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Fit for 55: latest on the trilogues – EED, RED, and AFIR

- **Energy efficiency (EED):** after a difficult marathon negotiation session in trilogue on 9 March – with strong divergences still remaining on key issues such as the overall efficiency target and its binding nature – the Parliament and Council finally managed to reach a political agreement. The final compromises appear positive on several CEDEC priority issues such as more nuanced rules on the exemplary role of public buildings, the removal of a blanket obligation for DSOs to ‘reduce grid losses’ or the adaptation of the prohibition to invest in ‘stranded assets’. The text agreed will now go back to the Council and Parliament for formal adoption.
- **Renewable energy (RED):** significant progress has also been made in the trilogue on this file, with agreements already reached on several points of relevance to CEDEC members, with positive outcomes including clarification of DSO obligations for providing information on the share of renewable electricity on their grid, or more flexible rules concerning the connection of third-party suppliers to DHC systems. The negotiators hope to wrap up work on this file by 29 March, but several key points still have to be dealt with before then, such as on permitting for renewables or the rules applicable to biomass.
- **Alternative Fuels Infrastructure (AFIR):** this key transport file – containing amongst other things requirements for public charging points of relevance to CEDEC members – appears somewhat stuck in a traffic jam. Although trilogues on this file picked up on 7 February and several political level meetings have taken place since then, the negotiators still have a long road ahead before reaching the finish line. The next trilogue session is planned for the 27th of March, but failing agreement here, the rapporteur for the file in the Parliament Ismael Ertug (S&D – DE) has indicated that there will not be a further one under the Swedish presidency.

The Buildings Directive (EPBD): ZEBs, PPAs and confusion at the plenary

Another key Fit for 55 file – setting the rules for decarbonising the buildings sector, responsible for 40% of energy use in the EU and 36% of greenhouse gas emissions – is now one step closer to finalisation. The Council had already reached its negotiating position (‘General Approach’) for the EPBD back in October, but in the Parliament the vote on compromise amendments in the ITRE committee had been delayed multiple times due to difficult negotiations. In the end, the ITRE MEPs adopted their report on 9 February, and submitted it for adoption by the plenary in the March 13-16 session. The ITRE position did open the crucial definition of ZEB to ‘energy from the grid’ as proposed by CEDEC but did little to address the other issues raised by CEDEC concerning the Commission’s initial proposal, and also made some problematic additions.

Indeed, on the crucial point of ‘zero-emission buildings’ (ZEBs) – i.e. the standard to which all new buildings will have to conform by 2028 (2026 for public authorities’ buildings) – the definition was positively amended in order to allow use of renewable energy from the grid (electricity, gas or district heating). However, the definition retained the reference to Annex III of the Directive, which still restricts the use of renewable energy from the grid to where it is ‘technically not feasible’ to meet demand through other sources. But the most problematic element comes from the new requirement that energy can only be sourced through the grid if it is documented with a power purchase agreement (PPA), with very significant consequences: only electricity is concerned, thereby excluding renewable gases, this electricity must all come from new renewables capacity and it can only be contracted through a PPA. PPAs are complex long-term contracts which are currently only used by large corporate clients and are unsuitable for residential customers and small businesses.

CEDEC therefore initiated a joint action with other EU associations to remove the reference to PPAs in the text through amendments in the plenary session of the Parliament. Although CEDEC’s proposal was picked up and successfully tabled by MEP Andreas Glück (Renew – DE), a multiplicity of other – less relevant – amendments ended up being tabled. This created confusion amongst the MEPs including on voting rules, with the result that another amendment by MEP Jerzy Buzek (EPP – PL) – containing some positive changes but of lesser importance – ended up taking precedence over Glück’s proposal.

With the Parliament now having adopted its negotiating position on EPBD, it remains to be seen whether this problematic PPA element will survive the upcoming trilogue negotiations.

Gas Package: Parliament gives green light and Council steps on the gas

In the plenary session on 15 March, the Parliament formally gave the go-ahead to the ITRE committee to enter interinstitutional negotiations (‘trilogues’) on the basis of the position it adopted on 9 February. Good news for CEDEC members: the ITRE position brings many positive elements to the table for the trilogue negotiations, in particular the distinction between hydrogen transmission and distribution and gas-based rules concerning vertical and horizontal unbundling, without which gas DSOs risk to be excluded from any future involvement in hydrogen.

In the Council, a potential final position was originally only on the official agenda of the Swedish Presidency for the end of June, but a final compromise now seems surprisingly just around the corner. The latest compromises, proposed in the preparatory committee for the Energy Council (Coreper) on 17 March, however still lacks essential provisions concerning the definition of distribution of hydrogen and vertical and horizontal unbundling. Instead, the debate has regrettably been taken off course by amending another – but totally irrelevant – provision on “geographically confined hydrogen networks” (Article 48). This diversion maneuver does not ensure a stable legal framework for DSO involvement in hydrogen. In addition, a new provision was added which would require the Commission to review the application of uniform rules for hydrogen transmission and distribution by 2030. Therefore, even if this distinction were to be introduced elsewhere in the text, the Commission could again propose to change it in less than 10 years – more than enough to scare off the necessary investments.

A major difficulty in advancing the negotiations on this point comes from an unrelated provision on use of low-carbon (i.e. nuclear) hydrogen to count towards decarbonisation objectives (Article 8a). These two issues – unbundling and low-carbon hydrogen – are among the major sticking points the Swedish Presidency will try to address in the proposal it will present to Coreper on 24 March, in view of a final agreement on the 28th of March.

