Working Group Report on Transparency in EU Retail Energy Markets

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ANNEX I - DETAILED EXAMPLES OF TRANSPARENCY AND PRESENTATION (MODELS)

ANNEX II – MEMBERS OF THE WORKING GROUP
1. **BACKGROUND**

*The functioning of the EU Single Market and challenges for European consumers*

Europe’s future economic growth is dependent upon stimulating innovation and improving the functioning of the Single Market. Improving conditions for consumers within the Single Market can make a significant contribution towards meeting this goal and demonstrate the benefits of European integration.

Empowered consumers who understand and can benefit from the range of choices they face, thereby rewarding efficient and innovative businesses, intensify competition and stimulate innovation. At the same time, it is a recurrent fact in consumer research that the choices consumer face are sometimes so complex to the extent that they can engender confusion, inertia, mistrust and eventually a feeling of 'helplessness' and 'fait accompli'.

In light of the above, it is important to deliver real improvements for consumers in the markets and sectors that matter to them taking into account the allocation of household budgets. Coincidentally, these are often the markets and sectors of the economy where consumers find it harder to make the right choices, where consumer confidence is low and problems persist, and where consumers see limited results from competition reaching them.

*The European energy policy perspective for consumers*

European energy policy has the clear objective of ensuring secure, safe, affordable and sustainable energy supplies to all businesses and households in the EU and thereby contributing to the welfare of Europeans.

With this in mind, EU energy policy measures have been developed with the aim of delivering meaningful and tangible benefits for consumers. In particular, internal energy market legislation combines high standards of consumer protection with the liberalisation of gas and electricity (wholesale and retail) markets. The rationale behind this dual focus is to establish the basis for creating choice and price competition for consumers without compromising their rights in any way. On the contrary, assertive consumers who know their rights and have the appropriate tools enabling them to take part in competitive (energy) markets can have a real impact on these markets, the EU’s energy mix and the European economy as a whole.

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2 As above.

3 According to recent data (2010) European households consume 30% of EU electricity.
Well-functioning energy markets that ensure secure energy supplies at competitive prices are key for achieving growth and consumer welfare in the European Union. To meet this objective, achieving an integrated and properly functioning Single European Energy Market is paramount. Moreover, while cross-border activity in retail electricity and gas markets is not yet a reality, the improvement of infrastructure to facilitate cross-border interconnections and transmission/transportation of electricity and natural gas are essential ingredients for better outcomes in EU energy markets and also for energy consumers.

Finally, while energy consumers are not a homogeneous group, not everybody is in the same situation and/or has the same needs, priorities, principles and economic means; nevertheless there are basic principles and conditions that apply to all. Similarly, in this report refers to the European Union as a whole while also acknowledging that some consideration is needed as regards the national context in each Member State when reading this paper.

**Present shortcomings and future challenges**

Observing the process of energy market opening in the EU for the past decade, it is fair to say that it has significantly provided new opportunities and led to the introduction of new products and services. However, while progress has been made, the objectives of market opening have not been fully met and there are still significant difficulties in exercising choice and finding offers that are meaningful to consumers. This observation is particularly true for household consumers. It is also the case that most consumers do not yet (fully) benefit from market opening and the expected benefits in terms of price, quality and choice.

Most consumers perceive the liberalised energy market as too complex and difficult to take part in. Some do not engage, some try but give up, some manage to take part. In the end, consumers will not engage unless there is something for them to gain. In many ways, the EU has still a long way to go to achieve its objective of a real Internal Energy Market in which each consumer has not only the legal right to choose their supplier but can also exercise this right and in return secure better outcomes in terms of price and quality.

At this stage, current policy needs to do more to prevent market malfunctioning and give consumers incentives to participate in the market. It needs to recognise good corporate citizenship and improve consumers’ awareness of their rights. It also needs to take action to inform individual consumers about the possibilities offered to them by market opening. The level of awareness is currently (and has been for the last few years) very low.

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4 SANCO (2010) retail electricity study found that up to 100 euro could be gained on average in the EU for switching supplier (minimum gain was 5€ maximum was 274€); year on year Consumer Market Scoreboards show limited satisfaction among electricity and gas consumers across the EU.

5 Only one in three EU consumers has compared offers and almost half of them (45%) do not know how much electricity they consume at home (Commission Staff working paper An Energy Policy for consumers Brussels, 11.11.2010. SEC (2010)1407 final).
For this purpose, policy makers at the EU and Member State level need to consider how difficult it is for consumers to make full use of the opportunities for the savings that market liberalisation offers through its choice of suppliers and tariffs. They also need to take action to make the presentation of tariffs and offers simpler and more transparent for energy consumers whilst not unduly impacting on choice and innovation.

Going forward, consumer groups note that the roll out of smart technologies and demand response policies are bringing with them the potential for more and increasingly complex tariffs. They recommend that these developments should be monitored by NRAs and policy makers, and, if needed, action should be taken to maintain the approach to tariff simplification recommended in this report.

*EU legislation and the challenges of transposition, enforcement and regulatory coordination among Member States*

The European Commission has already brought forward relevant legislative measures, in the form of the Third Energy Package, to promote a series of actions that will facilitate consumer choice and empower EU consumers in the energy market, including easier price comparison, more effective complaint handling procedures and better bills. It is now up to Member States to fully, correctly and carefully transpose and implement this legislation taking into consideration the national context.

Energy policy makers and enforcers will need to work even closer together. Moreover, the inclusion of a number of ‘core’ consumer provisions in the Third Package, which depart from the traditional mandate of energy regulators, will require establishing closer links between regulators and consumer and competition agencies to better enforce such provisions.

*Actions for energy companies*

In parallel, energy companies are also expected to take the initiative to drive forward liberalisation and competition by delivering tangible and meaningful results for their customers where the regulatory framework allows. By achieving this, they can argue for ‘more markets and less intervention’. The increasing presence of "European” energy companies, i.e. firms present in several EU Member States, should be a catalyst for change for the better. The dissemination of best practice, i.e. what has worked well in one market, with some adaptation to fit the national context, is something that such companies should strive for.

*What role for consumers and their representatives? Conditions and tools*

Consumers and their associations, have an equally important role to play. In a competitive market, they need to be assertive and active. Moreover, for those consumers that want to take the extra step, innovation in energy is giving them the possibility to become involved in electricity generation (self-generation) for example by installing solar panels on the rooftop of their house. Nevertheless, for all this to happen, an important element is necessary, *trust*. 
In practical terms, in most cases when consumers are concerned with energy they are faced with costly and complicated choices. This has a direct impact on trust. In this period of economic crisis there is an even greater need to give citizens the right tools to better manage their energy needs and the confidence that by participating in energy markets they can manage to achieve some benefits for their pocket and possibly contribute to protecting the environment at the same time.

**Persistent problems – a need to 'finish the job'**

A few years ago, the European Commission Competition Directorate General’s Energy Sector Inquiry identified two main inefficiencies in the retail and wholesale electricity and gas markets in the EU: transparency and price formation. Specifically, the report highlighted that the market lacks reliable and timely information. There is an information asymmetry between incumbents, competitors and consumers. Network users require more transparency going beyond the current minimum requirements set by the EU legislation. Improved transparency would minimise risks for new market players and so reduce entry barriers and improve trust in the wholesale markets and confidence in the price signals.

The report also found that more effective and transparent price formation is needed in order to deliver the full advantages of market opening to consumers. Many market participants have limited trust in the price formation mechanism, while regulated supply tariffs below market prices discourage new entrants and deprive consumers of any choice and store up debt for the future.

In many ways, these problematic areas persist not perhaps due to insufficient legislation, but due to 'unfinished business', especially at the retail level. Hence, the main objective today is to take action to address the information and competition deficits in the Internal Energy Market, to improve transparency and enhance trust and in turn produce better and fairer retail markets for consumers.

### 1.1. Mandate, scope and composition of WG

As set out in the Conclusions of the 4th Citizens' Energy Forum, the European Commission has launched a Working Group on prices and characteristics of such offers with focus on transparency of presentation.

The mission of the Group was to define criteria for transparent electricity and gas price offers and characteristics of such offers. Hence, the focus of the WG was on the clarity, conciseness and presentation of pre-contractual information facilitating comparison, as a

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6 Sector Inquiry pursuant to article 17 of Regulation (EC) No1/2003 into the European gas and electricity sectors (Final report).

7 Consumer representatives in the Working Group highlighted that regulated prices, if set appropriately and competitively, can play a key role in encouraging competition. A regulated tariff should provide a benchmark for a 'fair' and transparent energy price, against which other, non-regulated price offers are pitched and decisions to switch are taken.
means of covering both standard energy offers and premium products such as green energy. The Working Group also worked on the marketing and sales part of electricity and gas contracts, as they are closely linked to transparency (transparent energy prices and the tariffs on which the prices are based are useless if they are marketed in a misleading and/or confusing way).

To maintain a report of manageable size, the Working Group did not get into the subjects of self-generation, demand-response management and dynamic pricing. These areas that are currently developing, where very little evidence exists, will be very relevant for energy and consumers and should be tackled in future initiatives.

The Working Group was comprised of representatives from Consumer Associations, National Regulators (in the energy area and other national consumer watchdogs), and industry. A representative of a Member State also participated as observer. The Working Group has produced a report that makes recommendations and identifies national practices of price and offers transparency in the retail EU energy markets and puts them forward as good practice worthy of consideration by other EU Member States and beyond. Moreover, the report also presents best national practices of transparency that could be considered to replicate across Europe. This report also highlights relevant initiatives outside the EU that could be considered when designing a transparency policy framework in energy markets.

1.2. Approach

The Working Group met 5 times in 2012. Group members were informed about existing national practices via presentations both from their peers within the group and from invited speakers. The Working Group was chaired by the Commission (DG Health and Consumers (SANCO). The Directorate General for Energy (ENER) was also actively present to ensure conformity with the Third Energy Package.

The European Commission was responsible for convening the Working Group and providing the secretariat. The Commission drafted meeting reports and brought together Working Group Members' inputs, contributions and viewpoints in this report.

WG Members contributed to the report both in relation to their specific area of expertise and/or country and provided comments, positions and other evidence on policy aspects. WG Members were also instrumental in the identification and presentation of examples of national best practices of transparency in retail energy markets.

The present report is the outcome of the shared view of the Working Group. Where divergent opinions exist, this is clearly indicated in the text. The Working Group concluded the present report in time for its submission and presentation to the fifth Citizens' Energy Forum in London in November 2012.

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8 See Annex II, Members of the Working Group.
2. **EXISTING EUROPEAN AND NATIONAL LEGISLATION**

There are detailed provisions in EU legislation that cover transparency issues. In particular the requirements in the Third Energy Package are very specific, *de facto* asking Member States and the competent authorities to adopt a clearly defined set of rules. This Working Group received a presentation from one of the ‘liberalisation latecomer’ Member States in the energy sector with focus on this country's actions to meet the early stated 'dual objective' of improving competition and safeguarding consumer rights in electricity and gas markets.

2.1. **Provisions in EU Electricity and Gas legislation**

Both in Directive 2009/72/EC (electricity) and Directive 2009/73 (natural gas), Article 3 “Public Service Obligations and Consumer Protection” sets the parameters for consumer issues within market competition. Beyond that article there are other references in the two directives that define certain provisions in areas that concern transparency. They relate to a number of issues but broadly they focus on two areas: Contract Requirements and Standards; and Billing, Bills and Price Information.

According to the electricity and gas Directives, Member States shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. More specifically, when it comes to concluding contracts, the Directives require suppliers to provide the following information to consumers:

- supplier's identity;
- quality levels of the service offered and time for initial connection;
- maintenance services provided as well as their costs;
- up-to-date information on tariffs;
- duration, renewals and withdrawal terms of the contract;
- compensation modality for quality service not met;
- procedure for settlement of disputes;
- information relating to consumers' rights.

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11 Art. 3 (7) of the Electricity Directive and 3 (3) of the Gas Directive.

12 Annex I (a)
This information should be easy to access and provided in/within the contract, the bill, or promotional material provided by the energy supplier.

In case of a change to contractual conditions, suppliers should provide advance notice, while consumers should also be granted the right of withdrawal in case of non-acceptance of the new conditions. Suppliers are moreover required to provide transparent information on applicable standard terms and conditions, while general terms and conditions shall be fair. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers’ rights, for example, excessive contractual documentation. The Directives also clearly state that customers shall be protected against unfair or misleading selling methods.

