

CEER Feedback to the European Commission on the Proposal for an EU Directive on Energy Efficiency (recast) COM(2021) 558

19 November 2021

1 Introduction

This is a response to the European Commission's request for feedback¹ on a proposal for Directive on Energy Efficiency (recast) COM(2021) 558, which was published on 14 July 2021. CEER also responded² to the public consultation run by the European Commission (EC) from 17 November 2020 to 9 February 2021.

The Council of European Energy Regulators (CEER) is a non-profit association and is the voice of the Europe's national energy regulators at EU and international level. Hence, this contribution expresses the views of CEER at European level, without prejudice to Member State specificities. It does not aim to address any of the questions intended for a national point of view, which can differ significantly.

CEER is a strong believer in Europe's energy savings potential and advocates the need for Europe to deliver on its energy saving goals. Energy Efficiency First is the first line of defence to deliver energy (and cost) savings for consumers, and to help address energy poverty. It should be promoted and implemented in practice, across all economic sectors and for all forms of energy consumption. Regulators are committed to playing their part and encouraging all energy consumers to be more energy efficient. Cost-reflective tariffs and prices, based on actual – not estimated – individual metering, as well as encouraging demand-side participation are cornerstones towards supporting efficient energy use. Individual metering is a basic right of every consumer and should be sought after in order to induce energy saving behaviour on the part of the consumer. Energy efficiency programmes are also important tools to support consumers in managing their energy consumption (and costs) and in supporting the optimisation of an integrated energy system, on a path towards a carbon-neutral society.

In addition, CEER underlines the importance of promoting efficiency in the use of electricity and gas networks. In particular, reducing energy losses contributes to greater energy efficiency and security of supply and is an important goal, not least because the costs of energy losses are often passed on to consumers (in most countries the costs for covering these losses are included in the network access tariffs). Such losses are higher in distribution networks than in transmission networks.

CEER welcomes the introduction of basic contractual rights for heating, cooling and domestic hot water. As already stated in CEER's Contribution to the Public Consultation on the Review of the Energy Efficiency Directive (February 2021), it is important to have clear, cohesive and consistent rules to facilitate implementation and enforcement. The consumer protection improvements achieved in Directive (EU) 2019/944 (Electricity Directive) are also urgently needed for gas, heating and cooling consumers. The proper enforcement of these heating and cooling consumer protection measures should also be explicitly anchored in EU legislation.

¹ See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12552-EU-energy-efficiency-directive-EED-evaluation-and-review_en

² See "CEER response to the European Commission's public consultation on the EU energy efficiency directive (EED)", C21-CRM-141-05, 9 February 2021.

More generally, the rights of consumers should be safeguarded regardless of the type of energy carrier they contract. For example, energy consumers would be further protected and empowered by the introduction of punitive damages for infringements of their consumer rights.

In addition, in the context of the energy transition, integrated network planning of electricity and gas transmission and distribution networks becomes increasingly important in order to ensure an optimised and efficient investment in and development of energy infrastructure, and in turn to deliver an integrated – and efficient – energy system.

The integration of our energy systems can be seen from several interrelated perspectives, for example i) joint planning; ii) technological-neutrality and operation of the networks that transport the different types of energy carriers; and iii) coordinated use and management of energy resources at regional and local levels. As regulators, our role will not be to decide on the best technology to be developed or how each individual uses energy. However, to overcome potential barriers we must define the regulatory conditions that would allow the most cost-efficient solutions to be developed in a technology-neutral manner. In this regard, application of the energy efficiency first principle in energy transformation, transmission and distribution, is essential to ensuring system and cost efficiency overall, and is embedded in the Internal Energy Market provisions on network development and tariffication.

Regulators welcome provisions to reduce network losses and to optimise the efficiency of network operation. Another important aspect is to have an infrastructure planning process that enables cross-sectoral satisfaction of system needs without inherent bias towards CAPEX intensive solutions; i.e. promotion of innovative and advanced solutions to utilise the existing grid efficiently before considering reinforcement and expansion investments. Furthermore, adaptation of energy infrastructure is a prerequisite so that the energy system can integrate larger shares of renewable energy on the way to climate neutrality. The energy infrastructure projects necessary for this are often delayed due to lengthy approval procedures and legal uncertainties. CEER therefore advocates for lean and speedy approval procedures.

