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The Consumer Voice in Europe

European Energy Regulation: A Bridge to 2025

BEUC response to ACER Consultation Paper

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Introduction

Energy markets are changing rapidly and consumers need guarantees they will benefit from this energy transition. It is often debated what will be the main drivers of developments in the retail market. Will it be smart meters and smart grids, investments in network capacity or decentralised energy generation? From our point of view the main driver will be consumers' energy needs and expectations.

The European Consumer Organisation (BEUC) therefore welcomes this initiative of the Agency for the Cooperation of Energy Regulators (ACER) supported by the Council of European Energy Regulators (CEER) as we believe it is important to outline policy and regulatory actions for the next decade in order to ensure future policies take into account what is and will be most important for European consumers in the coming years.

Energy markets must be easily manageable, offer real choice and competing prices to consumers as well as provide all EU energy consumers with secure, sustainable, affordable and reliable energy so that they can trust the market and be more empowered to act if they wish so. We need transparent energy markets that are built on integrity not only because they are more efficient but because they make free and responsible choice possible.

We believe it essential that both ACER and CEER emphasise the most long-term and cost-effective solutions, while including the principle of affordability and avoiding discrimination against vulnerable consumers.

Energy sector embarks on a profound period of change in the way energy is produced, transported, commercialised and consumed. As the sector undergoes transformations on many levels, consumers not only cannot be left behind, but need to be put at the centre of a future market design. Therefore, we encourage both ACER and CEER to present concrete measures as good regulatory oversight is key to ensure markets live up to consumer expectations

The European Consumer Organisation (BEUC) warmly welcomes the initiative of the Agency for the Cooperation of Energy Regulators (ACER) supported by the Council of European Energy Regulators (CEER) as we believe it is important to outline policy and regulatory actions for the next decade. What follows is more specific feedback to the questions that ACER outlines in the green paper 'Energy Regulation: A Bridge to 2025'.

1. Have we identified correctly the issues and trends within each area of the energy sector?

We broadly agree with the issues identified in the section on retail markets and consumers.

First of all, well-functioning retail markets need well-informed and sufficiently protected consumers to really benefit from competition, be able to compare information on consumption and costs, and have awareness of their rights and means of dispute resolution. Thus, complete and urgent transposition and implementation of all relevant EU legislation is needed in order to make markets work better for consumers and ensure they can enjoy their rights. Therefore, we call for a timely implementation of the Energy Efficiency Directive. In addition, as of 13 June 2014 the Consumer Rights Directive is fully operational and it contains specific rules on pre-contractual information e.g. for distance and off-premises contracts and therefore these rules have to be taken into account when suppliers inform consumers.

Secondly, in November 2012, BEUC and CEER launched an initiative to deliver results in line with four key principles outlined in a Joint Statement 'A 2020 Vision for Europe's energy customers'. The Vision which has been supported already by 17 associations is indeed the first stepping stone and we closely observe how it is being implemented and transformed into reality. We welcome the fact that CEER is leading the charge of National Regulatory Authorities to always keep customers first and together with its members, BEUC is looking forward to further cooperation with both ACER and CEER so that the future policies continue respecting principles of reliability, affordability, simplicity and protection and empowerment. Although the Vision has gained a broad support, BEUC calls upon the whole sector to sign for the key principles and, more importantly, translate the principles into concrete actions.

Although we do see some good examples and the market performing better in some countries than in others, the electricity and gas markets are still generally rated amongst the worst performing, thus consumer trust is often very low. While looking at the energy bill for instance, consumers often do not know what they are paying for. Therefore, it is necessary to make markets more transparent, trustworthy, and simple by:

- Offering high quality products and services at a fair price;
- Communicating clearly via simple energy bills and offers;
- Listening to consumers' energy needs and their concerns;
- Following ethical business practices;
- Ensuring customer data are well-protected.

Thirdly, although the Third Energy Package defines a three week switching period, switching process often remains lengthy. Moreover, although the majority of switches are price driven,¹ consumers are less likely to switch if there are fewer offers available in the market or the price differences between supplier tariffs are not significant. At the same time, our members report also many other elements causing low switching rates and influencing consumer behaviour such as:

- Fear of consequences (consumers often believe there is a higher risk of supply interruptions when switching);
- Aggressive marketing practices (e.g. cold calls, telemarketing) so consumers are sometimes not even aware of what they are subscribing to;
- Little confidence in market players.

