



CEDEC Brief News | November 2023

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EMD reform – a deal before Christmas ?

Last Thursday (16/11) negotiators from the Parliament, the Commission and the Council met for a second round of political trilogue negotiations to discuss their positions on the reform of the Electricity Market Design (EMD). During this meeting the institutions touched amongst others upon the ‘easy-to-agree on points’ of the EMD reform, including the articles on forward markets including virtual hubs, consumer and retail markets including energy sharing, flexibility provisions, power purchase agreements (PPAs), cooperation between TSOs and DSOs and network tariffs. Ahead of the trilogue, negotiators have already outlined provisional deals on several articles at technical level.

Both Parliament and Council aim for finalising negotiations in December, which would make the EMD reform one of the speediest energy files ever negotiated, taking less than 10 months from the publication of the Commission proposal until the provisional political agreement. However, so far one of the most controversial topics, on which positions diverge considerably, notably the provision on two-way contracts-for-difference (CfDs), has not yet been discussed. The next political trilogue has been set on 13 December, which would mean that technical negotiations would have to be concluded by then, unless a reserve meeting is still foreseen for December. If negotiators should fail to reach a deal before the end of the year, negotiations will have to continue in 2024, with the Belgium Council Presidency taking over.

To prepare for the forthcoming technical and political negotiating sessions in December, experts of the Working Party on Energy (Council) were supposed to discuss last Tuesday (21/11) – according to the [agenda](#) – the way forward on the remaining articles, such as Article 19b on two-way CfDs.

Ongoing trilogues – state of play

- **Energy Performance of Buildings Directive:** despite alarming rumours in the last few months that this essential piece of the Fit-for-55 puzzle might be dropped, a final deal now appears in sight. After the agreement on the definition of zero emissions buildings (ZEBs) in the last political trilogue – with a positive outcome for CEDEC members (see our previous issue) – the only major issue remaining is the minimum energy performance standards (MEPS). Negotiators already agree on the approach to be followed, but still need to set the specific percentages of energy savings to be achieved through renovations by 2030 and 2035. This will therefore be on the agenda for the 7 December trilogue, along with the solar rooftop requirements and the potential ban on financial incentives for standalone fossil-fuel boilers. Several technical meetings will take place before then to lay the groundwork for this (hopefully) final political trilogue.
- **Gas Package:** negotiators for both the Directive and the Regulation are working at breakneck speed to reach a final deal by the 27 November trilogue. For the Directive, although a breakthrough was achieved in the last trilogue on the distribution/transmission split for hydrogen (see our [previous issue](#)), Parliament still had concerns – shared by CEDEC – on whether the vertical and horizontal unbundling requirements allowed sufficient synergies between gas and hydrogen networks. Indeed, the exemption from vertical unbundling requirements for small and medium-sized DSOs with under 100.000 customers was not extended to hydrogen DSOs in the draft discussed. As the number of future customers for hydrogen will most likely be lower than for natural gas, certainly in the initial stage of market development, this would subject DSOs with even a minor hydrogen activity to undergo a burdensome unbundling process. New compromise proposals from the Spanish Presidency attempt to address this, by allowing DSOs with under 100.000 customers for their combined gas and hydrogen activities to be exempted from both vertical and horizontal unbundling requirements. The specific details of the exemption are still under negotiation. For the Regulation, Parliament and Council are still working to find compromises on the future status of the Entity for hydrogen, as well as on network access tariffs and a potential biomethane target.
- **Methane Regulation:** in a final trilogue on 14 November, Parliament and Council reached their ambitious goal to find a deal before the COP28 UN Climate Conference. However, additional technical meetings are still being held to hammer out final details. A finalised text is therefore not expected for another couple of weeks, but preliminary information suggests many positive improvements on issues relevant to CEDEC members. Metering stations and service pipelines will for example be excluded from the scope of the requirements, avoiding the absurd situation of DSOs being required to enter customers’ homes to carry out measurements. However, the measurement, reporting and verification (MRV) requirements still leave room for improvement, with very tight deadlines and methodologies that remain unclear. the two key issues for CEDEC members. Nevertheless, CEDEC members can celebrate the fact that their long-standing demand for a risk-based approach for leak detection and repair (LDAR) survey frequencies - based on the composition of the pipes - will be reflected in the final agreement.
- **AI Act:** following the positive developments during the trilogue meetings in October – which allowed negotiators to provisionally agree on several crucial points, in particular by agreeing on a mechanism to classify high-risk AI-systems by introducing a derogation ‘filter’ based on some predefined conditions – negotiations are on the verge after technical negotiations broke down over the topic of foundation models. The division of the institutions over these types of AI jeopardises the whole timetable, putting at risk further negotiations. Initially the final political trilogue was foreseen to take place on 6 December, but with only few weeks left to work out landing zones, further meeting(s) may be necessary. Should there be no agreement by the December trilogue, negotiations will most likely be handed over to the Belgian Council Presidency, which would have to finalise negotiations by February the latest in order to be able to pass the EU law before the 2024 European elections.

