Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Delivering a New Deal for Energy Consumers'

(COM(2015) 339 final)

(2016/C 082/04)

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On 14 October 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Delivering a New Deal for Energy Consumers

(COM(2015) 339 final).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 January 2016.

At its 513th plenary session, held on 20 and 21 January 2016 (meeting of 20 January), the European Economic and Social Committee adopted the following opinion by 209 votes to 4, with 6 abstentions.

1. **Conclusions and recommendations**

1.1. The EESC welcomes the Commission's analysis and firmly supports its proposals. It is high time to place consumers at the heart of European energy policy and to provide them with comprehensive opportunities for active participation.

1.2. The obstacles 'preventing consumers from self-generation and self-consumption' addressed in the Commission communication are therefore an issue that urgently needs to be resolved. Unfortunately, however, the document does not explain in sufficient detail where and how these obstacles arise and what must be done to eliminate them. The Commission should produce a separate document to this end.

1.3. The EESC considers the Commission's approach — recognising local conditions, taking them more into account and promoting them, and supporting the involvement of local market participants — to be correct.

1.4. The question of how to design energy systems is of strategic importance. What is needed is competition to design the most efficient overall system. This goes far beyond production and conventional marketing.

1.5. Demand response will play a central role. To this end, the technical conditions (*smart meters, smart grids*) must first of all be established on the consumer side and should be understood and financed as part of grid development.

1.6. Demand response systems could be used by consumers to do more than just adapt their energy consumption and thereby save money. As the Commission quite rightly points out, 'the combination of decentralised generation and storage options with demand side flexibility can further enable consumers to become their own suppliers and managers for (a part of) their energy needs, becoming producers and consumers and reduce their energy bills' ([1]) ('prosumers').

1.7. New incentive schemes must be developed that reward efforts to design self-consumption, direct supply, storage of surplus energy and the provision of control power, i.e. active load management for all market participants, in a way which benefits the system.

([1]) COM(2015) 339 final.

1.8. The benefits of the new prosumer approach described by the Commission show that this is more than merely a complement to the 'centralised generation sources'. This is about the freedom of consumers, i.e. businesses, the public, public utility companies, etc. to choose to also play an active role in the energy system of the future through active generation, self-consumption, storage and self-marketing.

1.9. The Commission does not adequately define self-production and self-consumption in its communication. The examples listed show that it has a very limited understanding of the 'prosumer approach'. In the EESC's view, self-production and self-consumption must be interpreted much more broadly than simply self-produced and self-consumed electricity from a private generator behind the meter.

1.10. Other forms of more broadly defined community prosumer structures are emerging but are being seriously impeded. The implementation of novel business models would enhance the new, active role of consumers and open up completely new opportunities to add value. It is essential that they are taken into account in a 'new deal for energy consumers'.

1.11. More broadly defined forms of self-production and self-supply that use the public grid — in exchange for a fee, obviously — also enable tenants, smaller businesses or members of cooperatives to play an active and responsible role in the energy market and to earn and/or save money. A narrow definition of the terms self-generation and self-consumption is therefore unjust in social policy terms and economically discriminatory.

1.12. The decentralised energy system the Commission aspires to also requires decentralised approaches to markets ([2]). The consumer should be free to choose not only the distributor but also the energy producer.

2. **Introduction (gist of the Commission communication)**

2.1. The Energy Union Strategic Framework sets out the vision of an Energy Union 'with citizens at its core, where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills, participate actively in the market, and where vulnerable consumers are protected' ([3]).

2.2. While the energy sector in Europe has been transformed in recent years, consumers, i.e. private households, businesses and industry, have been and continue to be prevented from reaping the full benefits of the current transition in the energy sector, i.e. controlling their energy consumption and reducing their energy bills. The factors causing this include:

— the lack of transparency regarding costs, consumption and the range of products available,

— the increasing proportion of network charges, taxes and particularly levies in final household electricity bills,

— insufficient competition in many retail energy markets, a lack of reward for active participation and difficulties in switching,

— insufficiently developed markets for residential energy services and demand response,

— obstacles to self-generation and self-consumption,

— unequal access to information and high barriers to entry for new competitors, which slow down the adoption of available advanced technologies and practices (smart metering, smart appliances, distributed energy sources and energy efficiency improvements).

