

Joint response of the Walloon Network for Sustainable Access to Energy (RWADÉ) and the Federation of Social Services (FdSS) to the European Commission's consultation on Electricity Market Design

2 February 2023

Offers and contracts

Q4: Would you support provisions requiring suppliers to offer fixed price fixed term contracts (ie. Which they cannot amend) for households?

Yes. The current crisis has shown the volatility of energy prices and the difficulties for consumers to understand the myriad of complex formulas used to determine the price of variable products in the retail market, and ultimately to foresee the price that they will have to pay and to budget their expenses accordingly. This is all the more serious in a high-inflation context where many other important household expenses are also soaring (rental payments, food prices, etc.). Households should always be able to opt for stability and predictability by choosing a fixed-price, fixed-term contract, shielding themselves against a potential bill shock.

Customers should be able to terminate their contract at any moment without early termination fees, and pricing for fixed-price, fixed-term contracts should be reflective of suppliers' costs and their real risk exposure. The offer of 3-year fixed-price, fixed-term contracts in the Brussels-Capital Region has protected many households from the explosion of energy prices, especially in the beginning of the current crisis.

Q5: If such an obligation were implemented what should the minimum fixed term be?

- (a) less than one year,
- (b) one year,
- (c) longer than one year**
- (d) Other

We advocate for a minimum term of 3 years, which is in our view sufficiently long to protect households against short-term market shocks while avoiding the situation where they are bound by an outdated offer that no longer reflects market evolutions over multiple years.

Q6: Cost reflective early termination fees are currently allowed for fixed price, fixed term contracts. Should these provisions be clarified? If these provisions are clarified, should national regulatory authorities establish ex ante approved termination fees?

Yes, these provisions should be clarified. Cost-reflective early termination fees should not be allowed. Suppliers should however be allowed to charge customers a higher

price reflecting their real costs and increased exposure to risk as compared to variable price products. This premium should be limited by national regulatory authorities so that it is reasonable and cost-reflective and so that it allows households to have access to fixed-price, fixed-term offers at an affordable price.

Considering the existing practice in Belgium, it should be clarified that this premium for fixed-price, fixed-term contracts (when compared to variable price contracts) should always be charged based on the number of days during which the contract was active, i.e. suppliers should not be allowed to charge a unique fixed fee to customers for the entire term of the contract regardless of whether the customer decides to terminate the contract earlier than that date.

Following this model, a consumer would always be free to terminate their contract at no additional cost. They would however have to pay the price that was stipulated in the fixed-price, fixed-term contract in proportion to the number of days that the contract was in force. National regulatory authorities would control that these premiums remain reasonable and cost-reflective and that they do not excessively limit households' access to fixed-price, fixed-term contracts.

Q7: Do you see scope for a clarification and possible stronger enforcement of consumer rights in relation to electricity?

There should be stricter obligations for suppliers regarding the accessibility of their customer service, for instance maximum waiting times for phone calls and maximum response times for emails. These obligations should be enforced by national authorities and sanctions should be foreseen in case of non-compliance.

Moreover, abusive practices should be more strictly monitored and sanctioned by national public authorities. Door-to-door and phone canvassing should be prohibited and public advertisement of energy retail products should be banned or very strictly limited.

Finally, the Electricity Directive should establish that disconnections due to a consumer's inability to pay are prohibited. Instead, national public authorities should foresee mechanisms centred on targeted support to those at risk of being cut off. Suppliers should be required to proactively communicate with the household and the relevant social services to allow for any outstanding issues to be rapidly addressed.

Along the same lines, the installation of new budget meters and power limiting devices should be strictly forbidden. All existing budget meters and power limiting devices should be immediately removed.

Budget meters are punitive devices leading to self-disconnections and structural underconsumption when compared to actual household needs. The devastating effects of budget meters for households in Wallonia have been recently documented in a [series of podcasts](#) published in late 2022 by the Walloon Network for Sustainable Access to Energy (*Réseau wallon pour l'accès durable à l'énergie*, RWADE).

