



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 May 2013

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NOTE

from: Coreper

to: Council

No. Cion prop.: 16202/12 ENER 467

Subject: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
- Making the internal energy market work
= *Draft Council conclusions*

1. On 16 November 2012, the Commission presented the above Communication, together with accompanying Staff Working Documents. On 3 December, at the TTE (Energy) Council, the Commission presented the Communication, which formed part of the basis for the exchange of views on the topic "Follow-up to the European Council" ¹. The TTE (Energy) Council on 22 February 2013 held a policy debate on the Communication ². The Cyprus and Irish Presidencies sent summary letters to the President of the European Council outlining the results of the discussions at these Councils, so that these results contributed to the discussion on energy at the European Council meeting that took place on 22 May 2013 ³.

¹ On the basis of doc. 16203/12.

² On the basis of doc. 6221/13.

³ Note: the corresponding European Council conclusions on *inter alia* energy issues are reflected in doc. EUCO 75/13.

2. The Council Energy Working Party prepared draft Council conclusions, reflected in the Annex. At the meeting of Coreper on 23 May, delegations confirmed their agreement to the text of these conclusions.

 3. The TTE (Energy) Council on 7 June 2013 is invited to adopt the conclusions set out in Annex.
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draft

**Council conclusions on the Commission Communication
"Making the internal energy market work"**

THE COUNCIL OF THE EUROPEAN UNION

RECALLS that completion of the Internal Energy Market is a priority action under the Single Market Act II;

RECALLS the conclusions of the European Council of 4 February 2011 which stated that the internal market should be completed by 2014 and that no Member State should remain isolated from the European gas and electricity networks after 2015;

BUILDING on the conclusions of the European Council of 22 May 2013;

EMPHASISES the significant contribution that the completed Internal Energy Market will make to all three pillars of the Union's energy policy: sustainability, competitiveness and security of supply, but also to the Union's jobs and growth agenda, to the Union's energy and climate targets, to the transition to a low-carbon economy, to the strengthening of the Union's external energy policy and to the reduction of the Union's external dependency;

STRESSES the need to ensure a fully consistent and synergistic approach between different energy policies strands such as those relating to renewable energy, energy efficiency, the internal energy market and future energy policy goals, and also with closely linked policies such as transport policy, climate policy and economic policy and their respective goals;

RECALLS that in the further development of the Union's energy policies, account should continue to be taken of the specific circumstances of some Member States or regions, such as those with small isolated energy systems, those with an insular or peripheral character, as well as those with 'energy islands'.

IN ORDER TO COMPLETE THE INTERNAL ENERGY MARKET AND ACHIEVE THE 2014 AND 2015 DEADLINES, THE COUNCIL:

CONFIRMS its full commitment to the correct and urgent implementation of the internal energy market legislation, including notably the third energy package, which includes acting in line with the spirit of that legislation and ensuring proper application and enforcement to ensure a Union-wide level playing field;

INVITES all Member States to consider - whilst taking into account universal service obligations - the impact of existing end-user price regulation measures, in particular of those measures that may have negative effects on the functioning and completion of the internal energy market and that:

- do not focus on well-defined groups of vulnerable consumers;
- are not of a temporary emergency nature;
- are not justified by wholesale markets that are uncompetitive due to their geographical isolation or their temporary lack of interconnections or supply diversity.

Council invites Member States to subsequently consider the need to maintain such measures, and take appropriate action, whilst duly taking the economic conditions into account;

CALLS on Member States to rationalise and to phase out environmentally or economically harmful subsidies, including for fossil fuels, inter alia in order to create a level playing field for different types of generation, whilst recalling the TTE Council conclusions of 3 December 2012 relating to the gradual phasing out of support for new projects of certain types of maturing renewable energies, when their economic viability and competitiveness have been achieved and bearing in mind national specificities;

UNDERLINES the importance of finalising and implementing the Target models for electricity and for gas, from balancing to long-term markets, and for the continued rapid development of framework guidelines and network codes, and the adoption of the latter through the committee procedure and in close and early consultation with all relevant stakeholders, as set out inter alia in the Action Plan for Europe annexed to the Communication "Making the Internal Energy Market work", that will ensure the optimal functioning of the internal gas and electricity markets. In particular, the Council underlines the need to improve capacity utilisation in gas and electricity networks and improve consistency in EU cross-border transportation tariff calculation;

STRESSES the responsibility of Member States, cooperating at Union and regional level, to ensure generation adequacy in order to guarantee the secure supply of consumers. However, the market has the key role to play in providing clear investment incentives for new generation capacity, new interconnections, network and system optimisation, et cetera. Therefore the Council calls for the further enhancement of cooperation and coordination at policy as well as operational level, and welcomes the role of the Electricity Coordination Group;

