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## **Europex amendment proposals to the recasts of the Electricity Regulation\* and the Electricity Directive\*\***

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\* COM(2016) 861 final/2: Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast)

\*\* COM(2016) 864 final/2: Proposal for a Regulation of the European Parliament and of the Council on common rules for the internal market in electricity (recast)

## 1. Full market integration of renewables

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
4	<p><b>Balancing responsibility</b></p> <p>1. All market participants shall aim for system balance and shall be financially responsible for imbalances they cause in the system. They shall either be balance responsible parties or delegate their responsibility to a balance responsible party of their choice.</p> <p>2. Member States may provide for derogation from balance responsibility in respect of:</p> <p>(a) demonstration projects;</p> <p>(b) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW;</p> <p>(c) installations benefitting from support approved by the Commission under Union</p> <p>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</p>	<p><b>Balancing responsibility</b></p> <p>1. All market participants shall aim for system balance and shall be financially responsible for imbalances they cause in the system. They shall either be balance responsible parties or delegate their responsibility to a balance responsible party of their choice.</p> <p><del>2. Member States may provide for derogation from balance responsibility in respect of:</del></p> <p><del>(a) demonstration projects;</del></p> <p><del>(b) generating installations using renewable energy sources or high efficiency cogeneration with an installed electricity capacity of less than 500 kW;</del></p> <p><del>(c) installations benefitting from support approved by the Commission under Union</del></p> <p><del>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</del></p>	<p>Europex supports the full integration of renewables into the electricity market. We share the view in Art. 4 that all market participants need to bear full balancing responsibility. Unlike the Commission proposal, we therefore strongly recommend removing any exemptions from this principle.</p> <p>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.</p> <p>The same applies to the intention to encourage Member States to offer compensation payments for balancing responsibility to certain RES producers.</p> <p>Hence, there is no need for exemptions.</p>

	<p>compensation.</p> <p>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.</p>	<p><del>responsibility against appropriate compensation.</del></p> <p><del>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.</del></p>	
11	<p>1. Dispatching of power generation facilities and demand response shall be non-discriminatory and market based unless otherwise provided under paragraphs 2 to 4.</p> <p>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:</p> <p>(a) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; or</p> <p>(b) demonstration projects for innovative technologies.</p> <p>3. Where the total capacity of generating installations subject to priority dispatch under paragraph 2 is higher than 15 % of the total installed generating capacity in a Member State, point (a) of paragraph 2 shall apply only to additional generating installations using</p>	<p><b>[Europex supports Rapporteur Kariņš' amendment 35 to 39]</b></p> <p>1. Dispatching of power generation facilities and demand response shall be non-discriminatory and market based <del>unless otherwise provided under paragraphs 2 to 4.</del></p> <p><del>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:</del></p> <p><del>(a) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; or</del></p> <p><del>(b) demonstration projects for innovative technologies.</del></p> <p><del>3. Where the total capacity of generating installations subject to priority dispatch under</del></p>	<p>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.</p> <p>There should be an appropriate phase-out of priority dispatch for existing renewable installations which were subject to priority of dispatch when commissioned.</p>

	<p>renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW.</p> <p>From 1 January 2026, point (a) 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 or, if the threshold under the first sentence of this paragraph has been reached, of less than 125 kW.</p> <p>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 Council<sup>39</sup> 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.</p>	<p><del>paragraph 2 is higher than 15 % of the total installed generating capacity in a Member State, point (a) of paragraph 2 shall apply only to additional generating installations using renewable energy sources or high efficiency cogeneration with an installed electricity capacity of less than 250 kW.</del></p> <p><del>From 1 January 2026, point (a) 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 or, if the threshold under the first sentence of this paragraph has been reached, of less than 125 kW.</del></p> <p>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 Council<sup>39</sup> 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.</p> <p><i>4 a. Member States shall phase out priority dispatch for installations under paragraph 4.</i></p>	
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## 2. Bidding zone configuration and review

