

# CEER public consultation on bundled products

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A Eurelectric response paper

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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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Customers and Retail Services Committee

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## KEY MESSAGES

- We endorse CEER's goal to help businesses improve the bundled products and services they offer so that customers have a positive market experience.
- We think that the scope of the guide book could be enlarged. Currently it tends to focus only on the perceived risks that bundled products may pose and thus gives the impression that bundles are more a threat than an opportunity for consumers. Companies are developing bundled products because they bring added value to consumers, be it in terms of overall price, easy payment, convenience and simplicity. They enlarge consumer options and thus opportunities to engage in the market. Any type of product which would not satisfy a critical mass of consumers would imply high costs for companies and ultimately disappear from the market. Considering that barriers exist to bundled products in several markets, it would be helpful if CEER could try and analyse these barriers too and see what could be done to lift them up.
- As pointed out by CEER there is currently a shortage of guidance for NRAs on how to best treat bundled products. This is often the case when new products or actors enter a market. At the same time, we don't think that bundled products need a specific regulatory framework. A number of grey areas, as highlighted by CEER, may need to be clarified through high level guidelines but overall existing legislation, if correctly enforced, should be enough to answer most questions raised by bundles.
- CEER states that *"defining bundles raises all sorts of complex issues such as which services to include in the bundle(s), if there is a need for a single offer or a single price or a single invoice, which providers (and sectoral market and consumer rules) are involved"*. We think CEER should try and define more precisely what bundled products are. Coming up with clearer definitions of bundles would actually be one of the benefits of this guide book. We feel that the current document eludes this key question too quickly.
- Requirements to facilitate comparability should not end up inhibiting innovation, e.g. by forcing companies to limit their offers to "standard" products. As there is a variety of bundles, comparing such products on a like for like basis may prove challenging, especially if the bundle comprises different services. In addition, CTs should be kept simple as complex comparisons may create confusion and mislead customers. Ultimately, finding innovative ways to compare various offers in a user-friendly manner (e.g. through machine learning or artificial intelligence) should be left to CTs.
- What is key is that terms and conditions of bundles are fully transparent and easily understandable by customers and that the terminology used in a bundled product offer, contract and bill is indeed fully consistent, as this should be the case with any product. In our view this is what regulators should focus on. For the rest we should leave it up to the market and to consumer choice.

***Question 1: Do you agree in general with the 10 principles proposed in our Draft Guide on Bundled Products for companies, and the 5 principles proposed for regulatory authorities?***

In general we support CEER's goal to help businesses improve the bundled products and services they offer so that customers have a positive market experience. A number of grey areas, as highlighted by CEER, may indeed need to be clarified through high level guidelines. However, we do not think that a specific regulatory framework is needed for bundles. Existing legislation on consumer rights and protection, if correctly enforced, should be enough to answer most questions raised in the guide book.

The electricity industry strives to protect customers while coming up with innovative offers to meet different customers' need and preferences. Offers such as dynamic pricing or bundles, which may appear more sophisticated, should not be considered as less reliable as long as the customer is informed and treated fairly.

Bundled products bring added value to consumers be it in terms of overall price, easy payment, convenience or simplicity. They can contribute to make complex markets easier to navigate. They are also a way to customise offers to specific customer needs. All in all they enlarge consumer options and thus opportunities to engage in the market. In this respect we think CEER should also try and see how the regulatory framework can be improved to facilitate bundles and promote innovation. Indeed companies willing to offer bundles have to deal with various horizontal but also sectorial rules (e.g. various switching periods). Such complex legal framework can be quite challenging to navigate and thus represent a barrier to entry for service providers.

Please see our detailed comments to each of CEERs suggested principle in the Annex.