2.3. The new electricity market design ([4]), the use of new technologies, as well as new and innovative energy service companies are supposed to enable all consumers to participate fully in the energy transition with a view to better managing their consumption through energy-efficient solutions and thereby saving money and reducing overall energy consumption.

([2]) See TEN/577 'Launching the public consultation process on a new energy market design' (see page 13 of this Official Journal).
([3]) COM(2015) 80 final, p. 2.
([4]) See footnote 2.

2.4. At the same time, the role of the consumer is also set to change; not only will consumers be able to respond better and more flexibly to electricity supplies and services and benefit accordingly, they will also be able to take on an active role as energy producers.

2.5. The Commission talks about a 'three-pillar strategy' consisting of

(a) consumer empowerment,

(b) technical innovations in the area of smart homes and networks, with

(c) special attention given to data management and data protection

and which is due to be implemented through a 10-point action plan.

3. **General comments**

3.1. The EESC expressly welcomes the Commission's analysis and firmly supports its proposals. It is high time to put consumers at the heart of European and Member State energy policy, as significant progress on many objectives on the road to a sustainable and resource-efficient energy supply can only win acceptance and be achieved if consumers from all sections of society are fully able to play an active and responsible role with regard to the overarching energy and environmental objectives.

3.2. The EESC notes that in many Member States' energy systems, the structural and strategic importance of consumers is severely limited due to inadequate regulatory frameworks. These frameworks reflect the insufficient political understanding of the active role of consumers that has existed until now. In this context, the proposals appear to be suited to implementing the objectives set (including reducing energy consumption through increased energy efficiency and conservation, switching energy production to clean energy sources, adapting consumption more effectively to greater fluctuations in energy output in the future, reducing the strain on the grid and grid efficiency through *demand side management*, increasing the number of players) in a way that is transparent and cost-effective for the consumer.

3.3. However, giving consumers more rights and opportunities also means making it clear to them that they too have a responsibility and must accept the need for adaptation. For many people this is something new.

3.4. This responsibility cannot be imposed. It must be learned and developed in practice by all stakeholders (including policy-makers). There is therefore an urgent need to broaden consumer participation in decisions regarding energy and in investment in generating units, in energy grids (including *smart grid* applications) and in storage systems and management.

3.5. Energy costs for end-users must be both affordable (the problems of competitiveness and energy poverty) and fair (for a fair distribution of costs and benefits). Energy prices and technologies have in the past often favoured those with specific knowledge and expertise, skills and financial and technical resources and with the ability to put these to use. A system that does not attempt to address this imbalance undermines the trust of disadvantaged consumers in the market.

3.6. The EESC agrees with the Commission that energy poverty — a growing social problem — is best addressed directly through social policy measures. Nevertheless, it is important that the 'new deal for energy consumers' should also aim to eliminate imbalances and inequalities in the market.

3.7. The communication correctly states in clear terms that — aside from access to information — the real key factor for consumer decision-making is the (gross) final price. Whilst there is now much greater awareness of climate change issues and a positive attitude towards renewables amongst the public, it is primarily price which determines whether or not energy is saved, whether energy efficiency measures are implemented and whether environmentally-friendly energy sources are used. Above all, it is necessary to ensure that vulnerable consumers are not exposed to extreme price spikes and that (technical) mechanisms are established that pass the desired advantages on to them virtually automatically.

3.8. There is a new development whereby consumers are not only demanding regionally produced agricultural products but also 'regional power' from renewable energy facilities. The regulatory regime almost across the board is preventing this increased demand from being satisfied by energy companies — especially those that allow consumers to have a direct influence on business decisions, such as community energy companies or certain local government services.

3.9. This is unsatisfactory on two counts. Firstly, the market outcome is inefficient as consumer preferences and needs are not catered for. Secondly, regional green energy offers improve how energy is regarded more generally and encourage energy consumers to undertake more extensive energy-saving and efficiency measures and to use flexible options to balance out fluctuations in the production of renewable energy.

3.10. The EESC considers the Commission's approach — understanding local conditions, taking them more into account and promoting them, supporting the involvement of local market participants more intensively, partly in order to be able to offer real prices determined at the point of consumption, rather than at the point of production — to be important.

3.11. The question of how to design energy systems is of strategic importance. What is needed is competition to design the most efficient overall system. This goes far beyond production and conventional marketing. Therefore, unbalanced commitments to particular market or system configurations, of the kind made by individual Member States are often premature. It is, in particular, important to get away from the tendency to consider production and marketing separately, as well as from the sectoral division between electricity, heating and transport.