Power limiting devices could be installed in the Brussels-Capital Region until April 2022. These limiters could be placed by the DSO as part of the disconnection procedure launched by a supplier if certain conditions were met. They limited power to the household to 2,300 watts, although the public social services centre could demand, after conducting a social enquiry, that this limit go up to 4,600 watts.

Power limiters were punitive devices that did not allow to use multiple household appliances at the same time and that required significant changes to daily routines. For example, these limiters would not allow any appliances to be plugged in at the same time as a fridge, a TV and a cooking plate. Moreover, they did not reduce consumption: the household would still consume the same amount of electricity and it would develop strategies to bypass the power limiter, notably by using appliances subsequently rather than simultaneously. This meant in turn that no additional disposable income was available for households to try to limit their indebtedness, defeating the intended purpose of these devices and needlessly compounding the suffering experienced by people in this situation.

Supplier of last resort

Q10: Should the responsibilities of a supplier of last resort be specified at EU level including to ensure that there are clear rules for consumers returning back to the market?

Yes, both when commercial suppliers declare bankruptcy and when they withdraw or are expelled from the market.

Stricter rules should be established as regard the rates that can be applied to consumers in these cases, as they are seldom competitive and they are often in line with the highest-priced commercial products in retail markets.

Customers are rarely informed in an adequate manner that they are supplied by the supplier of last resort and often ignore that they should conclude a new contract to benefit from competitive pricing. Stricter information requirements for consumers in this situation should be introduced. In addition, suppliers of last resort should be subjected to the same consumer protection rules as commercial suppliers and national authorities should closely supervise their operation.

Q11: Would you support including an emergency framework for below cost regulated prices along the lines of the Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices, i.e. for households and SMEs:

- (a) If such a provision were established, price regulation should be limited in time and to essential energy needs only?**
- (b) Would such provisions substitute on long term basis for direct access to renewable energy or for energy efficiency? Can this be mitigated?**
- (c) Would such contracts reduce incentives to reduce consumption at peak times, can this be mitigated?**

Yes. We believe that the possibility to foresee below-cost regulated prices is key to ensure energy affordability for households and to secure their right to energy, enshrined in international and European human rights law as well as EU legislation and the European Pillar of Social Rights. This possibility should not be limited in time and should not be limited to essential energy needs only.

Price regulation should be able to take into account household income and wealth more broadly, beyond the narrower criteria established in the Electricity Directive regarding vulnerable and energy poor consumers. Social tariffs should thus coexist with wider below-cost regulated prices benefiting a larger sector of the population that cannot be defined as vulnerable or energy poor, but that experiences nonetheless difficulties to afford energy services, especially in times of increased and highly volatile prices. In other words, there is no reason for *all* households to benefit from below-cost regulated pricing guaranteeing energy affordability: high-income and wealthier households, as defined by each Member State, can afford market-based prices and should be excluded from these measures.

Current caps on market revenues linked to the distribution of surplus revenues and surplus congestion income revenues to final electricity customers along with temporary solidarity contributions, as set out in Council Regulation (EU) 2022/1854, should be maintained, at least as long as high prices and high volatility persist. They should even be maintained beyond this emergency situation, in order to ensure that below-cost regulated prices are (partly) financed by those mechanisms.

Finally, Member States should be encouraged to establish below-cost regulated prices under the conditions described above and, where applicable, should be required to justify in a publicly accessible document why they do not have recourse to this possibility in times of an emergency situation such as the current one.

Sub-questions (b) and (c) are beyond the scope of our expertise in this matter. We would however like to raise attention to the fact that consumption is not always correlated with disposable income, and that the ability to modulate consumption while sufficiently securing a household's energy needs tends to be greater for high-income and wealthier households. Too narrow of a focus on linking these provisions to energy consumption may thus lead to high-income and wealthier households mostly benefiting from below-cost regulated prices, to the detriment of those who need them the most.