***Question 2: Do you think our proposals make appropriate use of principles and adopt the right amount of prescription? Have we gone too far, or not far enough to protect consumers while allowing companies in various sectors to be innovative in the bundled products they offer?***

Overall, we are pleased to see that CEER favours a series of high level principles for companies over prescriptive obligations. We think this is a positive development. This said, we believe some of the principles could be further clarified as explained below in the Annex with our detailed comments. We also think that CEER should refrain from using terms such as "must" across the guide book.

In our view, the overall tone of the document is too negative towards bundled products. We fully understand and agree that such products may prove challenging for NRAs to regulate and that they raise a number of questions linked to consumer rights and protection. There may have been some examples of bad or misleading practices in some markets with bundled offers but in most cases bundled products offer lots of potential benefits and added value to consumers be it in terms of overall price, convenience or simplicity.

CEER should certainly protect consumer rights but it should also defend consumer choice and innovation, thus optimising social welfare. In this respect, bundled products enlarge consumer options and thus opportunities to engage in the energy market. We welcome CEER's intention to regularly review and update this guide book to keep up with market developments. At the same time, as highlighted in our response to CEER's 3D strategy, it is essential that regulation remains stable and that the need for an increased flexibility in the market is combined with clear regulatory predictability.

Last but not least, we think it is important to favour horizontal over sectorial regulation when it comes to bundles to avoid that actors coming from different sectors are subject to different rules while offering similar services. Would CEER guide book apply to e.g. a telco provider offering a bundled product which includes energy?

**Question 3: Do you think there are any areas of particular risk to customers that are not already addressed in this draft Guide on Bundled Products?**

We think the draft guide book is quite comprehensive when it comes to the potential risks associated with bundled products. As stated above, it would be helpful if CEER could also look into the **opportunities** of bundled offers, analyse the barriers to bundled products in several markets and propose options to lift up such barriers.

As pointed out by CEER there is currently a shortage of guidance for NRAs on how to best treat bundled products. This is often the case when new products or actors enter a market. We also agree that the Clean Energy Package does not say much about bundles.

At the same time, we don't think that bundled products need a specific regulatory framework. A number of grey areas, as highlighted by CEER, may indeed need to be clarified through high level guidelines but overall existing legislation, if correctly enforced, should be enough to answer most questions raised by bundles.

Additionally, setting rules and obligations on energy companies regarding additional services (other than the commodity itself) might hamper the level playing field if the same rules are not applied to companies from other sectors offering similar services.

What is key is that terms and conditions of bundles are fully transparent and easily understandable by customers, and that the terminology used in a bundled product offer, contract and bill is indeed fully consistent, as this should be the case with any product. In our view this is what regulators should focus on. For the rest we should leave it up to the market and to consumer choice. Obviously consumers in vulnerable situations may require additional support but here too existing legislation should be enough.

**Question 4: Do you agree with the proposal that there be a single point of contact so as to avoid ping-pong in the case of a customer having a problem with the bundled product? If not, what workable alternatives do you suggest?**

We agree that it should be clear to the customer which regulator, ADR body and consumer protection authority he should turn to in case of questions.

As for services providers, we agree that there should be clear liability principles towards the customer.

In our view what's key is that the customer is very clear who his /her counterpart is at any time. In case several companies are involved in a given bundled product, the customer should be clear who his/her counterpart is for which aspect of the bundled product. We do not see why one actor should necessarily be liable for the full bundle. This could well be an option – and some customers might find it convenient to have just one counterpart for all services – but this should not be an obligation. Other customers may prefer to be directly in touch with the most competent party for any given issue.

Even if this is not a bundle, in most Member States, the customer has an electricity and/or gas contract with a supplier and he receives only one bill from this supplier covering electricity/gas, network and taxes/levies. However if the customer has a problem with e.g. his/her connection or quality of supply, he may contact the DSO, instead of the supplier. The customer is then directly in contact with the responsible actor who has the expertise to answer his/her specific request.

All in all what is key is that (i) roles and responsibilities of involved parties are clearly defined, (ii) terms and conditions are very transparent and easily understandable by the customer and (iii) there is a clearly identified party responsible for any subsequent issue.