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
Recital 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.	To efficiently steer necessary investments, prices <del>also</del> 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 <i>involving all affected stakeholders, including spot and derivatives market operators.</i> 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, <i>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.</i> In particular, <i>Cross-zonal capacity should not be reduced in order to resolve internal congestion.</i>	As well as being transparent, the process to determine bidding zones should explicitly include all affected stakeholders, including market operators of short term spot and long- term forward and futures markets. 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.  The current proposal states that bidding zones should reflect structural congestion. However, structural congestion is just one aspect that has to be taken into account when determining bidding zones.  Long-term grid investment is the best structural solution to bottlenecks in the medium and long-term and should be encouraged.
13.1	(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	<del>Bidding zone borders shall be based on long-term, structural congestions in the transmission network and bidding zones shall not contain such congestions.</del> <i>The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and cross-border</i>	For this article to be clear, it has to define what a structural congestion is. Namely, network congestion qualifies as structural, if it cannot be solved in the medium-term by grid expansion. Bidding zones should be determined with the objective of maximising economic efficiency and cross-border trading opportunities, rather than be based on long-term

	economic efficiency and cross-border trading opportunities while maintaining security of supply.	<i>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.</i>	structural congestions, as is currently proposed. Structural congestion is just one aspect of many to be taken into account when determining the configuration of bidding zones.  Investment in the grid is the best structural solution to bottlenecks in the medium and long-term.  Additionally, markets can contribute to security of supply but it is TSOs which have the obligation to guarantee it.
13.2	(2) Each bidding zone should be equal to an imbalance price area.	(2) <i>Each imbalance price area should be equal to a bidding zone.</i> <del>should be equal to an imbalance price area.</del>	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.
13.3	(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, <i>including spot and derivatives market operators</i> , 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.	Just as for the process to determine bidding zones, any revision of bidding zones should crucially include 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.

<p>13.4</p>	<p>(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.</p>	<p><b>[Europex supports Rapporteur Kariņš' amendment 43, 44 and 46]</b></p> <p>The transmission system operators participating in the bidding zone review shall submit a proposal to the <i>relevant Member States</i> whether to amend or maintain the bidding zone configuration. <i>The relevant Member States are those participating in the review pursuant to Article 32(2) of Regulation (EU) 2015/1222 and those in the same Capacity Calculation Region(s) pursuant to Regulation (EU) 2015/1222.</i> Based on the proposal, the <i>relevant Member States</i> shall <i>come to a unanimous decision within six months</i> on whether to amend or maintain the bidding zone configuration. <i>Other Member States or third countries may submit comments. The decision shall be reasoned, in accordance with relevant Union law and shall take account of the observations of other Member States and third countries, as well as of commitments on addressing existing congestion made by the relevant Member States. The relevant Member States shall notify the Commission and the Agency of their decision and any cross-border agreements entered into by the Member States, the national regulatory authorities or the transmission system operators for the purpose of achieving consensus. Agreements entered into by the relevant Member States shall not deviate from coordinated capacity calculation processes as set out in Article 14 nor from the relevant provisions of Regulation (EU) 2015/1222.</i></p> <p><i>(4)a Where the relevant Member States fail to</i></p>	<p>According to the subsidiarity principle, Member States are best placed to define bidding zone configurations (Art. 13.4) at national or regional level with the technical assistance of TSOs. If, e.g., National Regulatory Authorities and the concerned TSO(s) cannot agree on a configuration, only then should the Commission take a final decision.</p> <p>It is important that any split of bidding zones is notified well in advance to better manage the negative impact on liquidity in long-term hedging products.</p>
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13.6	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.	<del>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.</del>	See above.