2 Detailed comments

Article 3: Energy efficiency first principle

Regulation (EU) 2018/1999 defined the principle of 'energy efficiency first' as "taking utmost account in energy planning, and in policy and investment decisions, of alternative cost-efficient energy efficiency measures to make energy demand and energy supply more efficient, in particular by means of cost-effective end-use energy savings, demand response initiatives and more efficient conversion, transmission and distribution of energy, whilst still achieving the objectives of those decisions". The proposal for a recast Energy Efficiency Directive introduces a provision specifying further how this principle is to be understood.

As mentioned above, CEER is a strong believer in Europe's energy savings potential and advocates the need for Europe to deliver on its energy saving goals. Article 3 promotes Energy Efficiency and CEER therefore welcomes this Article.

Since the energy efficiency first principle is an overarching principle, with the potential to overlap with other European legislation, regulators find the addition in Recital 11 very helpful (“While the energy efficiency first principle should be applied without prejudice to other legal obligations, objectives and principles, they should also not hamper its application or exempt from applying the principle.”)

The use of the terminology "cost-benefit assessment" in Article 3(3a) raises questions with regard to the regulation of electricity and gas networks.

Given its close link to the provisions on “cost-benefit analysis” in Regulation (EU) 2019/943, Regulation (EU) 715/2009 and Regulation (EU) 347/2013 within the context of infrastructure investment assessments, it is suggested to include a reference to these above-mentioned legal acts, to ensure complementarity and consistency in the application and reflection of energy efficiency benefits in infrastructure assessment methodologies. Further energy network-related comments are provided in Article 25.

Articles 16 and 17 and associated Annexes VII and VIII: billing information for natural gas and for heating, cooling and domestic hot water

Although not the only channel for communication, the bill and billing information represent a key source of information for and engagement with energy consumers. The recast Electricity Directive 2019/944 requires the bill to contain i.a. at least the price to pay, breakdown of price and when the payment is due. Additional billing information has to be provided by the supplier, such as consumption data of the billing period, contact details of the supplier, tariff name, contact details of the single point of contact and more.

Similarly, billing and billing information for other types of energy consumption (natural gas, heating, cooling and domestic hot water) should ensure that consumers receive clear, accurate and pertinent information on their energy use and spending. Such information basics contained in Annex I of recast Electricity Directive 2019/944 should also be established for customers of natural gas, heating, cooling and domestic hot water with relevant specificities and adaptations as needed. That being said, regulators reiterate that the increase in complexity and the amount of information should not result in a swamp of information overloading the consumer.

As regards natural gas, CEER welcomes the European Commission’s intention to incorporate – and update – billing and billing information provisions in the revision of Gas Directive 2009/73/EC.

Article 20: Basic contractual rights for heating, cooling and domestic hot water

CEER welcomes the introduction of basic contractual rights for final customers of heating, cooling and domestic hot water. The proposed Article 20 mirrors most of the provisions in Article 10 of the recast Electricity Directive 2019/944, with some exceptions. Notably, Article 20 is lacking the provision in Article 10(5) requiring suppliers to provide final customers with transparent information on applicable prices and tariffs and on standard terms and conditions.

The proper enforcement of these heating and cooling consumer protection measures should also be explicitly anchored in EU legislation. Concerning the competent authority for the enforcement of consumer protection for heating, cooling and domestic hot water, such an authority should act independently from any market interest, and should be able to take administrative decisions.

As already established in Article 41(4d) of the Gas Directive 2009/73 and Article 59(3d) of the recast Electricity Directive 2019/944, the Energy Efficiency Directive should foresee effective, proportionate and dissuasive penalties on undertakings not complying with their consumer rights obligations under this Directive, as this would be a highly effective tool to safeguard compliance by suppliers.

Regulators note with interest the new provision in Articles 20(6) and 21(2) to facilitate access to information for final customers with disabilities and suggest that this provision should be inserted as an amendment to Article 10 in the recast Electricity Directive 2019/944 and included in the upcoming proposals for the Decarbonised Gas and Hydrogen Package.

