

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of the EU rules on measures to safeguard security of electricity supply and infrastructure investment (Directive 2005/89)		
LEAD DG RESPONSIBLE UNIT	– DG ENER – B4 [AP 2016_ENER_032]	DATE OF THIS ROADMAP	101/2016
TYPE OF EVALUATION	[Select the category that applies from each line] Evaluation Final Internal	PLANNED START DATE	Q4 / 2015
		PLANNED COMPLETION DATE	Q2 / 2016
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
<p>(A.1) Purpose</p> <p><i>[Set out the purpose of this evaluation/FC, what it will deliver and how its results may be used, e.g. to provide the basis for a possible future IA, to improve application, etc.]</i></p> <p>The objective of the evaluation is to assess whether Directive 2005/89 concerning measures to safeguard security of electricity supply and infrastructure investment, as complemented by other targeted EU rules, has met its stated objectives, i.e ensuring a high level of security of supply in a well-functioning internal energy market. The objective is also to see whether the Directive (as complemented) is suitable to meet current and future expectations on security of electricity supply in Europe. Existing shortcomings and areas for improvement will therefore be identified.</p> <p>The results of the evaluation should serve as a basis for an impact assessment that might lead to the Commission proposing new legislation in this area.</p>
<p>(A.2) Justification</p> <p><i>[Explain the legal base requirement (if applicable) or other justification for carrying out the evaluation/FC. This might include existing legal obligation, REFIT programme or other justification.]</i></p> <p>Under Article 194 TFEU, the EU Energy policy aims in particular at ensuring security of energy supply in the Union, in a spirit of solidarity between Member States.</p> <p>Directive 2005/89 created a general framework on security of electricity supply, but left it by and large to Member States to define their own security of supply standards and policies, as long as the latter 'are not discriminatory and do not place an unreasonable burden on the market actors' (Article 3, paragraph 4).</p> <p>Many provisions of Directive 2005/89 have been superseded by more recent EU legislation, mainly by the Third Energy Package. A preliminary assessment indicates that this Directive, as it stands currently, has a limited added value only. It provides a number of very open-ended obligations only, which have been implemented in many different ways by Member States (see below).</p> <p>In its Energy Union Strategy, the Commission announced its intention to propose new legislation on security of electricity supply in 2016, as part of a broader set of initiatives to reform the EU framework governing electricity markets.</p> <p>The main driver behind this is the discrepancy between the reality of today's electricity markets, which are increasingly integrated, and the persistence of national, largely uncoordinated responses to security of supply.</p>

B. Content and subject of the evaluation

(B.1) Subject area

[Provide a short description/overview of the policy area/intervention/initiative to be evaluated.]

A fundamental objective of the EU energy policy is to guarantee security of electricity supply, i.e., to ensure, for the well-being of EU citizens and the proper functioning of the economy, an uninterrupted supply in electricity while respecting both environmental and sustainable development concerns. Directive 2005/89 represented a first attempt to provide a general legal framework for addressing security of electricity supply in the European Union, as a pre-condition for achieving a competitive internal market for electricity.

The core part of the evaluation will be Directive 2005/89 concerning measures to safeguard security of electricity supply and infrastructure investment, as well as relevant provisions stemming from Directive 2009/72/EC ("Electricity Directive") and Regulation (EC) 714/2009 ("Electricity Regulation"), as completed by guidelines and network codes, partly under development.

From a security of supply perspective, the operational network codes and guidelines are relevant, as they provide rules on Operational Security (OS), Operational Planning & Scheduling (OPS), Load Frequency Control & Reserves (LFCR) and Emergency and Restoration (ER). For more details on the different network codes and guidelines, see <http://networkcodes.entsoe.eu/>

In addition, to the extent they are pertinent for the issues under the scope of Directive 2006/89, some targeted provisions of the following legal acts may equally be assessed: Regulation (EU) No 347/2013 ("Infrastructure Regulation"), Directive 2012/27/EU ("Energy Efficiency Directive") and Directive 2009/28/EC ("Renewables Directive"). The evaluation will hence assess to what extent electricity security of supply is currently guaranteed by the set of EU legislation in place and to what extent Directive 2005/89 contributes in this overall context.