### 3. Excluding price caps

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
9	<p><b>Price Restrictions</b></p> <p>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</p>	<p><b>[Europex supports Rapporteur Kariņš' amendments 31-33, with some additions, marked in blue].</b></p> <p><i>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.</i></p> <p><i>2. By the way of derogation from paragraph 1, nominated electricity market operators may apply technical limits on maximum and minimum</i></p>	<p>Europex welcomes the Commission's proposal to explicitly exclude the possibility of introducing price caps in the various market time segments. Any price limitations constitute market distortions hampering the efficient functioning of energy markets. Any existing direct or indirect price caps must be phased out. This is equally important on the retail side - regulated consumer electricity tariffs should be abolished across EU.</p> <p>Technical limits are the only exception, as listed in the Congestion Management and Capacity Allocation network codes (Articles 41 and 54). For technical and operational</p>



	<p>include balancing energy and imbalance prices.</p> <p>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.</p> <p>3. Transmission system operators shall not take any measures with the aim of changing the wholesale prices. All dispatch orders shall be reported to the national regulatory authority within one day.</p> <p>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.</p>	<p><i>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.</i></p> <p><i>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.</i></p> <p>4. Member States, <i>or national regulatory authority when provided in national legislation</i>, 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.</p> <p>5. Where a Member State, <i>or national regulatory authority when provided in national legislation</i>, 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.</p>	<p>reasons, the phasing out of price restrictions needs to be in line with the provisions laid out in the Congestion Management and Capacity Allocation Guideline (CACM GL) and foregoing methodologies in the approval process of national regulators.</p> <p>We propose to refer to methodologies on Harmonised Minimum and Maximum Clearing Price Limits (HMMP) linked to CACM Regulation as a way to specify possible amendments of minimum and maximum limits.</p> <p>Furthermore, we find that the level of detail and attempted precision of the original proposed Article is not helpful and creates limitations and links between different timeframes that will be unnecessarily difficult to manage. We believe there is sufficient guidance in existing Network Codes and associated methodologies under development.</p> <p>In some Member States national regulatory authorities, where provided for in national legislation, are best placed to identify policies and measures which could serve to restrict price formation, and take appropriate actions to mitigate any impact.</p>
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#### 4. Reinforcing the importance of long-term markets

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
3	(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 <del>eliminate</del> <b>mitigate</b> uncertainty on future returns on investment, shall be tradable on exchanges in a transparent manner <del>subject to compliance with EU treaty rules on competition.</del> <b>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.</b>	<p>Risk is inherent to any economy. The purpose of long-term hedging products is to mitigate future risks in a market-based manner.</p> <p>The reason for pointing out compliance with competition treaty rules in the Article is not clear. It should be either further clarified or taken out.</p> <p>Regulatory frameworks should also recognise the key role that long term markets and products play in the electricity market. However, it is equally important to leave sufficient room for product innovation and new developments. The market is best placed to adapt its hedging contract offer to the needs of the market players in a fair and efficient manner.</p>
8	(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.	<p><b>(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.</b></p> <p><del>(3) Subject to compliance with treaty rules on competition,</del> <b>Market operators shall be free to develop market-based forward and futures long-term</b> 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</p>	<p>The importance of forward and futures markets in enabling and supporting the energy transition must be recognised. Future contracts account for over two thirds of wholesale electricity transaction volumes in the electricity market in Europe.</p>

		financial risks from price fluctuations. Member States shall not restrict such hedging activity to trades within a Member State or bidding zone.	
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## 5. Capacity mechanisms and regional adequacy assessments

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
Recital 29	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, <i>or national regulatory authorities when provided in national legislation</i> , should have the freedom to set their own desired level of security of supply, <i>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.</i>	<p>In some Member States, national regulatory authorities, where provided for in national legislation, may be competent to assess the security of supply by applying specific expertise. This possibility should be recognised in the text.</p> <p>Thanks to closely interconnected and ever more integrated EU power markets, security of supply is already European today. The nuclear outages in France at the end of 2016 and in early 2017 provide a good example: France was able to guarantee security of supply and avoid blackouts in times when part of its nuclear capacity was offline thanks to efficient interconnections with electrically interconnected Member States such as Germany, Belgium, Italy, etc.</p> <p>In this context, Europex supports a comprehensive trans-regional approach to the assessment of adequacy, eventually leading to a pan-European adequacy assessment. This will be a valuable step forward in the further integration of EU energy markets. However, the subsidiarity principle should be respected.</p>
20	(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 <i>and taking into account the existing interconnection capacities, installed</i>	Cooperation across Member States in defining reliability standards is crucial for the Energy Union to be rolled out. The application of capacity mechanisms is a last resort, and should take into account existing interconnection capacities, installed capacity, generation and demand-side flexibility in