Gigabit Infrastructure Act – Council accelerates

It appears that the Spanish Council Presidency is working intensively to get EU Member States to agree at the next Telecommunications Council, which will be held on 5 December, on a common position (General Approach) on the Gigabit Infrastructure Act (GIA), after progress under the Swedish Council Presidency in the first half of 2023 was rather slow.

As we have reported in our [last issue](#), the [2nd Presidency compromise text](#) dating from 25 September has introduced some first positive changes to the Commission proposal, such as the possibility for network providers to refuse access to their physical infrastructure if they provide a viable alternative means of non-discriminatory open wholesale access, and so to give ‘bitstream access’ to other operators. However, this option would only apply if certain conditions are fulfilled, like the access seeker has significant market power in the area concerned. Very positively, this specific (significant market power) condition has been scrapped in the [3rd Presidency compromise text](#). Meanwhile a [4th compromise](#) was circulated to delegations early November – and only made available to the public very recently, which does not provide any considerable changes concerning the provisions of access to existing physical infrastructure, except that when access to national critical infrastructure is refused, there is no obligation to provide reasons for the refusal. Moreover, concerning the granting or refusal of permits, the notion of ‘tacit approval’ (in the event of a missing response from the competent authority within the 4-month deadline) has been completely deleted, and the deadline for determining a completeness of an application was shortened to 20 working days (after an initial extension from 15 to 30 days).

As a reminder, the European Parliament is waiting for trilogues to start, since it approved its [position and mandate](#) for interinstitutional negotiations, based on the report of Alin Mituta (Renew, RO) as adopted in the Energy Committee (ITRE) on 25 September.

The future of the EU telecoms sector – towards a Digital Networks Act

While co-legislators are busy with the Commission proposal on the Gigabit Infrastructure Act, in the European Commission Thierry Breton is preparing the grounds for a new telecoms law, the ‘Digital Networks Act’, which according to the current state should cover four areas:

- Facilitating cross-border operations and the creation of true pan-European infrastructure operators;
- Adapting the regulatory framework to cut costs and red tape for a fast deployment of technologies;
- Attracting more – and more private – capital into the EU’s telecoms sector;
- Securing telecommunication networks.

The announcement of a future European telecoms law came simultaneously with the publication of the results of the Commission’s exploratory consultation on the future of the electronic communications sector and its infrastructure, which ran from 23 February to 19 May and which also addressed the idea of a fair contribution by all digital players to the costs of digital infrastructure (‘fair share’).

Commissioner Breton will prepare the grounds for this act still under the acting Von der Leyen Commission, but a concrete proposal may only be expected by summer 2025 under the new Commission. In this context, the Commission intends to come out with a strategy in a White Paper in the first quarter of 2024, which would push forward on the priorities of the upcoming Commission. Concerning Commissioner Breton’s idea of a ‘fair share’, which was again presented at the (informal) meeting of EU telecom ministers on 23-24 October, there is still broad opposition from the majority of Member States.

Spotlight on: CEDEC Annual Congress 2023

While EU political mills are still grinding at accelerated pace to bring negotiations on energy legislation to an end in light of the European elections 2024, the CEDEC Annual Congress on 15 November presented an ideal momentum to take stock of the decisive pieces of EU energy legislation that will redefine the future energy landscape in the Union’s member states.

High-level speakers including from the European Commission, local and regional energy companies from across Europe, national associations representing public utilities and other stakeholders discussed the opportunities of local solutions in three focussed panel sessions:

- EU ambitions and Member State realities – It takes two to boost local opportunities
- The big electrification shift – Building a bottom-up approach
- Energy workforce transition required – Filling the skill gaps

CEDEC hopes that the inspiring and energizing debates shed light on the central role for decentralised and local energy actors, and the importance of boosting local opportunities to meet the customers’ true needs, also providing a final message to EU decision-makers for the ongoing negotiations. Read the press release [here](#).



Upcoming meetings & Events

- [CEDEC Board of Directors – 6 December \(Berlin\)](#)