Europex amendment proposals to the recasts of the Electricity Regulation and Directive

9 August 2017

Europex

Association of European Energy Exchanges

Our six key messages

1.	**Full market integration of renewables**	**Art.* 4 & 11**
2.	**Bidding zone configuration and review**	**Rec. 14 & Art. 13**
3.	**Excluding price caps**	**Art. 9**
4.	**Reinforcing the importance of long-term markets**	**Art. 3 & 8**
5.	**Capacity mechanisms as a very last resort**	**Art. 20 & 26**
6.	**Accepting and allowing third-party market operators**	**Art. 3.1, 5.10, 48.1 & 55.9**

*All references to recitals and articles refer to COM(2016) 861 final/2: Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast)

1. Full market integration of renewables (Art. 4 & Art. 11)

All market participants need to bear full balancing responsibility

- Europex supports the full integration of renewables into the electricity market, and shares the view in Art. 4 that all market participants need to bear full balancing responsibility. Any exemptions from this principle have a significant impact on the technical functioning of and the competition in the energy system. Unlike the Commission proposal, we therefore strongly recommend removing any exemptions from this principle.
- If small RES producers are unable to fulfil their balancing responsibility, they can delegate the task to a third party of choice to minimise the impact on the market. Hence, there is no need for exemptions.
- **Europex suggests amending Art. 4 to remove all exemptions from balancing responsibility.**

Priority of dispatch provisions should be removed

- Allowing priority of dispatch for some market participants, but not others, fundamentally distorts the functioning and the efficiency of the market. We therefore support a market-based and non-discriminatory approach to dispatching of power generation facilities and demand response (Art. 11) and call for a removal of all provisions for priority of dispatch.
- **Europex therefore supports Rapporteur Kariņš' amendments 35 to 39 concerning priority of dispatch.**

1. Full market integration of renewables (Art. 4)

Art. 4	Art. 4 (amended)
2. Member States may provide for derogation from balance responsibility in respect of: (a) demonstration projects; (b) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; (c) installations benefitting from support approved by the Commission under Union State aid rules pursuant to Articles 107 to 109 TFEU, and commissioned prior to [OP: entry into force]. Member States may, subject to Union state aid rules, incentivize market participants which are fully or partly exempted from balancing responsibility to accept full balancing responsibility against appropriate compensation. 3. From 1 January 2026, point (b) of paragraph 2 shall apply only to generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW.	~~2. Member States may provide for derogation from balance responsibility in respect of:~~ ~~(a) demonstration projects;~~ ~~(b) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW;~~ ~~(c) installations benefitting from support approved by the Commission under Union~~ ~~State aid rules pursuant to Articles 107 to 109 TFEU, and commissioned prior to [OP: entry into force]. Member States may, subject to Union state aid rules, incentivize market participants which are fully or partly exempted from balancing responsibility to accept full balancing responsibility against appropriate compensation.~~ ~~3. From 1 January 2026, point (b) of paragraph 2 shall apply only to generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW.~~

1. Full market integration of renewables (Art. 11)

Art. 11

1. Dispatching of power generation facilities and demand response shall be non-discriminatory and market based unless otherwise provided under paragraphs 2 to 4.

2. When dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources or high- efficiency cogeneration from small generating installations or generating installations using emerging technologies to the following extent:

(a) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; or
(b) demonstration projects for innovative technologies.

3. Where the total capacity of generating installations subject […]

Art. 11 (amended)

[Europex supports Rapporteur Karinš' amendments 35 to 39]

1. Dispatching of power generation facilities and demand response shall be non-discriminatory and market based ~~unless otherwise provided under paragraphs 2 to 4~~.

~~2. When dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources or high- efficiency cogeneration from small generating installations or generating installations using emerging technologies to the following extent:~~

~~(a) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; or~~
~~(b) demonstration projects for innovative technologies.~~

~~3. Where the total capacity of generating installations subject […]~~

1. Full market integration of renewables (Art. 11)

Art. 11	Art. 11 (amended)
4. Generating installations using renewable energy sources or high-efficiency cogeneration which have been commissioned prior to [OP: entry into force] and have, when commissioned, been subject to priority dispatch under Article 15(5) of Directive 2012/27/EU of the European Parliament and of the Council or Article 16(2) of Directive 2009/28/EC of the European Parliament and of the Council39 shall remain subject to priority dispatch. Priority dispatch shall no longer be applicable from the date where the generating installation is subject to significant modifications, which shall be the case at least where a new connection agreement is required or the generation capacity is increased.	4. Generating installations using renewable energy sources or high-efficiency cogeneration which have been commissioned prior to [OP: entry into force] and have, when commissioned, been subject to priority dispatch under Article 15(5) of Directive 2012/27/EU of the European Parliament and of the Council or Article 16(2) of Directive 2009/28/EC of the European Parliament and of the Council39 shall remain subject to priority dispatch. Priority dispatch shall no longer be applicable from the date where the generating installation is subject to significant modifications, which shall be the case at least where a new connection agreement is required or the generation capacity is increased. ***4 a. Member States shall phase out priority dispatch for installations under paragraph 4. Such actions may include fair financial compensation or another form of agreement between the producer and the Member State.***