**Bills and Price Information**

According to the electricity and gas Directives, customers are entitled to receive all relevant consumption data. This right must be granted to them in a non-discriminatory manner as regards cost, effort or time. Suppliers have to provide their customers with actual electricity consumption and costs, and do so frequently enough to enable customers to regulate their own electricity consumption. Suppliers are also required to provide transparent information on prices and tariffs – indirect reference to the development of price comparison tools in energy - and make available a wide range of payment methods, specifying that prepayment systems should be fair and reflect consumption.

More specifically, in electricity, suppliers are also requested to specify the contribution of each energy source to the overall fuel mix of the supplier over the preceding year with a reference to existing sources, such as web pages, where information on CO2 emissions impact and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available. Suppliers also have to provide consumers with information on the means of dispute settlement. The electricity Directive specifies that this information should be made available in the bill or on promotional material. Previous WG reports highlighted the importance of the bill as de facto main communication tool between the energy company and their customer, and thus, the relevance of good bills as an element of transparency once the contract is signed.

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13 Annex I (b)
14 Annex I (c)
15 Annex I (d)
16 Art. 3 (5) of the electricity and Art. 3 (6) of the gas directive.
17 Annex I (i)
18 Annex I (c)
19 Annex I (d)
20 Art. 3 (9)
To promote energy efficiency, both Directives require Member States (i.e. energy ministries) or regulators to strongly recommend that electricity undertakings optimise the use of electricity, for example, by developing innovative pricing formulas\textsuperscript{21}.

National regulatory authorities (NRAs) play an important role in monitoring prices for household customers, including prepayment systems and charges for and the execution of maintenance services\textsuperscript{22}. NRAs are also asked to publish recommendations\textsuperscript{23}, annually, in relation to compliance of supply prices with Article 3. This includes compliance with access to universal service, i.e. the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices; the respect of the three week limit for supplier switching; receipt of consumption data and information about financial compensation in a transparent and non-discriminatory way; protection of vulnerable consumers and the definition of the concept of vulnerable customers.

2.1.1. 

**Marketing of energy products, including 'green' electricity**

The 2009/72 Electricity Directive refers to information concerning the generation mix of the electricity but does not make specific provisions related to the marketing of energy products or services. There are horizontal references in the Distance Selling\textsuperscript{24}, Doorstep Selling\textsuperscript{25}, Unfair Contract Terms (UCT)\textsuperscript{26} and the Misleading and Comparative Advertising\textsuperscript{27} Directives, i.e. not focusing on energy only. The first two measures will be replaced by the Consumer Rights Directive\textsuperscript{28}. Member States shall adopt by 13 December 2013 their laws necessary to comply with the Directive and the relevant national laws shall apply from 13 June 2014.

\textsuperscript{21} Art. 3 (11) of the electricity and Art. 3 (8) of the gas directive.

\textsuperscript{22} Art. 37 (1) (j) of the electricity and Art. 41 (j) of the gas directive.

\textsuperscript{23} Art. 37 (1) (o) of the electricity and 41 (1) (p) of the gas directive.


\textsuperscript{25} Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises

\textsuperscript{26} Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts


This is also the case for provisions in the Unfair Commercial Practices Directive\(^29\) (UCPD), where a trader must be in a position to substantiate any claim they make in connection with the product/service on offer. The UCPD applies to all business-to-consumer commercial practices, including in the energy sector. The Guidance on the implementation of the UCPD\(^30\) provides useful clarification as to how the Directive applies to green claims\(^31\) i.e. claims linked to the environmental performance or other attributes connected to the product/service and its use and how these claims may affect the economic behaviour of consumers.

Finally, the Renewable Electricity Directive\(^32\) focuses on a number of issues linked to the realisation of the 20% renewables target for the EU. As regards the market conditions for the marketing of renewables-based electricity, the focus has been on the establishment of a certification system for the accreditation of such electricity to facilitate trade in certificates (guarantees of origin - GOs). GOs can provide a fair basis for the certification of 'green' electricity. Yet so far this legislation has mostly focused on the 'upstream' part of renewable electricity, i.e. power generation and trading of GOs among companies to reach set targets.

The certification and substantiation of green claims in energy is a recurrent theme brought to the Commission's attention by consumers and their representatives. It is an issue that may potentially result in consumer mistrust of any green attributes connected with energy.

To this end, and while also acknowledging the significant efforts by various energy providers to guarantee the 'greenness' of their energy including through private certification schemes, the Working Group considers that it might be necessary to review definitions in the interest of enhancing trust, verifiability and accountability of claims linked to the marketing and promotion of green energy in the Internal Energy Market.

It is also evident that closer attention has to be paid to cross-border transactions of GOs including in relation to the accounting of green certificates. On this issue specifically, issuing bodies and regulators need to establish a closer collaboration to develop common guidelines on GOs trading and against double counting of GOs, particularly in the case of cross-border activities.


\(^{31}\) See section 2.5 of the UCPD Guidance

2.1.2. **Other pre-contractual information / price, terms and conditions**

There is horizontal Union legislation which protects consumers at the pre-contractual stage.

The UCPD protects consumers against misleading and aggressive commercial practices of traders. Its provisions require that traders operate in accordance with professional diligence and that they do not distort the economic behaviour of consumers by inducing them to enter transactions they would not have entered otherwise. In the case of an invitation to purchase, the Directive requires traders to provide in a clear, intelligible and timely manner, material information that consumers need in order to be able to make an informed purchase decision. Such information include, but is not limited to, the main characteristics of the product or service offered for sale as well as its price inclusive of taxes and, if those depart from the requirements of professional diligence, the arrangements for performance of the contract and the complaint handling policy. Annex I to the Directive provides a list of 31 commercial practices which shall be considered unfair in all circumstances, such as the practice for a trader to falsely describe a product or service as "free" or "without charge" if the consumer has to pay anything other than the cost of responding to the commercial practice.

The UCT Directive provides that contract terms should be written in plain and intelligible language and that a contract term causing a significant imbalance between the parties to the detriment of the consumer shall be regarded as unfair and as such shall not be binding. In addition the Annex to the Directive provides a list of contract terms which may be considered unfair, such as enabling the seller or supplier to alter the terms of the contract, or any characteristics of the product or service to be provided, unilaterally without a valid reason which is specified in the contract.

The Consumer Rights Directive lays down the requirements for pre-contractual information with a horizontal character. Maximum harmonization is ensured for the pre-contractual information requirements of distance and off-premises contracts. Article 6 of the Directive contains a comprehensive list of information to be complied with in every Member State and therefore ensuring high level of cross-border transparency of the information requirements. However, the information requirements for contracts other than distance and off-premises contracts are regulated with a minimum harmonisation approach, allowing Member States to adopt or maintain additional pre-contractual information requirements.

These horizontal Directives complement the sectorial legislation, i.e. the energy related legislation.

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33 Article 7(4) of the UCPD

34 Points (j) and (k) of the Annex to the UCT Directive
2.2. National approaches

National legislation on transparency, marketing and selling of electricity and gas in many ways reflects the varying levels of market 'maturity' and national specificities in the EU. Market sophistication may at times also affect the legislator's view as to the actions needed to address the issue at any given moment.

To this end, national legislation can be very specific and at times advocate strong actions, such as Norway's decision to publish Guidelines under the Requirements of the Marketing Control Act banning the use of the term 'green' in any marketing of energy. On the other hand, it can also be the case that almost no specific provisions governing the selling of energy exist, principally because until recently this activity was a heavily regulated monopoly particularly for the household market (e.g. in Greece, Bulgaria, Cyprus, Malta).

Portugal, a relative latecomer in the energy liberalisation process, was selected to report to the Working Group on its recent initiatives in the area of electricity and gas markets and with particular focus on the legislative and policy provisions for energy consumers where the energy regulator has been working closely with the consumer agency towards opening up electricity and gas markets while safeguarding consumer rights and empowerment.

Portugal – meeting the dual objective of market opening and consumer protection

The presentation of Portugal to the WG revealed a well-planned and executed collaborative model between the Portuguese Consumer Protection Authority (CPA) and the National Regulatory Authority (NRA) for energy.

The CPA's activity on energy issues, in collaboration with the NRA focuses on ensuring that consumers' interests are prominent on the latter's agenda. In fact, the CPA sits on the NRA’s advisory board to make sure that the issues are appropriately covered. It also chairs the Tariff Board which gives its opinion to the Ministry on the NRA's proposed regulated tariffs. Moreover, it provides support to the regulatory work, especially on technical issues with regards to the demand side, and it advices on new legislation and regulation of the sector.

Portugal has had to move at a fast pace on two policy and legislative areas in parallel, energy market liberalisation and consumer protection. Government decisions on energy and consumers can be found in the good practices section of this report (Annex I).

On top of legislation and governmental policy, Portugal has engaged in a number of actions to improve information to consumers, namely an information campaign by the NRA; information sent to consumers by post; the creation of an online price comparison

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35 Any energy produced from renewables will be presented as such, only specifying the source, e.g. geothermal generated electricity. This way the information to the consumer is purely factual; on the other hand, it is not sure that consumers understand the technical terms therefore confusion is not avoided. This information was reported to the Commission in the framework of the 2nd European Consumer Summit and specifically the 'Green Energy Challenge' Workshop for more information http://ec.europa.eu/consumers/events/ecs_2010/workshop5_en.htm
tool and explanation about the different types of fuels used to generate electricity and how they are reported in an energy label.

In addition to the above, the NRA and energy companies have signed cooperation protocols governing energy ADR. Moreover, the CPA and the NRA organise joint training courses for energy consumer and company representatives focusing on sharing of knowledge and good practice.

While all the above are very positive measures, consumer organisations from Portugal report that the dual tariff system (where both competitive and regulated prices exist) is not delivering for consumers as energy prices have increased.

**New legislation in Belgium**

Belgium has also recently brought forward a number of new laws in combination with a strong consumer awareness campaign prompting energy consumers to take an active role in electricity and gas markets and look for the right offer for them.

The Belgian government decided to take legal action in order to regulate the energy market liberalisation and consumer protection by

- temporarily freezing the indexation of the variable electricity and gas prices from the 1 April 2012 (law 8 January 2012 and law 29 March 2012, title 5, chapter 3);
- promoting transparency of billing, (online) comparison tools operated by regional NRA’s and supplier switches without costs (law 8 January 2012 and law 25 August 2012);
- completing and improving the Agreement regarding Consumer’s Protection in the Energy market. This Agreement about contractual relations, billing, switching and moving has been established by public administrations, consumers associations and suppliers. The accomplishing of this agreement is controlled by the federal administration “Control and Mediation” of the Federal Public Service Economy (law 8 January 2012 and law 25 August 2012);

Some conclusions:

Legislative provisions at EU level are now detailed and thorough. There are signs from ‘mature’ Member States in the energy liberalisation process that greater intervention or other action is needed to ensure meaningful competition for consumers, in particularly when it comes to choosing the right tariff best suiting their needs and priorities. Finally, for newcomers to energy markets liberalisation it is becoming increasingly necessary that legislation and policy foresee a number of parallel actions to fulfil the numerous and complex challenges of market opening and fair results for all consumers.
3. CHALLENGES TO IMPROVING CONSUMER UNDERSTANDING OF OFFERS AND MARKETING: MAJOR ISSUES AND GOOD PRACTICES

3.1. How to trigger understanding & customer engagement? Focus on behaviour

It is broadly accepted that conscious and informed choices by empowered and confident consumers are crucial to ensure functioning energy markets in Europe. Competition between suppliers puts downward pressure on prices and improves quality of service. Moreover, the ultimate aim of the consumer policy in energy is to make sure that the EU Single Market is working for European consumers offering greater choice of products and services, improved quality, ease of comparing offers, competitive prices and effective complaints handling.

While choice and flexibility are welcome and accepting that suppliers should remain free to innovate and explore their competitive advantages, messages from consumers and their representatives are increasingly stressing the need for meaningful choices.

To better serve these twin objectives (commercial freedom and preserving meaningful choice for consumers), it is necessary that policy considers the findings of consumer behaviour testing. As acknowledged in the introductory chapter to this report, consumers are a heterogeneous group. Considering this, behaviour testing could also guide policy insofar as it can identify specific actions to consider to match the various 'tendencies' among consumers.