These principles are also important because putting too many requirements in terms of liability could mean high entry barriers for smaller market players.

***Question 5: Can you provide best practice cases of regulatory treatment of bundled products?***

N/A

## ANNEX – Detailed comments on each principle proposed for companies and NRAs

### - Principles for companies offering bundled products

#### ***1/ Simplicity for informed customer choices - getting it right.***

We agree that simplicity is key.

One of the reasons why consumers choose bundled products is actually linked to the simplicity they offer. From this perspective, we cannot agree with CEER that bundled products are “complex products”. We understand that they may prove challenging for NRAs to regulate and that they raise a number of questions linked to consumer rights and protection. However this is likely to be the case with any new type of products (e.g. dynamic pricing) and in a way this shows that there is innovation in the market which is positive.

As there is a variety of bundled products, comparing different bundles on a like for like basis is likely to prove challenging by the very nature of bundle, especially if it comprises different services. We do not think that this is necessarily an issue. In our view what is key is that:

- The terms and conditions are fully transparent and easily understandable by customers.
- The terminology used in a bundled product offer, contract and bill is indeed fully consistent, as this should be the case with any product

All existing legislation on consumer rights and protection should apply to bundled products like any other product. For instance providing information about the product, including the main characteristics of the services provided, before a consumer is bound by a contract is part of existing legislative requirements. We are not sure to understand why there is a need to stress that “any update or change to the initial contract should be notified to the consumer at a minimum one-month in advance”. Besides, there might cases where changes to the initial contract are made but without any direct implication for the customer. In such cases, proactively informing the customer may generate excess information and confusion.

As CEER is referring to principles in this Guide book, it might be good to avoid using terms such as “must” in the text. Besides, it will always prove difficult for a service provider to be totally sure that “*a consumer has understood what he/she is signing up for*”. Consumers in vulnerable situations may require specific support.

#### ***2/ Clear liability principles where there are multiple parties/contracts involved in the bundled product***

We agree that there should be clear liability principles towards the customer.

As currently drafted, we think that the proposed principle lacks clarity. On the hand CEER states that “*the consumer should not have to interact with different parties for the different elements of the bundled product*” and later on CEER adds that “*the end user should have the choice whichever party is considered most relevant under the circumstance*”.

In our view what’s key is that the customer should be very clear who his /her counterpart is at any time. In case several companies are involved in a given bundled product, the customer should be clear who his/her counterpart is for which aspect of the bundled product. We do not see why one actor should necessarily be liable for the full bundle. This could well be an option – and some customers might find it convenient to have just one counterpart for all services – but this should not be an obligation. Other customers may prefer to be directly in touch with the most competent party for any given issue.

Even if this is not a bundle per se, in most Member States, the customer has an electricity and/or gas contract with a supplier and he receives only one bill from this supplier covering electricity/gas, network and taxes/levies. However if the customer has a problem with e.g. his/her connection or quality of supply, he may contact the DSO, instead of the supplier. The customer is then directly in contact with the responsible actor who has the expertise to answer his/her specific request.

All in all what is key is that (i) roles and responsibilities of involved parties are clearly defined, (ii) terms and conditions are very transparent and easily understandable by the customer and (iii) there is a clearly identified party responsible for any subsequent issue.

These principles are also important because putting too many requirements in terms of liability could mean high entry barriers for smaller market players thus hindering innovation and competitiveness.

### ***3/Signposting of the responsible (in-house or external) complaint handler in case something goes wrong.***

Please refer to our answer to the previous point.

We agree that it should be clear to the customer which regulator, ADR body and consumer protection authority he should turn to in case of questions or disputes.

In case of single point of contact, we think it should have a coordination role, referring the client to the most competent party for any given issue.

### ***4/Transparency is key***

We agree that transparency is THE key principle, not just in terms of prices – as CEER argues – but also in terms of contractual relations, terms and conditions.

