

MUNI
LAW

EU Energy Law (2024)

Martin SVEC

Masaryk University



EU

EU Member States

TEU

TFEU

EU

EU Institutions



EU Member States

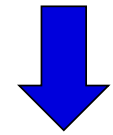
TEU

TFEU



EU

EU Institutions



EU Member States

MUNI
LAW

Energy: Relevant Competences

CCP

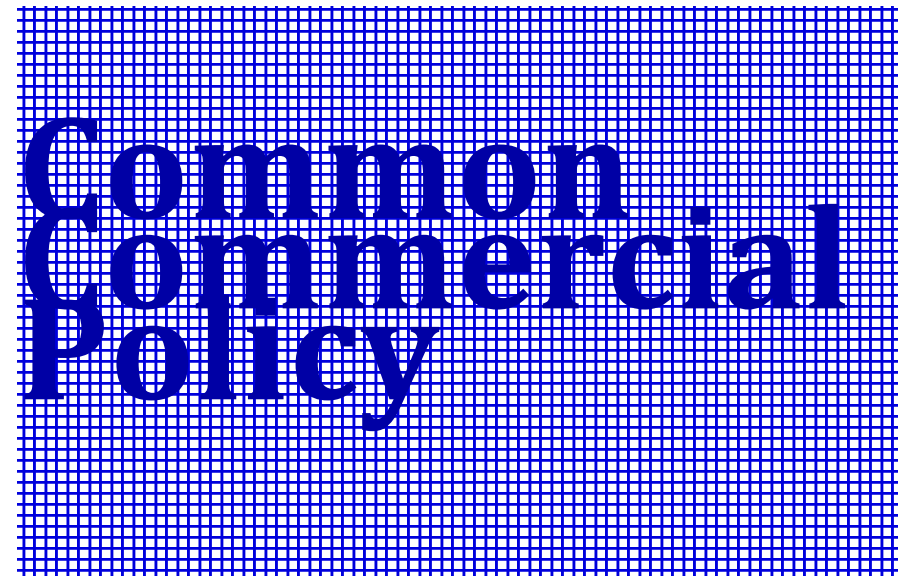
exclusive and external competence.

The CCP covers **trade tariffs and trade agreements** relating to trade in goods and services, commercial aspects of intellectual property and **foreign direct investments**.

EU external action can considerably contribute to the **removal of trade barriers**.

Trade in energy-related materials and products.

Examples: Conclusion of the Energy Charter Treaty, the Energy Community.



Article 207 TFEU:

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, **the conclusion of tariff and trade agreements relating to trade in goods and services**, and the commercial aspects of intellectual property, **foreign direct investment**, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.



Articles: 191-193 TFEU

Shared competence.

Article 191 includes objective “the promotion of measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change”.

Key principles:

A high level of protection.

The precautionary principle: The precautionary principle enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high.

The prevention principle: This principle allows action to be taken to protect the environment at an early stage. It is now not only a question of repairing damages after they have occurred, but to prevent those damages occurring at all. This principle is not as far-reaching as the precautionary principle. It means in short terms: it is better to prevent than repair.

The principle that environmental damage should as a priority be rectified at source: The rectification at source principle means that environmental damage should, as a priority, be addressed by targeting its original cause and taking preventive action at the origin of the problem. This principle places the responsibility for managing environmental damage on the polluter or the source of environmental harm. It reinforces the responsibility for managing environmental damage at the source of that damage - therefore linking it to the polluter. The principle also encourages processes that are inherently clean rather than approaches which treat the problem as or after it occurs.

The 'polluter pays' principle: The commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal.



Article 191 TFEU

1. Union policy on the **environment** shall contribute to pursuit of the following **objectives**:
 - **preserving, protecting and improving the quality of the environment,**
 - protecting human health,
 - **prudent and rational utilisation of natural resources,**
 - promoting measures at international level to deal with regional or worldwide environmental problems, and in particular **combating climate change.**
2. Union policy on the environment shall aim at a **high level of protection taking into account the diversity of situations in the various regions of the Union**. It shall be based on **the precautionary principle** and on **the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.**
3. In preparing its policy on the environment, the Union shall take account of:
 - available scientific and technical data,
 - environmental conditions in the various regions of the Union,
 - the potential benefits and costs of action or lack of action,
 - the economic and social development of the Union as a whole and the balanced development of its regions.
4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

Article 192 TFEU

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.
2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting **unanimously** in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt: (a) provisions primarily of a fiscal nature; (b) measures affecting: - town and country planning, - quantitative management of water resources or affecting, directly or indirectly, the availability of those resources, - land use, with the exception of waste management; **(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.** The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.
3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.
4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.
5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of: - temporary derogations, and/or - financial support from the Cohesion Fund set up pursuant to Article 177.