Conventional economics often assume that:

- Consumers approach markets with a (stable) set of preferences.
- They are concerned only with their own welfare.
- They can use available information rationally to make optimal decisions
- They face a "bounded rationality" and, as a result, rely on "heuristics" in decision-making.

36 For example some consumers are confident and able to compare and choose. Some consumers find it difficult to do so – some will make a bad choice, others will make a good tariff choice and some will decide not to bother. Others do not want to switch. Vulnerable consumers may be unable to compare options and switch.

37 e.g. in the form of various costs of acquiring and processing information

38 Such as reliance on a firm's reputation and other price and quality signals.

39 Decision-makers lack the ability and resources to arrive at the optimal solution. They instead apply their rationality only after having greatly simplified the choices available. Thus the decision-maker is a satisfier (one seeking a satisfactory solution rather than the optimal one). For more on factors of consumer satisfaction see Sternberg, R. J. (2009). Cognitive Psychology (5th ed.). Belmont, CA: Wadsworth. Economic agents employ the use of heuristics to make decisions rather than a strict rigid rule of
Behavioural economics challenges some of the presumptions of conventional economics that consumers make their choices coherently and rationally, given their preferences and the constraints upon them. It argues that consumers often fail to act in their own best interests due to behavioural traits such as failure to process information objectively or misjudgements about the costs and benefits of prospective decisions.

This raises questions on the extent to which consumers can appropriately 'digest' complex products. In the next section, the focus is on consumers' cognitive skills, employed when exercising choice, for example when selecting a set of bundled services (e.g. electricity and gas).

3.1.1. Assessing consumers' cognitive skills

Among the biases identified by behavioural economics, the following may be particularly relevant and may help to explain how, even where there is adequate information, consumers may be making seemingly irrational decisions in choosing an operator or service package:

- **Choice or information overload:** Consumers who have too many products or features to compare might experience increased anxiety about the possibility of making a bad choice. This can lead to random choice, or failure to make any choice, resulting in missed opportunities for buyers and sellers. A form of "analysis paralysis" can take hold when information and choices become very complex.

- **Endowment:** Consumers may be reluctant to give up what they have, even though they would not buy such goods or services if they did not already have them.

- **Defaults:**

  optimization. They do this because of the complexity of the situation, and their inability to process and compute the expected utility of every alternative action. For more see Zbigniew Michalewicz and David B. Fogel (2000) How To Solve It: Modern Heuristics, Springer Verlag.

40 OECD, Directorate for Science, technology and Industry, Committee for information, Computer and Communications policy "Enhancing competition in telecommunications: protecting and empowering consumers" Seoul, Korea, June 2008 Pg.9-10. A Working Group member highlighted that consumer "irrationality" in this report focuses on consumer interactions with the markets and that we should be similarly cautious with respect to the findings of consumer research. If consumers are “irrational” in their decision-making, they may equally be “irrational” when responding to surveys. This highlights the need to further engage with consumers to understand how to best communicate important messages to them in a way they understand.

41 e.g. consumers may stay with the incumbent fixed telephone line provider because of misplaced loyalty, a failure to acknowledge poor choices in the past, or an irrational consideration of sunk costs.
The ordering of options, particularly in markets where a choice must be made, influences choice. Consumers may tend to take a path of least resistance, particularly if they feel there is a "normal" option. 

- **Hyperbolic discounting:**
  Consumers tend to be short-sighted when making decisions with immediate costs or benefits to be weighed against future costs or benefits.

- **Framing biases:**
  Consumer choice is influenced by the "frame" in which information is presented. Presentation of the same information in a different "frame", can lead to a different decision.

- **Heuristics:**
  Consumers often take short cuts when the decision environment is too complex relative to their mental and computational capabilities.

**Instruments** for addressing such behavioural bias include:

- Requiring options to be presented in ways which may lead consumers to overcome "default inertia" and make better choices;

- Requiring providers to present information in a "variety of frames", or in specific frames which may guide sound consumer choice.

- Mandating "cooling-off periods" allowing consumers an opportunity for rational consideration to overcome the influence of impulsive choice.

- Educating consumers about their biases, and helping them to develop mechanisms to overcome those biases which go against their self-interest ("general de-biasing").

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42 e.g. people may buy "standard" packages offered by suppliers, even if they do not want the whole package.

43 e.g. consumers may enter long-term contracts because they place more value on the immediate benefits of the offer, rather than on the long-term costs of a contract (such as the inability to switch to lower-priced alternatives, and the inability to take advantage of latest technology).

44 These rules of thumb are called "heuristics" and are often accurate enough to be useful, but may sometimes lead to sub-optimal decisions.

45 OECD, Directorate for Science, technology and Industry, Committee for information, Computer and Communications policy "Enhancing competition in telecommunications: protecting and empowering consumers" Seoul, Korea, June 2008 Pg 42–43.

46 "Frame" is a generic term that covers the presentation of information in different ways e.g. annual consumption, consumption profiles etc.
Energy sector-specific research findings linked to behaviour

With reference to the 'drivers' and 'triggers' of switching and following the findings of SANCO’s Retail Electricity Study (figure 1 below) the following observations can be made. The report’s findings confirm that the price, where available, is the main driver for switching (more important than quality of electricity or gas service e.g. billing) and also that the advice consumers deem as trustworthy is an important factor to consider further exploring when seeking to establish the right conditions for consumer engagement in open energy markets. The following studies, undertaken at Member State level, also demonstrate the importance of personalised advice in terms of driving consumer choice.

In Britain, research commissioned by OFGEM found that electricity customers found out about deals in the following ways 47:

- 29% via a sales person on their door
- 9% via a sales person who called them
- 7% by a sales person in a public place
- 24% via an online comparison site
- 6% via a friend or relation

In Ireland, 47% identified direct contact from a supplier as one of their top three sources of information when switching supplier.

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Figure 1

<table>
<thead>
<tr>
<th>Country</th>
<th>Better deal</th>
<th>Moved house</th>
<th>Environmentally friendly provider</th>
<th>Poor customer service</th>
<th>Billing problems</th>
<th>Interruptions in supply</th>
<th>Advised to switch</th>
<th>Other</th>
</tr>
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<tr>
<td>Austria</td>
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<td>10%</td>
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<td>15%</td>
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<td>7%</td>
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<td>10%</td>
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<td>1%</td>
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<td>5%</td>
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<td>8%</td>
<td>4%</td>
<td>2%</td>
<td>10%</td>
<td>14%</td>
</tr>
</tbody>
</table>

Note: Darker shading illustrates the most frequently stated reasons for trying to switch and lighter shading indicates the second most frequently stated reason for trying to switch.

Percentages as a share of those who tried to switch within the last 2 years (including those who switched because they moved house) are based on Q24: ‘What was the main reason for trying to switch your electricity provider?’. It should be noted that, since this question is not based on the full sample the statistical significance of the results is reduced. The relevant sample size i.e. the number of respondents who tried to switch supplier is provided in Table 123. We note that the relevant sample is particularly small in Estonia, Hungary, Luxembourg, Poland and Romania and consists of less than 10 respondents in these cases. Respondents in Latvia, Lithuania, Greece, Cyprus and Bulgaria were not asked this question as switching is limited in these countries. EU-27 calculated as a weighted average using 2010 Eurostat population figures as weights.

Source: ECME Consortium general consumer survey; Study of the Functioning of Retail Electricity Markets for Consumers in the EU (2010).

3.2. Assessing the impact of price complexity & market maturity on consumers

Energy companies around Europe maintain a broad number of prices, tariffs and offers, whose number varies significantly among Member States. While it is difficult to

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48 In this report the term ‘price’ refers to the final (total) price consumers receive for their electricity/gas. ‘Tariff’ is the name of the product(s) available to them. ‘Offers’ refer to the presentation of prices and the tariffs, on which the prices are based, and are sometimes combined with other services (bundled) and/or can be of limited duration.
generalise also because of the varying degrees of energy market competition among Member States, it is equally correct to point out that consumers who are faced with multiple choices and/or an information overload have a greater chance of 'getting it wrong' and thus may simply choose to not participate in the market, i.e. by choosing a regulated tariff where it exists or simply stay with their supplier permanently even if not switching at all may result to higher prices for them. Consumer research by Ofgem confirms that the number and complexity of tariffs contributes towards disengagement with the energy market.

**Market Complexity**

As regards market complexity, SANCO's Retail Electricity Study reviewed both choice 'margins' (availability of options) and how complex it was for consumers to exercise choice. To maintain a picture of choice and complexity, various tariffs were collected and a correlation of tariffs and the consumers' perception of market complexity was developed. Among the most relevant findings of this analysis is that, irrespective of literacy (of the consumer sample for the study) and market maturity (both in terms of time period since the electricity market liberalisation started and on the number of market players) many consumers are on the wrong tariff for their circumstances.
Awareness of how much is paid for electricity and how much is consumed

Consumers generally said that they are well aware of the amount they spend on electricity but less aware of how much electricity they consume in kWh. However, it is not necessarily the case that consumers who are aware of the amount they pay for electricity are also well aware of their consumption. As shown in figure 2, across the EU 79% of consumers know the amount they pay for electricity. In addition, more than 80% of consumers in 13 Member States (Luxembourg, Cyprus, Greece, France, Belgium, Slovenia, Poland, the Czech Republic, Slovakia, Estonia, Romania, Latvia and Lithuania) are well aware of the amount they pay and in all Member States more than 60% of consumers are well aware of how much they pay for electricity. In comparison, only 54% of consumers across the EU know how much electricity they consume in kWh terms and in all Member States fewer people know how much electricity they consume than the amount they pay for electricity. In Ireland, Luxembourg, Portugal, the United Kingdom, Spain, Cyprus and Malta less than 50% of consumers are well aware of how much electricity they consume.

Figure 2

![Awareness of consumption and payment](image)

Note: Based on Q3: Agreement with statements: 1) I know how much electricity I use (per month, year or any other frequency) in kWh. 2) I know how much I pay for electricity (per month, year or any other frequency). Consumers are defined to ‘well informed’ if they provide a rating of 8, 9 or 10. The EU-27 average is calculated using 2010 Eurostat population figures as weights. Source: ECME Consortium general consumer survey – Retail Electricity Study DG SANCO.

49 ECME Consortium, The functioning of retail electricity markets for consumers in the European Union Pg.147.
The importance of personalised advice and monitoring where competition is taking place – focus on vulnerable consumers

The SANCO study also found in some Member States suppliers often provide personalised tariff advice, including proposing that consumers switch to the cheapest tariff (see Figure 3). This service is particularly common in Germany and Italy, but much less common in some new Member States such as Bulgaria and Lithuania. Consumers who have difficulty paying their electricity bills are likely to particularly benefit from assistance to find the best tariff.

It is also important to monitor the level of competition available to different segments of consumers. In Britain, there have been significant differences in the number of offers and options available to consumers depending on their payment method – e.g. out of the new tariffs launched between January 2009 to February 2012: all of the 283 tariffs were available to customers paying by direct debit, but only 38% were available to quarterly cash/credit payers and 3.2% to households with a prepayment meter. 50

Competition for customers has been fiercest in the direct debit, particularly online direct debit, segment of the market. In comparison, the savings available to customers switching from one PPM tariff to another have frequently been as low as £25-50 per annum. The above, underline the need to monitor where competition is taking place, in order not to discriminate against vulnerable consumers. 51

In the UK a significant proportion of consumers are effectively prevented from getting a better deal by segmentation of this nature. For example, almost a quarter of households do not have some form of internet access, with lower socioeconomic groups less likely to be online at home. Consumers on a lower income are also more likely to have prepayment meters or pay by standard credit than use direct debit. This is possibly because they have patterns of income that are better suited to budgeting in cash and feel that automated payments would lead to a loss of control and bank fees if direct debits take them overdrawn. There is also a significant minority of households (4%) that are excluded from direct debit entirely through not having a transactional bank account. As such, these consumers are effectively barred from being able to choose from the cheapest fixed-term direct debit tariffs 52.

