

EVALUATION ROADMAP				
TITLE OF THE EVALUATION/FC		Evaluation of market design aspects of the regulatory framework of the EU electricity markets		
LEAD DG – RESPONSIBLE UNIT		DG ENER – B2 (LEAD), B3, B4, C1, C3, [AP 2015/ENER/061]	DATE OF THIS ROADMAP	11 / 2015
TYPE OF EVALUATION		Evaluation Interim Internal/Mixed	PLANNED START DATE	11 / 2015
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This indicative roadmap is provided for information purposes only and is subject to change.				

A. Purpose
(A.1) Purpose
<p>The creation of an integrated electricity market is a cornerstone of the EU's project to create an Energy Union as was emphasised again in the <i>"Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy"</i> (COM(2015) 80). The aim is to set the conditions for a reliable and affordable energy for all, to apply the efficiency first and solidarity principles and to make the European Union the world leader in renewable energy.</p> <p>The evaluation is conducted in the context of and seeks to provide inputs to the formulation of a Commission's legislative initiative on <i>"market design and regional electricity markets, and coordination of capacities to ensure security of supply, boosting cross-border trade and facilitating integration of renewable energy, including Review of the Agency for the Cooperation of Energy"</i> ("ACER")¹ and the back to back impact assessment that will be developed for this purpose. The development of this initiative was launched on 15 July 2015 with the Commission issuing two Communications - (COM(2015) 340 Final)² <i>"Launching the public consultation process on a new energy market design"</i> and (COM(2015) 339 Final)³ <i>"Delivering a new deal for energy consumers"</i>.</p>
(A.2) Justification
The evaluation is not based on legal requirements. Instead, it seeks to contribute to providing input to the envisaged overhaul of the current electricity market design.

B. Content and subject of the evaluation
(B.1) Subject area
<p>The subject area of the evaluation will be the regulatory framework of the EU electricity markets. The most important constituting part hereof are the electricity market related acts that were part of the of so-called "Third Package" i.e. (i) Directive 2009/72/EC ("Electricity Directive"), (ii) Regulation (EC) N 713/2009 ("ACER Regulation") and (iii) Regulation (EC) 714/2009 ("Electricity Regulation"). In addition, to the extent they are pertinent for the regulatory framework of EU's electricity market, provisions of the following legal acts may</p>

¹ Agenda Planning reference is: 2016/ENER/007

² http://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v11.pdf

³ https://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v8.pdf

<p>equally be assessed (iv) Directive 2012/27/EU ("Energy Efficiency Directive") and (vi) Directive 2009/28/EC ("Renewables Directive"). The Energy Efficiency Directive, the RES Directive and the Electricity Security of Supply Directive are subject to separate evaluations. With the exception of certain more market related aspects (e.g. metering, billing and demand response) they will therefore not be covered here.</p> <p>The regulatory framework of the EU electricity markets will increasingly comprise so-called "network codes" as adopted pursuant to Article 6 of the Electricity Regulation. To date, only one of these network codes has actually become effective.⁴. Consequently, the evaluation will not comprise the effects of any network code. Instead the evaluation will focus on the procedure by which these are decided. Whereas the Third package contains certain measures related to transparency, these measures should be seen in conjunction with Regulation (EU) No 1227/2011 ("REMIT Regulation"). An evaluation of these Third Package provisions is therefore more usefully conducted in conjunction with a future evaluation of the REMIT Regulation. The evaluation will also not cover the regulatory framework of the EU's gas markets.</p>
<p>(B.2) Original objectives of the intervention</p> <p>The general objective of the Third Package was the completion of electricity and gas internal market as necessary vehicle to fulfil the objectives of the Lisbon strategy and for greenhouse gas mitigation. Specific objectives of the initiative were:</p> <ul style="list-style-type: none"> - Improving competition through better regulation, unbundling and reducing asymmetric information - Improving security of supply by strengthening the incentives for sufficient investment in transmission and distribution capacities - Improving consumer protection and preventing energy poverty <p>In the impact assessment for the Third Package (SEC(2007) 1179/2)⁵, the Commission identified a number of issues related to the electricity markets⁶, which were:</p> <ul style="list-style-type: none"> - market concentration and market power; - vertical foreclosure (in particular the inadequate unbundling of network and supply); - lack of market integration (cross border and national); - lack of transparency; - distorted price formation mechanisms (regulated prices and cross-subsidies); - downstream market foreclosure (access to consumers); and, - security of supply (investment network security and reliability). <p>The most important root cause identified was associated with the existence of vertically integrated companies, which not only controlled essential facilities (such as electricity transmission systems) but also enjoyed significant market power in the wholesale and, often, retail markets.</p>
<p>(B.3) How the objectives were to be achieved</p> <p>These objectives were expected to be achieved by a series of measures that, collectively, address the identified issues. The measures included:</p> <ul style="list-style-type: none"> - improved unbundling rules for TSOs; - strengthening national energy regulatory authorities; - improving the collaboration between these regulators; - improving collaboration between transmission system operators; - transparency obligations; - improving DSO unbundling; - consumer protection. <p>The complete matrix as to how these measures were expected interact with the objectives is contained in annex IV⁷ of the impact assessment for the Third Package.</p>