Article 194 TFEU
Shared competence.

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, *in a spirit of solidarity between Member States*, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union;
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.

Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).



OPAL - T883/16

(78) Having regard to the scope of the principle of solidarity, the Commission was required, in the context of the contested decision, to assess whether the variation to the regime governing the operation of the OPAL pipeline, as proposed by the German regulatory authority, could affect the interests in the field of energy of other Member States and, if so, to balance those interests with the interests that that variation had for the Federal Republic of Germany and, if relevant, the European Union.

Limitation of Article 194(2) TFEU: Treaty shall not affect Member State's sovereignty over the choice of its energy sources and the general structure of its energy supply in the electricity sector.



Article 194 TFEU

Shared competence.

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

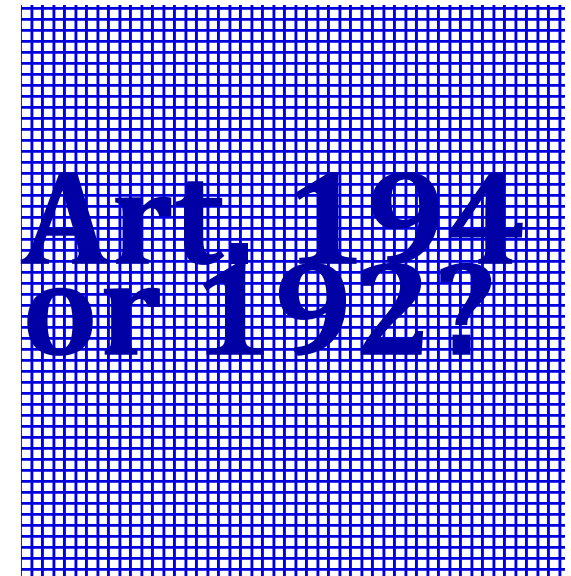
- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union;
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.

Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).

Article 192 TFEU

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.
2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting **unanimously** in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt: (a) provisions primarily of a fiscal nature; (b) measures affecting: - town and country planning, - quantitative management of water resources or affecting, directly or indirectly, the availability of those resources, - land use, with the exception of waste management; **(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.** The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.
3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.
4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.
5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of: - temporary derogations, and/or - financial support from the Cohesion Fund set up pursuant to Article 177.



Art. 194 or 192?

EU ETS T-370/11

However, it is true that, under the second subparagraph of Article 194(2) TFEU, measures established in accordance with the procedure laid down in the first subparagraph of that paragraph and necessary to achieve the policy objectives of the European Union in the area of energy, referred to in paragraph 1 of that article, cannot affect the right of a Member State to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

*However, there is no reason to suppose that the second subparagraph of Article 194(2) TFEU establishes a general prohibition to assign that right that is applicable in European Union policy in the area of the environment (see, to that effect, Case C-490/10 Parliament v Council [2012] ECR, paragraph 77). On the one hand, Article 194 TFEU is a general provision which relates solely to the energy sector and, consequently, delineates a sectoral competence (Opinion of Advocate General Mengozzi in Parliament v Council, point 33). On the other hand, it should be noted that the second subparagraph of Article 194(2) TFEU expressly refers to point (c) of the first subparagraph of Article 192(2) TFEU. Indeed, the second subparagraph Article 194(2) TFEU provides that the prohibition on affecting the right of a Member State to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply applies without prejudice to point (c) of the first subparagraph of Article 192(2) TFEU. While it is true that that latter provision is only procedural in nature, it none the less provides specific rules relating to the environment policy of the European Union. **It follows that the right referred to in the second subparagraph of Article 194(2) TFEU is not applicable in the present case, since the contested decision constitutes an action taken by the European Union within the framework of its environment policy.***

Art. 194 or 192?

EU ETS C-5/16

EU ETS - Establishment and application of the market stability reserve

The Republic of Poland claims that the contested decision infringes Article 192(1) TFEU, read in conjunction with point (c) of the first subparagraph of Article 192(2) TFEU, in that it was adopted in accordance with the ordinary legislative procedure although it constitutes a measure significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply within the meaning of the latter provision. Under the first subparagraph of Article 192(2) TFEU, such a decision should have been adopted by the Council unanimously, in accordance with the special legislative procedure.

Court:

It follows that point (c) of the first subparagraph of Article 192(2) TFEU can form the legal basis of an EU measure only if it follows from the aim and content of that measure that the primary outcome sought by that measure is significantly to affect a Member State's choice between different energy sources and the general structure of the energy supply of that Member State.