2. Bidding zone configuration and review (Rec. 14 & Art. 13)

Involvement of key stakeholders in the review process (Art. 13.3, Art. 13.4 & Rec. 14)

- A bidding zone review should explicitly include the full involvement of all key market stakeholders, including spot market operators and long-term forward and futures market operators. Given the complexity of the issue and its multiple consequences, it is important to develop a comprehensive understanding of possible consequences for the underlying spot and derivative markets.
- **Art. 13.3 should be amended to explicitly include spot and derivatives market operators.**

Bidding zone configuration (Art. 13.1)

- The configuration of bidding zones should be designed in such a way as to maximise economic efficiency and cross-border trading opportunities, rather than be 'based on long-term, structural congestions in the transmission network', as is currently proposed. Structural congestions are just one aspect to take into account when determining bidding zone configuration.
- **We suggest an amendment that makes this distinction, while recognising the importance of long-term investment in the network.**

Imbalance price areas (Art. 13.2)

- The definition of bidding zones in relation to imbalance price areas needs to be clarified. Imbalance price areas are to follow the configuration of bidding zones, not the other way around.
- **We put forward a modified text.**

2. Bidding zone configuration and review (Art. 13)

Art. 13	Art. 13 (amended)
(3) In order to ensure an optimal bidding zone definition in closely interconnected areas, a bidding zone review shall be carried out. That review shall include analysis of the configuration of bidding zones in a coordinated manner with the involvement of affected stakeholders from all affected Member States, following the process in accordance with Articles 32 to 34 of Regulation (EU) 2015/1222. The Agency shall approve and may request amendments to the methodology and assumptions that will be used in the bidding zone review process as well as the alternative bidding zone configurations considered.	(3) In order to ensure an optimal bidding zone definition in closely interconnected areas, a bidding zone review shall be carried out. That review shall include analysis of the configuration of bidding zones in a coordinated manner with the involvement of affected stakeholders, ***including spot and derivatives market operators***, from all affected Member States, following the process in accordance with Articles 32 to 34 of Regulation (EU) 2015/1222. The Agency shall approve and may request amendments to the methodology and assumptions that will be used in the bidding zone review process as well as the alternative bidding zone configurations considered.

2. Bidding zone configuration and review (Rec. 14)

Rec. 14	Rec. 14 (amended)
(14) To efficiently steer necessary investments, prices also need to provide signals where electricity is most needed. In a zonal electricity system, correct locational signals require a coherent, objective and reliable determination of bidding zones via a transparent process. In order to ensure efficient operation and planning of the Union electricity network and to provide effective price signals for new generation capacity, demand response or transmission infrastructure, bidding zones should reflect structural congestion. In particular, cross-zonal capacity should not be reduced in order to resolve internal congestion.	(14) To efficiently steer necessary investments, prices ~~also~~ need to provide signals where electricity is most needed. In a zonal electricity system, correct locational signals require a coherent, objective and reliable determination of bidding zones via a transparent process ***involving all affected stakeholders, including spot and derivatives market operators***. In order to ensure efficient operation and planning of the Union electricity network and to provide effective price signals for new generation capacity, demand response or transmission infrastructure, ~~bidding zones should reflect structural congestion~~ ***any bidding zones configuration change should take into account the effect on spot and forward and futures markets. Structural congestions should also be considered in the configuration of bidding zones.*** ~~In particular,~~ ***Cross-zonal capacity should not be reduced in order to resolve internal congestion.***

2. Bidding zone configuration and review (Art. 13)

Art. 13	Art. 13 (amended)
(1) Bidding zone borders shall be based on long-term, structural congestions in the transmission network and bidding zones shall not contain such congestions. The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and cross-border trading opportunities while maintaining security of supply. (2) Each bidding zone should be equal to an imbalance price area.	(1) ~~Bidding zone borders shall be based on long-term, structural congestions in the transmission network and bidding zones shall not contain such congestions.~~ ***The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and cross-border trading opportunities while*** ~~maintaining~~ ***contributing to security of supply. The configuration of bidding zones in the Union shall also consider long-term, structural congestions. If such congestions exist, however, then transmission assets upgrade and extension shall be pursued to maximise economic efficiency.*** (2) ***Each imbalance price area should be equal to a bidding zone.*** ~~should be equal to an imbalance price area.~~