<p>C. Scope of the evaluation/FC</p>
<p>(C.1) Topics covered</p>

⁴ Only the network code on Capacity Allocation and Congestion Management entered into effect by September 2015.

⁵ http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2007/sec_2007_1179_en.pdf.

⁶ This impact assessment prepared for the third package covered both gas and electricity markets. The present evaluation is focused on electricity markets only.

⁷ http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2007/sec_2007_1179_en.pdf (page 91)

The overarching objective of the Third Package was to create a legislative framework conducive to the creation of efficient, competitive electricity market. Market outcomes determine whether the intervention met its objectives. In the present evaluation mandate, particular emphasis will be given to whether the market created by the Third Package performs well in providing proper investment signals and active participation of consumers, their protection and trust.

In addition, new circumstances have arisen since the adoption of the Third Package⁸, most notably (i) significant and growing shares of generation from renewable, increasingly decentralised and variable, energy sources following renewables policies; ii) a significant reduction of demand following energy efficiency policies and the economic slowdown and (iii) national policies to address the challenges related to fostering investment in RES and to address investment issues related to system adequacy concerns.

Whereas, according to the Commission's Better Regulation principles⁹, the evaluation will cover the effectiveness, efficiency, coherence, relevance and EU added value of the measures relative to the objectives the Third Energy Package, it will put particular emphasis on the relevance criterion with a view to assessing whether and to what extent the market that the Third Package fostered is able to respond to these new challenges.

DG ENER will put all available quantification of costs, and if they have any on benefits too, into the evaluation, but an in-depth efficiency assessment of the Third Package and in particular quantitative cost/benefit assessments are not considered feasible¹⁰. However, the scope for reducing regulatory burden and simplification will be evaluated (to the extent this is not already envisaged in the streamlining initiative regarding planning and reporting as part of the governance framework for the Energy Union).

(C.2) Issues to be examined

Evaluation questions to be addressed include:

Effectiveness:

- To what extent has market integration already been achieved?
- To what extent have retail and wholesale markets become more competitive?
- Does the EU electricity market constitute a favourable investment climate for electricity assets? To what extent does it create a level playing field for investments in the operation of RES, conventional generation, demand response or storage?
- To what extent has regional and EU wide cooperation evolved?
- Are the roles carried out by DSOs, and their incentives, still fit-for-purpose given the increased need to integrate variable distributed generation?
- Are the existing provisions for demand response ("demand-side management") sufficient for ensuring necessary levels of flexibility?
- To what extent are the benefits of competition on wholesale markets being passed through to consumers?
- To what extent have consumers been properly empowered, including been given effective choice to

⁸ Notably the Third Energy Package consisting of Directive 2009/72 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, *OJ L 211, 14.8.2009, p. 55–93*; Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity repealing Regulation (EC) No 1228/2003, *OJ L 211, 14.8.2009, p. 15–35*; Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, *OJ L 211, 14.8.2009, p. 1–14* as well as Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, *OJ L 140, 5.6.2009, p. 16–62*