Internal Energy Market

“Liberalization becomes reality if users are free in law and *in fact* to select their suppliers.”

- 1) Principle of **free competition in the generation of electricity.**
- 2) A prerequisite for the freedom of choice is that each supplier can get access to the networks linking supply and demand (need for non-discriminatory access to networks).
via. Third party access
- 3) Non-discriminatory environment
via. Unbundling of energy suppliers from network operators
- 4) Independent national authorities and their cooperation
via. ACER
- 5) Electricity and gas can physically cross-national borders
via. energy infrastructure
- 6) Removal of regulatory and technical barriers
via. ENTSO-E/ENTSO-G and network codes



Liberalisation of EU Energy Markets

Article 7 of the DIRECTIVE 2009/72/EC

Authorisation procedure for new capacity


1. For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.
2. Member States shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. In determining appropriate criteria, Member States shall consider:
 - (a) the safety and security of the electricity system, installations and associated equipment;
 - (b) the protection of public health and safety;
 - (c) the protection of the environment;
 - (d) land use and siting;
 - (e) the use of public ground;
 - (f) energy efficiency;
 - (g) the nature of the primary sources;**
 - (h) the characteristics particular to the applicant, such as technical, economic and financial capabilities;
 - (i) compliance with measures adopted pursuant to Article 3;
 - (j) the contribution of the generating capacity to meeting the overall Community target of at least a 20 % share of energy from renewable sources** in the Community's gross final consumption of energy in 2020 referred to in Article 3(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (17); and
 - (k) the contribution of generating capacity to reducing emissions.

Principle of free competition in the generation of electricity

Article 32 of the DIRECTIVE 2009/72/EC

Article 32 of the DIRECTIVE 2009/73/EC

1. (...) Member States shall ensure the implementation of a system of third-party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users.



*Third Party
Access*

electricity

Article 9 of the DIRECTIVE 2009/72/EC

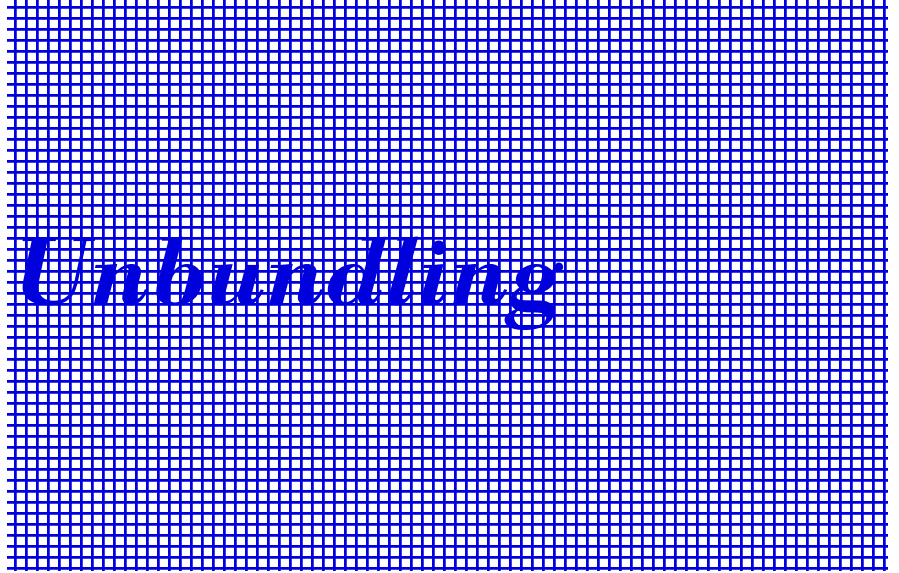
Article 26 of the DIRECTIVE 2009/72/EC

gas

Article 9 of the DIRECTIVE 2009/73/EC

Article 32 of the DIRECTIVE 2009/73/EC

*The rules on unbundling aim at preventing companies which are involved both in transmission of energy and in production and/or supply of energy from using their privileged position as operators of a transmission network to prevent or obstruct access of their competitors to this network. **Unbundling requires effective separation of activities of energy transmission from production and supply interests.***



Unbundling

Principle of independence

Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks, the regulatory authority:

- (a) is legally distinct and functionally independent from any other public or private entity;
- (b) ensures that its staff and the persons responsible for its management: (i) act independently from any market interest; and (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks.

In order to protect the independence of the regulatory authority, Member States shall in particular ensure that: (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and (b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

DIRECTIVE 2009/72/EC

Article 35 Designation and independence of regulatory authorities

DIRECTIVE 2009/73/EC

Article 35 Designation and independence of regulatory authorities



Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators

As an independent European structure which fosters cooperation among European energy regulators, ACER ensures that market integration and the harmonisation of regulatory frameworks are achieved within the framework of the EU's energy policy objectives.

