

**IFIEC Europe's position
on the Commission's "Third Package" proposal
for legislative measures to improve the internal electricity market**

1. IFIEC Europe welcomes the European Commission's efforts to strengthen the regulatory framework of the electricity sector. The Commission's proposals are an important step towards an integrated and competitive European electricity market. The package contains measures for further market integration, higher transparency and better regulatory supervision with the purpose of improving competition. IFIEC strongly supports these measures and objectives.
2. Industrial energy consumers constitute a major stakeholder group, which is strongly affected by the steps taken. Therefore, IFIEC Europe needs to have a formal role in the development and implementation of these measures to be able to bring in their knowledge, needs and experiences.
3. Additionally, industrial energy consumers are still concerned that these measures will not lead to competitive electricity prices, at least not in the foreseeable future. Therefore, more attention should be given to the problems of market power, price formation and transparency. Also policies on long-term contracts and temporary measures will be needed to avoid further deterioration of the competitiveness of energy intensive sectors leading to relocation outside the EU.
4. In this position paper IFIEC refers to the measures proposed by the Commission and expresses its concerns related to the electricity market, some of which are not directly addressed in the package.

Market integration

5. Creating a real internal electricity market is of great importance for competitive prices and security of supply. The ultimate goal is to create a single European electricity market by eliminating national electrical borders. Fully independent grids and strong co-operation between TSO's, through a European System Operator, are essential ingredients for realising this.
6. IFIEC favours full ownership unbundling as the most effective and efficient instrument to guarantee neutrality of the grid and a proper and independent development of networks, and to improve TSO-cooperation in grid operation. This is a fundamental basis for improving market integration and security of supply. Any alternative should result in equivalent grid independence. This might be achieved through the ISO-option proposed by the Commission, but requires very strict conditions and regulation.

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7. Grid operators, fully independent from supply and generation, need to cooperate on a regional and European level to remove all barriers for cross border trading, ultimately resulting in a situation where energy consumers can buy their electricity all over Europe under the same conditions, eliminating today's concept of national borders. A European System Operator (ESO) can both effectively as well as efficiently decide on grid investments and operations needed to eliminate cross border congestion. Apart from removing cross border congestion, the need to integrate enormous volumes of wind power is requiring a higher level of co-ordination. Also, incidents registered in Germany and Italy revealed the importance of the exchange of real-time data between neighbouring operators. For these reasons, IFIEC has promoted for years the idea of creating a European grid co-ordinator.
8. In the package the Commission proposes the establishment of the European Network for Transmission System Operators for Electricity. This new organisation may result in a further co-operation of TSOs, but it will not directly result in an efficient real-time operation across the European grid. Therefore, within the reforms proposed by the Commission, a further strengthening of TSO-cooperation, ultimately resulting in an ESO, should be made possible. Regional grid operation would be a first step. Ultimately, the ESO and involved TSOs should decide on investments and operations (e.g. netting, common calculation and re-dispatching) to eliminate cross border congestion and improve security of supply within Europe.
9. As long as there still exists cross-border congestion, the cross border capacity available to the market should be maximized and divided in a balanced way into capacity for longer periods and capacity that is allocated on a day-ahead-basis. On the one hand, there is a need for short-term optimization which points to the necessity of day-ahead-capacity allocation, but on the other hand, for industrial energy users, bilateral cross-border long-term-contracts for energy must remain a valuable option, which is only feasible when a certain amount of capacity is allocated on a longer term-basis (one year or longer).
10. In the opinion of IFIEC, the new Directive and Regulations should not restrict calculation and allocation mechanisms to those which are currently used. In the longer term this could stand in the way for an ESO to introduce other mechanisms, which can eliminate all borders between countries more effectively.
11. IFIEC especially welcomes the amendment of article 6 of regulation 1228/2003 meaning that revenues from congestion management have to be earmarked for maintenance and extension of physical capacity in order to ensure a higher level of investment.
12. IFIEC opposes to harmonizing the setting of charges for load. This should not be part of European regulation, as it does not distort competition in the electricity market or cross border trade. This part of the amendment of article 8.2 of Regulation 1228/2003 should be removed. Apart from the effect of the inter-TSO compensation mechanism, national regulators should decide on the setting of load tariffs.
13. With regards to regional market integration in the transition period towards a single electricity market, the following issues are most important to IFIEC, in order to eliminate electrical borders:

- Increase grid investments, to enlarge cross border capacities;
- Maximize cross border capacities made available to the market;
- Efficient capacity allocation, including long term capacity;
- Improved transparency.

Role for representative organisations

14. For the proposed measures to be effective, it is of great importance that codes and rules are adopted that facilitate the creation of an internal European electricity market. Network users like industrial energy consumers must be involved in their development and implementation. This way experiences and information from network users can effectively be put to use.
15. Representative organisations for network users like IFIEC Europe as well as the Agency for the Cooperation of Energy Regulators, should have a formal role in the development of the European Gridcode. This relates to the adoption of technical and market codes as proposed article 2c in Regulation 1228/2003, where stakeholders must have an effective basis to include their interests and views into the decision making process. Furthermore, the Commission will have to adopt Guidelines where necessary to ensure that there are Codes, and that these Codes are compatible with the objectives of the internal market.
16. Similarly, involvement from network users is recommended in the process of certification of TSOs and ISO's and the national regulators and the Agency should grant them an audience in their decision making processes.