⁹ Commission Communication "Better regulation for better results - An EU agenda" of 19 May 2015 – (COM(2015) 215 final)

¹⁰ The efficiency criterion aims at the relationship between the resources used by the intervention and the changes generated by it. Resource implications of the Third Package are associated primarily with the reinforcement of the powers of National Regulatory Authorities. Whereas it may be possible to provide information on the resource intensity of these institutions, their benefits are real but too diffuse to assess in detail.

purchase electricity from their supplier of choice;

- Are consumers sufficiently protected, what is the level of consumer satisfaction?
- What factors contributed hereto in particular or prevented this?
- To what extent did the Third Package contribute to achievement of these results?

Efficiency:

- In qualitative terms, to what extent are the costs proportionate to the benefits achieved?
- Are there areas where there is potential to reduce inefficiencies, particularly regulatory burden and simplify the intervention (the issue of streamlining planning and reporting obligations will be dealt with elsewhere)?
- Are there areas where the current regulatory framework for the EU's electricity markets could be streamlined and optimised?

Relevance:

- The 2030 targets imply that the share of electricity generated from RES is likely to reach up to 50% of electricity produced. Under which conditions can the current electricity market facilitate the integration of such increasing levels of RES, also considering that it is primarily decentralised?
- Does the market (still) provide a proper framework for investments in electricity assets? Are there barriers to investment, in particular in new technologies?
- To what extent can the current regulatory and governance framework respond to the risk that, in an increasingly integrated market, national policies create negative spill-over effects?
- Does the current regulatory and governance framework still provide sufficient scope for fostering necessary market integration, and effective prevention of distortions and secure operation of the integrated electricity system?
- Does the current regulatory provide sufficient scope to ensure that final consumers can actively participate in the market, and are optimally protected?

Coherence:

- Are the various measures comprised in the Third Package properly working together or not?
- Does the ineffectiveness of certain measures compromise the effectiveness of other components?
- To what extent is the Third package coherent with other measures affecting the electricity sector, such as the RES Directive, the Energy Efficiency Directive and the Electricity Security of Supply Directive?

EU value added

- What is the additional value resulting from the Third Package compared to what could be achieved by Member States at national and/or regional levels?
- What is the value added of European Network of Transmission System Operators for electricity ("ENTSO-E") and ACER?
- To what extent do the objectives addressed by the Third Package continue to require EU-intervention?

(C.3) Other tasks

In the context of the present evaluation (see also above), an effort will be done to identify meanwhile redundant provisions and possibilities to optimise the enforcement of the regulatory framework for the EU's electricity markets

D. Evidence base

(D.1) Evidence from monitoring

The Commission is legally bound to review and monitor the progress towards the creation of the internal electricity market on the basis of Article 47 of Directive 2009/72/EC. This reporting is based to a large extent on the national monitoring reports¹¹ as submitted by the national regulatory authorities pursuant to Article 37(1)e of Directive 2009/72/EC to the Commission (and equivalent provisions in earlier internal market legislation) and the Agency for the Cooperation of Energy Regulators ("ACER"). The Commission also collects statistical information through its own Energy Market Observatory¹².

ACER is an agency created by the ACER Regulation. ACER's duties include pursuant to Article 11 monitoring and reporting on the internal electricity market. ACER's monitoring reports – produced in partnership with the Council of European Energy Regulators – must also identify any barriers to the completion of the internal electricity market. By the end of 2015, ACER will have published four annual reports¹³ that report in-depth on issues such as retail and wholesale prices, price convergence and price regulation, wholesale and retail market performance, capacity mechanisms, market liquidity, generation and demand and demand side flexibility, market structure, competition performance an entry and network related issues, such as loop flows network access, grid connection, cross-border interconnection and transmission tariffs and well as on consumer empowerment and protection, including regulatory consumer protection measures, switching, consumer information and complaints and dispute resolution. It equally reports on many more detailed aspects of the regulatory framework.¹⁴ The data used for compiling ACER's annual report is provided by national regulatory authorities for energy (NRAs), the European Commission and the European Networks of Transmission System Operators (ENTSOs). The members of the Administrative Board of ACER (Article 12(7) of the ACER Regulation) and ACER's Director (Article 16(1) of the ACER Regulation) act independently of the Commission and other interests.