2. Bidding zone configuration and review (Rec. 14 & Art. 13)

Member States are best placed to define bidding zone configurations (Art. 13.4)

- In accordance with the subsidiarity principle, Member States are best placed to define bidding zone configurations at national or regional level with the technical assistance of TSOs and other stakeholders, including traders and market operators. If, for example, national regulatory authorities and the concerned TSO(s) cannot agree on a configuration, only then should the Commission take a final decision.
- **Regarding the process of bidding zone review, Europex therefore supports Rapporteur Kariņš' amendments 43 and 44.**

2. Bidding zone configuration and review (Art. 13)

Art. 13	Art. 13 (amended)
(4) The transmission system operators participating in the bidding zone review shall submit a proposal to the Commission regarding whether to amend or maintain the bidding zone configuration. Based on that proposal, the Commission shall adopt a decision whether to amend or maintain the bidding zone configuration, [no later than 6 months after entry into force of this Regulation, specific date to be inserted by OP] or by six months after the conclusion of the bidding zone configuration launched in accordance with points (a), (b) or (c) of Article 32(1) of Regulation (EU) 2015/1222, whichever comes later. (6) Where further bidding zone reviews are launched under Article 32(1)(a), (b) or (c) of Regulation (EU) 2015/1222, the Commission may adopt a decision within six months of the conclusion of that bidding zone review.	**[For amendments to paragraph 4 and 6, Europex supports Rapporteur Kariņš' amendments 43, 44 and 46.]**

3. Excluding price caps (Art. 9)

No restriction to the price formation process

- Europex welcomes the Commission's proposal to explicitly exclude the possibility of introducing price caps in the various market time segments. Any restrictions to the price formation constitute market distortions hampering the efficient functioning of energy markets.
- Any existing direct or indirect price caps must be phased out.

Technical limits are the only exception

- However, technical limits on maximum and minimum clearing prices are the only necessary exception to this principle. For Single Day-Ahead Coupling and Single Intraday Coupling, such technical limits are set out in the Congestion Management and Capacity Allocation (CACM) Regulation (Art. 41 & 54).

These principles should be reflected in the Electricity Regulation and formulated in a clear and transparent way.

3. Excluding price caps (Art. 9)

Art. 9

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.

2. By way of derogation from paragraph 1, until [OP: two years after entry into force] market operators may apply limits on maximum clearing prices for day-ahead and intraday timeframes in accordance with Articles 41 and 54 of Regulation (EU) 2015/1222. In the event that limits are, or are anticipated to be, reached, they shall be raised for the following day.

Art. 9 (amended)

[Europex supports Rapporteur Kariņš' amendments 31-33, with some additions, marked in blue].

1. There shall be no maximum and 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.

2. By the way of derogation from paragraph 1, nominated electricity market operators may apply technical limits on maximum and minimum clearing prices for day-ahead and intraday timeframes in accordance with Articles 41 and 54 of Regulation (EU) 2015/1222. In the event that those technical limits are, or are anticipated to be, reached, they shall be adjusted in accordance with Articles 41 and 54 of Regulation (EU) 2015/1222.

The technical price limits shall be sufficiently high so as not to unnecessarily interrupt trade, and they shall be harmonised for the common market area.

3. Excluding price caps (Art. 9)

Art. 9	Art. 9 (amended)
4. Member States shall identify policies and measures applied within their territory that could contribute to indirectly restrict price formation, including limiting bids relating to the activation of balancing energy, capacity mechanisms, measures by the transmission system operators, measures intended to challenge market results or to prevent abuse of dominant positions or inefficiently defined bidding zones.	4. Member States, ***or national regulatory authority when provided in national legislation,*** shall identify policies and measures applied within their territory that could contribute to indirectly restrict price formation, including limiting bids relating to the activation of balancing energy, capacity mechanisms, measures by the transmission system operators, measures intended to challenge market results or to prevent abuse of dominant positions or inefficiently defined bidding zones.
5. Where a Member State has identified a policy or measure which could serve to restrict price formation it 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, ***or national regulatory authority when provided in national legislation,*** has identified a policy or measure which could serve to restrict price formation it 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.