Objective:

- A more **competitive**, integrated market which offers consumers more **choice**;
- An **efficient** energy infrastructure guaranteeing the free movement of energy across borders and the transportation of new energy sources, thus enhancing **security of supply** for EU businesses and consumers;
- A **monitored and transparent** energy market guaranteeing consumers fair, cost-reflective prices and **the deterrence of abusive practices**.



Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity
Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks

Conditions for network access for cross-border electricity/gas exchanges:

- a) Tariffication
- b) Congestion management
- c) Network security

European network of transmission system operators for electricity (ENTSO-E)

European network of transmission system operators for gas (ENTSO-G)

A network code (NC) is a set of technical rules enabling the development of the internal energy market in Europe. The NCs address the major barriers impeding the cross-border flow of electricity and gas, transforming a mere patchwork of national energy markets into a single European energy market.

NC are designed by ENTSO-E/G, ACER, the European Commission

**Cross-border
exchanges in
electricity or gas
(Network codes)**

2015 Energy Union

2015 Energy Union is ...

a policy initiative
a complex strategy

bringing together energy and climate actions as well as actions in other relevant policy areas, leading to more and longer-term policy coherence.

The objective: to give EU citizens and businesses ...

... secure, sustainable, competitive and affordable energy (*energy dimension*)

and

... to make economy sustainable, low-carbon and climate-friendly (*climate dimension*).



Paradoxically, energy policy has been one of the slower areas to develop in the European Union, despite the Union's roots, which lie, in part, in two energy-related international organizations: the European Coal and Steel Community and Euratom.

The European Coal and Steel Community (founded in 1951)

- Germany, France, Italy, Belgium, the Netherlands, Luxembourg
- A new type of political cooperation.
- Coal and steel production was placed under common, supranational control (both coal and steel was needed to build the machinery of war as well as in times of peace).

The European Economic Community (founded in 1957)

- Economic integration.
- It was clear from early on that the EEC would apply to the energy sector.
- However, no concrete steps have been taken to integrate energy markets.
- Energy markets remained largely isolated from one another.

The Euratom (founded in 1957)

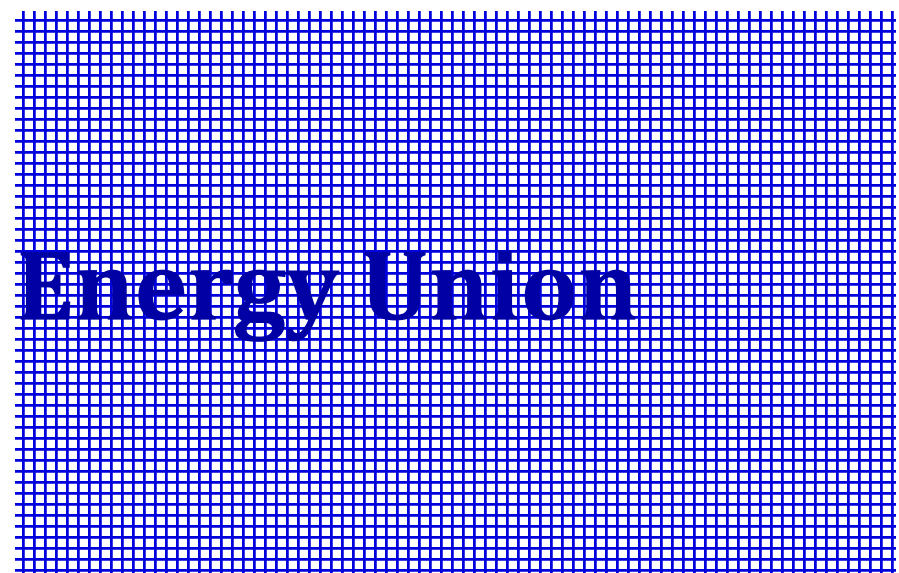
- Aimed to promote nuclear power.



COM(2015) 80 final A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy

Energy Union with a Forward-Looking Climate Change Policy. The Energy Union, which aimed to deliver **greater energy security, sustainability and competitiveness**, was to be made up of “five mutually-reinforcing and closely interrelated dimensions”:

- A) Energy security, solidarity and trust
- B) A fully integrated European energy market
- C) Energy efficiency contributing to moderation of demand
- D) Decarbonising the economy
- E) Research, Innovation and Competitiveness

The logo for the Energy Union, featuring the words "Energy Union" in a blue serif font, centered within a blue grid pattern.