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50 Data submitted by UK consumer body Consumer Focus


52 Evidence submitted by UK consumer body Which?
Figure 3

Share of consumer given personalised tariffs advice

Note: Based on Q8a. Percentage that said ‘yes’ to the following question: “Does your electricity provider propose that you switch to the cheapest tariff or to a tariff more in line with your preferences and thereby ensure personalised service based on your consumption”.
Source: ECME Consortium general consumer survey – Retail Electricity Study DG SANCO.

3.3. Marketing, commercial practices & direct sales

The way in which offers are promoted influences the consumer experience of the energy market. Face-to-face sales, telephone sales and marketing activities have a direct impact on the consumers. Due to this fact, marketing decisions can strongly influence the level of trust of energy consumers.

Mandatory rules to better frame commercial practices

In several Member States, compliance of promotional material with information standards is specified by legislation which requires operators to provide each domestic and small non-domestic customer with a given set of information before entering the contract.

In order to promote transparency and a more fair deal for consumers, Ofgem has introduced mandatory rules governing selling methods effectively banning any practices that could be considered as promoting products that are too complex for consumers and
practices that could be seen as misleading. Previously, such activity was governed by voluntary agreements among traders.

**Closer collaboration among public bodies to handle complaints**

Consumers who encounter misleading advertisements sometimes report them to the consumer watchdog (or a consumer agency), consumer organisations and, where it already exists, to the public energy Ombudsman or other ADR entities. The consumer regulatory authority may be directly involved in the resolution of the complaint in their capacity of enforcer of consumer protection. At the same time, depending on the Member State, the energy regulatory authority will handle energy-related complaints and be responsible for the case analysis through the use of non-binding means of dispute resolution; although, it is also not unusual for public consumer authorities to be involved in this process. On top of this, and depending on the governance models of the Member State, regional governments and their administrations and regional competent bodies may have a role to play.

To better tackle this new challenge reinforced cooperation and coordination among relevant public authorities is needed. Moreover, clarity about who does what will ensure that the resources of each body are used for the prescribed purpose and that overlaps are avoided. Clearly defined roles are equally important for all parties involved, in particular for non-expert consumers, to navigate through the system.

**Updating the remit of NRAs**

In the process of retail energy markets liberalisation new challenges emerge that were previously not an issue, and as such the tackling of these challenges was not within the remit of energy regulators. An important part of this definition of tasks has already taken place by establishing new competences for NRAs in the Third Energy Package, but more needs to be done – particularly in areas where more than one public authority could be involved.

Unfair commercial practices are not always under the supervision of the energy regulator. For example, in Italy the Antitrust Authority is responsible for their enforcement. Energy regulators will need the (technical) capacities to cover these questions too and will need to work together with other public authorities that have been dealing (horizontally) with such practices, to apply this experience in the energy sector. However, the open question remains as to how to explain who is responsible for what to individual consumers in a simple, short and accessible manner.

**Green Energy and green claims**

Green energy and green offers are becoming more prominent and gaining more and more importance. European consumers have a demonstrated interest to consume in a responsible and sustainable manner and energy is no exception to this. At the same time, buying 'green' energy is a question of personal priorities.

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53 For more see [http://www.ofgem.gov.uk/Media/FactSheets/Documents1/Supply%20Probe%20QA.pdf](http://www.ofgem.gov.uk/Media/FactSheets/Documents1/Supply%20Probe%20QA.pdf)

54 Although, it has been brought to the attention of the Commission that at times the technical capacities of the regional bodies is not sufficient to address queries/complaints brought before them.
The EU’s 20-20-20\textsuperscript{55} objectives and public policy 'carrots and sticks'\textsuperscript{56} are pushing Member States and, therefore, national energy companies to increase their offer of sustainable products. Whereas green energy is commonly defined as the electricity produced by renewable sources, understood as non-fossil renewable sources, the terms "green offer" or "green tariff" are open to misinterpretation and even mis-selling. The Working Group considers that it might be necessary to review definitions of 'green' (as above) in the interest of enhancing trust, verifiability and accountability of claims linked to the marketing and promotion of green energy in the Internal Energy Market.

A set of solutions can be found across Member States, from mandatory rules regarding the qualification and specification of renewable energy offers, to voluntary schemes of green certification, to guidelines defined by the regulator authenticating the energy with the regulator's approved logo. In countries where the offer is more limited, misleading practices are unlikely to be reported: for example, in Portugal, due to the presence of a single company that provides green energy offers, the definition of green tariff de facto applies to the one existing tariff.

A matter of concern, which has been voiced by the Commission in its recent Communication about progress towards meeting the EU's renewable targets for 2020 is the cross-border coordination and authentication / mutual recognition system of renewable electricity certificates (Guarantees of Origin – GOs). Action is needed here among competent authorities, primarily NRAs together with Issuing Bodies (of GOs) to instil reliability and trust in the European system of accounting these certificates when used across borders.

3.3.1. Sales over the internet and over telephone

3.3.1.1. Presentation & communication channels: the role of ICT tools

Internet and energy consumer trends: a first analysis of market research findings

The Working Group received evidence from a leading internet market research company, Nielsen, on the topic of energy and the internet, in particular the attitudes of consumers and companies. It focused on consumers' behaviour through the study of the traffic in energy companies' websites and the time spent there. Nielsen's research provided a picture for France, Germany, Italy, Spain, and the United Kingdom.

According to this data, the national incumbent or a small group of leading companies per Member State hold the largest share of the total traffic on energy companies' websites. This finding is true for all of the countries in Nielsen's sample, with the exception of

\textsuperscript{55} Renewable energy sources reaching 20% of the total EU energy mix, an increase of energy savings by 20% and a reduction of domestic emissions by 20% by 2020 using 1990 as the basis year.

\textsuperscript{56} Such as the EU Emissions Trading Scheme giving the flexibility to choose how reduce greenhouse gas emissions either by producing in a cleaner manner or by purchasing green energy certificates.
Germany where no dominant website usage was observed. Research also shows that the time spent on an energy supplier's website is more than 7 minutes all across the sample countries.\textsuperscript{57}

Moreover, Nielsen suggested that search engines are the main access 'gateway' to energy companies' websites and that it is mostly the larger energy companies that have a very prominent presence in the Internet. At the same time, the existence of comparative advertisements in the energy sector is not very common, but where it exists and the comparison has been truthful, it has contributed to increased competition.

Green energy advertisements, messages and/or green energy campaigns are present in the Internet with the focus on education while also conveying some advertising content. In this sense, green energy is still linked to a more 'principles-based' consumption pattern. In 2011 in the sample countries ca. 3300 campaigns have been undertaken by energy companies and more than 12.600 banners\textsuperscript{58} have been displayed during the same year.

\textit{Comparability and ICT: criteria and Commission initiatives}

Product or tariff comparability is essential to fully benefit from the advantages of competitive markets. For the energy market, as indicated in the previous section, it is not easy for consumers to compare different offers. There are several reasons for this; the most widely quoted probably is the lack of a unit price for energy\textsuperscript{59}. However, the unit price criterion is not considered to be the most efficient index for comparability, if it does not include all price components. In those cases, annual expenditure for consumption is considered a more efficient criterion for comparability. Having said this, it should be possible to develop a methodology to include the missing parameters in the unit price criterion to establish a simple value for consumers to compare 'like for like'\textsuperscript{60} across the market.

Apart from the development of a 'core criterion', consumers also need a platform and a tool for comparing tariff offers correctly, quickly, efficiently and easily. Web comparison tools, for those with access to the Internet, are the main instrument for price

\textsuperscript{57} As regards the structure and usage of energy websites with regards to demographics, two remarkable and interesting findings are that i) age ranges of visitors vary across countries, but ii) it is almost overall true that males are keener to access energy websites.

\textsuperscript{58} A web banner or banner ad is a form of online advertising delivered by an ad server. It entails embedding an advertisement into a web page. It is intended to attract traffic to a website by linking to the website of the advertiser. The advertisement is known as a "click through". In many cases, banners are delivered by a central ad server. Web banners function the same way as traditional advertisements are intended to function: notifying consumers of the product or service and presenting reasons why the consumer should choose the product in question.

\textsuperscript{59} This is a comment that frequently appears in the communications to the Commission from European consumers.

\textsuperscript{60} This issue was considered in the framework of the WG on Billing already in 2008-9 by the Commission; the WG recommendations included the development of a 'Comparability Box' to appear on the front page of an invoice that would include the basic data needed for an energy consumer to compare the data of their bill with the data of a bill from another consumer serviced by a different supplier. The WG Billing report, which was presented to the 2\textsuperscript{nd} Citizens’ Energy Forum is available here: \url{http://ec.europa.eu/energy/gas_electricity/doc/forum_citizen_energy/20090927_citizen_forum_meeting.zip}
comparability. Already online comparison tools exist in many EU Member States. Depending on the Member State they can be owned and operated by public bodies (NRAs on their own or together with the public Energy Ombudsman e.g. in Austria and France respectively), consumer associations, the energy industry or other privately-run for profit actors and can be energy-specific or sell a broad range of products. Finally, there are online comparison tools operated by consumer organisations via their websites.

The ownership, financing arrangements, modus operandi and management of these websites are fundamental to consumers' trust in comparison tools, because an independent entity is expected to produce more fair information. Clarity, user-friendliness transparency and completeness are key to the correct functioning of online comparison tools. To this end, the potential benefit presented when opting for another tariff and/or another supplier must be certain and not misleading. Equally, the business model should be clearly stated so that consumers can see whether the tool may have a bias towards one or another company. The information in the tool must be comprehensive, and include all the companies in the market, not penalising the smaller players and/or new market entrants.

There are certain web comparison tools run by private companies that go beyond comparison and take care of supplier switching too (via the internet). In some of these websites products and services across many sectors are on offer. For these websites, commission per switching and advertisements are the main revenue stream and this should be indicated clearly.

The European Commission is currently working on the very issue of web comparison tools generally. A workshop was held at the 2012 European Consumer Summit61.

Ensuring objectivity

The SANCO Retail Electricity study, presented during the 3rd Citizens' Energy Forum, shows how liberalised electricity markets have the potential to benefit consumers across Europe. More than 30% of consumers are not on the cheapest tariff62. It was also highlighted that transparent information is not accessible to all consumers. This compromises their active role in the liberalised market, de facto reducing their interest and abilities in finding a better deal.

With the above in mind, neutral and objective information that is easily accessible (i.e. easy to understand and easy to find on the Internet) by all consumers and carries some

61 For more information on the European Consumer Summit, 29 May 2012: http://www.european-consumer-summit.eu

The European Commission is aiming to address the issue of transparency and reliability of information intermediaries through a direct dialogue with stakeholders. The workshop was the first step in a process which will analyse the interaction between the stakeholders involved, map best practices in the comparison of products and services across different sectors and provide a better understanding of the functioning of those different tools and identify potential areas of improvement.

62 While price is an important criterion, a Working Group member also highlighted that consumers need to be on the best tariff for their needs, e.g. their consumption, service level or preferred payment method. This may not be the cheapest.
sort of quality accreditation\textsuperscript{63} is crucial for the development of an integrated European energy market. It is equally important to highlight that while this information is very useful to consumers, it should not be considered as a panacea as there is still an important part of the population in Europe that does not have access to the internet. Therefore, to guarantee fairness and accessibility, comparison websites should not be the only means for consumer information.

\textit{The role of the NRAs}

The Council of European Energy Regulators published the Guidelines of Good Practice on Price Comparison Tools\textsuperscript{64} in July 2012 with focus on accuracy and impartial information and also giving importance on accessibility. The document presents a number of proposals to make improvements on the implementation and quality of price comparison tools. It presents "14 recommendations for price comparison tools which cover the following themes: independence, transparency, exhaustiveness, clarity and comprehensibility, correct and accurate, user-friendliness, accessibility and customer empowerment". The Working Group acknowledges the authority and importance of these recommendations.

\subsection{3.3.2. \textit{Doorstep selling}}

Door-to-door selling practices have been identified as a problem in several EU Member States. In certain cases, it has received extensive media attention, for example in the UK doorstep selling has been connected to aggressive pressure selling. Feedback from Working Group members, in particular the Italian NRA and consumer organisations from Belgium, the Czech Republic, Spain and the United Kingdom define doorstep aggressive selling methods as one of the main complaints from consumers\textsuperscript{65}.