SUPPORTS the further strengthening of regional initiatives, regional cooperation and planning to improve the overall functioning of the internal energy market, in particular in order to assist in improving system adequacy, the implementation of the Target models for gas and for electricity - the latter with particular attention to flow-based method for capacity allocation - the establishment of further energy interconnections and energy market integration. In cases where these are lacking, the establishment of further interconnections and better market integration should receive the highest priority;

HIGHLIGHTS the role that energy infrastructure plays in the completion of the internal energy market and the achievement of energy and climate objectives. A precondition to the completion of the internal energy market is adequate infrastructure, in particular sufficient interconnections between Member States and regions to improve security of supply, to end energy isolation, to enable the uptake of increasing amounts of variable renewable energy and to foster significant volumes of crossborder trading in gas and electricity. Furthermore, the Council underlines the importance of adequate infrastructure connecting remote areas and islands, as well as the contribution of adequate infrastructure to the territorial integrity of the Union and to social and economic development;

URGES therefore Member States, the Commission and relevant stakeholders, in particular Transmission System Operators and project promoters, to devote all necessary efforts to the swift implementation and application of the Regulation on guidelines for trans-European energy infrastructure, and invites the Commission, Member States and ACER to promote regional initiatives which play a prominent role in bridging infrastructure gaps;

UNDERLINES that in order to further proceed with the market integration in Europe clear rules of congestion management on cross-border gas connections with third countries may be required. The Council invites the Commission to analyse this issue and, if appropriate, present possible options to resolve this issue within the EU bilateral dialogues with relevant third countries;

STRESSES that an effective regulatory framework that is predictable and reliable on a long-term basis is vital for creating the necessary investment incentives in network infrastructure as well as in new generation capacity;

HIGHLIGHTS the positive effects that the unbundling provisions of the third energy package generally have on the development of energy infrastructure and on competition, while underlining the importance of assessing the effectiveness of the different unbundling models, and notes the Commission's analysis and guidance on institutional investors that wish to invest in both energy generation capacity and energy infrastructure;

UNDERLINES that the principles of the third energy package should be applied to the power system management in Baltic Member States, as this is a necessary prerequisite for the completion of the fully-fledged and EU-wide internal energy market. With a view to reaching this objective, particular attention should be paid to the aim of the Baltic States to integrate the Baltic power system into the European continental networks;

RECOGNISES the problem posed by unplanned power flows occurring frequently and on a large scale and the potential dangers that this poses to the secure functioning of transmission systems and the costs these flows might provoke. The Council underlines the need to address this problem that results from the mismatch between commercial and physical flows. This should be done in the long term by the development and upgrade of the grid. In order to avoid security of supply incidents and loss of social welfare within and across regions, further measures should be assessed and implemented in the short- and medium-term that will aim to guarantee the safety of system operation, whilst optimising the utilisation of infrastructure, as well as to support market integration objectives and ensure a high level of transparency. The Council acknowledges that such measures require a close bilateral and regional cooperation of the TSOs as well as further analysis and coordination effort at Union level;

EMPHASISES once again the significant role that energy efficiency and energy saving play in helping to solve a wide range of challenges facing the internal energy market, including from an infrastructure perspective, and underlines the importance of implementing the Energy Efficiency Directive, which includes provisions on distributed generation, demand response and related price signals, as well as an assessment of the energy efficiency potential of the national energy infrastructure, which will all help the completion of the internal energy market;

RECALLS the need to keep the internal energy market adequately supplied, taking advantage of the Union's indigenous resources and using as well resources from external suppliers, whilst bearing in mind the need to continue the process of cooperation and, where applicable, integration with neighbouring countries based on the relevant Union acquis, and to ensure a level playing field for business and industry so that they can be competitive in the global marketplace, having regard inter alia to the impact of carbon leakage;

UNDERLINES the important role of indigenous energy sources in ensuring security of supply, in reducing the Union's external energy dependency, and in stimulating economic development within the Union. The Council recalls the important role of the United Nations Convention on the Law of the Sea (UNCLOS) in relation to offshore indigenous energy sources.

