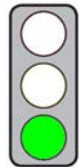


## KEY ISSUES

**Objective of the Communication:** The Commission announces measures to advance the completion of the internal energy market.

**Parties affected:** Energy and natural gas companies, private and commercial end consumers



**Pros:** (1) The implementation of the Third Energy Package through infringement proceedings strengthens competition and allows for a level playing field in the internal energy market.

(2) Capacity mechanisms can lead to partitioning in the internal energy market and thus distort decisions made regarding choice of business location; this requires action on the part of the Commission.

(3) The desire for "greater consistency" in support schemes for renewable energies can lead to their being more competitive and thus reduce costs.

**Cons:** The supply of electricity derived from renewable energies fluctuates as it is fed into the grid, and this creates costs. These should be levied on producers individually and not consumers; the Commission should make a clear commitment to this principle.

## CONTENT

### Title

Communication COM(2012) 663 of 15 November 2012: **Making the internal energy market work**

### Brief Summary

#### ► Background

- By 2014, the EU wishes to establish a competitive "internal energy market" in order to pursue three targets (see [CEP Compass EU Energy Policy](#), p. 13 et sqq., *in German only*):
  - Competition: opening up and liberalising energy markets should reduce the energy costs of private and commercial consumers at the same time as increasing energy efficiency, investments and innovations. Separating power generation from grid operation is to facilitate access to the energy market for new companies; hereby consumers are to obtain a greater choice of energy suppliers.
  - Security of energy supply: energy suppliers should be given incentives to invest in new power generation and network infrastructures. A safe and integrated energy network should enable a diversification of the energy supply and thus contribute to the security of energy supply.
  - Climate protection: the integration of electricity from renewable energies into the electricity system is to be facilitated.
- According to the Commission, the EU is "not on track" to complete the internal energy market by 2014. Member States are slow to implement EU rules and hesitant to create "fully competitive markets with consumers' involvement". (p. 2)

#### ► Implementing EU legislation

- The "Third Energy Package" comprises the Electricity Market Directive (2009/72/EC; see [CEP Policy Brief](#)), the Internal Gas Market Directive (2009/73/EC; see [CEP Policy Brief](#)), the Regulation on the network access conditions for cross-border electricity trading (No. 714/2009; see [CEP Policy Brief](#)) and the Regulation on network access conditions to natural gas transmission systems (No. 715/2009; see [CEP Policy Brief](#)).
- The Commission complains that many Member States have failed to implement or apply completely or properly the requirements set out in the Third Energy Package even long after the expiration of the implementation deadlines (March 2011).
- Therefore, it wishes "as a matter of priority" to pursue infringement procedures against Member States that have not yet fully transposed the Third Energy Package Directives or have failed to do so correctly (p. 8).

#### ► Strengthening consumers

- Consumers do not use the option to switch electricity suppliers or tariffs.
  - Only one third of consumers compare electricity prices.
  - The Commission estimates that consumers could save up to 13 billion Euros per year if they switched to the "cheapest electricity tariff available" (p. 6).

- By the end of 2012, the Commission wishes to provide information via internet with regard to
  - consumer rights in the energy sector and
  - information sources for consumers in the single Member States.
- In 2013 it wishes to promote the exchange between Member States on how to facilitate price comparisons and how to increase transparency in pricing and billing.

► **Price regulation**

- In most Member States energy prices are not formed freely on markets but regulated in different forms statutorily.
- In many Member States price regulation impedes
  - "offering attractive services" and "tailor-made and dynamic pricing schemes",
  - efficient energy use, and
  - investments in the energy system.
- The Commission is calling for an end to price regulation for electricity and natural gas for all commercial and private consumers. It considers this to be an impediment to the internal market and therefore wishes to pursue infringement procedures against Member States which regulate energy prices for end consumers.