Article 21: Information and awareness raising

Regulators welcome the European Commission's recognition of the importance of providing consumers with support to help them understand and engage with energy markets. In addition to the availability of the information itself, consumers need to be made aware of, and learn how to, process new information, what the information tells them and how they can use the information to their advantage.

It is essential to find ways to make sure consumers are informed in an effective, useful and understandable way. Regulators nevertheless recall the risks of information overload, which can lead to confusion and, ultimately, disengagement by consumers. Therefore, requirements on providing information must be accompanied by adequate and wide-reaching national and European campaigns to educate consumers to identify, read, understand and use that information in their future decision-making and behaviour. In this regard, the proposed creation of one-stop shops or similar mechanisms to provide advice and assistance are welcome.

An additional measure could be reflected in the list in Article 21(2) to promote and facilitate an efficient use of energy; namely the availability of publicly-supported energy audits for household consumers, in particular vulnerable customers, people affected by energy poverty and, where applicable, people living in social housing. Such personalised assessments are the first step in supporting consumers to change their behaviour and their energy needs, followed by financial support instruments to support implementation of concrete measures.

Regarding the particular challenge to promote energy efficiency and associated investments in rented properties, the European Commission could consider developing specific recommendations and a toolbox of measures to address and eliminate the split incentive between owners and tenants or among owners of a building or building unit, drawing from existing experiences and practices across Europe.

Article 22: Empowering and protecting vulnerable customers and alleviating energy poverty

Regulators very much welcome the recognition of the needs of vulnerable customers, people affected by energy poverty and, where applicable, people living in social housing. The proposals in the Fit for 55 Package, which range from energy to transport to buildings, – although absolutely necessary to tackle the climate crisis and therefore endorsed by regulators – will likely have a major financial impact on consumers and markets. Consumers will require comprehensive and clear information and advice, as well as financial support, in order to face these ambitious transition measures. In this context, we welcome prioritisation of the challenges faced by the most vulnerable in society to provide them with support to achieve energy savings. Nevertheless, we reiterate the complexity and multifaceted nature of vulnerability and energy poverty, necessitating holistic and integrated social policies by Member States to address them effectively.

Article 25: Energy transformation, transmission and distribution

Article 25(1)

With regard to decisions on network tariffs, regulators recall that the main provisions concerning electricity and gas tariffs are laid down in Article 18 of Regulation (EU) 2019/943 and in Article 13 of Regulation (EU) 715/2009, while the proposal for a revised Energy Efficiency Directive highlights that energy efficiency targets should also be reflected in electricity and gas tariff regimes.

Regulators see the achievement of cost and system efficiency as the primary goal of economic regulation. Energy costs for the construction and operation of the grid are already taken into account in the above-mentioned Regulations. These Regulations incentivise (especially via the efficiency comparison) network operators to take into account the criterion of energy efficiency when making all relevant economic decisions.

Article 25(2)

At the level of transmission network development planning, the energy efficiency first principle is covered inter alia by the scenario assumptions on energy consumption and in particular, in considering and applying the general principle of efficient grid expansion. Economic efficiency requirements to be met by investments of the transmission system operators (TSOs) are set out in Regulation (EU) 2019/943 and in Regulation (EU) 715/2009, for instance.

However, Article 25(2) does not address only the transmission level, but also extends to the distribution level. It has to be kept in mind that for electricity distribution networks, Article 32 of Directive (EU) 2019/944 has recently established rules for a network development plan at distribution level. These rules are quite differentiated and provide for the necessary exemptions to keep the process manageable. Adding further requirements through the Energy Efficiency Directive in the early phase of implementation is not expedient. At national level, incentives for energy efficient planning and energy efficient operation of the grids could be set by the regulatory regime for the distribution system operators (DSOs), as not all DSO projects are individually approved, verified or monitored.

On the gas side, there is no EU provision mandating gas DSOs to provide network development plans. Therefore, the suggested provision in Article 25(2) might not be applied in practice. Regulators do not see the need to mirror mandatory DSO national development plans from the Clean Energy Package to gas DSOs, as several differences exist in terms of role, number and dimension of DSOs in each Member State leading to diverging views over the benefits of an EU-wide approach.