	<p>(2) The reliability standard shall be set by the national regulatory authority based on the methodology pursuant to Article 19.</p> <p>(3) The reliability standard shall be calculated using the value of lost load and the cost of new entry over a given timeframe.</p> <p>(4) The parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the national regulatory authority.</p>	<p><i>capacity, generation and demand-side flexibility in neighbouring Member States.</i></p> <p>(2) The reliability standard shall be set by the national regulatory authority <i>ies in a coordinated manner across Member States</i> based on the methodology pursuant to Article 19.</p> <p>(3) The reliability standard shall be calculated <del>using</del> <i>taking into account</i> the value of lost load and the cost of new entry over a given timeframe.</p> <p>(4) The parameters determining the amount of capacity procured in the capacity mechanism shall be approved by the national regulatory authority.</p>	<p>neighbouring Member States.</p>
24	<p>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.</p>	<p>Member States applying capacity mechanisms <del>on</del> [OP: <i>after</i> entry into force of this Regulation] shall <i>ensure</i> their mechanisms <del>to</del> comply with Articles 18, 21 and 23 of this Regulation</p>	<p>In its current form, the provision would disconnect different EU legislations and harm market participants' and operators' confidence. In order to avoid regulatory uncertainty, and to ensure legal security and predictability, this provision should only apply to mechanisms which have not already been approved by the Commission under the Energy and Environment State Aid Guidelines. As a general remark, such an amendment in the proposed Regulation is aligned with the Energy and Environment State Aid Guidelines.</p>

## 6. Accepting and allowing third-party market operators

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
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:	1. Member States, national regulatory authorities, transmission system operators, distribution system operators, and market operators <i>and third parties to whom responsibilities have been delegated or assigned where relevant</i> shall ensure that electricity markets are operated in accordance with the following principles:	In case the definition of ‘market operator’ is not amended to include certain parties, e.g. imbalance settlement administrators, who traditionally describe themselves as ‘market operators’, and that have already been recognised in the Network Code on Emergency and Restoration (NC ER) and the Electricity Balancing Guideline (EB GL) as ‘third parties’, then this amendment to Article 3 is proposed.
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.	10. Transmission system operators, <i>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</i> , shall publish close to real-time information on the current balancing state of their control areas, the imbalance price and the balancing energy price.	Article 5.10 does not recognise the existing arrangements that use a non-TSO for this data publication in certain Member States. The proposed wording mirrors that for assignment in the Electricity Balancing Guideline, which recognises the existence of non-TSO third parties.
55.9	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	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 <del>limited number of the main affected stakeholders,</del> <i>including third-party market operators</i> . 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 <del>paragraph 6</del>	Europex supports the proposal in Article 55.9 to allow different stakeholders to directly participate in the drafting process of Network Codes. However, this improvement must not be restricted by the limitation of the number of main affected stakeholders in drafting committees. All relevant stakeholders, explicitly including third-party market operators, need to be involved.