► **Capacity mechanisms**

- In order to ensure the electricity supply at times when electricity is not being generated by renewable energy sources such as sun or wind, it is necessary to create reserve capacities for power generation ("capacity mechanisms").
- In several Member States the consumers are to finance these reserves.
- The Commission is concerned that the "premature" introduction of "poorly designed" capacity mechanisms which are not properly coordinated at EU level would be "counterproductive" (p. 15), for capacity mechanisms pose the following risks in the energy internal market:
  - fossil fuels are preferred at the expense of renewable energies;
  - the choice of location for energy generation is distorted;
  - national electricity markets are closed off and thus cross-border trade and competition is impeded;
  - the efficient and flexible use of generation capacities is prevented which leads to increased costs.
- According to the Commission, capacity mechanisms are subject to EU law on controlling State aid. Therefore, Member States should be obliged to prove that they are necessary and preferable to other solutions, e.g. electricity imports.
- The Commission wishes to avoid a fragmentation of the internal energy market and to maintain cross-border electricity trade also at times of capacity bottlenecks.
- In this respect the Commission is considering proposing "follow-up measures" after "consultation and further engagement with Member States and stakeholders" (p. 15).
- Member States are to:
  - "prefer" cross-border solutions to securing generation capacities;
  - examine if, and if so why too little has been invested in generation capacities;
  - in the case of State intervention take into account any impact the intervention will have on neighbouring Member States.

► **Promoting renewable energies**

- The promotion of renewable energies, including the obligation to prioritise grid access, may be justified "at first" as long as
  - national markets are "incompletely" opened;
  - prices do not take full account of the external costs of conventional energy; and
  - most of the renewable energies are still at an early stage in their development.
- However, the "evolution of markets and technologies" should be regularly "reviewed".
- In 2013, the Commission wishes to issue guidelines on best practice for support schemes for renewable energy and for "reform" thereof.
  - In this way it wishes to achieve greater "consistency" in national support measures in order to avoid a fragmentation of the internal energy market.
  - In addition, greater efficiency and a steady reduction in support ("degressivity") should make energy generation from renewable sources cheaper.
- In 2013 or 2014, the Commission wishes to adjust its guidelines for State aid for environmental protection (OJEU C 82 of 1 April 2008, p. 1 et sqq.; see [CEP Study](#), pp. 12 and 24, *in German only*) to technological developments and amended EU targets in the energy sector.
  - The guidelines serve to improve the control of State aid. They shall only be granted if they are targeted and distort competition as little as possible, and provided that no better alternatives (regulatory, market based instruments) are available.
  - Moreover, the Commission wishes to minimise distortion of competition in the internal energy market and promote cost-efficient cross-border solutions.

## Statement on Subsidiarity by the Commission

The Commission does not address the issue of subsidiarity.

## Policy Context

In the 1990s the EU took the first steps towards the creation of an internal energy market through the liberalisation of energy markets ("First Energy Package"). However, as the market opening was progressing very slowly, the aim of the "Second Energy Package" was to expedite the creation of the internal energy market. Even before the time limit defined in the Second Energy Package for completing the opening of electricity and natural gas markets had expired, the Commission declared that "the European Union is still far from the objective of a true internal energy market" [Communication COM(2006) 841, p. 7.; see [CEP Policy Brief](#)]. The Commission named as the main reasons for this the fragmentation into national submarkets a partially strong market concentration of energy suppliers and the connection between energy generation and distribution with the network operation in energy companies ("vertical integration"). The Commission now wishes to address with greater urgency the Member States' inadequate implementation of the Third Energy Package, which was intended to tackle these deficiencies.

## Options for Influencing the Political Process

Leading Directorate General:	DG Energy
Committees of the European Parliament:	Industry, Research, Energy (leading), rapporteur: not yet nominated
Leading German Ministries:	Economy; Environment
Committees of the German Bundestag:	Not yet nominated
Consultation procedure:	Every citizen may participate in the <a href="#">Consultation</a> on issues relating to energy generation capacities, capacity mechanisms and the internal energy market for electricity by 7 February 2013.

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

In order to ensure a level playing field in the internal energy market it is necessary that Member States implement EU law correctly. **The announced enforcement of the Third Energy Package through contract infringement proceedings strengthens competition and allows for a level playing field in the internal energy market.**

### Impact on Efficiency and Individual Freedom of Choice

The Commission is right to point out that competition in the internal energy market leads to gradually falling prices for consumers. However, the projected saving potential of 13 billion Euros is a construed number. Switching to a "cheaper electricity supplier" is not always the best option if, for instance, this is related to pre-payments or fixed purchase quantities.