Energy Union

Clean Energy for All Europeans Package

1. The recast Renewable Energy Directive (EU) 2018/2001
2. Governance of the Energy Union and Climate Action (EU) Regulation 2018/1999
3. Regulation on risk-preparedness in the electricity sector (EU) 2019/941
4. Regulation establishing a European Union Agency for the Cooperation of Energy Regulators (EU) 2019/942
5. Regulation on the internal market for electricity (EU) 2019/943
6. Directive on common rules for the internal market for electricity (EU) 2019/944

A fully integrated European energy market

Clean Energy for All Europeans Package

CEP aimed to modernize European electricity markets with a particular focus on **decarbonisation** and enabling the participation of **active consumers**.

Traditional objective: the establishment of common internal energy market, ensuring energy security, energy efficiency, competitiveness

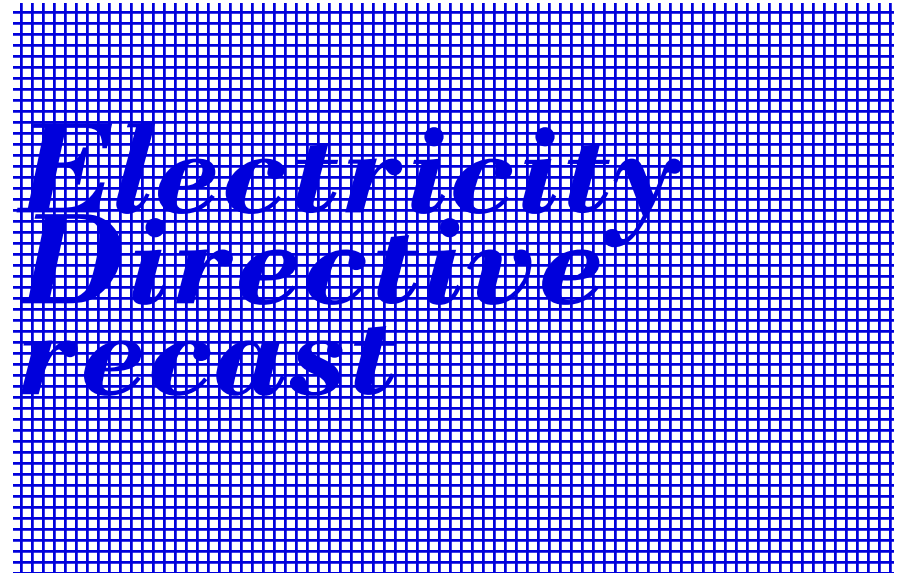
CEP: further deployment of renewables is required + transformation of the grid + active participation of the end-consumer.

DRIVERS: TECHNOLOGICAL DEVELOPMENT AND DIGITALIZATION



DIRECTIVE (EU) 2019/944 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast)

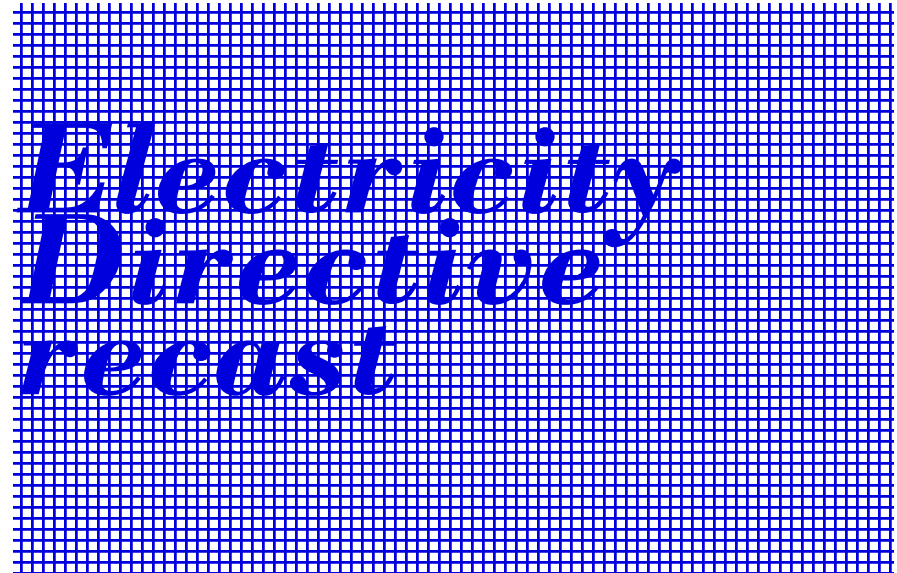
Objective: The Union's energy system is in the middle of a profound change. The common goal of decarbonising the energy system creates **new opportunities and challenges for market participants**. At the same time, **technological developments allow for new forms of consumer participation and cross-border cooperation**. **There is a need to adapt the Union market rules to a new market reality**. It seeks to put consumers at the heart of the transition – giving them more choice and greater protection. Consumers will be able to become active players in the market thanks to **access to smart metres, price comparison tools, dynamic price contracts and citizens' energy communities**. At the same time, energy poor and vulnerable consumers will enjoy better protection.