	<p><del>paragraph 6</del> <del>Article paragraph 1</del> upon a request addressed to it by the Commission in accordance with paragraph 8 <del>Article 6(6)</del>.</p>	<p><del>Article paragraph 1</del> upon a request addressed to it by the Commission in accordance with paragraph 8 <del>Article 6(6)</del>.</p>	
48.1	<p>The Commission shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 5210(6) of <u>[recast of Directive 2009/72/EC as proposed by COM(2016) 864/2]</u> <del>Directive 2009/72/EC</del> as soon as it is received. Within two months of the day of receipt of such notification, the Commission shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Article 5210(2) or Article 5311, and Article 439 of <u>[recast of Directive 2009/72/EC as proposed by COM(2016) 864/2]</u> <del>Directive 2009/72/EC</del>.</p> <p>When preparing the opinion referred to in the first subparagraph, the Commission may request the Agency to provide its opinion on the national regulatory authority's decision. In such a case, the two-month period referred to in the first subparagraph shall be extended by two further months.</p> <p>In the absence of an opinion by the Commission within the periods referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections to the regulatory authority's decision.</p>	<p>The Commission shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 5210(6) of <u>[recast of Directive 2009/72/EC as proposed by COM(2016) 864/2]</u> <del>Directive 2009/72/EC</del> as soon as it is received. Within two months of the day of receipt of such notification, the Commission shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Article 5210(2) or Article 5311, and Article 439 of <u>[recast of Directive 2009/72/EC as proposed by COM(2016) 864/2]</u> <del>Directive 2009/72/EC</del>.</p> <p><i>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.</i></p> <p>When preparing the opinion referred to in the first subparagraph, the Commission may request the Agency to provide its opinion on the national regulatory authority's decision. In such a case, the two-month period referred to in the first subparagraph shall be extended by two further months.</p> <p>In the absence of an opinion by the Commission</p>	<p>Certain parties, e.g. 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'. In order to align the Electricity Regulation with the recognition of third parties, we propose the amendment of this Article in order to allow Member States, or where applicable a relevant regulatory authority, to assign tasks or obligations otherwise entrusted to TSOs to one or more third parties. This amendment recognises the <i>status quo</i> within Member States.</p>

		within the periods referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections to the regulatory authority's decision.	
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## 7. Regional Operational Centres (ROCs)

Europex supports the draft Regulation's push towards further cooperation as an important step on the way to completing a fully integrated European internal energy market. Any change to the regulatory set-up of regional cooperation should leave sufficient space to allow for changes and innovation, to welcome new actors and to enable well-functioning, efficient and transparent energy markets without creating artificial regulatory distortions.

While we fully understand that more integration needs to be followed by a modified governance structure, it is important to strike the right balance between European, regional, national and sub-national governance, with clear responsibilities, including cost-wise, and full transparency.

## 8. DSO and TSO ownership of storage

Article (Dir.)	COM proposal	Suggested amendments	Reasoning
36	<p><b>Ownership of storage facilities</b></p> <p>1. Distribution system operators shall not be allowed to own, develop, manage or operate energy storage facilities.</p> <p>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:</p> <p>(a) other parties, following an open and transparent tendering procedure, have not</p>	<p><b>[Europex supports Rapporteur Kariņš' amendments 26-31] with one modification (strikethrough)</b></p> <p>1. Distribution system operators shall not be allowed to own, develop, manage or operate energy storage facilities, <i>except equipment used by the distribution system operators for local short-term control of the distribution system where there is no influence on energy and non-frequency ancillary services markets, and where the national regulatory authority has granted its approval.</i></p>	<p>It is important to avoid distortion of the energy and non-frequency ancillary services markets. Europex therefore fully supports the principle that Distribution System Operators (DSOs) shall not be allowed to own, develop, manage or operate energy storage facilities, except under the conditions listed. We advocate taking a similar approach to the ownership of storage by Transmission System Operators (TSOs).</p> <p>We believe there should be no reference to 'reasonable cost' in paragraph 2, point (a) of Rapporteur Kariņš' amendments. If there has been a tendering procedure and it has resulted in a price, there is no sense in judging if it is 'reasonable' or not - it is indeed the price determined by the market.</p>