Last but not least, several BEUC members have already enhanced consumers' interest in many European countries via organising collective energy switching campaigns.² These campaigns help consumers to get a better energy deal and get them more engaged in the energy market. They can also improve competition by enabling smaller providers to overcome entry barriers. However, these initiatives should not be seen as long term solution for market complexity.

2. Have we identified an appropriate regulatory response?

▪ **Completion of internal energy market**

Consumers should be able to shop around to choose their preferred supplier irrespective of their place of residence. While this should be the expectation in an internal market, European consumers are still waiting to reap the benefits of truly competitive energy markets. This even though the Third Energy Package obliges Member States to allow consumers to choose the supplier regardless of the country in which the supplier is registered.

BEUC believes that consumers should have the right to participate in a market where there are a significant number of competing operators leading to downward pressure of prices. However, the reality is that there is no real internal market for household consumers in which they could choose energy suppliers from a different Member State.

▪ **Transparency of information**

¹ According to recent Which? Energy Tracker, getting a cheaper deal/saving money is the main reason cited for switching energy tariff (6 in 10 switchers citing this reason). This is followed by:

- 16% wanted a fixed price tariff
- 14% switched away because their old supplier announced a price rise
- 13% because they moved house
- 10% because of poor customer service from previous supplier
- 9% attracted by a special offer or incentive eg. reward points
- 9% to get better customer service

² BEUC factsheet is available at: <http://bit.ly/1otkUSq>

According to the Third Energy Package, consumers are entitled to receive transparent information on applicable prices and tariffs as well as on standard terms and conditions with regards to the access to and use of both electricity and gas services. Moreover, regarding information requirements in energy contracts, service providers must equally comply with the horizontal legal framework on consumer protection.

Consumers need easily accessible, understandable, transparent and fully comparable information about each offer so that they can choose the most suitable one for them. However, despite the legislative framework, consumers often find energy markets unclear and non-transparent and therefore additional measures are needed. There must be sufficient choice without overburdening consumers with an excess supply of incomparable tariffs. Therefore, in order to improve transparency and facilitate the comparability of different offers across the market, ACER/CEER should ensure that the presentation of energy offers is standardised. At the same time, a summary of the key contractual conditions should be provided to consumers in concise and simple language alongside with the contract.

Although the relevant legislation provides a number of rules, BEUC members continue raising issues related to unclear and confusing bills, often caused by an unclear price structure. Consequently, consumers have difficulties to use the information on the bill in practice and as a result, they spend very little time analysing their energy bills.

The information in the bill must be clear, concise and must provide all relevant information to consumers, including complaint handling and contact points in case consumers have complaints or questions regarding their energy bills and their consumption. Suppliers should take a proactive approach and ensure that energy bills are clear, accurate and well-structured as also recommended by Working Groups of the European Commission.

Energy regulators should therefore undertake a full scale review of the content of energy bills and annual statements and urgently put forward proposals to improve the information provided. This should also include a review of billing practices in each Member State, identifying best practices and setting minimum standards for energy bills.

Furthermore, BEUC is also concerned that notification letters to inform consumers about price increases can be confusing. Some BEUC members reported that price rise notification letters sent along with marketing materials can often lead consumers to ignore the letter. Thus, BEUC encourages energy regulators to consider the misleading nature of this practice and explore other means of communication of eventual price increases such as standardised forms, which could then be used across the industry.

In addition, when searching for a suitable deal, in some Member States consumers can use price comparison tools which help to compare different energy offers available on the market. As comparison websites play a key role when looking for a better deal, it is essential that the consumer gets clear and independent information on the offer. Regardless of who is running the comparison website, it must be ensured that the information consumers get is impartial, up to date, accurate and

provided in a simple way. Each comparison tool should respect the main principles which are further described in BEUC's position paper on Comparison Websites.³

BEUC strongly believes there should be at least one comparison tool for electricity and gas services in every Member States which consumers can use to compare different offers.

▪ **Consumers' engagement and switching**

European consumers have few tools to navigate the market and often very little power to be able to subscribe to services that give them reasonably-priced, affordable and reliable energy. It is of utmost importance that new and innovative ideas to empower consumers are discussed, better understood, and replicated.

However, it is crucial that consumers are aware of their rights and are protected against unfair commercial practices and unfair contract terms limiting their rights under the contract. Face to face sales (e.g. door-step selling) have raised a number of problems. Also, consumers often have difficulties to access and understand the contract terms and conditions which are often displayed in small font or are too long, just to mention a few examples.