A quote from Which? (UK) demonstrates how troublesome door-to-door selling can be and how much it damages consumers' trust in the energy market: "a low interest area like energy where consumers have demonstrated little initiative to proactively engage with the market, arguably needs companies to be able to go out and find new customers if the full benefits of competition are to be delivered. However, the serious abuse of certain

\textsuperscript{63} An example could be the Confidence Code that Consumer Focus issues for comparison websites. For more see \url{http://www.consumerfocus.org.uk/files/2010/12/New-Confidence-Code.pdf}

\textsuperscript{64} \url{http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Crystal/Tab3/C12-CEM-54-03_GGP-PCT_09Jul2012.pdf}

\textsuperscript{65} The End of the Road report published by Consumer Focus in July 2011 which called upon suppliers to voluntarily halt cold calling doorstep sales, demonstrated that this sales method was very unpopular with consumers, with many feeling pressurised into switching supplier by a doorstep sales agent. Following the publication of this report, five of the big six suppliers stopped cold calling in 2011, with the last supplier following in 2012. The report is available here: \url{http://www.consumerfocus.org.uk/files/2011/07/The-end-of-the-road.pdf}
sales channels has led to (...) withdrawing from the doorstep channel in face of public pressure”.

Some natural gas and electricity suppliers are sometimes accused of engaging in unfair commercial practices, consisting in inducing (or even pressure selling) consumers to sign supply contracts without their clear consent, and performing fraudulent switches/sales at the expenses of the previous energy suppliers and, most of all, of the consumers – especially the most vulnerable ones. Often, retail energy companies subcontract doorstep selling to third party intermediaries, particularly commercial agencies, which may offer an explanation for the very aggressive selling and bad commercial practices (e.g. sellers not being properly trained and/or working only on commission).

A dynamic marketing activity including intense doorstep selling is a business strategy used to break into new markets and establish a sufficiently-wide initial customer base. In particular, door-to-door selling has been used by new entrants to the energy markets as a means of raising their potential customers' awareness of their offer and of their presence. Doorstep selling, if done properly, can contribute to consumer awareness provided that the consumer has been made aware of their right to withdraw from the contract and the duration of the cooling off period.

Although the Working Group fully understands that newcomers in the retail energy markets may take additional steps and measures to establish themselves in difficult-to-compete markets, dominated by very large ex-incumbents, it also strongly believes that the consumer must be protected from unfair, misleading and fraudulent practices. In fact, avoidance of such practices and protection against them is critical and vital for the functioning of the electricity and gas market. Bad practices undermine consumers' trust in the market and prevent them from further engagement and tapping into potential benefits from the liberalisation process. It is legitimate to bring innovation into selling practices to allow companies increase their customers' base on the basis of their commercial advantages. At the same time, they must respect European and national legislation regarding unfair and aggressive commercial and selling practices.

This Working Group acknowledges that the legislation is already in place to address these issues. Active enforcement together with the establishment of Voluntary Codes of Conduct from the industry can be a cost effective step to enhance standards in the industry and provide a guide to new entrants. In establishing these codes, industry should consult all stakeholders. Regulators participating in the Working Group also highlighted that codes will have to be monitored by regulators to ensure effectiveness and further actions if the voluntary approach is not delivering the expected outcomes.

It can be the case that a disproportionally strict legal framework on transparency can act as a deterrent to small(er) market actors and/or newcomers due to higher levels of investment and increases in administrative expenditure. To this effect, the demonstration of leadership and good practice from established market players, combined with quality in conforming to voluntary codes, can be a good way forward.

The Italian Authority for Energy offers an example of best practices in dealing with the issue of doorstep aggressive or fraudulent selling practices. The "Delibera 19 Aprile
2012, 153/2012/R/com”\textsuperscript{66} concerns the adoption of pre-emptive measures and restoration in case of unwanted energy contracts or activations. The regulation establishes precise rules for voluntary codes of conduct, for the identification of the commercial agent and for the restoration procedures, if a contract is signed against the will of the consumer. In particular, the new policy requires sellers who conclude a contract away from their office to send a confirmation letter and contact the contracting party via telephone to confirm the stated interest to switch.

In Belgium, doorstep selling is regulated by the Code of Conduct which is annexed to the Agreement regarding Consumer’s Protection in the Energy market. This Agreement about contractual relations, billing, switching and moving has been established by public administrations, consumers associations and suppliers. The Code of Conduct is focused on marketing and selling practices outside the company’s building. The Code of Conduct indicates very clear rules concerning when visits can take place. Furthermore, door-to-door sellers pledge to respect the wishes of consumers and not to abuse the weakness of some people.

There are initiatives from outside the EU that could be considered to improve doorstep selling. For example, in Australia under a self-regulation initiative by energy companies, door-to-door sellers have to be registered. In this way, if there is any aggressive selling or mis-selling the agent can be identified. Within the same company initiative, there are very clear rules concerning when visits can take place\textsuperscript{67}.

\subsection*{3.3.3. Language, format and presentation of offers, prices, bills and contracts}

In all markets, there is a delicate balance between how prices and offers in general should be presented to consumers to inform and eventually guide their purchase and how to avoid that this information becomes complicated, confusing and altogether dissuading consumers from engaging in an active role.

Quite often, complicated information, e.g. 'busy bills' with too many numbers and footnotes in small print, endless contracts with technical terms and offers with unclear clauses phrased in a cryptic manner, is a consequence of a mix of 'teething troubles' following recent liberalisation, bad commercial practices and complicated legislation. The energy industry also points to the fact that the spirit of legislation does not keep up with current developments. Finally, it is also clear that while good practices in certain Member States exist, nevertheless they are not replicated in other. This 'race to the bottom' is a market failure that must be addressed, for example by extending good practices by energy companies that develop them in the first place in new markets that they branch out to.


\textsuperscript{67} This information was submitted in a presentation by the energy think tank Vaasa ETT to the Working Group during a presentation.
**Finding the information (in bills and contracts): a task for consumers**

Europe has moved from heavily regulated energy markets, where no competition existed, to gradually opening markets with legislators putting weight on the provision of information to consumers. The assumption is that traders must provide a very detailed and often technical account of what was previously regulated (*de facto* audited by the competent authority) and then it is up to the consumer to review, process and make use of this information in their purchasing choices.

This shifting of responsibility towards consumers coupled with the recent experience of competition in electricity and gas markets has created a series of issues. Consumers feel poorly informed about retail energy markets, have trouble understanding the terms of their current supply contract and claim to have low awareness and understanding of the available tariff choices. These different observations suggest that consumers may require information to be more tailored to their personal situation and provided to them more proactively.

It is also a fact that in most EU Member States *the legislator did not place any conditions about how this information should be communicated to the non-expert consumer*. The focus was on completeness of data and not presentation according to relevance. There has not been any targeted review about which parts of price information are truly relevant and meaningful to consumers and how this information should appear to guide choices. *So far, limited efforts are being made by public policy to monitor and test consumer behaviour to present tariff information in a consumer-friendly manner, to develop better bills, contract and other information channels to support market competition*.  

To counter the above problematic issues policy makers, regulators, consumer experts and industry must work together to improve tariff information, presentation of offers, contracts, regular bills, annual statements and price rise notifications. Improvements will lead to a better understanding of the possible benefits, provided they are meaningful for consumers, and can contribute to consumer *education and motivation to take a closer look at their energy consumption.*

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68 Ofgem has recently tested consumer behaviour, and has standing Consumer Panels. The European Commission could not find any other such activities involving 'real' consumers in the EU. The 2009 report of the Working Group on Billing also showed that while good examples of bills exist, there is very little (public) research on what makes a good bill to guide policy.
Figure 4

Results from the answers by WG members to the set of questions regarding the status of transparency in EU retail energy markets. The chart gives a picture of the number of tariffs available as reported by WG members.

**Tariffs: is more actually less for consumers?**

Figure 4 presents an interesting picture for Europe. Reviewing the data submitted by Working Group members (which is, not of statistical value, but primarily relevant as empirical evidence) indicating that the number of EU Member States that have more than 100 tariffs is the greatest of all in the reported categories. Still, the fact that there is a great array of choice in several EU Member States does not reduce strong consumer dissatisfaction in most EU Member States.

It is a difficult question to answer, but it appears that extensive choice does not help consumers, if *choice is not meaningful to them in terms of price, quality and meeting their needs*. Strength is not necessarily in numbers when it comes to consumer choice in the energy sector. As presented by the Commission's findings (Consumer Scoreboards and 2010 Retail Electricity Study) consumers do not know what offers exist, and do not even know the tariff they are in – they only know how much they pay per month. This is hardly sufficient information for exercising choice and remedies to this difficult challenge are needed.

A strong action to make energy consumers become more involved in markets and for energy companies to present their products in an easier to understand, and more comparable way was taken by Ofgem. The GB NRA has proposed to limit the number of tariffs per paying method that an energy company can offer to their clients.\(^69\) It remains

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\(^69\) See [http://www.ofgem.gov.uk/Media/FactSheets/Documents1/Simpler%20energy%20tariffs%2020107.pdf](http://www.ofgem.gov.uk/Media/FactSheets/Documents1/Simpler%20energy%20tariffs%2020107.pdf)
to be seen whether this decisive step will deliver positive benefits for British customers or it will result in reduced choice and stifle competition.

The Working Group agrees that given the current extensive and recent legislative provisions any additional legislative action should be considered after consumer detriment is demonstrated and when the energy industry cannot deliver better results to help consumers participate in open markets and exercise choice. Most Working Group members also note that competition in retail energy markets is affected by the presence of regulated end prices set below market standards in most EU Member States, which de facto reduces the development of competitive pricing for end users. Therefore, the Working Group underlines, when deciding to gradually disengage from regulated end prices, the need to proceed in parallel with improving clarity, comparability and transparency of tariffs in retail energy markets.\(^\text{20}\)

*Separating regulated price components and the competitive part in price offers or presenting a total price*

Figure 5 also indicates that at present taxes, cost per kWh for consumed energy and cost of distribution are the main price components. But there are more elements that already exist in smaller scale such as a premium for green energy, cost of production and a premium for smart meters. Considering that all three above areas will become much more prominent in the coming years and that these are regulated price components, energy consumers will need to have a clear presentation in their offer, on which part of their tariff is open to competition and also the amount. Alternatively, consumers should be given the possibility to compare similar tariffs through a *total price* that incorporates the same elements for all similar products.

**Figure 5**

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\(^{20}\) Consumer groups in the Working Group highlighted that regulated prices or caps are still meaningful for a certain part of the population that will not actively look for better offers in a market.
Results from the answers to the set of question disseminated by the European Commission in occasion of the Working Group on Transparency in EU Retail Energy Market. The chart has a representative and not a statistical value.

Billing: language, presentation, communication

Research on language in bills from Ofgem reveals that "some paragraphs [...] show almost the same level of complexity as the Harvard Law Review". To counter this, Ofgem proposes that a common set of rules stating the need of providing complete, accurate, appropriate, fair and not misleading information when promoting and before finalising a contract are needed.

The Working Group reiterates the relevance of the recommendations in the Working Group report on Billing that highlight the importance of maintaining consistent use of (technical) terms and simple language, grouping key information together (preferably in a Comparability Box) and specifying in the communication to the customer whether the document is an annual statement or a regular bill.

Contracts

Contracts are widely acknowledged to be a challenge to comprehend. The issue does not end with the content of the contract itself. Language, length and presentation are just as troublesome as the content. The size and the colour of the font, as well as the format of the contract can be challenging to read. Moreover, as the contract is a legal document, it often makes references to legislation that is not reproduced in the contract itself in text, thus limiting the possibility for the consumer to check the legislation while reading through the contract.

Industry members of the Working Group argued that supply contracts reflect in full the legal provisions, terms and conditions as they are required to do. They believe the quality of the information provided in the contract is of good quality, depending on the complexity of the offer. In short, the contract cannot steer away from the legal framework.

With regards to the complexity in contracts, and this applies to all sectors, there is a fundamental clash between the need to use clear language and to provide legal certainty. Contracts are usually produced and reviewed by the energy company’s legal team, and their objective is to provide the legal basis needed both to comply with the duty of supply and to protect their own corporation from unjustified redresses. The resulting document is a detailed legal text that may well be too complicated for the average consumer. While legal certainty is essential for commerce, consumers should be, at the same time, able to

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72 This can of course become a vicious circle, where more full references equal more text for the consumer to read.
understand the contents and provisions in their energy supply contract that define their rights and obligations.