	<p>expressed their interest to own, develop, manage or operate storage facilities;</p> <p>(b) such facilities are necessary for the distribution system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system; and</p> <p>(c) the regulatory authority has assessed the necessity of such derogation taking into account the conditions under points (a) and (b) and has granted its approval.</p> <p>3. Articles 35 and 56 shall apply to distribution system operators engaged in ownership, development, operation or management of energy storage facilities.</p> <p>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.</p>	<p>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 <b>all of</b> the following conditions are fulfilled:</p> <p>(a) other parties, following an open and transparent tendering procedure, <b>subject to review by the national regulatory authority</b>, have not expressed their interest to own, develop, manage or operate storage facilities, <del>at a</del> <b>reasonable cost</b>;</p> <p>(b) such facilities are necessary for the distribution system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system <b>and the ownership or operation of the facility does not influence competitive energy markets</b>; and;</p> <p>(c) the regulatory authority has assessed the necessity of such derogation taking into account the conditions under points (a) and (b) and has granted its approval.</p> <p><b>2(a) National regulatory authorities may draw up guidelines or procurement clauses to aid distribution system operators in ensuring a fair tendering procedure.</b></p> <p>4. <b>Member States</b> shall perform at regular intervals or at least every five years a public consultation in order to re-assess the potential</p>	
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		<p>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.</p>	
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### 9. Highlighting the need for liquid and cross-border markets

Article (Reg.)	COM proposal	Suggested amendments	Reasoning
1b	<p>[This Regulation aims at) setting fundamental principles for well-functioning, integrated electricity markets, which allow non-discriminatory market access for all resource providers and electricity customers, empower consumers, enable demand response and energy efficiency, facilitate aggregation of distributed demand and supply, and contribute to the decarbonisation of the economy by enabling market integration and market-based remuneration of electricity generated from renewable sources;</p>	<p>[This Regulation aims at) setting fundamental principles for well-functioning, integrated <b>and liquid</b> electricity markets, <b>including cross-border markets</b>, which allow non-discriminatory market access for all resource providers and electricity customers, empower consumers, enable demand response and energy efficiency, facilitate aggregation of distributed demand and supply, and contribute to the decarbonisation of the economy by enabling market integration and market-based remuneration of electricity generated from renewable sources;</p>	<p>Electricity markets need to be liquid and working across borders to effectively deliver clean and affordable electricity to all Europeans.</p>

1d	[This Regulation aims at) facilitating the emergence of a well-functioning, and transparent wholesale market with a high level of security of supply in electricity. It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity.	[This Regulation aims at) facilitating the emergence of a well-functioning, <i>liquid</i> and transparent wholesale market <i>contributing to with a high level of security of supply in electricity.</i> It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity, <i>taking into consideration the principles set out in Regulation (EU) 2015/1222.</i>	Security of supply is not provided by markets. But markets can contribute to security of supply by smoothing volatility, providing long-term transparency and by hedging against extreme situations.  A stable, long-term and coherent regulatory framework is vital to allow the emergence of a well-functioning and transparent wholesale market. The Capacity Allocation and Congestion Management Guideline (CACM) already provides harmonisation of cross-border exchange rules in electricity. The proposed Electricity Regulation recast should acknowledge the work already done in the context of the network codes and guidelines.
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## 10. Independent demand response aggregators

Article (Dir.)	COM proposal	Suggested amendments	Reasoning <sup>1</sup>
3.2	Members States shall ensure that no undue barriers exist for market entry and market exit of electricity generation and electricity supply undertakings.	Members States shall ensure that no undue barriers exist for market entry and market exit of electricity generation, <del>and</del> electricity supply undertakings <i>and other service providers, including independent aggregators.</i>	We recommend reinforcing Article 3.2 of the draft recast Directive by including all demand response service providers, including ‘independent demand response aggregators’ in the list of actors whose freedom to enter in and exit from the market should be guaranteed, alongside electricity generators and suppliers.

<sup>1</sup> from the joint EFET, EURELECTRIC, Europex position paper on demand response, 16 May 2017.