*Electricity
Directive
recast*

Focus on the EU citizens - Consumers have an essential role to play in achieving the flexibility necessary to adapt the electricity system to variable and distributed renewable electricity generation. Technological progress in grid management and the generation of renewable electricity has unlocked many opportunities for consumers. **By empowering consumers and providing them with the tools to participate more in the energy market, including participating in new ways, it is intended that citizens in the Union benefit from the internal market for electricity and that the Union's renewable energy targets are attained.**

Member States and regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of generation, energy storage and demand response.



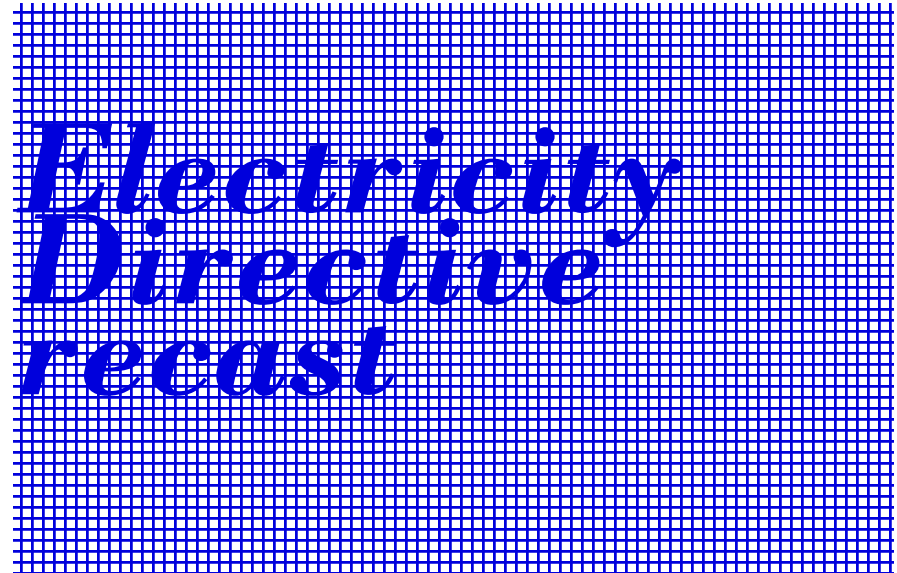
Electricity Directive recast

ENERGY COMMUNITIES (decentralization)

The Directive aims to recognise certain categories of citizen energy initiatives at the Union level as 'citizen energy communities', in order to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations. Household customers should be allowed to participate voluntarily in community energy initiatives as well as to leave them, without losing access to the network operated by the community energy initiative or losing their rights as consumers. Access to a citizen energy community's network should be granted on fair and cost-reflective terms. Citizen energy communities are considered to be a category of cooperation of citizens or local actors that should be subject to recognition and protection under Union law.

Citizen energy communities should not face regulatory restrictions when they apply existing or future information and communications technologies to share electricity produced using generation assets within the citizen energy community among their members or shareholders based on market principles.

See: Directive 2019/944: Preamble 46-49, Art. 16

A graphic featuring the text "Electricity Directive recast" in a blue, serif font. The text is set against a background of a blue grid pattern. The word "Electricity" is on the top line, "Directive" is on the middle line, and "recast" is on the bottom line. The grid pattern is composed of small, light blue squares.

*Electricity
Directive
recast*

CONSUMER EMPOWERMENT AND PROTECTION

Final customers shall have the right to a contract with their supplier that specifies ...

Final customers shall be given *adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract* ...

Suppliers shall provide final customers with *transparent information on applicable prices and tariffs* and on standard terms and conditions, in respect of access to and use of electricity services ...

Switching supplier or market participant engaged in aggregation shall be carried out *within the shortest possible time* ...

All customers are free to purchase and sell electricity services, including aggregation, other than supply, independently from their electricity supply contract and from an electricity undertaking of their choice ...