To this end, the Working Group considers that a way forward could be the presentation of a summary of the contents of the contract in concise and simple language as a way of concentrating consumer information. This information should reach consumers together with the contract.

3.3.4. Incentives: 'Packages', bundled services, discounts, bonus/premia, duration of offers

Based on the input by Working Group members (replies to the set of questions on the status quo of transparency in their market), a range of incentives is offered in the context of alternative offers.

These incentives are mostly financial; such as discounts targeting personal preferences (all-inclusive packages, 'quality' packages etc.) and/or payment modalities. Less frequently they can focus on non-monetary practices such as ties-in with charities and good causes.

The most common incentives are: discount for prompt payment, discount on goods or services, loyalty points, bonuses, cash back at the start or after a period of time, fidelity gifts, free ancillary services like insurance, technical assistance, exact monthly bill, electronic invoice, energy audit, energy management and so forth.

Replies by members from the energy industry in the Working Group stated that the conditions and terms for incentives and discounts are clearly stated and disclosed in the presentation of the offers but some problems were reported from consumer representatives concerning the clarity of initial discounts, in particular unclear contract conditions about bonus payments for new customers.

While acknowledging that overregulating may hinder commercial practices and restrict choice for consumers, Working Group members also agree that clear language in offers including the clear and consistent definition of duration of offers and discounts, benefits, other services or premia on offer is fundamental for trust in the market and the operators.

73In the UK, the ‘Key Facts’ for financial services products exist. Ofgem is currently developing a ‘Tariff Information Label’ based on the same concept. Such a summary could be offered in the form of a standardised notice including key precontractual information provided that rights and obligations of the consumer under the contract are included so that there are no divergences with the contractual terms and conditions. Additionally, this information notice must comply with the existing transparency requirements of unfair commercial practices legislation (UCPD).
3.4. Third party information & awareness about terms and conditions

3.4.1. The role of trusted intermediaries

From the behavioural research and energy sector specific findings presented in this chapter it is evident that complexity does not help consumers. As indicated by the findings of the SANCO Retail Electricity Study, consumers will switch if convinced that they have found a better offer. Consumer participants to the WG also underline that consumers must be able to judge the market also on an on-going basis if repeated engagement with the market is to be encouraged. However, as also reported in the study, consumers complain about complexity in the presentation and structure of offers. Trying to look for a better offer in a difficult and complex environment can lead to frustration and eventually, inertia and the feeling of helplessness to participate in open (energy) markets.

The fact that consumers in some countries will rely upon advice from third parties as to whether or not they should switch could make consumers vulnerable – including towards aggressive commercial practices. Mistrust as a prevailing feeling when they have to deal with their (or any for that matter) energy provider is also regularly quoted by consumers.

The above underline the need to improve the quality (i.e. trustworthiness) of advice from providers, government and independent bodies (including market actors and consumer organisations). Apart from energy-specific actors, other bodies with a 'social' character (e.g. centres of social inclusion, citizen liaison bureaux) can play an important role towards the better education and information of citizens, particularly those in vulnerable situations. It is also clear that marketing messages from energy companies need to reflect the reality of the product on offer. This will require the use of plain language and transparent conditions without exaggerated or misleading interpretation of possible benefits, offers and discounts and other premia and services included or it may act as a boomerang for the trader.

Working Group members submitted a number of good practices aimed at increasing trust. Namely, Eurelectric indicated that one of their members in Hungary has one delegated account manager per customer. In Slovakia suppliers run campaigns to inform consumers, while the regulator organises press conferences to inform the public about price decisions. In Austria, E-Control, the energy regulator, visits trade fairs and organises road shows throughout the country in collaboration with consumer associations to contact and inform consumers directly.

Irrespective of the relevance and importance of the above good practices, consumers still often need to receive specific advice from bodies that they can regard as independent, and thus reliable. The presence of trustworthy intermediaries i.e. independent bodies from industry and even from government is another confidence building measure that should be carefully considered by policy makers and industry. An often quoted example is the Swedish Consumer Electricity Advice Bureau, which is financed by industry, but remains completely independent from energy companies as their Board of Directors is composed of the heads of the Swedish NRA, the Swedish consumer agency and the country’s consumer association.
**UK – collaboration between regulator and market participants to respond to consumer concerns**

The UK regulator has established working group to review the broad range of information and communications that energy customers receive. Members of this Consumer Bills and Communications Roundtable Group (CNCRG) include consumer groups, industry representatives, the regulator and Government. The CNCRG aims to review the current effectiveness of consumer bills and communications with regard to the key messages they are intended to convey, and discuss opportunities for clarifying, and reducing the amount of information contained on bills and communications. More information about this good practice can be found in Annex I.

Consumer associations, also active in the energy area can be trustworthy intermediaries, assuming that they have the expertise to deliver authoritative advice. Notable examples are Which? in the United Kingdom, Tests Achats in Belgium, the Danish Consumer Council and Consumentenbond in the Netherlands. In fact Which? and Consumentenbond have taken an additional step to organise, negotiate with energy companies and operate group purchases of electricity. Tests Achats is also currently organising such a campaign.

The Working Group acknowledges that there are a number of actions to improve consumer trust in competitive energy markets. Advice and assistance are welcome, provided they are not misleading, transparent and reliable. Information to consumers and campaigns to engage with them can improve their knowledge of the energy market. The presence of trustworthy intermediaries acting independently and guaranteeing consumer welfare, also via group actions, can improve the consumer market perceptions and even result in more competition.
Some conclusions:

Behavioural research tells us that complexity does not help consumers. The SANCO Retail Electricity Study also highlights that while consumers are aware of how much they spend on their energy, the majority of EU citizens do not know what the price per unit of their electricity is and how much they consume. Personalised advice may act as a ‘confidence-building measure’ for consumers, particularly for vulnerable ones, where the wrong tariff may be too costly.

As regards selling practices and marketing, 'more can be less' in terms of creating false or misleading expectations for consumers, which could impact on trust. With regard to green claims and given the current discussion about verifiability of green claims, action is needed to enhance trust, verifiability and accountability by reviewing definitions of what is 'green' energy. It is also necessary to improve the certification and authentication of Guarantees of Origin, in particular for cross-border purposes.

The Internet is seen as the next terrain for the marketing of energy services and for greater energy consumer engagement. Evidence submitted to the WG indicate the potential, but also the need to ensure quality and objectivity i.e. trust and user-friendliness, possibly via (legislative and/or regulatory) quality standards.

Doorstep selling can be a problematic practice for consumers if not done in a professional manner. At the same time, if done properly and lawfully, it can be an educational experience for consumers and a way for industry newcomers to showcase their offers and gain market share. Codes of practice by industry and active enforcement of legislation are needed for ensuring fairness for consumers.

More tariffs can, in the end, be less for consumers. Choice matters only if it is meaningful, which is to say relevant and tangible in cost and energy savings. Additional legislative action is the final resort to reduce tariff complexity and should be considered unless existing legislative and voluntary actions to simplify things for consumers do not deliver results.

Language and presentation of offers, invoices and finally on contracts is a fundamental issue for consumer engagement. The legislator's assumption has been focusing on the need for the supplier to include all the information as required by legislation and then tasking the consumer to digest it. This is certainly not helpful for consumers particularly in a technically complex area as energy. While commercial freedom and innovation are needed to cater for the varying needs of consumers, it is also important to structure information in a correct, clear and concise manner that can also facilitate 'like for like' comparisons, also across the market for consumers to choose among tariffs and providers. In particular for contracts, a short non-legal summary of rights and obligations to be given together with the contract, can help consumers.

As regards incentives, clarity of initial discounts, duration of offers and real savings (e.g. after bonus payments) are conducive for consumer trust.

It is equally important that information and education initiatives (e.g. campaigns) take place, preferably organised in collaboration between public, private and consumer bodies, to engage and motivate consumers to look closer into the offers available, their energy consumption and how to make savings.

Finally, the establishment of independent advice bodies, acting as trustworthy intermediaries, to guide energy consumer choices at this early stage of liberalisation, could be a decisive action to improve confidence and increase consumer motivation to participate in energy markets. Clear sign-posting and coordination is needed to ensure that consumers can easily find their way to the appropriate advice and none are left stranded between the responsibilities of different organisations. Similarly, the role of consumer organisations is highlighted as trustworthy, independent bodies that can
augment consumer trust and confidence. Some of these bodies have taken an additional step of organising consumer joint purchases and/or supplier switching. Such actions can increase consumer benefits in open markets and deliver stronger competition.
4. **ENFORCEMENT**

4.1. **Role of national authorities: energy regulators, competition authorities, consumer agencies and ombudsmen**

Effective enforcement is paramount for consumers to benefit from regulation and legislation established to promote and defend their rights. As indicated in previous sections, the complexity and relatively novel nature of some of the issues for energy regulators and also for consumer agencies and/or competition authorities, make the case for closer, stronger, more frequent and better coordinated collaboration and 'common thinking'. In many ways, what is needed is the modernisation of enforcement to tackle the present challenges. This must involve all relevant authorities, updating them to face the current challenges is necessary.

The increase of areas and issues for regulators to supervise and act upon (areas that were in the past not open to competition), will also require some 'empowerment' of regulators in terms of their means and (technical) capacities. This will be all the more necessary, in the case of regional governments and the local bodies that citizens turn to.

A special role in this new 'regulatory architecture' is also given to public energy ombudsmen and other ADR entities. Due to the nature of their work, involving direct contacts with individual consumers, they can facilitate the process of raising energy consumer awareness while also establishing a fair platform for the handling of consumer disputes. As highlighted in the 2011 Working Group Report on ADR in the Energy Sector presented to the 4th Citizens' Energy Forum, public energy ombudsmen and other ADR entities also need to make sure that the information they have as regards the nature and numbers of disputes is communicated to regulators and policy makers, since it is an important indicator of market development.

Finally, given the increasing cross-border relevance of the EU Internal Energy Market, enforcement will greatly benefit from cross-border coordination and sharing of national experience and good practice, notably, but not exclusively, in the framework of the Citizens' Energy Forum and via the 'cross-pollination' of views, ideas and practices among energy, consumer and competition authorities representatives.

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74 E.g. retail energy market complaints and/or inquiries reaching consumer bodies; marketing complaints and/or inquiries directed to energy and or competition regulators.

75 Apart from the existence of Public Ombudsmen, there are also ADR entities that exist in some EU Member States (e.g. in Italy). While these 'out of court' instances do not constitute a national authority or agency, nevertheless, due to the nature of their activity they possess important empirical information and a good picture of the main issues that concern consumers and areas of possible market malfunctioning. This information should be also channelled towards enforcers and these ADR entities should contribute towards improving energy market functioning.
### Some conclusions:
Effective enforcement of recently transposed energy and consumers legislation is key to any future developments. Consumer provisions in the Third Energy Package, which go beyond the traditional domains of activity of energy regulators, require close coordination and collaboration with consumer and competition authorities and some 'common thinking'. Public energy ombudsmen can also feed into this process since, due to their role, they are in contact with all relevant authorities when handling a dispute. Collaboration and coordination of national regulatory bodies should also extend to the European level, making use of existing structures such as the Citizens' Energy Forum.
5. **RECOMMENDATIONS – CRITERIA FOR IMPROVED TRANSPARENCY**

The WG members agreed on a number of key recommendations and criteria for improved transparency in retail energy markets. Some of the good national practices presented throughout the report and in Annex I are also included in this section.

5.1. **Criteria**

Competition in markets is a means of delivering the allocation of resources in the most effective manner. For consumers to engage and tap into the potential of competition in electricity and gas markets it is fundamental that *choice, quality* and a good level of *market trust* is present.

Consumers could become active, as demonstrated in other service markets, once *meaningful choices with demonstrable benefits* become available to them. Conversely, if choice, trust, and thereby confidence, are poor, especially at a time of rising prices, consumers may demand political intervention to protect them against underperforming markets.

5.2. **Recommendations**

5.2.1. *Behavioural and consumer research*

*Behavioural insights* and *consumer surveys* deployed by NRAs and other relevant bodies are important to understanding consumer problems and help in designing suitable solutions.