The initiative complements the ongoing "Evaluation of aspects of the regulatory framework of the EU electricity markets" and the initiative on streamlining planning and reporting obligations in the energy and climate field.

(B.2) Original objectives of the intervention

[State clearly the objectives of the policy area/intervention/initiative]

Directive 2005/89, based on Article 95 of the EC Treaty, results from the assumption that a competitive internal market for electricity necessitated harmonised, transparent and non-discriminatory security of supply policies at national level, the absence of which could lead to distortions of competition.

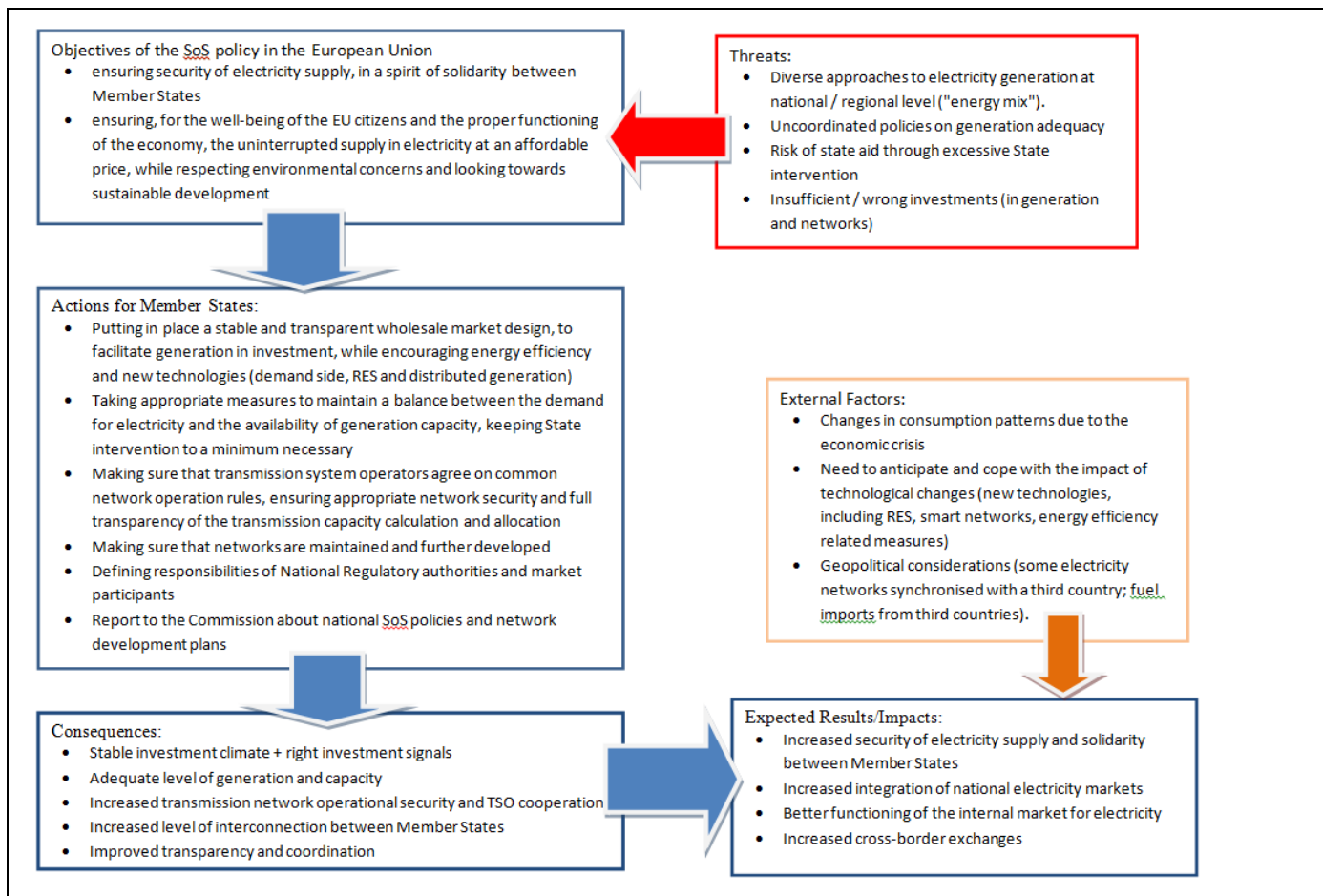
Therefore, Directive 2005/89 required Member States to lay down an unambiguous, appropriate and stable framework which would facilitate security of electricity supply, as a precondition for the proper functioning of the internal market for electricity. In particular, it required Member States to ensure (a) an adequate level of generation capacity; (b) an adequate balance between supply and demand, and (c) an appropriate level of interconnection between Member States. The Directive does however not provide definitions for these concepts, nor any indicator to assess whether Member States have achieved these objectives.

