



CEDEC Brief News | July 2023

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Electricity Market Design – final countdown in Parliament and Council

Both the Parliament and Council are working intensively on finding a deal in their respective institutions to reform the Electricity Market Design (EMD).

In **Parliament**, negotiations are progressing well in view of the vote in the Energy Committee (ITRE) scheduled on 19 July. Following the publication of more than 1300 amendments, as submitted by ITRE members, the rapporteur and shadows are working on compromise amendments to ensure a majority during the ITRE vote and to have a clear mandate for negotiations with the Council. First compromise amendments have been circulating over the past weeks, but negotiations continue intensively. After another shadow meeting yesterday, two subsequent meetings are scheduled (6 and 11 July). The latest version of compromises – as seen by CEDEC – entails several positive elements, like the inclusion of DSOs in the peak shaving product, the voluntary nature for participation in CfDs or the restriction of the geographical scope for energy sharing to a more limited area. At the same time, there are also some negative elements, such as the inclusion of energy sharing within the provisions on dedicated ‘measurement’ device.

In the **Council**, the Swedish Presidency did not realize its initial objective to reach a general agreement at the 19 June Energy Council meeting; the file was sent back to Coreper, but the last attempts to reach a compromise before 30 June could not lead to a final agreement. The main blocking points concern the application of contracts for difference (CfDs) to existing installations, with EU countries (including Austria, Germany and Spain) fearing a distortion of competition in favour of too much aid for French nuclear power. The Spanish Presidency will now have to bring the negotiations to an agreement, in order to start the trilogue negotiations.

Spotlight on: The Spanish Presidency – last tango before EU elections

On 1 July, Spain started the 6-month rotating Presidency of the Council, taking over from Sweden. The Presidency gives significant influence to the Member State in charge, enabling it to set the Council’s agenda and decide which files to prioritise, from the technical to high-level political.

In view of the approaching EU elections, due to take place in June 2024 under the Belgian Presidency, Spain’s mandate will be of particular significance. Indeed, this will be the last opportunity to finalise the numerous legislative files still being negotiated, since MEPs will be fully dedicated to campaigning as of beginning of next year. Speaking of elections, some turbulence can also be expected in the beginning of this Presidency, as Spaniards will be called to the polls on 23 July – earlier than anticipated.

On energy issues, the reform of the electricity market can be expected to be a main focus for this Presidency, especially since Spain took a particularly strong and active position on this file in the run up to the Commission’s proposal. The Spanish Presidency will also have to see through the finalisation of the Gas Package trilogues, which will be no easy task as compromises on the bulk of the provisions – including several sensitive subjects such as unbundling – remain to be found. For the Methane Regulation, the Spanish Presidency intends to initiate trilogues immediately after the summer break. However, the file risks to be put on hold as soon as the Electricity Market Design trilogues begin, once the co-legislators adopt their final positions.

Aside from the Market Design reform, AI was identified as a top priority by the Spanish Prime Minister in a speech presenting the Presidency’s programme, and significant efforts can therefore be expected to accelerate negotiations on the AI Act under this mandate.

Gas Package and Methane Regulation – latest on the trilogues

- **Gas Package:** Trilogues were launched on 1 June with a brief first meeting, lasting under an hour for both the Directive and Regulation respectively. Strong opposition on the status of the future Entity for hydrogen network operators was already apparent: the Parliament insisted on the integration of hydrogen network operators into the existing ENTSO (ENTSO&H), while the Council and Commission indicated that they would treat this issue as a red line. A further two technical meetings took place on 20 and 26 June. Another two will be held on 5 and 14 July during which the ENTSO&H/ENNOH issue will again be discussed. This will be followed by a second political trilogue on 18 July before the negotiators take their summer break.
- **Methane Regulation:** Despite hopes on the Parliament’s side to start negotiations as soon as possible, the Swedish Presidency did not treat this file as a priority, leaving it to the Spanish to launch trilogues. The kick-off therefore will not take place before September (no specific date has yet been set) with the intention of making as much progress as possible before attention is diverted to the EMD reform trilogues. This therefore risks squeezing the time available to conclude negotiations under this European legislative mandate. Nevertheless, a compromise seems feasible on one of the key issues for CEDEC members, namely the adoption of a ‘risk-based approach’ concerning the intervals for leak detection and repair (LDAR) surveys.