ENTSO-E is an entity set-up under the Third Package and comprises the EU's transmission system operators. The Electricity Regulation stipulates ENTSO-E's tasks and responsibilities. ENTSO-E provides detailed statistical information on the European electricity system¹⁵ including e.g. a monthly overview of national systems and physical energy flows¹⁶. Live information is accessible via the new ENTSO-E transparency platform.¹⁷

(Some of these sources are under review in line with the streamlining of reporting and monitoring as part of the Energy Union governance).

(D.2) Previous evaluations and other reports

The Commission has already conducted detailed reviews of the functioning of the Internal Electricity Market as part of its monitoring requirements. The results of this reporting include the Communications:

- *"Making the internal energy market work"* (COM(2012)663) and its accompanying SWD *"Energy markets in the European Union in 2011"* (SWD (2012)368 including information on each Member States' regulatory framework, infringements, retail and wholesale markets, market structure and unbundling and , including statistical data;
- *"Progress towards completing the internal market"* (COM(2014) 634), which also had a number of technical annexes on each Member State, including statistical data, and specific topics such as on unbundling, investments and enforcement.
- *2009-2010 Report on progress in creating the internal gas and electricity market* (Commission SWD) and its technical annex with statistical analyses¹⁸

Other Commission reporting that provides assessments of the functioning of the internal energy market include the

- *"Report on energy costs and prices"* (COM(2014) 21/2).
- *"Delivering the internal electricity market and making the most of public intervention C(2013) 7243"* and its accompanying SWDs on more internal market connected issues such as on *Generation Adequacy in the*

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http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/NATIONAL_REPORTS/National%20Reporting%202014

¹² <http://ec.europa.eu/energy/en/statistics>

¹³ http://www.acer.europa.eu/electricity/market_20monitoring/Pages/default.aspx

¹⁴ http://www.acer.europa.eu/Official_documents/Publications/Pages/Publication.aspx

¹⁵ <https://www.entsoe.eu/publications/Pages/default.aspx>, and <https://www.entsoe.eu/data/data-portal/Pages/default.aspx>

¹⁶ https://www.entsoe.eu/Documents/Publications/Statistics/2014_Monthly/14_01_MS.pdf

¹⁷ <https://transparency.entsoe.eu/>

¹⁸ Annual reports actually date back to the year 2000

internal electricity market - guidance on public Interventions (SWD(2013) 438 final) and Incorporating demand side flexibility, in particular demand response, in electricity markets (SWD(2013) 442 final)

- *Commission recommendation C(2012)134 on preparations for the roll-out of smart metering systems and Commission Report COM(2014) 356 & supporting SWD(2014) 188, SWD(2014) 189: Benchmarking smart metering deployment in the EU-27¹⁹*
- *Commission evaluation of the activities of the Agency for the Cooperation of Energy Regulators (ACER) under Article 34 of Regulation (EC) 713/2009.(C(2014)242)²⁰*

ACER has, as part of its monitoring reports, identified barriers to market integration of the internal electricity related to retail competition, barriers to cross-border retail competition, demand side flexibility, issues related to continuing important role of market incumbents, end-consumer price regulation, retail pricing, consumer rights, network access (including network access for renewable energy sources and other barriers to the well-functioning of the internal electricity market. It has also conducted a series of studies on the specific topic of on electricity market design in its *"Bridge to 2025"* report that seeks to identify the challenges Europe's energy markets will face in the coming decade and regulatory responses for the period 2014-2025.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

Enforcement action undertaken by the Commission in relation with the Third Energy Package, including electricity related acts is set out in detail in *"Enforcement of the Third Internal Energy Market Package (SWD(2014) 315 final)"*.²¹

