

European Commission's New Deal for Consumers

Eurelectric response paper

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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WG Commercial Processes and Customer Relationship

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KEY MESSAGES

- Eurelectric welcomes the European Commission's initiative and we fully stand by it in its effort to improve consumer protection across the EU.
- We welcome the Commission's decision to stick to the subsidiarity principle on doorstep selling. Experience of doorstep selling varies greatly from country to country and Member States need flexibility to address this issue in a way that suits their national specificities.
- Consumers will be key actors in the achievement of a successful energy transition. For this reason, it is essential to ensure consistency between EU consumer law and the legislative framework on energy, and to point out the direct consequences of the New Deal for Consumers on the electricity sector. In this regard, we want to draw co-legislators' attention to two specific topics:
 - There is a need for coherence between the supplier-switching period discussed under the Electricity Directive of the Clean Energy Package and the withdrawal period amended by the New Deal for Consumers.
 - Electricity suppliers' turnover is artificially pumped up by the network charges, taxes and levies they collect on behalf of system operators and national authorities and this should be taken into account.
- Eurelectric recognises the need for a harmonised way for consumers to seek redress across the EU. However, we would like to warn against the lack of safeguards in the current version of the proposal, which leaves the door open to abusive representative actions. Eurelectric also calls for clarity and legal certainty when it comes to cross-border infringements. Finally, Eurelectric is strongly in favour of the introduction of an opt-in system at EU-level, that is to say that Member States shall require the mandate of the individual consumers concerned by the infringement before a redress order is issued.

The New Deal for Consumers released by the European Commission in April 2018 is consistent with the Juncker Commission's will to create a modernized single market and to adapt consumer rights to digital developments.

Eurelectric welcomes the European Commission's commitment to continuously improve and where relevant harmonise consumer protection rules across the EU. We also stress the need to ensure that horizontal and sectorial rules are consistent with one another. As the Clean Energy Package, and in particular the Electricity Directive, is about to be adopted by the Council and the European Parliament, we would like to urge the European Commission and co-legislators to take into account the impact that some of the proposed provisions may have on the energy sector.

Refit Directive:

- **Doorstep selling**

The European Commission specifies that there will be no restriction or ban introduced on doorstep selling at EU level. Instead, the proposal leaves the freedom to Member States to legislate on that matter at national level.

Eurelectric welcomes the Commission's decision to stick to the subsidiarity principle on this matter. Indeed, experience with and perception of doorstep selling vary greatly from country to country. While some Member States have introduced restrictions or even a complete ban on doorstep selling after serious issues were reported, others see it just as another sale channel which does not raise any particular concern. Where national authorities fail to fully solve problems related to doorstep selling, the lack of awareness of consumers on their rights and the inadequate enforcement of existing law are often pointed out by stakeholders.

Based on the existing situation, Eurelectric wants to highlight that doorstep selling is a legitimate sales channel, provided that existing legislation is properly implemented and that there is a sound regulatory oversight. Many people do not have access to the internet and/or still live in remote areas. For them, doorstep selling may be the only way to have access to the competitive market and be aware of the potential gains they could get from switching supplier. Some people also favor direct personal contact over telephone or online interactions.

However, concerns raised in some countries cannot be ignored, and appropriate measures have to be put in place. On that matter, both industry and regulators need to ensure that consumers are well aware of their rights and that robust protections are in place to prevent abuses and deter misleading practices as this is the case with other sales channel (e.g. comparison tools).

In this regard, Eurelectric believes that an EU-wide legislation is not the solution to a national and often sector-specific problem affecting some Member States. **We urge both the Council and the European Parliament to stick to the Commission's proposal, as it takes into account countries' need for flexibility to address doorstep selling in a way that suits their national specificities.**

- **Consumer's 14-day right-of-withdrawal period**

The New Deal for Consumers attempts to adapt and modernise consumers' 14-day withdrawal period (known as the "cooling-off period"). Eurelectric supports its extension to digital services, and the alleviation on traders' obligations.

However, Eurelectric would like to raise concern on an issue relating to energy supply which is left unaddressed in the current version of the text, namely the switching period when a new contract is concluded between a consumer and an energy supplier.

Further consideration should be given to the relationship between the 14-day cooling-off period and the 3-week switching period. Clarification is much needed on that matter, especially as the issue is also being dealt with under the Clean Energy Package.

Currently and depending on Member States, the cooling-off period is either added on top of the switching period or incorporated into it. This means that the total length of the switching process legally runs from 3 to 5 weeks across the EU, and that customers are allowed to use their right of withdrawal at different moments in time over the course of the switching process.