IN ORDER TO IMPROVE THE RIGHTS AND ROLES OF CONSUMERS, THE COUNCIL:

STRESSES the rights of consumers to transparency, equality and predictability in particular with regards to contracts, billing and pricing schemes;

EMPHASISES that the interests of consumers play a central role in the internal energy market and that consumers should be a driving force for market integration, efficient market functioning and the creation of integrated national and crossborder retail markets, by exercising their right to choose the best offer from different electricity and gas providers - facilitated for example by tools providing simplified access to consumption data, and having regard to inter alia prices and pricing schemes, quality of service, contractual conditions and environmental and sustainability aspects - and, where framework conditions allow, by lowering their energy costs through demand response based on all available information, including on prices;

ENCOURAGES therefore awareness-raising and trust-building activities such as clear, regular and targeted communication and education measures, from both public and private actors, aimed at various consumer groups, using consumer-focused instruments that enhance consumer choice and empowerment, such as price comparison tools that enhance transparency and comparability of information, e.g. on prices and pricing schemes, quality of service, contractual conditions and environmental and sustainability aspects, and tools for switching suppliers;

HIGHLIGHTS the importance of affordable energy for households and for the competitiveness of European industrial consumers, and the value of assessing future energy policy initiatives from the perspective of the consumer, including, where appropriate, the implementation of specific cost-benefit analyses;

UNDERLINES the importance of protecting vulnerable consumers, including notably those affected by energy poverty, through energy policy and/or social policy, as determined by the Member State, and underlines the need to use specific and well-targeted consumer information on any measures taken. In this context, the Council recognises the scope for the exchange of best practices among Member States as an input and stimulus for national policy development, whilst underlining that measures to support vulnerable consumers should not undermine energy efficiency policy or the correct functioning of the market, including price signals for demand. Furthermore, the Council underlines the particularly effective role that energy efficiency measures and policy can play in helping vulnerable consumers;

HIGHLIGHTS the importance of smart meters, micro-generation, micro-storage, home automation and smart appliances, in empowering consumers and delivering demand response, whilst underlining the need to ensure adequate privacy and data protection and address other issues related to the consumer acceptance of such devices, including notably the need to inform and educate consumers. The Council therefore emphasises the need for Member States to consider the adoption of strategies for the roll-out of smart meters, which may be subject to the outcome of cost-benefit analyses where undertaken by Member States and where these demonstrate the net benefits for the consumers, as well as for other energy actors;

ENCOURAGES the roles that the consumer can play in the micro-generation of renewable energy ("prosumers"), and in micro-storage, and the multiple potential benefits that this can have on important elements of the Union's energy and climate policy, whilst also having regard to the accompanying costs;

WELCOMES AND SUPPORTS initiatives that raise public acceptance for infrastructure projects, in particular those that encourage and enable participation of individual citizens in infrastructure projects, generation projects and storage projects, especially those in their local area. This should be done, when appropriate, also in line with the measures set out in the Regulation on guidelines for trans-European energy infrastructure, and taking into account the importance of communicating on the need for, and the challenges associated with, the completion of essential energy infrastructure.

IN ORDER TO CONTRIBUTE TO THE TRANSITION TO THE INTERNAL ENERGY MARKET OF THE FUTURE, THE COUNCIL:

while noting the need to take into consideration actions already undertaken by Member States, CALLS FOR the rapid development of standards for smart meters, smart grids and smart appliances and notes that rules and standards for the seamless interaction of smart meters, smart grids, smart appliances, micro-generation and micro-storage technologies and home automation are essential, inter alia for enabling demand response and data management. In this context, the Council underlines the important role that the European regional policy and its priorities under the 2014-2020 financial framework can play in supporting the deployment of smart technologies;

NOTES the intention of the Commission to propose guidance for a roll-out of smart meters, and emphasises the importance of taking into consideration actions already undertaken by Member States. The Council underlines the need for transparency, coordination and exchange of best practice in the roll-out of smart meters, as well as the need to take into account local network and distributed generation characteristics, the level of demand and economic considerations. In the roll-out process, an important role can be played by national action plans;

SUPPORTS further Research, Development and Demonstration projects on smart grids, and encourages Member States to consider the preparation of national action plans for smart grid development. The Council supports the development of cross-border smart grids in the Union, in particular where these contribute to generation adequacy, security of supply, the uptake of increasing amounts of variable renewable energy, and optimal network management;

UNDERLINES the potential role that can be played by the providers of innovative services and new actors such as ICT companies, for developing demand response systems in distribution networks. The Council notes that there may be a need to assess the tasks and roles of Distribution System Operators (DSOs) in light of the emergence of new consumer demand for innovative services. In general, the Council emphasises the need to exploit the large synergistic potential that lies in the cooperation between energy actors: energy companies, DSOs, Transmission System Operators, National Regulatory Authorities, Member State authorities, retailers, ICT and telecom companies and system developers;