In order to foster compliance, the Commission (i) is discussing draft measures and technical solutions with the national authorities on an on-going basis in order to prevent deficiencies at an early stage as well as to resolve existing incompatibilities and (ii) has issued a number of interpretative notes to provide guidance²². The Commission has also resorted to formal legal action if required. As a first step, in September 2011 the Commission opened 19 infringement proceedings against 19 Member States to ensure full transposition of the Electricity Directive. Non-resolved cases were followed up in 2012-2013 by sending reasoned opinions and referrals to Court. As of 30 September 2015, all of the infringement proceedings for partial transposition of the Electricity Directive have been closed as the Member States achieved full transposition in the course of the proceedings. As a second step, focus has been given to address incorrect transposition or bad application of the Third Energy Package, with priority being given to violations which have the highest impact on the functioning of the internal market, including as a rule i.e. unbundling, independence, powers and duties of the national regulatory authorities and consumer protection. On this basis, the Commission has initiated structured dialogues with a number of Member States. As of 30 September 2015, 8 of these cases have resulted in infringement procedures where, *inter alia*, violation of the EU electricity market rules is at stake. In parallel to these systematic non-conformity procedures, the Commission has also acted on an *ad-hoc* basis. This type of action targets a specific non-conformity problem of which the Commission becomes aware (via complaints from individuals or undertakings or emanating from contacts with National Regulators or based on the Commission's own assessment) and which needs to be urgently raised with the Member State concerned. For example, the Commission launched 1 infringement procedure in 2012 which concerned the Electricity Regulation.

The regulatory framework also contains certain provisions on the ex-ante certification of unbundling requirements (Article 10 and 11 Electricity Directive) or exemption requirements for infrastructure (Article 17 Electricity Regulation). To the extent pertinent, the experience gained from these ex-ante approval procedures will be fed into the evaluation.

(D.4) Consultation

Part of the initiative, in particular aspects related to electricity retail markets and end-consumers have already been subject to a wide public consultation²³. Moreover, on 15 July, the Commission issued a Communication (COM(2015)340 Final)²⁴ *"Launching the public consultation process on a new energy market design"*. The results

¹⁹ <http://ec.europa.eu/energy/en/topics/markets-and-consumers/smart-grids-and-meters>

²⁰ https://ec.europa.eu/energy/sites/ener/files/documents/20140122_acer_com_evaluation.pdf

²¹ https://ec.europa.eu/energy/sites/ener/files/documents/2014_iem_communication_annex6_0.pdf. Figures presented here are updated, to the extent necessary.

²² Available at <http://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation>

²³ <https://ec.europa.eu/energy/en/consultations/consultation-retail-energy-market>, https://ec.europa.eu/energy/sites/ener/files/documents/20140416_energy_retail_market.pdf

²⁴ http://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v11.pdf

<p>of these consultations²⁵ will feed into the evaluation. Indeed, these consultations provoked submissions by a large number and variety of respondents²⁶ that often also provided insights into the reasons as to why the regulatory framework may need revisions. A general stakeholder event has taken place in Q3 2015 whereas specific stakeholder categories, such as energy customers, Member States and regulatory authorities, retail and wholesale market participants and distribution and transmission grid operators will also be addressed in existing fora <i>inter alia</i> with a view to define more clearly where the Internal Electricity Market has delivered and where it has not and for what reasons.</p> <p>ACER's Bridge 2025 recommendations and its monitoring reports, which also provide inputs for the present evaluation (see also above), have also been subjected to a public consultation²⁷.</p>
(D.5) Further evidence to be gathered
In view of the very large body of information already gathered through monitoring and reporting, no further evidence is needed.

E. Other relevant information/ remarks
<i>[e.g. comments on scope, further detail on communication activities or validation exercises]</i>

²⁵ <https://ec.europa.eu/energy/en/consultations/public-consultation-new-energy-market-design>

²⁶ <https://ec.europa.eu/energy/sites/ener/files/documents/First%20Results%20of%20Market%20Design%20Consultation.pdf>

²⁷ http://www.acer.europa.eu/official_documents/public_consultations/pages/pc_2014_o_01.aspx