for the distribution system operators to fulfil its obligations under this regulation for the efficient, reliable and secure operation of the distribution system **and they are not used to sell electricity to the market**, and

(c) the regulatory authority has assessed the necessity of such derogation taking into account the conditions under points (a) and (b) of this paragraph and has granted its approval.

[...]

(4) Regulatory authorities shall perform at regular intervals or at least every **three** years a public consultation in order to re-assess the potential interest of market parties to invest, develop, operate or manage energy storage facilities. In case the public consultation indicates that third parties are able to own, develop, operate or manage such facilities, Member States shall ensure that distribution system operators' activities in this regard are phased-out.

Justification: To ensure technology neutrality, increase competition between flexibility solutions and this way reduce energy prices for consumers and businesses, there should be in principle no special treatment for storage facilities. However, if such a derogation is created for DSOs willing to own storage facilities for a limited period of time, they should only be allowed to use this technology to balance their grid, not for selling it to the market (similar to the provision proposed by the Commission for TSOs, in article 54). Moreover, in view of the rapid technological and market conditions evolutions, regulatory authorities should regularly reassess the situation, which means every three years instead of every five years.

2.6. [Chapter V – General rules applicable to the transmission system operator](#)

Electricity directive, article 40, technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(1) (d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response and energy storage, insofar as such availability is independent from any other transmission system with which its system is interconnected;</p> <p>[...]</p> <p>(4)(b) ensures effective participation of all market participants including renewable energy sources, demand response, energy storage facilities and aggregators, in particular by requiring regulatory authorities or transmission system operators in close cooperation with all market participants, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of all market participants.</p>	<p>(1) (d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by flexible generation, demand response and energy storage, insofar as such availability is independent from any other transmission system with which its system is interconnected;</p> <p>[...]</p> <p>(4)(b) ensures effective participation of all market participants including renewable energy sources, flexible generation, demand response, energy storage facilities and aggregators, in particular by requiring regulatory authorities or transmission system operators in close cooperation with all market participants, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of all market participants.</p>
<p><i>Justification: ‘Flexible generation’ is at least as important as ‘demand response’ and ‘energy storage’ for providing ancillary services (incl. balancing services and non-frequency ancillary services) to transmission system operators. EU legislation should be technology neutral and not pick and choose certain technologies. To reduce energy prices for consumers and businesses, legislation should be open to all efficient technologies and let them compete so that electricity costs are reduced.</i></p>	

2.7. [Chapter VI – Unbundling of transmission system operator](#)

Electricity directive, article 54, technology neutrality	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(4) The transmission system operator shall perform at regular intervals or at least every five years a public consultation for the required storage services in order to assess the potential interest of market parties to invest in such facilities and terminate its own storage activities in case third parties can provide the service in a cost-effective manner.</p>	<p>(4) Regulatory authorities shall perform at regular intervals or at least every three years a public consultation in order to re-assess the potential interest of market parties to invest, develop, operate or manage energy storage facilities. In case the public consultation indicates that third parties are able to own, develop, operate or manage such facilities, Member States shall ensure that transmission system operators’ activities in this regard are phased-out.</p>

Justification: As they are dealing with the same problematic ('ownership of storage facilities') and there are no concrete differences between DSOs and TSOs in that matter, wordings of articles 36 and 54 should be very similar. To avoid that TSOs become both "judge and judged" in that matter, the public consultation mentioned in article 54 should be performed by regulatory authorities, not by the TSOs themselves (same wording as in article 36). Furthermore, to ensure technology neutrality, increase competition between flexibility solutions and this way reduce energy prices for consumers and businesses, there should be in principle no special treatment for storage facilities. However, if such a derogation is created for TSOs willing to own storage facilities for a limited period of time, in view of the rapid technological and market conditions evolutions, regulatory authorities should regularly reassess the situation, which means every three years, instead of every five years.

Electricity directive, article 59, need for flexibility	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(k) measuring the performance of the TSOs and DSOs in relation to the development of a smart grid that promotes energy efficiency and the integration of RES based on a limited set of Union-wide indicators, and publish a national report every 2 years, including recommendations for improvement where necessary;	(k) measuring the performance of the TSOs and DSOs in relation to the development of a smart grid that promotes energy efficiency, flexibility and the integration of RES based on a limited set of Union-wide indicators, and publish a national report every 2 years, including recommendations for improvement where necessary;
<i>Justification: Flexibility has become a key issue for ensuring electricity security of supply when electricity demand and supply (especially from variable renewable energy sources, wind & solar) are not perfectly matching. It therefore makes sense that the smart grid developed by TSOs and DSOs fosters flexibility solutions.</i>	

2.8. [Chapter VII – National regulatory authorities](#)

2.9. [Chapter VIII – Final provisions](#)