4. Reinforcing the importance of long-term markets (Art. 3 & Art. 8)

The importance of the contribution of futures markets to the energy system must be recognised

- Future contracts represent over two thirds of wholesale power transaction volume on the electricity market in Europe.

Inconsistent reference to competition treaty rules.

- The reason for pointing out compliance with competition treaty rules in Art. 3 is not clear. It should be either further specified or taken out. If any reference to competition treaty rules is made, it should be done in a consistent manner in the Regulation.

Regulatory frameworks should take into account effects not only on short-term markets and products, but also on long-term forward and futures markets and products.

Europex therefore suggests amendments to Article 3 and 8 to reinforce these principles.

4. Reinforcing the importance of long-term markets (Art. 3)

Art. 3	Art. 3 (amended)
(n) Long-term hedging opportunities, which allow market participants to hedge against price volatility risks on a market basis, and eliminate uncertainty on future returns on investment, shall be tradable on exchanges in a transparent manner subject to compliance with EU treaty rules on competition.	(n) Long-term hedging opportunities, which allow market participants to hedge against price volatility risks on a market basis, and ~~eliminate~~ ***mitigate*** uncertainty on future returns on investment, shall be tradable on exchanges in a transparent manner ~~subject to compliance with EU treaty rules on competition.~~ ***Regulatory frameworks shall take into account effects not only on short-term markets and products, but also on long-term forward and futures markets and products.***

4. Reinforcing the importance of long-term markets (Art. 8)

Art. 8	Art. 8 (amended)
(3) Subject to compliance with treaty rules on competition, market operators shall be free to develop forward hedging products including for the long -term to provide market participants, in particular owners of generation facilities using renewable energies, with appropriate possibilities to hedge financial risks from price fluctuations. Member States shall not restrict such hedging activity to trades within a Member State or bidding zone.	***(1) Long-term forward and futures markets are an essential tool that contribute to the management of the energy transition and the decarbonisation of the power sector. Any change to the electricity market design should therefore take into consideration the impact this has on forward and futures markets.*** (3) ~~Subject to compliance with treaty rules on competition,~~ ***M***arket operators shall be free to develop market-based forward ***and futures long-term*** hedging products ~~including for the long -term~~ to provide market participants, in particular owners of generation facilities using renewable energies, with appropriate possibilities to hedge financial risks from price fluctuations. Member States shall not restrict such hedging activity to trades within a Member State or bidding zone.

5. Capacity mechanisms as a very last resort (Art. 20 & Art. 26)

Capacity mechanisms distort the market and should only be applied when there is a clear, structural long-term lack of capacity with no alternative options to overcome the situation.

Taking into account all available resources when assessing adequacy

- Before applying capacity mechanisms, it is important to take into account existing interconnection capacities, installed capacity and generation and demand-side flexibility in neighbouring regions and Member States (Art. 20).
- A comprehensive trans-regional approach to the assessment of adequacy, eventually leading to a pan-European adequacy assessment, is a valuable step towards the further integration of EU energy markets.

Europex therefore supports Rapporteur Kariņš' approach to capacity mechanisms, with some amendments.

5. Capacity mechanisms as a very last resort (Rec. 29)

Rec. 29	Rec. 29 (amended)
Member States intending to introduce capacity mechanisms should derive resource adequacy targets following a transparent and verifiable process. Member States should have the freedom to set their own desired level of security of supply.	Member States intending to introduce capacity mechanisms should derive resource adequacy targets following a transparent and verifiable process. Member States***, or national regulatory authorities when provided in national legislation,*** should have the freedom to set their own desired level of security of supply***, but on the basis of at least a regionally coordinated assessment of security of supply, and preferably a regional standard level for security of supply, which over time should evolve to a pan-European standard.***

5. Capacity mechanisms as a very last resort (Art. 20)

Art. 20	Art. 20 (amended)
(1) When applying capacity mechanisms Member States shall have a reliability standard in place indicating their desired level of security of supply in a transparent manner.	(1) When applying capacity mechanisms Member States shall have a reliability standard in place indicating their desired level of security of supply in a transparent manner ***and taking into account the existing interconnection capacities, installed capacity, generation and demand-side flexibility in neighbouring Member States.***
(2) The reliability standard shall be set by the national regulatory authority based on the methodology pursuant to Article 19.	(2) The reliability standard shall be set by ~~the~~ national regulatory authority~~***ies*** ***in a coordinated manner across Member States*** based on the methodology pursuant to Article 19.
(3) The reliability standard shall be calculated using the value of lost load and the cost of new entry over a given timeframe.	(3) The reliability standard shall be calculated ~~using~~ ***taking into account*** the value of lost load and the cost of new entry over a given timeframe.
(4) The parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the national regulatory authority.	(4) The parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the national regulatory authority.