In the context of the Clean Energy Package, the Council and the Parliament are calling for shortening the switching period to ensure that the technical process of switching can take place within 24h. Apart from the need for clarification on what is meant by “technical process of switching”, **Eurelectric calls for consistency between both texts and sees the New Deal for Consumers as an opportunity to clarify rules across the EU**, while maintaining enough flexibility to accommodate various practices in Member States and ensure proper consumer protection.

Besides, Article 16 of the Consumer Right Directive mentions that the cooling-off period does not apply to “service contracts after the service has been fully performed if the performance has begun with the consumer’s prior express consent”. **The electricity industry calls for clarification on the eligibility of energy supply for this derogation.** In case of eligibility, precise provisions need to be developed to ensure consistency across the EU regarding the actions to be taken in order to consider the full performance of energy supply as completed.

- **Common penalties**

A final remark on the content of the Refit Directive relates to common penalties introduced for widespread infringement of EU consumer law. The Commission’s proposal includes a maximum fine of at least 4% of the trader’s annual turnover in the Member State(s) concerned by the infringement.

Beside the 4% threshold which may be excessive, we want to highlight that basing fines upon electricity traders’ turnover can be misleading, considering the particular case of electricity suppliers: their turnover is artificially pumped up by network charges, taxes and levies they collect on behalf of system operators and national authorities. Therefore, it seems important to explicitly mention that the turnover considered should not take into account taxes and levies.

Referring to the penalty system which has been adopted along with the General Data Protection Regulation (2016/679), we recommend introducing a fine of 2% of the trader’s turnover in case of infringement of EU consumer law, and a higher fine of 4% in the event of non-compliance with an order by the supervisory authority.

Finally, clarification is needed for situations where an infringement is committed by a subsidiary, as it is not mentioned whether the turnover considered is the sole subsidiary’s turnover or the group’s consolidated turnover. **For consistency reasons, we recommend taking into account the subsidiary’s turnover only.**

Injunction Directive:

The European Commission introduces collective redress mechanisms to allow qualified entities to seek redress on behalf of a group of consumers harmed by an illegal commercial practice. **Eurelectric recognises the need for more harmonisation across EU countries and for consumers to be able to seek redress, and welcomes the application of the subsidiarity principle as set out in recitals when it comes to compensation rules.** However, we remain concerned by some provisions of the Commission's proposal.

- **Lack of safeguards**

In its current version, the proposal for collective redress is too broad, and the lack of safeguards leaves the door open to abusive litigations. Eurelectric calls on co-legislators to strengthen certification requirements to discourage dishonest actions which could harm businesses' activities. In this view, the possibility for qualified entities to seek injunction orders without having to provide proof of actual loss, damage, intention or negligence from the trader should be tightened up. Indeed, this provision conflicts with the principles of the liability for damage, and could allow for legal actions aiming at benefiting from media coverage or imparting confidential documents.

- **Absence of *res iudicata* principle**

The proposal (Article 8) includes basic procedural elements of judicial settlement. **However the latter may not be the final decision in case where unsatisfied consumers use their rights to sue the trader individually.** The absence of *res iudicata* principle provides legal uncertainty to traders, who could have to face two legal procedures for the same infringement of EU consumer law.

- **Scope of the Directive**

The scope of the proposal should also be narrowed. Eurelectric believes that its extension to 59 provisions of EU law, including several on energy and environment, is likely to result in an unnecessary increase of litigation risk for companies, including cases that are not directly linked to the contractual relation between the trader and the customer.

In addition, we think this Directive should only apply to infringements of EU consumer law that actually harm the collective interests of consumers (and not "may" as currently proposed).

- **Cross-border infringements**

More clarity and legal certainty are also needed when it comes to cross-border infringements, in order to avoid forum shopping. In its current version, the proposal raises the possibility that an incorrect decision issued by a national court could have a negative impact on the company concerned across the EU as a whole.

- **Mandate of individual consumers**

Last but not least, a major concern relates to opt-in and opt-out systems. **Eurelectric is strongly in favour of the introduction of a compulsory opt-in system at EU-level, that is to say that Member States shall require the mandate of the individual consumers concerned before a redress order is issued.** Unlike opt-out provisions, this will provide fairness for consumers, as they will not be bound by the legal consequences of a procedure without being aware of the trial. Besides, this opt-in system should be implemented at EU level to avoid any problem in case of cross-border representative actions.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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