3.12. Energy systems must be evaluated according to the extent to which they fulfil these requirements. Consumers have always been more integrated in the relevant regional processes for heat and transport — in contrast to electricity. More progress towards energy and environmental objectives will be made if there is a willingness to configure energy systems on the basis of consumer integration and participation and the convergence of the electricity, heating and transport sectors. In view of this, there is much to be said in favour of decentralised energy systems. The EESC refers here to its opinion on a new energy market design ([5]).

3.13. Great attention should be paid to the user-friendliness of the new systems. They must be simple and transparent and must not under any circumstances overwhelm the consumer. The necessary technical resources are now available to ensure this.

3.14. First of all, however, it will be necessary to establish a unified European framework, through which all costs associated with energy production, including external costs, are fully incorporated into the energy price. Full true-cost pricing is called for ([6]). Consumers must be able to interpret retail prices easily and reliably. Market regulation, however transparent, flexible and open, cannot compensate for incorrect price signals resulting from direct or indirect subsidies for particular energy sources.

([5]) See footnote 2.
([6]) See footnote 2.

4. **Pillar 1: Empowering consumers to act**

4.1. *General remarks*

4.1.1. The role of the consumer in the energy sector could change profoundly in the years to come, provided there is the political will. It is therefore entirely appropriate that the greater part of the Commission communication is devoted to this section. This is not simply a matter of technical and commercial law-related issues, but rather of fundamental structural changes which will lead to more democratic energy processes.

4.1.2. Enabling consumers to better manage their consumption independently requires first and foremost that the technical and economic **conditions** be met, in addition to better information. Situations where individual consumption is not or cannot be determined (and therefore billed) should be remedied as quickly as possible. Where new meters need to be installed, these should automatically be 'smart meters'.

4.1.3. Consumption data should be improved quickly in line with the Commission's plans, which also require that the approximately 28 % of consumers who will probably still be without access to 'smart meters' after 2020 be given the right to apply for one. The economic conditions will only be in place once all potential savings remain with the end customer and are not offset by new flat-rate fees.

4.1.4. In order to achieve a swift take-up of smart meters, this must be cost-neutral for the consumer. The cost of installing them should be included in the network costs. Unified and stringent frameworks on data protection and transmission protocols must be put in place for manufacturers.

4.1.5. However, cost neutrality is only one essential and necessary criterion for encouraging consumers to accept smart meters. There must also be a high level of trust in the network operators, suppliers and distributors that collect and analyse the data. The further removed consumers are from these companies, the harder it is to establish this trust. For the EESC, it goes without saying that the highest level of data protection must apply for consumers, meaning among other things that consumers must have full access to all data.

4.1.6. Nowadays, a number of options are already available to consumers looking for cheaper supply on existing markets. The Commission's statement that 'making the switch needs to be technically easy, quick and reliable' should be self-evident in a Europe that was created to promote the free movement of goods. Therefore, the removal of switching fees and penalties should not 'be considered' ([7]), but carried out!

4.1.7. The possibility of choosing a supplier and negotiating the terms of the contract are key elements of market competition. The frequency of switching supplier serves as an indicator in this respect. More and more people are switching supplier, however in many Member States switching rates are very low ([8]). This is due to insufficient consumer information and other existing market barriers.

4.1.8. Although switching supplier is an important tool for consumers, it is not possible to determine how well competition is functioning based solely on the switching rate and prices. Customer satisfaction, local links as well as social involvement at a local level are already an increasingly important factor when choosing a supplier, as is the local availability of representatives of the supplier. Users are increasingly concerned not only about how their electricity is produced, but also where and by whom. It is therefore important that the consumer should be free to choose not only the electricity distributor but also the energy producer.

4.1.9. There will therefore be **competition both in terms of price and quality**. If network costs and production costs are transparent, electricity that was marginally more expensive to produce but which has lower transport costs could on balance still end up being cheaper. However, this requires distance-based pricing in the network cost component, as well as the possibility of directly and personally marketing self-generated electricity from renewable energy sources under fair competitive conditions.

([7]) See footnote 1.
([8]) See ACER/CEER: *Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2013*, October 2014, p. 69.

4.1.10. The Committee agrees with the Commission that social, structural and regional policy objectives cannot be achieved through state-controlled or state-regulated energy prices.