Market Power and Market Design

17. IFIEC is convinced that market power and market design constitute major problems in the electricity market and requests a higher commitment of the Commission on these issues.
18. The current design of electricity markets, as a result of dominant generators, does not result in favourable outcomes for customers. A proper market design should clearly separate the short-term markets organised for producers to manage their load and the market of supply to end-users with a base load profile. In a truly competitive market, industrial energy consumers should be able to negotiate with suppliers contracts based on their profiles and based on the sharing with them of capital and fuel risks. Products and services would be designed to accommodate consumers, for a competitive price. And energy consumers and suppliers would negotiate for conditions, which suit their mutual interests.
19. To prevent further consolidation of the generation market, IFIEC demands to limit the growth of the dominant electricity generators in each relevant market. Power release programmes or other measures are urgently needed to stimulate competition. These measures should be implemented in a way that it improves, or at least does not reduce, the investment climate for new power plants.
20. A proposed amendment of directive 2003/54/EC (article 22c (3)(b)) enables regulators to monitor the functioning of electricity markets and decide on measures to promote effective competition, including Virtual Power Plants. IFIEC however questions the effect of this amendment to mitigate market power. The experience so far shows that VPP did not result in more competitive prices. Several reasons explain this outcome: the design did not include true underlying costs and the amount of capacity auctioned was too small

to effectively reduce market power. Also, the short time frame of offered products invited to a direct arbitrage with existing wholesale products. For a more effective power release program, the time frame should be significantly extended and the volumes offered and auctions procedures reformulated to eliminate dominant players' capability to set market prices. A detailed investigation of existing VPP's should form the basis for a Guideline adopted by the Commission, which the national regulators have to take into account when designing electricity release programs.

21. IFIEC welcomes the obligations for supply undertakings to keep at disposal, and provide relevant data to national regulators or the Commission on hourly dispatching decisions per plant and their bidding behaviour at power exchanges, interconnection auctions, reserve markets and OTC markets (Art. 5 Regulation 1228/2003). However, in addition, a regular investigation on market power issues based on this information should be obligatory. Also the results should be made public.
22. Clear possibilities to sanction misbehaviour should be introduced. For that purpose it is also necessary to have a clear catalogue of prohibited action such as insider trading.

Long-term contracts

23. IFIEC Europe's members require market arrangements that allow them to contract at internationally competitive prices, including access to long term agreements. As long as this is not brought about by effective EU wide competition policy, producers should be allowed and encouraged to make such long-term arrangements with industrial consumers on a basis that suits both the users' and producers' needs (e.g. sharing of risks, base load consumption pattern, interruptible supply).
24. IFIEC Europe welcomes the initiatives towards developing policies on long-term contracts and looks forward to discussing ideas with the Commission.

Regulatory oversight

25. IFIEC strongly supports the measures on strengthening the independence and powers of national regulators and the cooperation of regulators in the Agency for the Cooperation of Energy Regulators (ACER). Setting up ACER is crucial for solving cross-border-issues and improving the cooperation between the TSOs. Therefore, the Commission proposals for regulatory oversight on a European level, are necessary to create one single European electricity market.

ETS effect on power market

26. The Commission has chosen not to include measures to resolve the major problems caused by the current system of the CO₂ Emission Trading Scheme in the package. IFIEC stresses that the flaws in the operation of the EU Emissions Trading Scheme (EU ETS) have disproportionately added to the deterioration of competitiveness of industrial consumers in meeting global competition from those not having these and other imposed costs. The unreasonable costs placed on IFIEC Europe members have stemmed partly from the lack of competition in EU energy markets, with a further factor being the current design of EU-ETS, which allows opportunity costs to inflate the electricity price. In addition, the current design of the system forms an important obstacle for supporting competition in the liberalised electricity market by favouring incumbents when allocating certificates on a historic basis and discriminating against new entrants.

27. These detrimental effects are clear and undisputed. However, the Commission does not seem to act sufficiently on this issue. IFIEC urges the Commission to deal with these unacceptable effects, which are in clear opposition to the Lisbon Strategy. The allocation system should be converted into a production efficiency based allocation with ex-post corrections. This would remove these detrimental effects, provide a fair and transparent CO₂-price and even strengthen emission reduction incentives. A system that equates reducing production with increased efficiency is not acceptable if the Commission is to take the Lisbon Strategy seriously. Holding on to the current system will drive out industries to less efficient regions, causing a higher CO₂-emission per product output, without achieving the desired global climate policy results.
28. IFIEC calls upon European decision-makers to address the ETS-issues as soon as possible. However, in no circumstances this should delay the process of adopting the 3rd package proposals made by the Commission.

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