



Union Française de l'Électricité

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# Position paper

## Towards a major market failure?

### Demand Response deserves more than the Proposed Directive!

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Enhancing consumers' participation to markets is a key objective of the Clean Energy Package. Within a context of greater digitalization of appliances and growing need of demand flexibility to adapt to renewable generation, each consumer should be given opportunities to value its flexibility, either individually or through aggregators.

**Unfortunately, the proposal of the Electricity Directive about demand response by aggregation (art.17) is likely going to open years of legal uncertainty by overlooking advanced Member States experiences (e.g., France, Germany and Belgium) and independent analyses (reports from electricity regulators, report of the EG3 driven by the Commission).**

The proposed text asserts that “aggregators shall not be required to pay compensation to suppliers and generators” and “compensation payments between aggregators and balancing responsible parties” should remain exceptional. It contradicts with the Impact Assessment, according to which “the exclusion of any compensation mechanism introduces a possibility of demand aggregators being free riders in the markets and therefore creating inefficiencies”. It simply means that, with the proposed directive, somebody, i.e. the consumer in the end, will support the cost of this free-riding, even without participating to any demand response program.

*The Union Française de l'Electricité (UFE) is the trade association for the French electricity sector. It represents employers in the electricity and gas branches of the industry, and defends the interests of its members, generators, system operators or electricity and energy efficiency suppliers, in the economic, industrial and social field.*



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**This proposal bans payments for the energy that aggregators are given the opportunity to re-sell on markets, in contradiction with the principles of level playing field and fair competition.**

In France, for instance, the framework currently in place foresees a regulated payment from aggregators, as soon as a transfer of energy occurs and, of course, if this energy has not been paid directly by the customer. This payment has been recognized by all supreme courts in France. Indeed, in 2013, the French Constitutional Court approved this mechanism referring to the respect of property rights, principle which is also a clear article of the European Treaties. Likewise, the Council of State and the French Competition Authority, in 2016, recognized that payment principle unreservedly.

Vice-President Sefcovic stated that “another challenge that we are addressing is regulation stability, an issue that I constantly hear about from investors, all across Europe. [...] this is one of the priorities of the 2030 Climate and Energy Policy Framework and the Energy Union strategy”. It is very doubtful that the proposal regarding demand-response will meet this challenge.

**That is why UFE highly recommends that the European Directive target some more general principles to be declined in each Member State and adapted to local real situations: it would allow countries, where frameworks are already in place, to strengthen them rather than re-opening debates for new long years.**

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