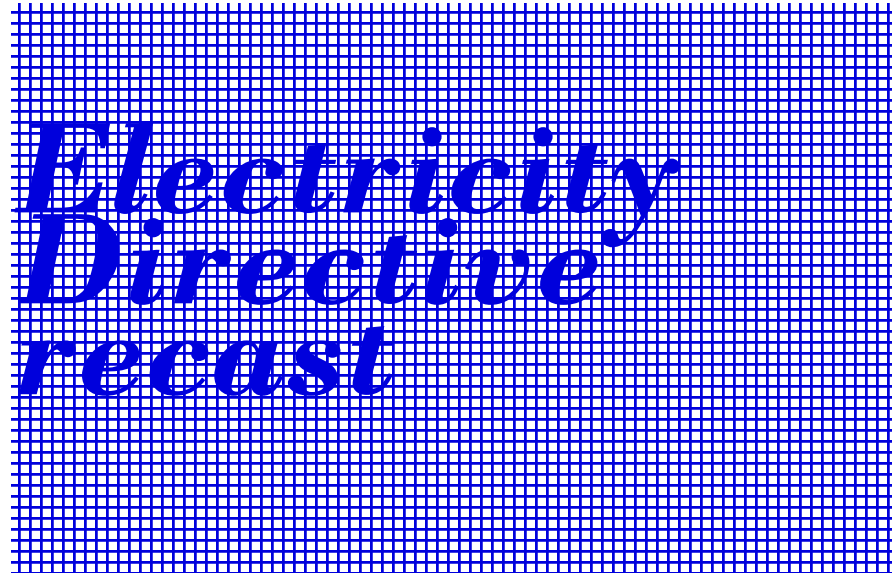
Member States shall ensure that at least household customers, and microenterprises with an expected yearly consumption of below 100 000 kWh, have access, free of charge, to at least one *tool comparing the offers of suppliers* (comparison tools)

Member States shall provide an enabling regulatory framework for citizen energy communities.

Member States shall ensure that bills and billing information are accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers. On request, final customers shall receive a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption.

Member States shall ensure the deployment in their territories of smart metering systems that assist the active participation of customers in the electricity market.

See: Directive 2019/943: Preamble 31-37, Art. 10,12,14,15

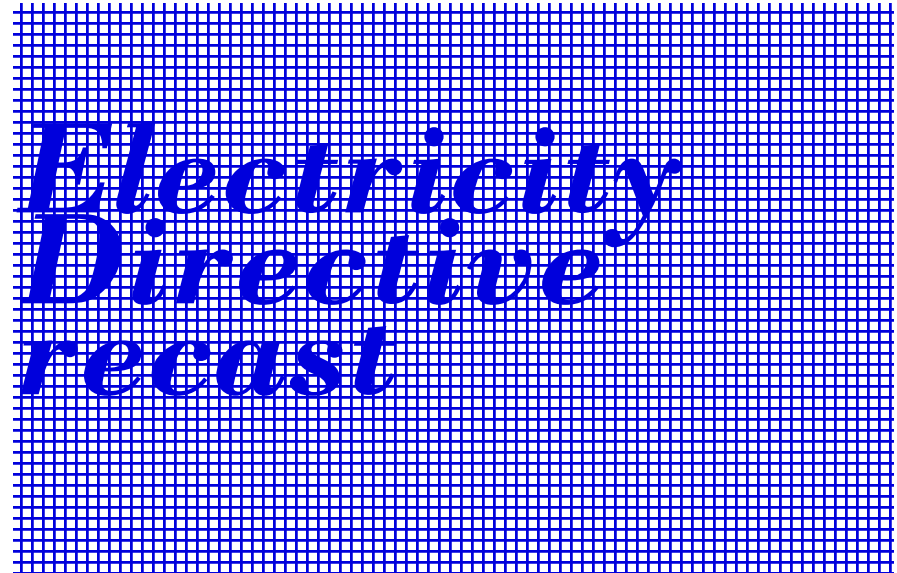
A graphic featuring the text "Electricity Directive recast" in a blue, serif font. The text is set against a background of a blue grid pattern. The word "Electricity" is on the top line, "Directive" is on the second line, and "recast" is on the third line. The grid pattern is composed of small squares, creating a textured effect behind the text.

Electricity
Directive
recast

ENERGY POVERTY AND VOLUNERABLE CUSTOMERS

Member States should take the necessary measures to protect vulnerable and energy poor customers in the context of the internal market for electricity. Such measures may differ according to the particular circumstances in the Member States in question and may include **social or energy policy measures relating to the payment of electricity bills, to investment in the energy efficiency of residential buildings, or to consumer protection such as disconnection safeguards.**

See: Directive 2019/943: Preamble 58-59, Art. 28-29



*Electricity
Directive
recast*

Regulation (EU) 2019/943 of the European Parliament and of the Council on the internal market for electricity

It sets the basis for an efficient achievement of the objectives of the Energy Union and in particular the climate and energy framework for 2030 by enabling market signals to be delivered for increased efficiency, higher share of renewable energy sources, security of supply, flexibility, sustainability, decarbonisation and innovation.