5. Capacity mechanisms as a very last resort (Art. 24)

Art. 24	Art. 24 (amended)
Member States applying capacity mechanisms on [OP: entry into force of this Regulation] shall adapt their mechanisms to comply with Articles 18, 21 and 23 of this Regulation.	Member States applying capacity mechanisms ~~on~~ ~~[OP:~~ ***after*** entry into force of this Regulation~~]~~ shall ***ensure*** their mechanisms ~~to~~ comply with Articles 18, 21 and 23 of this Regulation.

6. Accepting and allowing third-party market operators (Art. 3.1, 5.10 48.1 & 55.9)

Certain third-parties already perform market-based activities and should be recognised

- Certain parties, such as imbalance settlement administrators, have already been recognised in the Network Code on Emergency and Restoration (NC ER) and the Electricity Balancing Guideline (EB GL) as 'third parties'. This is because of their expertise in their areas of responsibility and also due to the fact that not all grid services need to be performed by TSOs or DSOs, hence increasing competition and innovation.

Article 5.10 does not recognise the existing arrangements that use a non-TSO for this data publication in certain Member States.

- We suggest a wording of Art. 5.10 that mirrors that for assignment in the Electricity Balancing Guideline, which recognises the existence of non-TSO third parties.

Third-party inclusion in key processes

- All relevant stakeholders, explicitly including the third-parties previously mentioned, need to be able to participate in important processes, such as the drafting of Network Codes and Guidelines (Art. 55.9).

We suggest a series of amendments to recognise these third parties and ensure their full involvement in key market processes.

6. Accepting and allowing third-party market operators (Art. 3.1 & 5.10)

Art. 3.1

1. Member States, national regulatory authorities, transmission system operators, distribution system operators, and market operators shall ensure that electricity markets are operated in accordance with the following principles:

Art. 3.1 (amended)

1. Member States, national regulatory authorities, transmission system operators, distribution system operators, ~~and~~ market operators, ***and third parties to whom responsibilities have been delegated or assigned where relevant*** shall ensure that electricity markets are operated in accordance with the following principles:

Art. 5.10

10. Transmission system operators shall publish close to real-time information on the current balancing state of their control areas, the imbalance price and the balancing energy price.

Art. 5.10 (amended)

10. Transmission system operators, ***or third parties to whom these responsibilities have either been delegated by the relevant TSO or assigned by the relevant Member State or regulatory authority***, shall publish close to real-time information on the current balancing state of their control areas, the imbalance price and the balancing energy price.

6. Accepting and allowing third-party market operators (Art. 48.1)

Art. 48.1	Art. 48.1 (amended)
	[New paragraph] *A Member State, or where applicable a relevant regulatory authority, may assign tasks or obligations entrusted to TSOs to one or more third parties. Prior to the assignment, the third party concerned shall demonstrate to the Member State, or where applicable the relevant regulatory authority, its ability to meet the task to be assigned.*

6. Accepting and allowing third-party market operators (Art. 55.9)

Art. 55.9	Art. 55.9 (amended)
The ENTSO for Electricity, or where so decided in the priority list pursuant to paragraph 2, the EU DSO entity, shall convene a drafting committee to support it in the network code development process. The drafting committee shall consist of representatives of the ENTSO for Electricity, the Agency, the EU DSO entity, where appropriate of nominated electricity market operators and a limited number of the main affected stakeholders. The ENTSO for electricity <or where so decided in the priority list pursuant to paragraph 2 the EU DSO entity> shall elaborate <proposals for> network codes in the areas referred to in ~~paragraph 6 Article~~ paragraph 1 upon a request addressed to it by the Commission in accordance with paragraph 8~~Article 6(6).~~	The ENTSO for Electricity, or where so decided in the priority list pursuant to paragraph 2, the EU DSO entity, shall convene a drafting committee to support it in the network code development process. The drafting committee shall consist of representatives of the ENTSO for Electricity, the Agency, the EU DSO entity, where appropriate of nominated electricity market operators and ~~a limited number of~~ the main affected stakeholders, ***including third-party market operators.*** The ENTSO for electricity <or where so decided in the priority list pursuant to paragraph 2 the EU DSO entity> shall elaborate <proposals for> network codes in the areas referred to in ~~paragraph 6 Article~~ paragraph 1 upon a request addressed to it by the Commission in accordance with paragraph 8~~Article 6(6).~~

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