It is equally important that NRAs, consumer organisations and other relevant bodies *engage in regular gathering of evidence* with a focus on different types of consumers, market functioning and the impact of measures targeting improved transparency in retail energy markets, including complaints data. National monitoring frameworks should take these insights into account when reporting market performance.

- The Working Group *recommends* that good national practices by NRAs regarding *behavioural research* and *energy consumer data* presented in this report are extended across Europe to other energy regulators, business and consumer organisations.

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76 often in collaboration with public energy ombudsmen and national policy makers: the case in France where collaboration between the NRA (CRE) and the Ombudsman (MNE) takes place; and in Belgium, where the Belgian Energy Ombudsman has a mandate to give evidence and advice to the government.
5.2.2. **Smarter regulation and information provisions**

Improved transparency in price and offers may be linked to 'better regulation'. National policy-makers need to *assess the impact* of current national legislative provisions and requirements regulating the presentation of prices and offers from providers to consumers.

Provisions of information should focus on what is *meaningful for consumers*, rather than on the technical data that cannot be processed by non-experts (as also recommended by the 2009 Working Group on Billing). It is equally important that the information provided *leads to better understanding and improved management of energy consumption*.

- The Working Group *recommend* that when *designing, defining and enforcing* legislation and other rules, policy makers and regulators should take into account that sometimes more information can be actually less for consumers, i.e. it should be simple.

5.2.3. **Understanding what is on offer: clear presentation is needed**

The Working Group *recognizes* that choice based on a variety of offers is a basic ingredient of competition in the market. Not all consumers have the same needs and priorities and on this basis energy companies can differentiate what they offer in terms of price and conditions. However, the Working Group members also believe that for consumers to be able to tap into the possibilities of open markets and take advantage of this, it is fundamental that they *understand* what is on offer and are *capable of comparing* 'like for like' across the market. As evidenced in this report, in several EU Member States there are numerous energy tariffs, but still consumers do not feel able to make the right choice.

- The Working Group *recommend* that action is taken so that consumers are protected and can feel confident and equipped to participate in energy markets.

  - To this end, the Working Group notes that options include:

    a) to *separate* the *regulated* parts of what forms the *final price* from the *competitive* part and

    b) to present a *total price* i.e. comparable, for similar products.

*Confidence-building measures* for energy consumers are needed to reverse their negative perception of the impact of competition on energy markets. The energy industry needs to deliver more consumer-oriented products for their customers, also employing behavioural research, and address their needs.

- In many Member States energy companies will provide *personalised advice* to their customer on request what is the cheapest and most appropriate tariff
according to their situation and consumption profile. The Working Group recommends that this practice is extended across the EU.77

_Traded price comparison tools_ can help energy consumers understand the characteristics of energy products by displaying them in a clear manner and using simple language.78

As _smart meters_ are rolled-out throughout the EU, additional functionalities to help energy consumers use them and engage in regular review of their energy consumption and price comparisons and will also facilitate the development of innovative tariffs. Dynamic tariffs on the basis of frequent real time meterings of consumption by smart meters could match consumers' priorities and needs.79

5.2.3.1. **Actions to improve consumer knowledge and understanding**

The Working Group _understands_ that action is needed towards improving energy market knowledge and understanding for consumers. Good practices submitted by Working Group members regarding initiatives by public bodies and industry and at times in collaboration with consumer associations could be adopted by other EU Member States.

- **The Working Group recommends** that NRAs, business and consumer associations work _together_ on consumer information and education to improve engagement in retail electricity and gas markets.

- **The Working Group recommends** that energy industry continues to engage with (their) customers to improve awareness, working _together_ with NRAs and other bodies. The development and exchange of industry best practices and mechanisms to benchmark and monitor these initiatives could help build consumer trust. Focus should be on areas that matter to consumers such as energy market functioning, smart meters, price changes, green energy and better management of energy consumption.

  - The Working Group notes that in Portugal, the energy regulator organises training sessions for employees of consumer associations and municipal information centres with focus on regulation and best practices in the energy market.

  - The Working Group also notes that in Belgium, customers in Brussels have the possibility to consult ‘InforGasElek’. Energy consumers can visit the

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77 Some Working Group members commented that irrespective of the ‘good service’ aspect of this practice, in some cases, this may give the customer a false sense that they are getting a good deal, while distracting them from the much more substantial savings that they can achieve by switching to another supplier.

78 In the case of Belgium, any offer presented online needs to also display a link to the regulator-operated online tool for consumers to check whether a better offer exists in the market.

79 However, consumer participants to the WG noted that distributional impact assessments of the consumer impacts in advance of new dynamic policies will help identify potential winners and losers from the changes and allow for protections to be established where necessary.
office of InforGasElek, which offers a free service providing personalized information on:

- Choosing a supplier;
- Social measures regarding access to energy;
- Supply of gas and electricity;
- Green power and how to save on energy consumption

5.2.4. **Presentation of information**

*Presentation* of information in offers, contracts and bills is key. Some energy companies have demonstrated that it is possible to balance commercial freedom and deliver *quality* of information on bills. Their example needs to be replicated.

➢ To this end, the Working Group *recommends*:

- that the *same price components* should be present in the offer, the contract and the bill; the presentation of this data should be aligned.

- the use of *plain language* and *transparent conditions* which accurately represent the potential benefits by offers and discounts also including other premia and services

- on *contracts*, while acknowledging that a contract is a legal document, the Working Group *supports* the idea of presenting together with the contract a *summary* of the consumer's and the energy provider's rights and obligations.

5.2.5. **Technology and price comparison**

Technology can provide innovative *tools* for consumer empowerment and engagement: price comparison tools, online calculators and smart meters. But their mere existence does not automatically lead to consumer trust and/or engagement.

The Working Group *acknowledges* the importance and relevance of the CEER Guidelines of Good Practice on Price Comparison Tools.

Comparison websites, irrespective of ownership, can be a good tool for consumers if run in an independent, transparent and trustworthy manner, including information on the basis of personal consumer profiles.

➢ The Working Group *recommends verifying* the accuracy and objectivity of price comparison tools e.g. with a 'trust mark' under the auspices of the energy regulator or a competent consumer association. Another option is to have a regulator-operated comparison tool.
5.2.6. Action against vulnerability

It is important to highlight that a significant part of the EU population is still offline\textsuperscript{80}. Therefore, online tools are not a panacea. The Working Group recommends that action is needed to ensure access to information to avoid adverse effects, in particular costlier outcomes, for vulnerable consumers.

- To this end, information on price comparison and switching, should be available to consumers offline e.g. via a telephone hotline.

The Working Group acknowledges that there are a range of factors that can make consumers vulnerable and may make it hard for them to engage, for example having limited cognitive skills, being in debt, not having internet access, not being a native speaker, disability or sickness.

- The Working Group believes that targeted actions taking into account their varying circumstances together with improved market transparency are needed to help vulnerable consumers.
  - Personalised advice and the role of social agencies and consumer organisations can be useful tools.

- The Working Group recommends facilitating access to information by taking into account the cultural and linguistic conditions and literacy in a Member State.
  - The Working Group notes, for example, that the Austrian energy regulator provides the most important messages on their website not only in German but also in Turkish and Croatian.

5.2.7. Consumer organisations

The Working Group highlights the new and important role consumer associations are playing in energy markets by providing innovative solutions for consumers and fostering consumer empowerment.

Recent actions involving joint energy purchases and collective switching, for example in Britain, the Netherlands and Belgium can result in better outcomes for consumers, increase competition, instil some trust in the retail energy market and deliver better value for consumers\textsuperscript{81}.

- The Working Group recommends that accurate information about this active involvement in the energy market by consumer organisations becomes widely disseminated.

\textsuperscript{80} Even though Eurostat reports that in 2011 73% of households had access to the internet and over 70% of individuals in the EU used the internet with 68% being regular users (i.e. used the internet at least once a week).

\textsuperscript{81} The collective switching activities need to be subject to the same conditions as other commercial sales channels i.e. clear, transparent, not misleading and with the business model clearly stated.
5.2.8. **Instruments: active enforcement and voluntary codes, competition, good practices**

*Enforcement* of existing legislation should be combined with voluntary codes, competitive pressure and leading by example in the area of sales practices to remove the 'bad apples' from the market.\(^{82}\)

- The Working Group *recommends* that a combination of *active enforcement* with *voluntary codes* would improve the functioning of energy markets. However, if this process does not deliver tangible improvements in transparency, further *regulatory action should be considered.*

5.2.9. **Coordination**

The Working Group highlights the role of energy regulators, public energy ombudsmen and other public bodies that focus on general consumer protection and competition authorities.

- The WG *recommends* that relevant public authorities set up *permanent coordination structures* dealing with cross-cutting issues.

  - The example of Portugal, where collaboration between the energy and the consumer authorities is institutionalised, demonstrates that not only is this possible but also that it can function well.

5.2.10. **The European dimension**

- While acknowledging that effective enforcement of new legislation requires collaboration at national level, the Working Group also *recommends* that *coordination* and stocktaking and the sharing of *good practices* and experience among relevant authorities should be *actively promoted at the EU level* to speed up positive developments in the Member States and the completion of the Internal Energy Market. The existence and support of a structure, such as the Citizens' Energy Forum, is key to this end.

\(^{82}\) The International Energy Agency presented to the Working Group that the retail electricity market in Texas is a good example where a combination of instruments has been delivering good results for consumers.
ANNEX I - DETAILED EXAMPLES OF TRANSPARENCY AND PRESENTATION (MODELS)83

Legislation

In Spain there is an obligation for the suppliers to communicate to the regulator all public offers of gas and electricity, including any change in tariffs. The suppliers are responsible for the data presented, as they have to send updated information. The national regulator can sanction companies in case of non-communication of offers. Moreover, in 2009 the Bureau for the Change of Supplier (Oficina de Cambios de Suministrador, OCSUM) was created to monitor the switching activities. The Bureau also functions as a forum to allow discussion on regulatory issues between stakeholders and the national regulator about the accomplishment of the provision from the European Directive about the three weeks target for supplier switching.

In Switzerland, as in Spain, the grid operators must publish their tariffs on the website of the national regulator. Due to the partial disclosure of the Swiss energy market, some household may not be able to change supplier: in this case, operators must provide those customers with the cheapest available tariff.

In Britain, the regulator is working on the Retail Market Review proposal on competition and consumer engagement. The main points of this proposal are:

- To improve of information available by making it clearer and simpler and more tailored;
- simplification of tariffs;
- prescription of content and format of bills, annual statements and price rise notifications;
- monitor activities and enforcement of the compliance with existing rules that relate to information transparency.

In France there are no costs for switching, at any time.

Legislation and government decisions in Portugal:

- Law 6/2011 of March 10: provides for the establishment of a compulsory arbitration mechanism to access to justice by the users of essential public services;
- Law 44/2011 of June 22: establishes the requirement of discrimination in electric bills, individually, each cost related to energy policy measures, sustainability or economic interest and the amount of it;

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83 This section presents best practices at Member State level submitted by Working Group members.
• Resolution of the Council of Ministers 34/2011 of August 1: approval of the process and calendar of the end of regulated tariffs for the sale of electricity and natural gas to final consumers and indicates that necessary measures to protect consumers, especially the economically vulnerable ones;

• Directive 4/2011 from Sector Regulator: establishes obligations to provide information in the context of social tariffs and social extraordinary support to energy consumers;

• Decree-Law 101/2011, of September 30: establishes a social tariff for the provision of natural gas to vulnerable consumers;

• Decree-Law 102/2011 of September 30: establishes an extraordinary social support measure for vulnerable energy consumers, defined according to their regular consumption of energy.

Price, terms and conditions

In Belgium variable prices are automatically subject to monthly price indexations. Suppliers are obliged to communicate on a monthly basis all gas and electricity offers to the regulator. Based on this data, the regulator publishes a monthly report in which all products (electricity and gas) are ranked based on an €/year price scale. This report also gives insight in the availability of new products and their ranking as well as the distinction between fixed and variable price formulas.

Specifically for variable price formulas a public consultation was launched in order to define the list of criteria to which all indexes used in variable prices should comply:

The indexing parameters defined by the suppliers operating on the Belgian electricity and gas market must meet the following cumulative criteria:

1. they may only change according to modifications in the real supply costs of the supplier and may only be calculated on the basis of stock exchange quotations relating to the European electricity and gas market.