<p>17.3</p>	<p>Member States shall ensure that their regulatory framework encourages the participation of aggregators in the retail market and that it contains at least the following elements:</p> <p>(a) the right for each aggregator to enter the market without consent from other market participants;</p> <p>(b) transparent rules clearly assigning roles and responsibilities to all market participants;</p> <p>(c) transparent rules and procedures for data exchange between market participants that ensure easy access to data on equal and non-discriminatory terms while fully protecting commercial data;</p> <p>(d) aggregators shall not be required to pay compensation to suppliers or generators;</p> <p>(e) a conflict resolution mechanism between market participants.</p>	<p><b>[Europex supports Rapporteur Kariņš' amendments 15 and 17 with one modification (in blue below)]</b></p> <p>Member States shall ensure that their regulatory framework encourages the participation of aggregators in <i>the wholesale and retail markets</i> and that it contains at least the following elements:</p> <p><i>(d) transparent rules and procedures to ensure that market participants are remunerated for the energy they actually feed into the system or that they do not consume during the demand response period. Where the conditions of remuneration are not agreed by market participants, they shall be subject to approval by the national regulatory authorities and monitored by the Agency;</i></p>	<p>When an 'independent demand response aggregator' sells energy on the market, this energy has been sourced by the supplier of the involved consumers. This energy is not consumed by the activated customer; this then results in freeing up of energy that is implicitly diverted by the independent demand response aggregator and potentially consumed elsewhere in the system. We support the idea that there should not be undue compensations imposed on 'independent demand response aggregators' beyond the costs of the sourced energy. However, a fair market based remuneration of this sourced energy - by which the 'independent DR aggregator' pays the supplier for its sourcing costs - should be required instead of being explicitly excluded.</p> <p>Omitting this adds distortions to free price formation and risks undermining the overall efficiency of the market. As stated in the Commission's own impact assessment "the exclusion of any compensation mechanism introduces a possibility of demand aggregators being free riders in the markets and therefore creating inefficiencies. This is not in line with the EU target model and generally not in line with creating a level playing field for competition."</p> <p>If this issue is not tackled, other participants in the market will bear the costs of DR activation, with a risk of seeing end-consumer bills increase.</p>
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<p>17.4</p>	<p>In order to ensure that balancing costs and benefits induced by aggregators are fairly assigned to market participants, Member States may exceptionally allow compensation payments between aggregators and balance responsible parties. Such compensation payments must be limited to situations where one market participant induces imbalances to another market participant resulting in a financial cost.</p> <p>Such exceptional compensation payments shall be subject to approval by the national regulatory authorities and monitored by the Agency.</p>	<p><del>Member States may derogate from the principles referred to in paragraph 3 in specific situations in which the impact of the activity of market participant activity on other market participants is limited and where the compensation referred to in point (d) of paragraph 3 therefore appears to be disproportionate.</del></p> <p><del>In order to ensure that balancing costs and benefits induced by aggregators are fairly assigned to market participants, Member States may exceptionally allow compensation payments between aggregators and balance responsible parties. Such compensation payments must be limited to situations where one market participant induces imbalances to another market participant resulting in a financial cost.</del></p> <p><del>Such exceptional compensation payments shall be subject to approval by the national regulatory authorities and monitored by the Agency.</del></p>	<p>While we agree with the deletion of Art. 17(4) of the proposed Regulation, we do not agree with the amendment by Rapporteur Kariņš'. If the market has one price, we see no sense in introducing modifications if this price is considered "disproportionate". It also raises the question of who would make this assessment.</p> <p>The current market model is based on the central principle of balance responsibility, an obligation for anyone connected to the grid to respect its schedules or to be exposed to the financial consequences for deviating from them. This principle would be violated if one category of market participants were exempted from being charged by the TSO the cost of its energy imbalances. The activity of 'independent demand response aggregators' should not induce distortions for BRPs, which can for instance be ensured if an imbalance adjustment is applied on impacted balancing responsible parties (BRPs).</p> <p>As a fundamental rule, 'independent demand response aggregators' should thus be financially responsible for their own imbalances.</p>
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