Once the Council has reached its position, it will be able to join the Parliament and Commission in starting interinstitutional negotiations (‘trilogues’) to reach a final agreement on the Gas Package.

Connectivity Package: EC publishes long-awaited BCRD review

To lay the ground for the transformation of the EU electronic communication networks, the EC published on 23 February – under the name of [Connectivity Package](#) – a set of actions including the long-awaited [Gigabit Infrastructure Act \(GIA\)](#) which will replace the 2014 Broadband Cost Reduction Directive (BCRD). The aim of the GIA is to further accelerate the rollout of gigabit networks. The EC proposes to simplify and digitalise permitting procedures, enhance the coordination of civil works as well as the information and transparency obligations. To be seen critically is the provision on civil works coordination which – especially when considering that the GIA shall be a Regulation applicable in all Member States – lacks clarity when it comes to construction works carried out by publicly owned companies.

In addition to the GIA proposal, the EC published a [draft Gigabit Recommendation](#) providing guidance to NRAs on the conditions of access to telecom networks of operators with significant market power and launched an [exploratory consultation](#). CEDEC, which was actively involved in the revision process of the BCRD by engaging in the public consultations and workshops in the past, has initiated the internal process in its Platform Local Broadband with the aim to develop recommendations and amendments to the GIA proposal as well as a common CEDEC response to the exploratory consultation on ‘fair share’.

Data Act and AI Act: Digital spring in the European Parliament

Just before the start of springtime, the Parliament approved its [position on the Data Act](#) last Tuesday (14 March) ensuring more legal certainty and making data sharing rules more practicable in the future. For local companies the Data Act can bring some opportunities when wider access to a variety of data previously unavailable from sensors, equipment and machines is made available to them, leading to potential optimisation of business processes and the possible emergence of new business models. In the Council, discussions have resulted in a new and most probably final [Presidency compromise text](#) presented under the Swedish presidency.

As regards the Artificial Intelligence (AI) Act – nearly two years after the EC revealed its proposal – negotiations in the Parliament are still ongoing, keeping co-rapporteurs and shadows busy with several technical meetings happening over the course of this month, but with an agreement in sight. The definition of AI systems remains among the most sensitive topics and is the most contentious point between left – being in favour of a broad definition to avoid loopholes – and right – wanting a narrower definition in order to cover only machine learning. In the meantime, the Council is waiting for the start of the inter-institutional negotiations with its [position](#) already adopted in December 2022, which significantly narrowed down the definition of an AI system to provide clear criteria for distinguishing AI from simpler software.

Spotlight on: Electricity Market Design reform

On 14 March 2023 the EC revealed its [proposal](#) for reforming the **EU Electricity Market Design**. The document proposes to amend the **Electricity Market Regulation (2019/943)** and the **Electricity Market Directive (2019/944)** – both of which have been already revised in the framework of the Clean Energy Package negotiations that were concluded in 2019 – as well as other related files (RED, ACER Regulation and REMIT Regulation). The proposal is a response to the shortcoming of the EU electricity market system which came into light during the energy price crisis. The proposed measures aim at:

- **Protecting consumers** from the energy price volatility, through a greater contract choice, including fixed price in addition to dynamic price contracts, and by creating a right to participate in energy sharing; also, Member States will have to ensure a supplier of last resort regime as well as protection of vulnerable consumers from electricity disconnection.
- **Making electricity bills independent of short-term markets** through enhanced use of long-term contracts, such as power purchase agreements (PPAs) and two-way contracts for difference (CfDs), and by enforcing hedging strategies for suppliers.
- **Boosting system flexibility, such as demand side response and storage** to increase the uptake of renewable energy investments, by regularly assessing electricity system flexibility and increased transparency when it comes to available grid connection capacity.

For CEDEC members, in particular suppliers, producers and DSOs, both the amendments to the Regulation and the Electricity are of concern. Some of the new elements will require particular attention, such as the provisions regarding energy sharing with the possibility to deduct shared electricity from total metered consumption (net-metering) or the introduction of a provision on a dedicated metering device (sub-metering). Positive elements include among others the increased significance of anticipatory grid investments and grid tariff designs.

With the 2024 EU election approaching, the Parliament is considering an accelerated procedure. In the Council however there are opposing views on the timetable with France (and supporters) very much in favour of a structural reform by the end of the Swedish Presidency, whereas Germany (and supporters) is in favour of conserving the current setup and prefers to delay till after the EU election in 2024.

CEDEC had already contributed to the public consultation on the reform earlier this year and now has started the internal process for analysis of the text, in view of specific recommendations and concrete amendments to be proposed to the EU co-legislators.

Upcoming meetings & Events

- Madrid Forum: 11-12 May
- CEDEC Platform Local Broadband: 22 March 2023
- CEDEC Working Group Electricity Market Design: 27 March 2023
- CEDEC Working Group Gas: 5 April 2023

Ongoing consultations

- [Feedback to EC proposal on the Electricity Market Design reform](#) - deadline 17 May 2023
- [Exploratory consultation on the future of electronic communications sector and its infrastructure](#) - deadline 19 May 2023

Reading of the month

- [Communication from the European Commission on the European Hydrogen Bank](#)