4.1.11. The EESC believes that the statements relating to 'demand response', 'self-generation and self-consumption' and 'increasing consumer participation through intermediation and collective schemes' are absolutely key as this opens up entirely new developments.

4.2. *Demand response*

4.2.1. The successes described in the Commission document relating to existing demand response, e.g. through dynamic pricing (in energy supply agreements) and flexible, automated demand response systems provide striking evidence for the statement that 'energy efficiency and demand response are often better options for balancing supply and demand than building or keeping in operation more power plants or network lines' ([9]).

4.2.2. However, there will only be active participation of end-users if the benefits of flexible tariffs offset the necessary investment costs within a reasonable time-frame. Price signals must therefore be correct, i.e. periods of high energy supply and lower demand (e.g. during windy or sunny periods) or of high demand and reduced supply must be reflected in selectable end-user prices.

4.2.3. Customers must be made aware of price signals — as automatically as possible — so they can make use of them. This requires systems to be as self-regulating as possible. Otherwise only customers with technical expertise would benefit. It must be left to consumers to decide the extent to which they wish to participate in these markets.

4.2.4. It is to be expected that these 'new, active consumers' will participate more intensively in demand response, the more directly involved they are in making decisions regarding infrastructure measures and in investments and the management of generation systems, grids and storage. For this reason, all forms of civic participation as well as civic energy and other community-organised prosumer structures are very important elements of the electricity market. However, this is not sufficiently addressed in the Commission's communication.

4.3. *Self-production and self-consumption of energy — The prosumer in the energy landscape of the future*

4.3.1. Demand response systems could be used by consumers to do more than just adapt their energy consumption. As the Commission quite rightly points out, 'the combination of decentralised generation and storage options with demand side flexibility can further enable consumers to become their own suppliers and managers for (a part of) their energy needs, becoming producers and consumers and reduce their energy bills' ([10]).

4.3.2. However, this will only be possible if there is a genuinely new market design tailored to the formal objectives and no attempt is made to simply transform the existing system so that the new energies can be incorporated into it ([11]).

4.3.3. New incentive schemes must be developed that reward efforts to design self-consumption, direct supply, storage of surplus energy and the provision of control power in a way which benefits the system. This requires not only redefining criteria for what is meant by benefiting the system; it also requires a new vision of what could constitute an 'energy system of the future' in an increasingly decentralised energy landscape. In any case, it is unacceptable to cling to a concept of a system inherited from an age in which conventional nuclear and coal-fired power stations provided baseload capacity on a permanent basis.

([9]) See footnote 1.
([10]) See footnote 1.
([11]) See footnote 2.

4.3.4. In its communication the Commission sets out other advantages of decentralised generation of renewable energy, including being able to reduce grid losses and congestion and thereby save on network costs in the long term. The EESC shares this view; however these benefits have so far not been sufficiently recognised and taken into account in the Member States.

4.3.5. The detailed description of the benefits of this new approach in the working document ([12]) which accompanies the communication shows that this 'prosumer approach' is more than merely a useful complement to the 'centralised generation sources'. This is about the consumer's freedom to choose to play an active role in the energy system of the future through self-generation, self-consumption, storage and self-marketing.

4.3.6. However, the Commission does not adequately define self-production and self-consumption in its communication. In fact, the examples ([13]) quoted in the working document appended to the communication show that it has a very limited understanding of self-production and self-consumption. In the EESC's view, this must be interpreted more broadly than simply self-produced electricity from a private generator behind the meter, for example PV power from a household rooftop system: i.e. power produced without using or being transmitted through a public grid. The assumed identification of the system operator with the end-user should be abandoned, since this only covers a specific type of self-supply.

4.3.7. More broadly defined prosumer structures are emerging but are still being seriously impeded. This includes for example the business model whereby energy cooperatives market their electricity directly to their members or where community energy companies supply their electricity to consumers in the local area, without going via the energy market or distributors. The implementation of models such as these would greatly enhance the new active role of the consumer and open up completely new business models and must be taken into account in a 'new deal' for energy consumers.

4.3.8. The broadening of the definition of self-generation and self-consumption is also important because the narrow interpretation used to date (based on identification of the system operator with the end-consumer) only targets a particular group of 'active consumers'. As such, the only consumers able to engage in self-generation and self-consumption are those with sufficient capital to invest in generating facilities or, more importantly, sufficient space (e.g. in or on buildings) to install them. For example, tenants would in effect be excluded. The same problem applies to industrial consumers, particularly smaller firms and those that do not have their own extensive premises.