Moreover, as low supplier switching rates are indeed a big problem and have a negative impact on competition, we believe the switching period should be shortened. Switching periods are currently unacceptably long and switching gains materialise too slowly.⁴

In order to contribute to consumers' understanding of energy offers and trust and engagement in the energy market, ACER and CEER should focus on a wide range of factors when monitoring the market. These include:

- overall switching levels including a clear focus on which consumers segments are more likely to switch and which are not;
- price competition within different market segments (not just direct debit offers) and different regions (if there is regional pricing);
- intra supplier switching levels;
- accuracy and speed of the switching process;
- quality of switching (e.g. in terms of experience throughout the process and benefits of switching).

At the same time, there must be tools facilitating consumer participation. For instance, collective switching campaigns and possibly new trustworthy intermediaries simplifying the market for consumers and offering services tailored to consumers' circumstances and preferences. Therefore, BEUC asks National Regulatory Authorities together with other relevant stakeholders to facilitate collective switching campaigns improving consumers' experience on the energy market and helping them to get a better deal.

Also, BEUC supports that the supplier should be the main point of contact for the consumer, especially for issues related to switching, billing or when moving house.

³ <http://bit.ly/1is225I>

⁴ For instance in France, supplier switching can indeed be fast and managed in 1 day which also raises a question why switching periods differ so much across the EU.

Although the supplier-centric model should be considered as a general rule, it is important to bear in mind the variations among Member States. For instance, in France the supplier is considered as the unique contact point for the consumer and therefore should also have a unique liability towards the consumer. However, in some other countries, the Distribution System Operator (DSO) may sometime be the contact point for consumers in particular situations. Member States and National Regulatory Authorities should therefore undertake the necessary steps in order to ensure that consumers get clear information on whom to contact in different situations.

- **Data protection**

New technologies make it technically possible to process much more granular data than is currently processed in the retail energy market sector, which could give a unique insight into the activities of households. If compliance with the data protection framework and effective enforcement is not ensured, this information may be used not only for analysing the consumption patterns of particular households but also for other purposes that are not compatible with the one for which the data has been collected. For instance, smart metering technology is based on the principle of generating and communicating data, therefore it can easily pose significant risks and challenges in terms of data protection. In order to address all concerns and prevent the misuse of consumers' personal data, the EU legal framework⁵ has established a number of fundamental principles every data processing operation must comply with.

The customer has a fundamental right to access and control *all* the data generated by the smart meter (whether the consumer owns (or has the property rights to) the smart meter is irrelevant). In addition to the right to access the data, consumers must be also able to exercise their rights to correct, erase and delete information held about them. This should always remain free of charge so that consumers can fully exercise their fundamental rights in accordance with the principle that they have the ownership and the control over their data. Moreover, when consumers wish to switch their energy supplier they need to be able to carry their data with them, and proper procedures for the complete and effective erasure of their personal customer data by the old suppliers need to be guaranteed.

According to Article 8 of European Convention on Human Rights, *everyone has the right to respect for his private and family life, his home and his correspondence*. We believe each party requesting the data should provide justification why the data is needed, ie. the burden of proof should also be extended to DSOs/metering operators and any request to access personal data should pass the 3 step test. We believe such a test is vital in order to prevent parties from collecting data that is 'nice to have' for the performance of their (legal) duties but is not critical to perform their (legal) duties. It should always be tested if there are alternatives open to the other party that are less intrusive to the fundamental right to privacy of the European consumer. We therefore believe that further guidance will be needed in this respect.

⁵ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Furthermore, although the discussion on the proposal for a Data Protection Regulation is still ongoing, the need for a specific legislation should not be excluded and be considered on the basis of the new general data protection regulation.

At the same time, Data Protection Authorities as well as consumer associations should be consulted when standardising data content, data format and data exchange as well as monitoring of compliance.

- **Protection of vulnerable consumers**

Special attention should be paid to vulnerable consumers and low income households and the circumstances and conditions that lead to vulnerability in the energy sector need to be better understood. It should be analysed if these consumer groups are sufficiently protected and strong protections should be put in place for these groups where needed.

- **Consumer benefits from new technology and new services**

New technologies like smart meters, varying user interfaces, new appliances and home automation in general will offer a larger choice of products and services as well as more information for consumers, yet the benefits for consumers are not guaranteed. It all depends on how these new technologies will be presented and used by consumers, how changes in energy products and services will be communicated to them and if there is any interest (financial, environmental, and social) from consumers' side.