UNDERLINES that further efforts are needed to facilitate and enable the development of more and better energy storage solutions, in all sizes and types, and therefore supports further Research, Development and Demonstration in this area, the timely implementation of already existing projects such as hydro pumped storage projects, as well as closer cooperation between Member States and neighbouring EFTA countries;

UNDERLINES the contribution that the large-scale use of both micro-generation of renewable energy and micro-storage of energy can make to generation adequacy and security of supply, and calls upon the Commission, Member States and relevant authorities including notably DSOs to ensure that technical and administrative barriers to the large-scale deployment of these types of generation and storage are removed or minimised. In this context and in light of the recent Commission proposal for a Directive on the deployment of alternative fuels infrastructure, the Council underlines the importance of a successful integration of the micro-storage and demand response potential of electric cars into smart grids, which is an aspect of particular importance to energy policy;

UNDERLINES that generation adequacy should be measured at Member State level and at the appropriate regional level. Relevant factors within the appropriate wider region should be taken into account, such as crossborder energy flows, available interconnection capacity, market coupling, base load, potential demand flexibility and available production capacity, including both variable and flexible generation. In order to further improve the security and reliability of energy supply and the efficient functioning of the internal energy market, the Council welcomes initiatives to promote further transparency of methodologies and practices used to assess generation adequacy. Such initiatives could, following further detailed analysis, lead to proposals for minimum criteria aimed at converging or, if appropriate, harmonising national and regional generation adequacy assessment methodologies;

UNDERLINES that any state intervention in the energy market should be within the limits of Union law and, without prejudice to the right of Member States to undertake action in due time, should only take place after due consideration of the alternatives and/or other policy tools available within the relevant timeframe - in particular the removal of existing distortions, the promotion of demand response mechanisms and energy efficiency, as well as additional interconnection capacity - and should be the least distortive possible. The Council notes that the use of capacity mechanisms could be an option to consider, with the aim of guaranteeing generation adequacy and security of supply in situations where the internal market does not yet function effectively, for instance due to a lack of interconnection, or where the inflow of large quantities of variable power generation accelerates a need for sufficient investment in flexible generation that the market does not meet, whilst noting the potential negative effects of capacity mechanisms as set out in the Communication. In this context, the financing of capacity mechanisms by relevant actors could be considered;

STRESSES therefore, that with a view to excluding or minimising potential negative effects of capacity mechanisms on the functioning of the internal energy market, coordination at regional and Union level is needed, and the following issues relating to capacity mechanisms should be examined thoroughly:

- criteria for their use (which should include an assessment of the alternatives and/or other policy tools available within the relevant timeframe, such as additional interconnection capacity, market coupling, storage, demand response mechanisms *et cetera*);
- design, including existing and envisaged designs of capacity mechanisms, as well as costs;
- potential effects - including on cross-border trade, on investment in interconnections, on other Member States and producers; and
- how to prepare optimally for their possible later phase-out as the internal energy market and technology develop and thus improve the security of supply.

This examination should closely involve Member States and relevant actors and may lead to non-binding guidance at EU level on the use of capacity mechanisms, to coordination at Union and regional level, and to criteria to assess consistency of national capacity mechanisms with the internal market. The Council recognises that the different nature of generation adequacy-problems in different Member States should be duly taken into account in this process. Non-binding guidance on these issues should help in minimising the possible drawbacks of these mechanisms;

NOTES the Commission's announced non-binding guidance on renewable energy support schemes reform to promote further cost reduction and market integration of renewables. Notes also the revision of the guidelines on State aid for environmental protection, and underlines that in the context of Union legislation on antitrust and State aid, there is a continued need for tailored measures that correspond to the varying levels of maturity of renewables technologies;

STRESSES that when Member States, in exercising their rights to determine their energy mix, make choices that have a substantial impact on neighbouring Member States, they should duly consider ways to minimise negative repercussions and maximise the positive effects that such choices may have on neighbouring Member States and their region, including through coordination and dialogue with affected Member States.

IN LIGHT OF THE ABOVE, THE COUNCIL:

SUPPORTS the broad thrust of the Action Plan for Europe as set out in Annex 1 to the Communication. The Council therefore invites the Commission to proceed with the implementation of the actions specified in these conclusions, taking due account of the messages contained herein, and with regular reporting by the Commission to the Council bodies, so that these bodies can monitor the implementation;

EMPHASISES the need to take stock of the work done in 2011 on the strengthening of the European External Energy Policy and welcomes the discussion on the lessons learned, scheduled to take place in the second half of 2013. The Council underlines that this discussion should take due account of the need to deepen the energy market integration with neighbouring countries based on the EU energy acquis;

STRESSES that it intends to review the implementation of these conclusions by the end of 2014.