Ecodesign standalone ‘boiler ban’ – the Commission in hot waters

As mentioned in our [April edition](#), the Commission is currently preparing a proposal for a revision of implementing legislation on heating appliances (‘space heaters’) under the Ecodesign Directive. The draft proposal includes provisions which would require all heating appliances to reach a minimum efficiency threshold of 115% to be placed on the market as of 2029. The new efficiency requirements would thus only allow placing on the market of hybrid heaters (like gas + solar thermal or gas + heat pump), micro-CHP space heaters and heat pumps (all types).

In the Consultation Forum held on 27 April, while only Italy, Romania, and Poland explicitly took position against the proposal, most Member States expressed reservations against at least some aspects of the measure. Only Belgium and Denmark gave their full support.

In response to the criticism, the Commission organised an additional technical meeting on 12 June, asking for feedback on the proposal to introduce a list of specific exemptions for situations where no technical alternatives to a stand-alone boiler were available. However, Member States did not support this approach, and a shift towards opposing the whole proposal was apparent in the position of several among them.

The Commission is now no longer taking feedback on the measure, and is set to bring forward the proposal in the course of Q3 2023. The implementing regulation will then need to receive a qualified majority in the relevant comitology committee – composed of Member State representatives – which does not seem evident at all for the moment.

Data Act and Artificial Intelligence – digital sprint

In a record time of only three political trilogue meetings, the European Parliament and Council reached a provisional political agreement on the Data Act on 27 June. As a reminder, the data act will give both individuals and businesses more control over their data, where the data are generated through smart objects, machines and devices. The new rules will give consumers and companies a say on what can be done with the data generated by their connected products. One of the main outstanding questions concerned the provisions on the protection of trade secrets. The Council position on this topic – veto by the data holder against data access claims in exceptional circumstances – was much stricter than that of the EP – suspension of the provision of data only in case of non-compliance with data protection measures.

Regarding the first ever EU rules on Artificial Intelligence, the Parliament’s position on the Artificial Intelligence (AI) Act was finally voted on 14 June, whereas the Council has been ready to start negotiations as from December 2022 ([see April issue of CEDEC brief news](#)). The Parliament position contains among others a positive element on the definition of AI systems, which is now much narrower and does not include simpler software systems anymore – as initially proposed by the Commission – due to the deletion of Annex I (on AI techniques and approaches). This position comes very close to that of the Council’s negotiation mandate. The kick-off trilogue took place already on the same day the Parliament has adopted its position, and will be followed by at least two other trilogue meetings on 18 July and 26 September.

Gigabit Infrastructure Act – state of play

In **Parliament**, rapporteur Alin Mituta (Renew, Romania) has unveiled its draft report on the Gigabit Infrastructure Act (GIA), which foresees amongst others shorter timelines for permit granting and dispute settlement proceedings and a stronger consideration of the input from the body of European regulators for electronic communications (BEREC). The rapporteur also proposes the introduction of a designated body when more competent authorities are involved in the permit-granting procedure. However, the report does not include ‘bitstream access’ as a form of alternative means of access to existing infrastructure, as proposed by CEDEC and several other stakeholders. Concerns regarding the extended transparency obligations have not been integrated by the rapporteur either, who proposes instead that Member States may require additional information – for example on the occupation level of the infrastructure – in addition to the minimum information foreseen by the Commission. The deadline for MEPs to submit their amendments was on 29 June and the amendments should be publicly available in the coming days.

In the **Council**, the Swedish Presidency presented its report on the progress done so far, summarising the discussions that took place within the Council Working Party on Telecommunications and Information Society. Main points of concern for EU Member States are in particular the ‘tacit’ approval for permit granting, the disclosure of works on critical infrastructure and the legal form of the proposal (the Commission proposes that the GIA shall be a Regulation). Moreover, Member States asked for clarification regarding aspects relating to the single information points (SIP) on the modalities of online access and the ownership of data. Member States are now waiting for the Spanish Presidency to reveal its first attempt for reaching a general approach in the Council.

F-Gas Regulation – agreement in sight?

Negotiations on the F-Gas Regulation – which started already on 25 April – have been progressing fast, with a potential final trilogue already planned for 19 July. On the provisions for electrical switchgear – the main issue in this file for CEDEC members – the Council’s position appears the most likely to form the basis of a compromise, as several major Member States have already made significant concessions on their positions in order to reach a general approach. This is overall good news, as it would for example avoid the Parliament’s particularly severe proposal to ban all f-gases in switchgear. However, a final compromise has not yet been reached on this topic which remains a point of tension, and will still be on the agenda for the 19 July trilogue.

Upcoming meetings & Events

- CEDEC Working Group Electricity Market Design Reform: 10 July
- CEDEC Platform Local Broadband: 11 July
- CEDEC Working Group Digitalisation: 17 July
- CEDEC Working Group Gas: 19 July