(B.3) How the objectives were to be achieved

[Explain how the policy area/intervention/initiative covered by the evaluation/FC were expected to interact to achieve the objectives. This may be done either as a diagram (the intervention logic) or in text, concentrating on the main areas which the evaluation/FC will investigate. Even if a full intervention logic diagram cannot be developed, it is recommended to include a diagram illustrating how the different components were expected to fit together.]

The Directive calls on Member States to put in place transparent and non-discriminatory security of supply policies.

The obligations imposed on Member States and the Directive's rationale are illustrated in the following intervention logic scheme:



C. Scope of the evaluation/FC

(C.1) Topics covered

[Define the scope of the evaluation/FC in terms of parts/measures of the policy area/intervention/initiative covered, geographical coverage, period to be evaluated, etc. Explain what has been excluded from the scope of the evaluation/FC and why.]

The evaluation to be carried out is a final evaluation of the functioning and implementation mainly of Directive 2005/89 and other related EU rules. In particular, the evaluation aims to (see also below under C.2):

1. assess to what extent the objectives of the Directive (i.e., a high level of security of supply, a better functioning internal market) have been achieved taking into account also any possible overlap/interaction with other related EU legislation;
2. assess the administrative costs accruing with EU and national administration and if applicable private entities resulting from the obligations in the Directive;
3. assess the impact of the Directive on the level of security of electricity supply in the individual Member States, their respective regions, or the EU as a whole; e.g. whether the Directive resulted in MS action on security of supply that otherwise would not have taken place/happened later;
4. examine the degree of implementation achieved in Member States and in particular inform, to the extent possible, which action would also have been undertaken at national level in the absence of the Directive;
5. examine whether potential differences between national implementing rules have negative consequences on the security of supply in the Member State, their region, or the EU wide internal market;
6. examine to what extent other external factors influenced the predicted outcome (most importantly heightened security of supply concerns, national interventions such as capacity mechanisms, supply restrictions etc...);
7. check whether the Directive is still fit for purpose, i.e., still corresponds to the needs of the electricity sector as it has evolved since 2009. In this context, account should also be taken of new legislative developments that have taken place since, notably the adoption of the Third Package;
6. assess possible gaps – i.e. problem situations not or not adequately addressed through the Directive.

(C.2) Issues to be examined

[Define the main issues that the evaluation will address. Precise evaluation questions, tailored to the specific evaluation and information needs, will be defined later in the process. All Commission evaluations must contain an assessment of the relevance, effectiveness, efficiency, coherence and EU added value of the policy area/intervention/initiative. The evaluation of efficiency should always include an assessment of the potential for regulatory simplification and burden reduction. A quantitative assessment of actual costs and benefits including impacts on business should be carried out where possible. For further information on evaluation criteria, see the Better Regulation guidelines.]

There are also several further evaluation criteria which can be considered depending on the type of intervention and the timing of the evaluation. The most common additional evaluation criteria are utility; complementarity; coordination; equity, sustainability and acceptability. These criteria should be covered as appropriate to the policy area/intervention/initiative.]