**Regulated prices impede the internal market and set the wrong signals to both investors and consumers.** Consumers are not motivated towards efficient consumer behaviour through artificially low prices, and investors are given too little incentive to invest in the required capacities. **The infringement proceedings against regulated prices announced by the Commission are therefore appropriate.**

**The increasing share of electricity from wind and solar energy, which, depending on the weather, fluctuates as it is fed into the grid, represents a great challenge to the security of supply.** In order to secure electricity supply in the case of low power generation, other power plants must be available in order to close the gap. However, due to the fact that more and more of the electricity being generated is from wind and solar energy, the time slot in which conventional power plants are producing any electricity at all is becoming shorter and shorter, and thus new power plants are often not profitable (see [CEP Compass EU Energy Policy](#), p. 26 et sqq., *in German only*). **The supply of electricity that is fed into the grid from renewable energies is not constant. This creates costs which should be charged to the power producers individually and not to consumers.** This can be done either by smoothing the supply themselves, e.g. by keeping a reserve, or by participating in an apportionment from which facilities to stabilise the grid are financed. Thus incentives are created to smooth the electricity supply and to invest in the relevant technology. The Commission should make a clear commitment to such practice.

A secure supply of electricity can be guaranteed by means of the capacity mechanism mentioned by the Commission, but also through storage and flexible demand behaviour. Therefore a consistent system is necessary which remunerates efforts to secure the electricity supply.

**The Commission is right to be concerned that national capacity mechanisms could lead to partitioning in the internal energy market and distort decisions made regarding choice of business locations. It should address this decisively by way of its legal State aid instruments and where necessary also with further "follow-up measures".** For through national capacity mechanisms incentives can be set for the establishment of a power plant designed to supply power in one Member State exclusively. At the same time,

an improved cross-border network also increases power supply security. National capacity mechanisms should therefore be used only to the extent that they do not drive other similarly secure cross-border power supplies out of the market.

However, the question of how to design a future market in the liberalised internal energy market with a high share of renewable energies remains open. A complex system of State determined remunerations for renewable energies and services for the security of energy supply threatens to replace free price building – which is sending scarcity signals.

The current development of renewable energies is unnecessarily expensive for it is mainly applied where Member States grant particularly high subsidies and not where energy consumption is optimal in terms of infrastructure costs [see [CEP Policy Brief](#) on the Renewable Energy Communication after 2020, COM(2012) 271].

**The Commission's aim to achieve "greater consistency" in State aid schemes for renewable energies can lead to competition in the internal market and thus reduce costs.**

#### Impact on Growth and Employment

Liberalised energy markets with the lowest possible prices have a positive impact on growth and employment.

#### Impact on Europe as a Business Location

Liberalised energy markets with the lowest price possible have a positive impact on Europe as a business location.

## Legal Assessment

### Competency

The EU has the power to adopt energy policy measures in order to ensure the functioning of the energy market, to guarantee the security of energy supply, as well as to promote energy efficiency, energy savings and the development of new and renewable energy sources (Art. 194 TFEU).

### Subsidiarity

Unproblematic.

### Proportionality

Unproblematic.

### Compatibility with EU Law

Unproblematic.

### Compatibility with German Law

Unproblematic.

## Conclusion

The implementation of the Third Energy Package by way of infringement proceedings strengthens competition and allows for a level playing field in the internal energy market. The fact that electricity fed into the grid from renewable energies fluctuates creates costs. These should be borne by the producers individually and not to consumers; the Commission should show a clear commitment to this. The Commission is right to be concerned that national capacity mechanisms might lead to partitioning in the internal energy market and distort decisions made regarding choice of business location. It should, amongst other things, use State aid tools to address this issue decisively. The Commission's aim to achieve "greater consistency" in support schemes for renewable energies can lead to more competition and thus reduce costs.