The energy consumption of residential households varies largely and it is expected that not all consumers can benefit from technologies such as smart meters in the same way or at all. Depending on the household size, inhabitants or number of appliances in use, consumers' savings, if any, will vary. Most importantly, if consumers do not engage with the new technology, changes in their behaviour can hardly be expected.

Although this technology may help those who consume large amounts of electricity or for example households equipped with heat pumps, smart meters should not be understood as a necessity to achieve energy savings. Therefore, instead of pushing through this technology – which seems to be the current approach – new services (facilitated by new technologies) or demand response programmes should be based on understanding market opportunity and consumer outcomes.

All consumers should have the possibility to engage in demand response and should be offered simple services and hassle-free technical solutions. However, it is essential to provide consumers with choice and it should be left up to them to choose whether or not they would like to have a smart meter installed and if they want to opt-in and participate in demand response programmes. If smart meters are rolled-out, a solid legal and regulatory framework is needed in order to guarantee that the roll-out is cost efficient and that costs and benefits are fairly shared among all stakeholders who benefit from the new technology. We urgently need clear commitments that the investments to upgrade the infrastructure and the roll-out of smart meters will deliver benefits to consumers as well as monitoring and enforcement of these commitments.

Moreover, variable tariffs coming with smart meters may add further complexity to the market. Therefore, regulators should ensure that 'more sophisticated tariffs' do not turn into a jungle of different tariffs and BEUC is strongly recommending a distributional analysis on the impact of time-of-use tariffs on different social groups and if/how these groups can access the benefits of new deals.⁶

- **Prosumers as participants in the market**

Distributed generation will increase in the near future when more and more consumers will install micro-generation. Although there is a high potential for micro-generation, barriers (especially financial barriers, lack of knowledge of which technology is the most suitable for different kinds of households, lack of clear rules of planning and permitting processes) still remain so further support is needed in this respect.

- **High customer services levels**

From a customer perspective, connections, disconnections and maintenance of energy supply are indeed very important processes as they often represent the first consumer contact with the energy market. We agree that if these processes are well designed, they will help to improve customers' perception of the energy market.

- **Understanding consumer behaviour**

It is often suggested that consumers should be active players in the energy market. However, according to the experience from the current energy markets, most consumers fall into a group of passive consumers who want simply to use the energy services without getting involved in understanding the market complexity. Although increased consumer engagement is considered to be important to the future of the energy sector, further analysis is needed with regards to the willingness and ability of consumers to engage with and participate in energy markets.

Consumer sentiment about a range of issues should be regularly monitored including views on the

- ease of finding information suitable for carrying out a price comparison;
- range of tariff offers available through different sales channels;
- availability of offers suitable for their needs;
- price comparison processes;
- the switching process itself; and
- satisfaction with suppliers' customer service and/or complaints handling performance.

⁶ More details about BEUC key demands for the future smart markets are available at <http://beuc.eu/publications/2013-00083-01-e.pdf>

Moreover, while we support the idea of organising focus groups and consumer surveys, we believe that consulting consumer organisations in parallel will contribute to better understanding of consumer behaviour.

3. Which regulatory actions are most important and should be prioritised?

- **Standardisation of consumer information and presentation of contracts**

As already described above, consumers do not always receive objective and reliable information on offers which they could use to compare different available offers. This will become even more difficult as offers may become more complicated.

Standardising the way pre-contractual information is presented to consumers could be a means to increase transparency of energy offers and enable consumers to compare them more easily. In this regards, the co-operation of consumer associations, energy providers and regulators could facilitate the development of standardised templates with key information to be displayed at the supplier's premises and on their websites.

It is not the intention of BEUC to standardise the offers as such (content), as they may well change following the evolution of national markets and competition. BEUC however considers that standardising the way the offers are presented would be a meaningful way to provide consumer with comparable information when making a consumption decision and therefore stimulate competition and, ultimately, fairer offers.

It is essential that this exercise takes into account behavioural economic insights in order to identify how consumers perceive and act upon pre-contractual information and therefore avoid information overload. In this regard, in 2013 BEUC commissioned a study about consumer information which provides policy recommendations on how to inform consumers more efficiently.⁷

Similarly, the development of model contracts with standardised clauses would allow consumers – before they enter into the contract, as well as once they entered it – to identify relevant contractual information e.g. switching conditions, price clauses, termination clauses, etc.