In accordance with the Better Regulation Guidelines, the evaluation will be based on the five mandatory evaluation criteria, considering also potential for reducing inefficiencies, particularly regulatory burden, and simplification of the intervention, as well as the costs and benefits of the intervention, and in particular on the following evaluation questions:

- Relevance: To what extent is the intervention still relevant? Do the objectives of the Directive and related EU rules still correspond to the needs of security of electricity supply, taking into consideration the evolution of the electricity markets over the past 10 years?

- Effectiveness: To what extent have the objectives of the Directive and related EU rules (i.e., more security of supply, better functioning markets) been achieved? To what extent would these objectives have been achieved in the absence of Directive 2005/89? What have been the (quantitative and qualitative) effects of the intervention? Did the Directive directly or indirectly improve investment (conditions), cross border sharing of capacity, effect electricity prices and generation cost?

- Efficiency: To what extent has the intervention been cost effective? Is the administrative burden imposed on Member States and economic operators (e.g., through the reporting obligation contained in Article b7) justified? Is there room for simplification? Could the Directive have been better enforced/implemented? This question will be examined in consistency with the Energy Union governance initiative on streamlining planning and reporting obligations, where streamlining of planning and reporting obligations post 2020 will be done.

- Coherence: To what extent is this intervention coherent with other interventions which have similar objectives and with wider EU policy? In particular what is the coherence between this Directive and the provisions contained in the Third Package?

- EU added value: What is the additional value resulting from the EU intervention compared to what could have been achieved by Member States at national and/or regional levels in the absence of the Directive?

(C.3) Other tasks

[If relevant, define other tasks to be delivered within the evaluation/FC, particularly those linked to external works, e.g. support for impact assessment, synthesis of National Reports, Stakeholders consultation report etc.]

D. Evidence base

(D.1) Evidence from monitoring

[Provide information on monitoring provisions in place, indicate what data is available and assess its quality.]

Under Article 7 of Directive 2005/89, in connection with Article 4 of Directive 2009/72, Member States shall ensure the monitoring of the security of supply and shall publish every 2 years a report on the results of this monitoring.

Under Article 9 of Directive 2005/89, the Commission had to monitor and review the application of this Directive and submit a progress report. It did so in 2010 (see also point D.2).

The Commission is legally bound to report on the progress towards the creation of the internal electricity market on the basis of Article 47(6) of Directive 2009/72/EC. This reporting is based to a large extent on the national monitoring reports 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 Observatory.

(D.2) Previous evaluations and other reports

[Provide general information on previous impact assessments, evaluations, studies, monitoring and implementation reports, preferably with links to relevant websites. Indicate how they will be used.]

The current EU rules on security of electricity supply represent the Union's reaction to a series of events in the electricity markets of several countries (within and outside the EU), mainly in the years 2002 and 2003.

These incidents, as well as more recent ones that challenged the robustness of transmission networks gave rise to abundant literature, which will be considered in the evaluation.

http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Electricity/2003/CEER_INCIDENTS.PDF
http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Electricity/2007/E06-BAG-01-06_Blackout-FinalReport_2007-02-06.pdf

In addition, there is a wealth of more recent literature on the impact of national policies on security of supply on the functioning of the internal market, which will be used in the evaluation process.

The Electricity Coordination Group has also looked into the matter and set out Recommendations in 2013.

The evaluation will moreover build on a long series of Commission's policy documents and their underlying analysis, as follows

- Commission Green Paper of 29 November 2000 Towards a European strategy for the security of energy supply [COM(2000) 769 final]. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52000DC0769>

- Communication from the Commission of 26 June 2002 to the Council and the European Parliament - Final report on the Green Paper Towards a European strategy for the security of energy supply [COM(2002) 321 final]. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0321:FIN:EN:PDF>

- Communication from the Commission to the European Council and the European Parliament of 10 January 2007, An energy policy for Europe [COM(2007) 1 final]. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007DC0001>

The documents related to the legislative process that led to the adoption of Directive 2005/89 will be carefully examined, in particular the extended impact assessment (SEC(2003) 1368) and initial proposal, among other documents concerning the inter-institutional debates. The purpose will be to analyse in particular whether the level of ambition in the original Commission's proposal was limited in the final Directive, and the reasons for this. <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:32005L0089&qid=1443635783945>

In 2010, the Commission issued a report to the Council and the European Parliament on progress concerning measures to safeguard security of electricity supply and infrastructure investment (COM(2010)330 final).