2. their names must explicitly reflect the basis on which the information is calculated

In addition to these criteria a standardised message to the electricity and gas invoice could be added including the reference to a price simulator and a description of the switching process.

Moreover, the regional Belgian regulator introduced a reminder system on their websites for fixed tariff customers. Thanks to it, consumers are aware of the conclusion date of the contract which should trigger their switching decision (empowerment of consumers at the appropriate time).
In Greece, the Regulator Authority for Energy publishes, every year, a comparative analysis of the energy offers.

The role of Acquirente Unico in the Italian electricity market

Acquirente Unico (AU) was set up in order to ensure electricity supply to the customers of the captive market (d.lgs n. 79/1999).

In establishing AU, the law-makers took into account that the Italian electricity sector is characterised by vertically-integrated distribution and generation companies. Indeed, the former incumbent and municipally-owned companies are involved in both the generation and distribution business. In this situation, AEEG (the Italian electricity & gas regulator) would have been unable to determine the price of electricity on the basis of the procurement costs of distributors, who would have had no interest in minimising the costs of electricity supply.

Therefore, AU represents a “wedge” between the liberalised segments of generation and sale which avoids the above-mentioned conflict of interest.

With the full opening-up of the market on the demand side, the law-makers provided that small consumers would be entitled to benefit of an “enhanced protection” service. Small consumers include households and small businesses connected at low voltage, with less than 50 employees and a yearly turnover not exceeding € 10 million.

Since 1 July 2007, in the new competitive scenario, AU has fulfilled the task of procuring electricity for supply to small consumers not wishing to migrate to the open market.

In accomplishing its procurement task, AU minimises costs and risks by diversifying contracts deadlines and using an adequate mix of fixed - and indexed - price contracts to cover a demand of almost 84 TWh (ca 25% of the national demand) related to 28 million customers.

In particular, AU trades in regulated (spot and forward) markets and holds auctions under transparent and non-discriminatory procedures.

AU relies on an energy auction portal (physical bilaterals, contracts for differences, transmission capacity, green certificates and guarantees of origin).

AU acts as any other operator, transferring the prices established in the wholesale market directly to small customers, allowing them to benefit of the competitive energy market.

On a monthly basis, AU publishes the price of sale of electricity to the enhanced protection retailers. This provides the market with a transparent price signal, i.e. a benchmark to open-market retailers.

On a quarterly basis, AEEG updates the price of electricity that retailers apply to end users on the basis of the costs incurred by AU. Thanks to this mechanism, the enhanced protected consumers, i.e. those who have the lowest individual consumption and an informational gap take advantage from wholesale market competition.
These market models, fully compliant of the European directives, is supporting successful the development the retail market, as shown by the high rates of customers who changed their supplier.

In the past few years, AU’s role in the electricity market has been further strengthened with other tasks aimed at: i) providing consumers with information about their rights and market opportunities; ii) making retailing competition work more effectively, by improving the data flow between operators.

**Green offers and renewable energy offers**

In Denmark, the Danish Energy Association in cooperation with all relevant Danish NGO’s has produced a declaration of power products that are ‘climate friendly’. The declaration requires a company to use only certain claims of environmental impact for a specific product according to its characteristics. The claims must be documented. The background for this was widespread confusion as to what is a real green product and accusations of green washing and so forth. With this declaration, all retailers on the market have agreed to respect the product definitions outlined. This has proved to be a very powerful and effective way to create consumer confidence in the market.

**Online tools**

In Austria, the National Regulatory Authority provides a free of charge price comparison tool on its website which is the main information source for all customers who want to switch supplier. The suppliers are legally bound to provide their products and prices in an electronic way. The NRA provides detailed and extensive of information on its homepage too (how to switch supplier, how to complain etc.) in a dedicated consumer sector. The most important messages are presented in more languages – also in English, Turkish and Croatian.

As submitted by GEODE a Swedish price comparison and switching website operated privately can become the ‘golden standard’ if it is set up properly. The set up and format of this online page are user-friendly and easy to use. The creation of this online comparison tool has not been driven by the Regulator; instead, the website was developed in response to the demand for transparency in the energy market. Moreover, as reported by the Eurelectric member from Sweden, certain national online comparison tools provide comparison, not only for price, but for different kind of services as well.

Best practices on online content can be found in the United States, namely the Texas Electric Choice Program. The International Energy Agency (IEA) reports that Texas is one of the leading markets for energy in North America. Its cumulative index of switching for residential customers is 87%. The website run by the Texan energy authority can assist in an easy-to-use and didactic manner those who are interested in becoming active consumers in the electricity and gas market. Following the model from this best practice, information presented on websites needs to have certain features to stimulate consumer trust and participation. Information has to be accurate, relevant, focused and at the same time demonstrating in simple terms potential benefits via engagement, and it should facilitate effective product comparison. Finally, information
should be 'tiered', i.e. starting from basic messages and moving onto more complicated data upon demand by the reader.

In Austria, the website of the National Authority provides a free of charge price comparison tool on its website which is the main information for all customers who want to switch supplier. The suppliers are legally bound to provide their products and prices in an electronic way. The NRA provides also detailed and extensive information on its homepage in more languages – also in English, Turkish and Croatian.

In Portugal, the web comparison tool can simulate the annual value of invoices for electricity with the prices charged by different suppliers.

In Spain, the National Energy Commission has launched an online tool to provide information and costs of supply to the users of last resort rates. Recently, an online comparison tool with updated information about tariffs has been launched as well, providing additional information and estimates of the bill for one or two years.

A French web comparison tool, run by the National Regulator Authority and the Energy Ombudsman, presents offer in a standardised way. Each energy provider voluntarily agreed to publish and update the information about tariffs.

Consumer organisations in several countries also provide consumers with online price comparison tools where they can check what is the best offer available while taking into account their consumption patterns. For instance, OCU, the Spanish Consumer Organisation, operates the online calculator both for electricity and gas where consumers can find impartial, up to date and accurate information in a simple way helping them to switch to a better deal. Arguably, these tools enable consumers to make better choices because the advice provided is personalised as it takes into account their very own consumption patterns.

As presented by Eurogas, there are many examples of good practices by online tools and companies alike, including access by telephone. The examples include tools which cover products and services across all sectors (i.e. not only limited to energy and are trusted by consumers for more than one transaction), and demonstrated good practice in presenting product features and customer satisfaction such as that run by Which?. The media takes an important role in raising awareness, making it simple and giving customers confidence for example in Germany published tables of the cheapest energy supply offer in your region, and ‘if I can do it you can’ switching and save articles in the UK. Examples of company initiatives were also presented such as GDF Suez in conversation with customers, E.ON demystifying the kWh and promoting awareness and understanding of energy use via tools such as its energy takeaway menu.

Finally, the Danish Energy Association is running the price comparison website www.elpristavlen.dk. The website is supported by all relevant stakeholders, e.g. the regulator and the consumer council. One special feature of the site is that all retailers are obliged to post all products. Since it is run by a business association, there is no interest in promoting any products and/or retailers in particular. This helps improving the trust in the market and provides a good basis for price and product comparison for the consumers.
Features of offers, tariffs and contracts

Eurelectric (Dutch member) reports that the same price components should be present in the offer, the contract and the bill and the data presented should align.

In Hungary, as the Hungarian Eurelectric member states, individual customers can benefit from the provision of a delegated account manager.

CEDEC submitted to the Working Group their proposal to start talking equally in terms of power (kW) and not only consumption (kWh), in order to face the (financial) impact on grid investments and tariffs of increased number of decentralized renewable connected to the distribution grid.

CEDEC also submitted a recent political decision in Belgium about a proposal from the NRA to remedy for the lack of transparency in indexation of prices. The decision stipulates that an exhaustive list of criteria for each authorized indexation parameter will be set up; the parameters will have to be calculated on the basis of free accessible data for the end user, and will have to be explained on the website of the supplier.

According the GB energy market regulator, Ofgem, is considering five key areas to increase the quality of information to consumers and their engagement in the market: simplify tariff structures, reduce tariff proliferation, introduce tariff label / key facts document with detail about the tariff, introduce price comparison metric so consumers can easily compare offers across the market, simplify content of energy bills and annual statements. UK, domestic customers receive an annual statement, which provides details of the energy product they are currently on. The statement informs the customer of:

- the exact name of a customer's tariff;
- details of premium/discount between customers current tariff and the licensed suppliers standard direct debit tariff;
- details of relevant Principal Terms of the customers contract;
- a reminder in a prominent position that the customer can change their supplier/switch;
- information about where to find impartial advice and information about switching;
- consumption for the previous 12 months where the customer has held their contract for 12 months;
- illustrative annualise bill estimate (in £);
- details of any time of use tariffs which may apply.

This information, all in one statement, gives the customer a complete picture of their product, how it compares to the suppliers standard product and what their costs are likely to be for the next 12 months. Using information this information and details about switching the can consumer explore alternative offers.

The Spanish Industry Ministry (Ministerio de Industria, Turismo y Comercio, MITyC) published in 2011 a Decision that approves the framework procedure of contracting gas via telephone and online means. It standardizes the way of contracting gas supplies between suppliers and customers.
Communication and consultation

In the Netherlands, a national point of contact offers understandable, practical and relevant information on all sort of topics, including energy www.consuwijzer.nl. Explanations can be found about correctness and completeness of bills, along with step by step guidelines, tips and tricks on how to solve bill problems or on how to choose the best supplier.

Eurelectric (Hungarian member) focuses on communication best practices with the description of four key points: clear communication, relevant information available on the website of the company, dedicated and clearly communicated telephone service for SME customers, and delegated account managers for individual customers.

The Italian National Regulatory Authority provides information about reduction of expenses for poor or disabled people by promoting it on public means of transport.

Another Eurelectric member from the Czech Republic (Eurelectric) reports that communication campaigns based on direct e-mail play are the most effective communication channel. Other channels are print media, PR, web pages presentation, consultancy centre for seminars, external for pupils or student or with energy savings topic. E.ON also organizes a globe award for the best project in the area of savings and environment protection.

Eurelectric presents one additional best practice on communication: in fact, in Slovakia, suppliers provide various campaigns to improve better information to consumers. The regulator provides official information as well through press conferences after price decisions, press memos and annual reports.

In Luxemburg (Institut Luxemburg de Regulation), the preparation of citizens to the introduction of smart meters in their homes is being build up through an elaborated and transparent communication strategy.

In Austria, the regulator visits trade fairs and has road shows throughout the country in cooperation with the most important consumer association to inform customers with a direct contact approach.

In Poland, a broad communication campaign named "Electricity is a commodity. Choose where to buy it" has been launched to educate consumers and raise their expectative of the energy market in order to stimulate a more competitive environment.

In Portugal, the Regulator organises "training sessions for the staff of consumer associations and municipal information centres with the aim of providing in depth training on regulations and best practices on the energy market. These trainees deal with consumers on a daily basis and can help to build a frontline of information providers to consumers".

In Belgium, one of the most relevant energy companies launched its specific communication campaign on green energy while promoting a campaign on sustainable
consumption on a broader target scale. The fore-mentioned company delivers communication campaigns that are pre-tested on a small panel of clients and performs post-test to understand how the campaign has been perceived and understood.

**UK – collaboration between regulator and market participants to respond to consumer concerns**

The UK regulator has established working group to review the broad range of information and communications that energy customers receive. Members of this Consumer Bills and Communications Roundtable Group (CNCRG) include consumer groups, industry representatives, the regulator and Government. The CNCRG aims to review the current effectiveness of consumer bills and communications with regard to the key messages they are intended to convey, and discuss opportunities for clarifying, and reducing the amount of information contained on bills and communications.

The purpose of the group is to deliver a proposed approach for improving consumer bills and communications to customers, including recommendations to government, Ofgem, suppliers and other relevant parties, identifying where the group feels legislative requirements with regard to consumer bills and communications are restrictive, and where improvements can be made to current practice.

The group also provides a forum for discussion of the types of information that should be included on consumer bills and communications, and how the information currently included could be streamlined or rationalised. Additionally, the group provides a platform for sharing research and evidence relating to consumer bills and communications in the interests of better understanding what is effective for consumers.
# Annex II – Members of the Working Group

**Invited representatives and speakers:**

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**European Commission:**

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