- **Refocusing demand response policies to give consumers greater control**

We welcome the proposed review of the changing roles of market actors created by the opportunities of demand response technologies. We urge ACER/CEER however to give a greater focus going forward to the potential to assign greater control and

⁷ http://www.beuc.eu/publications/x2013_089_upa_form_matters_september_2013.pdf

choice to consumers according to their specific needs and interests. To date the primary focus has been on the introduction of TOU and dynamic tariffs. BEUC would welcome greater transparency of the costs and opportunities for domestic consumers of such tariffs. However it is likely that greater co-ordination between demand response and energy efficiency policies could open new opportunities for consumer to manage and reduce their consumption if this is supported by a greater understanding of the potential of the respective consumer groups to engage.

- **Focus on consumer outcomes**

We welcome ACER's and CEER's focus on removing barriers to competition as well as on the measurement of consumer delivery. At the same time, we ask ACER/CEER to consult consumer organisations when determining criteria to measure market performance for consumers. This could help bring EU policies closer to EU citizens, if promises of consumer benefits are defined and monitored (including impact assessment differentiating between the needs of different consumer groups).

4. Are there other areas where we should focus?

- **Competition**

The number of suppliers in the market, aggregated switching volumes and price comparisons between Member States are usually considered as the key measures of the competitiveness of retail energy markets. However, these indicators do not provide a complete overview of the market and therefore, the following indicators should be used. First of all, the proportion of consumers on the cheapest tariff will show whether large numbers of consumers are paying significantly more than others for what is essentially the same product. The second key indicator of a competitive market is the extent to which new firms are able to enter and grow in the market. The final key indicator is an increased level of consumer satisfaction as companies in a truly competitive market would treat their customers well to avoid the risk of losing them to competitors. Therefore, the indicators used to measure the degree of competition in energy markets should be revised and should include indicators such as the proportion of consumers on the cheapest tariffs, the ability of new companies to enter the market and grow and the levels of customer service and innovation, all of which will help provide a real picture about the level of competition on the market.

- **Wholesale energy markets**

As for the retail markets, we need transparent and liquid wholesale markets. We expect ACER to take steps (for instance via ambitious implementation of the Regulation on Wholesale Energy Markets Integrity and Transparency) to improve wholesale market functioning. We expect that these will foster open and fair competition in wholesale energy markets for the benefit of final consumers and will prevent market manipulation and distortion of competition.

Moreover, the relationship between wholesale costs and retail prices is rather complex but in principle, one should impact the other. However, this is often not the case. While wholesale prices are falling, the decrease has not always translated into a reduction in the energy element of retail prices. This has also been caused by insufficient competition in the market.

- **Future consumer contracts**

As the energy transition develops and more renewable generation capacity is brought online, we will face increased market volatility. Although the wholesale prices decrease, consumers in many countries cannot really benefit from these developments as they do not really have direct access to these forward wholesale markets. Therefore, BEUC calls on ACER to analyse if the energy transition warrants changes to the regulation of markets and/or how consumers' energy contracts may be priced and sourced in the future.

- **Accessibility of network codes**

As the energy sector transforms itself and new technologies are deployed, infrastructure laid out, and technical rules developed, it is of utmost importance that consumer representative bodies are not left out and able to participate in policy development processes, helping out policy makers to protect and strengthen consumer interests. Therefore, we ask ACER to use the opportunity of a review to consider how to make consultations more easily accessible to other market actors, including consumers, where they are likely to be impacted by the new market rules although not directly engaged in the operation of the networks.

- **Transparency and affordability of domestic energy prices**

Considerable focus is given in EU policy to protecting energy intensive industrial consumers from the cost of decarbonisation in the form of exemptions, as evidenced in the recently published guidelines for state aid for environment and energy investment purposes. At the same time it is unclear what will be the final cost to energy consumers of the upgrade of the energy infrastructure and the introduction of smart technology, and how this will be managed. Yet with respect to domestic consumers, one of the top priorities is the introduction of full competition and the removal of regulated prices. This appears to contradict the principle of "polluter pays" and raises concerns for transparency and affordability.

BEUC calls on ACER and CEER to closely monitor the burden imposed on domestic energy prices by the application of industry exemptions and other investment costs to ensure fair treatment of all consumer groups within an overall framework for the affordability of domestic energy bills. At the same time, we believe ACER/CEER should monitor the exemption conditions for large energy consumers by national legislation of the EU Member States.

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