Member States reports under Article 7 of Directive 2005/89, in connection with Article 4 of Directive 2009/72, shall be taken into consideration.

In addition to extensive literature on SoS that is already available at national and EU level, the Commission has contracted a number of ongoing studies:

- "Identification of appropriate generation and system adequacy standards for the internal electricity market". (ENER/B2/FV2014-501/SI2.691913). Interim report submitted in June 2015

- "Review of current national rules and practices relating to risk preparedness in the area security of electricity supply ("risk preparedness fact finding study)". To be launched in Autumn 2015.

Other relevant studies (non-exhaustive list):

- Prognos Study: "Security of supply: a pan-European approach". July 2015

- Pentilateral Energy Forum: "Generation Adequacy Assessment". March 2015
http://www.benelux.int/files/4914/2554/1545/Penta_generation_adequacy_assessment_REPORT.pdf

- ENTSO-E publications (e.g. Scenario Outlook & Adequacy Forecast, Summer/Winter Supply Outlooks, document on "Current practices in Europe on Emergency and Restoration")
<https://www.entsoe.eu/publications/Pages/default.aspx>

- Council of European Energy Regulators (CEER): "Assessment of electricity generation adequacy in European countries"
http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Electricity/Tab3/C13-ESS-32-03_Generation%20Adequacy%20Assessment%20Elec_10-Dec-2013.pdf
- Study on the Benefits of an integrated European Energy Market
https://ec.europa.eu/energy/sites/ener/files/documents/20130902_energy_integration_benefits.pdf

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

[Provide information on infringements, compliance and complaints received.]

Member States were due to implement Directive 2005/89 by 24th February 2008. Non communication infringement procedures were opened in 2008 against 17 Member States. The Commission services issued an interpretative note meant to help Member States in implementing the Directive. Between 2009 and 2010, Member States produced comprehensive correlation tables reflecting the transposition in their national legislative frameworks, which served as a basis for carrying out systematic conformity checks.

No infringement procedure was opened on non-conformity, for two reasons: the broad and non-committal nature of the obligations contained in the Directive and the fact that the "Third Package" had just been approved, superseding some of its provisions.

At the same time, the Commission received only a limited number of complaints related to this Directive. None of these led to the opening of an infringement procedure on SoS related issues, mainly given the open-ended nature of Directive 2005/89.

(D.4) Consultation

*[Describe the key elements of the proposed consultation strategy. Which stakeholders and information gaps will be targeted and over which time frame? The launch of stakeholder consultations related to this initiative will be announced in the consultation planning that can be found at:
http://ec.europa.eu/yourvoice/consultations/docs/planned-consultations_en.pdf.*

If the consultation has already been launched or is already closed a link to the relevant website should be included.]

SoS related issues were the subject of previous recent public consultations: 2013 Consultation on generation adequacy, capacity mechanisms, and the internal market in electricity
<https://ec.europa.eu/energy/en/consultations/consultation-generation-adequacy-capacity-mechanisms-and-internal-market-electricity>

A wide stakeholder consultation was launched on 15 July 2015 through the Communication on a new energy market design, as complemented by the consultation paper on risk preparedness in the area of security of supply.
<https://ec.europa.eu/energy/en/consultations/public-consultation-new-energy-market-design>
<https://ec.europa.eu/energy/en/consultations/public-consultation-risk-preparedness-area-security-electricity-supply>

Stakeholder events to take place in Q3 2015 and beyond, including through existing fora (e.g., the Florence Forum).

Targeted discussions with Member States will also take place in the framework of the Electricity Coordination Group in Q3 2015 and over the course 2016.

Data gathering under the ongoing study includes consulting stakeholders via questionnaires and interviews.

(D.5) Further evidence to be gathered

[Provide information on what further evidence is needed and how it will be gathered.]

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