Cost-benefit analyses are sometimes associated with a delay of urgently needed infrastructure, due to unclear terminology or lengthy legal proceedings. It should therefore be left to the discretion of national regulatory authorities to determine if and when to introduce a cost-benefit analysis.

Article 25(3)

CEER welcomes the new provisions as a way to help prevent methane leakage, reduce network losses and implement flexibility solutions. Regarding the upcoming hydrogen and decarbonised gas market package, double regulation should be avoided.

Regulators would like to stress that not every improvement in energy efficiency has a positive effect on overall costs. In our view, there is no need for additional energy efficiency incentives via the system of network charges. Inflexible application of an energy efficiency first principle (ahead of cost efficiency) may even lead to contrary incentives and the lowest possible grid costs would no longer be guaranteed.

Concerning the last sentence of Article 25(3), which calls on Member States to encourage network operators to develop innovative solutions [...] through incentive-based regulations, a definition of the term "innovation" would be useful. Such a definition would be a precondition for incentive-based regulatory measures linked to "innovative solutions". Without a clear definition, transmission and distribution system operators tend to label every energy efficiency project as "innovative", which is not the case in practice.

As noted in CEER's 2nd Report on Power Losses³, reduction of power losses is an important contributor to improvement of energy efficiency and decrease of operational expenses of power grids. Many countries employ measures that enable NRAs to ensure that system operators limit or reduce the volume of losses and the cost of energy necessary to cover them. Technical losses could be reduced by implementing newer or more efficient transformers or by operating higher voltages in distribution grids, among other possible approaches. Non-technical losses will most likely decrease with increased penetration of smart meters. They reduce metering errors and improve identification of fraud which leads to a more accurate measurement of electricity consumption. Most countries where smart meters have already been introduced reported a significant improvement in the measurement accuracy of losses along with a reduction of losses in general. Before a full roll-out or a significant expansion of smart meters, countries with low penetration rate should increase monitoring and raise knowledge and awareness of non-technical losses.

³ <https://www.ceer.eu/documents/104400/-/-/fd4178b4-ed00-6d06-5f4b-8b87d630b060>

Article 25(7)

Regarding the removal of those incentives in transmission and distribution tariffs that are in conflict with energy efficiency, the main provisions concerning electricity and gas tariffs are laid down in Article 18 of Regulation (EU) 2019/943 and in Article 13 of Regulation (EU) 715/2009. These regulations already imply (especially via the efficiency comparison) that network operators always have the criterion of energy efficiency in mind when making all relevant economic decisions.

3 About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national energy regulators. CEER's members and observers comprise 39 national energy regulatory authorities (NRAs) from across Europe.

CEER is legally established as a not-for-profit association under Belgian law, with a small Secretariat based in Brussels to assist the organisation.

CEER supports its NRA members/observers in their responsibilities, sharing experience and developing regulatory capacity and best practices. It does so by facilitating expert working group meetings, hosting workshops and events, supporting the development and publication of regulatory papers, and through an in-house Training Academy. Through CEER, European NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

In terms of policy, CEER actively promotes an investment friendly, harmonised regulatory environment and the consistent application of existing EU legislation. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable Internal Energy Market in Europe that works in the consumer interest.

Specifically, CEER deals with a range of energy regulatory issues including wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

More information is available at www.ceer.eu.

4 Relevant CEER publications

[CEER 2022-2025 Strategy "Empowering Consumers for the Energy Transition"](#), June 2021, C21-SSG-06-05.

[CEER Report on Billing Issues in the Clean Energy for All Europeans Package](#), March 2021, C19-CEM-132-03.

[CEER response to the European Commission's public consultation on the EU energy efficiency directive \(EED\)](#), February 2021, C21-CRM-141-05.

[ACER-CEER Position on Revision of the Trans-European Energy Networks Regulation \(TEN-E\) and Infrastructure Governance](#), June 2020

[CEER 2nd Report on Power Losses](#), March 2020, C19-EQS-101-03.

[Guidelines of Good Practice on Regulatory Aspects of Smart Metering for Electricity and Gas](#), February 2011, E10-RMF-29-05.