The share of electricity produced by renewable energy sources is expected to grow from 25% to more than 50% by 2030. At the same time, electricity must also be produced and delivered in **sufficient quantities when there is no wind or sun.** Markets need to be improved to meet the needs of renewable energies and attract investment in the resources, like energy storage, that can compensate for variable energy production. The market must also provide the right incentives for consumers to become more active and to contribute to keeping the electricity system stable.

*Regulation on the
internal market
for electricity*

Regulation (EU) 2019/943 of the European Parliament and of the Council of on the internal market for electricity

In the future, **customers need to be enabled to fully participate in the market on equal footing with other market participants and need to be empowered to manage their energy consumption.**

To integrate the growing share of renewable energy, the future electricity system should make use of all available sources of flexibility, particularly demand side solutions and energy storage, and should make use of digitalisation through the integration of innovative technologies with the electricity system.

Regulation on the internal market for electricity

***Regulation (EU) 2019/943 of the European Parliament
and of the Council on the internal market for electricity***

Key concepts introduced by the Regulation:

- 1) **Just Transition**
- 2) **EU DSO**
- 3) **Capacity Mechanisms**

*Regulation on the
internal market
for electricity*

Just transition

(To ensure that no region is left behind in this transition, the Commission launched the initiative for coal and carbon-intensive regions in transition. Included as a non-legislative element of the ‘Clean energy for all Europeans’ package the initiative helps mitigate the social consequences of the low-carbon transition.)

The Commission shall support Member States that put in place a national strategy for the progressive reduction of existing coal and other solid fossil fuel generation and mining capacity through all available means to **enable a just transition in regions affected by structural change. The Commission shall assist Member States in addressing the social and economic impacts of the clean energy transition.**

The Commission shall work in close partnership with the stakeholders in coal and carbon-intensive regions, shall facilitate the access to and use of available funds and programmes, and shall encourage the exchange of good practices, including discussions on industrial roadmaps and reskilling needs.

See: Regulation 2019/943: Preamble 51, Art. 4

*Regulation on the
internal market
for electricity*

EU DSO entity

In order to increase efficiencies in the electricity distribution networks in the Union and to ensure close cooperation with transmission system operators and the ENTSO for Electricity, an entity of distribution system operators in the Union (EU DSO entity) should be established. The tasks of the EU DSO entity should be well-defined and its working method should ensure efficiency, transparency and representativeness among Union distribution system operators.

The Regulation introduced a new entity - **European entity for distribution system operators (EU DSO)**

Distribution system operators shall cooperate at Union level through the EU DSO entity, in order to promote the completion and functioning of the internal market for electricity, and to promote optimal management and a coordinated operation of distribution and transmission systems.

See: Regulation 2019/943: Preamble 60, Art. 52-55

*Regulation on the
internal market
for electricity*

Capacity Mechanisms

It ensures that there is sufficient generation or load-management capacity in the system to cope with times of stress on the network when, for example, the wind stops blowing or there is a surge in demand. The Capacity Market will provide back-up generators and demand-side responders to help balance the network at times of stress.

Participants will be paid a per MW rate for the capacity they offer to the market. This capacity needs to be available when providers are called upon by National Grid at any time during the contracted period.

The Regulation introduced a limit for powerplants eligible to receive subsidies as capacity mechanisms (confirming the phasing out of subsidies to generation capacity emitting 550gr CO2/kWh or more).

It seeks to ensure that electricity supply continues to meet demand as more volatile and unpredictable renewable generation plants come on stream.

See: Regulation (EU) 2019/943: Preamble: 48-50 Art. 21 – 23

*Regulation on the
internal market
for electricity*

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (Text with EEA relevance.)

Capacity Mechanisms (2)

Ensuring an adequate, long-term energy supply is a paramount concern in Europe. EU member states now intervene by **encouraging investment in generation capacity, offering an additional revenue stream for conventional power plants** in addition to the existing, heavily subsidised investments in renewable energy sources. These capacity remuneration mechanisms (or simply capacity mechanisms) have become a hot topic in the wider European regulatory debate. European electricity markets are increasingly interconnected, so the introduction of a capacity mechanism in one country not only distorts its national market but may have unforeseeable consequences for neighbouring electricity markets. If these mechanisms are adopted by several member states with no supra-national coordination and no consideration for their cross-border impact, **they may cause serious market distortions and put the future of the European internal electricity market at risk.**

*Regulation on the
internal market
for electricity*