The terms and conditions should be fully transparent and easily understandable by customers. The terminology used in a bundled product offer, contract and bill should be fully consistent, as this should be the case with any product.

If the terms and conditions are clear and if the customers knows whom to contact in case of problems, we do not see the need to list all the partnerships and subcontracts. Indeed there are certain services with many subcontract companies which may also change locally.

As for the price, if it is a bundled product, then there should be one price covering all the products and services included. Customers may be able to pick only the products and services they are interested in, but the sum of the prices may be higher than the bundled price when sold separately. Companies' cost to serve may indeed be lower in case of bundled products and services which is why they can propose more attractive prices or discount for bundles. In any case, it should be clear in contractual conditions how the prices would change in case the consumer withdraws from the bundle. We also agree with CEER that companies should not be able to arbitrary allocate the price to individual elements of bundle, which might be disadvantageous for the consumer in the event of warranty claim.

Unlike e.g. telecom bundles which are pure commodity services, energy bundles may include lots of different services which can be sold or priced very differently. There are many ways to sell e.g. solar PV. Comparing services on a like for like basis will ultimately hamper innovation. Instead, qualitative explanation could help the customer understand a given package without having to split out the cost of each element that is part of the offer.

Companies should not be obliged to sell all the services included in a bundle individually. Freedom of contract should be respected. If consumers are interested in a (single) service that a given company does not offer, it is likely that competitors will step in.

When there are regulated components as part of the price (e.g. network tariffs, taxes and levies) then the customer should be able to see them transparently.

### ***5/On billing***

The terminology, terms and conditions used in a bundled product offer, contract and bill should indeed be fully consistent, as this should be the case with any product.

All existing legislation on consumer rights and protection should apply to bundled products like any other product.

As one of the main added value of bundled products is to favour simplicity and convenience for the customer, we agree that there should ideally be one bill for bundled products.

At the same time, if the terms and conditions are fully transparent and easily understandable by customers, we don't think regulation should exclude the possibility of having several bills for bundled products. There might be cases where this would actually make more sense. Besides, bundles are sometimes composed of very different products and complying with different regulations while providing a single bill might be complex to do in practice for service providers, and difficult to understand for consumers.

Last but not least we would like to caution against the idea that *"no third party entity can be included"*. In some Member States, e.g. Finland, suppliers are using back office service companies to print and send the bill. Consumers are not aware of it but this should not be excluded by the guide book.

### ***6/On payments for bundled-only products***

We can only agree with this principle.

### ***7/Respecting good guidance principles for price comparison tools***

We agree that including bundled offers in Comparison Tools (CTs) is desirable – and this might even become a requirement as part of the revised Electricity Directive - but it is likely to be more a listing of products than anything else.

In our view what is key is that:

- The terms and conditions of the products are fully transparent and easily understandable by customers.
- The terminology used in a bundled product offer, contract and bill is indeed fully consistent, as this should be the case with any other product

Requirements to facilitate comparability should not end up inhibiting innovation, e.g. by forcing companies to limit their offers to "standard" products. As there is a variety of bundled products, comparing different bundled products on a like for like basis may prove challenging, especially if the bundle comprises different services. If e.g. product A is an EV sold with electricity and insurance for free for 1 year and product B is a contract comprising electricity, insurance and security services for 2 years, how could they be compared on a like for like basis? The same issue would apply e.g. to fixed tariff products versus floating/dynamic ones. In addition, CTs should be kept simple as complex comparisons may create confusion and mislead customers. Ultimately, finding innovative

ways to compare various offers in a user-friendly manner (e.g. through machine learning or artificial intelligence) should be left to CTs.

In addition - and this is particularly important in case of bundled products - we think that the comparison should not focus on the price only but also on e.g. the features and quality of the services.