4.3.9. On the other hand, more broadly defined forms of self-generation and self-supply that use the public grid — in exchange for a fee, obviously — constitute models that also enable tenants, smaller firms, members of cooperatives, etc. to play an active and responsible role as prosumers in the energy market and to earn and/or save money. A narrow definition of the terms self-generation and self-consumption is therefore unjust in social policy terms and economically discriminatory.

4.4. *Consumer participation through intermediation and collective schemes*

4.4.1. The Commission also talks about 'collective schemes and community initiatives' that 'have been emerging with increasing frequency in a number of Member States. More and more consumers engage in collective self-generation and cooperative schemes to better manage their energy consumption. This innovation **by** consumers leads to innovation **for** consumers and opens up new business models. Energy services companies, aggregators, brokers, data handling companies, other intermediary companies and frequently also consumer organisations are emerging to help consumers achieve better energy deals while relieving them from administrative procedures and cumbersome research. … This also opens new opportunities for local communities and authorities whose regional and local energy initiatives can provide a valuable link between decision-makers, citizens and innovators at the local level' ([14]).

([12]) SWD(2015) 141 final, 15.7.2015.
([13]) See footnote 12.
([14]) See footnote 1.

4.4.2. The study carried out by the EESC on civic energy ([15]) highlights that a range of additional benefits can also be cited (e.g. increased public support for new plants, development opportunities for regional economies, funding for investments). In all Member States visited, the EESC identified a high level of willingness on the part of civil society to actively support private sector and/or community models, and/or to implement these themselves. However, these initiatives often fail to due to legal requirements, bureaucracy or as a result of other intended or unintended discrimination.

4.4.3. One example: individuals who collectively operate a civic wind turbine are often unable to directly access and use their own electricity and instead must place it on the market via distributors and subsequently buy it back themselves. This is not what the EESC understands by 'active market participation'.

4.4.4. In the introduction to the communication, the Commission states that obstacles 'preventing consumers from self-generation and self-consumption' are an issue that needs to be addressed, but does not explain in sufficient detail where and how these obstacles arise and what must be done to eliminate them. Experience from many Member States shows that national regulatory bodies often effectively prevent self-generation, self-consumption, self-supply or direct supply, or at least create economic or bureaucratic obstacles; examples for this include Spain and Germany. The Committee therefore calls on the Commission to draw up a specific paper to be included in the consultation process, building on the working document ([16]) appended to the communication and describing what intended or unintended disadvantages are encountered by prosumer approaches, what bureaucratic hurdles exist and how existing discrimination is to be eliminated.

This also means that the Commission should carry out a self-critical analysis of whether or not its own State aid rules are compatible with the proposals set out in the communication. It is already clear at this stage that self-consumption, self-supply and direct supply are not sufficiently acknowledged in the Guidelines for State aid for environmental protection and energy ([17]).

4.4.5. The discussion on the role of intermediaries should also look at the independence of large distributors. In order to preserve this, a further discussion on the business models of intermediaries and the question as to who their clients are would be useful.

5. **Pillar 2: Smart homes and networks**

5.1. The new energy system is growing from the bottom up. Networked devices become smart homes, which become smart buildings, which in turn become active network components. Smart houses effectively form the basis of the new energy system and are also a good place for new active 'consumers' to learn and gain experience. Better information must be provided about the many possibilities that already exist.

6. **Pillar 3: Data management and data protection**

6.1. Standardised, reliable data protection directives are the foundation of and a prerequisite for the rapid, future-proof roll-out of modern communication systems. The following must be specified:

— what data is it absolutely necessary to gather for optimised operation,

— how the data must be encrypted,

— where and for how long data may be stored,

— who can order data to be erased.

6.2. For the EESC, it is essential that consumers are and remain owners of their data and that they have full control of and access to it, in order to be able to verify, correct, delete it and transfer it in the event of switching supplier.

Brussels, 20 January 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

([15]) EESC study on *Changing the future of energy: EESC study on the role of civil society in the implementation of the EU Renewable Energy Directive* (EESC-2014-04780-00-04-TCD-TRA).
([16]) See footnote 12.
([17]) OJ C 200, 28.6.2014, p. 1.