Eurelectric supports certification of CTs as proposed by the European Commission in the recast Electricity Directive. Regulatory oversight is indeed crucial to guarantee that CTs comply with these principles and verification should be carried out by a body that is structurally and financially independent from CTs. It could well be the NRA, but also a statutory consumer body, a Ministry, or an external auditor depending on who runs the tool.

### ***8/ The right to information about the contract conditions.***

There is strict consumer protection regulation in place both at EU and national levels and all existing legislation should apply to bundled offers. For instance providing information about the product, including the main characteristics of the services provided, before a consumer is bound by a contract is part of existing legislative requirements.

We agree that companies should “*seek to give the consumer the possibility to switch out of or terminate the whole bundled contract*”. Consumers should only be able to keep part of a bundled product/pick some of the services provided in a bundled offer if the company offers this possibility. This should not be a rule by default.

Whilst aligning the contractual conditions of all products in the package is desirable, it might not always be straightforward. There may be guarantees or financing with different terms for different services in the package.

We also agree that there should be no penalty or worsening of the price. However, it is important to clarify that a loss of benefit, such as a bundle discount, should not be considered as a worsening of the price since it is a natural consequence of the termination of a bundle.

Furthermore, we agree that the customer should not have to pay for services he has not used. Nonetheless, it is important to point out that the way to deal with services rendered can't be the same as access services. In the latter case, the customer is paying for the possibility to use a service in case of necessity (insurance services for example).

Regarding switching, we agree that companies from different sectors should try and align the duration of the elements of the bundles with the duration of the essential service whenever it is compatible to do so.

### ***9/ No disconnection of essential services***

Theoretically we understand the rationale behind asking that in the event of non-payment of another element of the bill of a bundled product, there should be no disconnection of essential services. We understand this has even become a case law in some countries, e.g. Portugal.

However we are not at ease with having this as a principle endorsed and promoted by European Energy Regulators. The basic rule should be that a bill – which covers the services used by a consumer over a given period - has to be paid in full. Besides, in case a bundled product has only one price and one bill covering all the services included, paying only for the essential services which are part of the package might not be straightforward.

There are different regulatory frameworks for disconnection of essential services in Member States and existing rules should apply irrespective of whether a product is bundled with other services or

not. In our view, a sound regulatory framework should aim at protecting customers (e.g. by avoiding the accumulation of debt) while enabling suppliers to cover their costs. Most suppliers today assist customers who are struggling with managing their electricity usage and bills through e.g. energy advice, payment arrangements and/or appropriate debt management processes.

### ***10/ No dispute resolution fee***

There are different regulatory frameworks for dispute resolution in Member States and existing rules should apply irrespective of whether a product is bundled with other services or not. At EU level, the Alternative Dispute Resolution Directive sets the right framework and the guide book should be in line with it: “ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, the ADR procedure should be accessible, attractive and inexpensive for consumers. To that end, costs should not exceed a nominal fee.”

#### **- Principles for regulators overseeing and regulating sectors with bundled products**

##### ***A/ Establish rules in general consumer law governing bundled products across all sectors***

We agree with CEER.

##### ***B/Protect essential services***

We believe this principle is better formulated than principle 9 for companies and could replace it. Please also refer to our response to principle 9

##### ***C/Strengthen the right to exit bundle products.***

Switching rules should apply to bundled products like any other product.

##### ***D/ Monitor***

We agree with CEER although the monitoring mechanism and the indicators required should not create too much interference and inhibit innovation.

##### ***E/ Cooperate across sectors with relevant authorities.***

We fully agree with CEER that cross-authority cooperation and coordination is key. At a time when data sources are multiplying and industries have begun to converge, strengthening cooperation between regulatory authorities from different sectors has become crucial to break down silos, enhance competition and innovation, and protect consumers. In this respect, we welcome CEER’s Partnership for the Enforcement of Energy Rights (PEER) which aims at promoting a cross-sectoral cooperation at EU level between NRAs, consumer protection agencies, ombudsmen and data protection authorities.

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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