

Memorandum

The Energy Ombudsman Service is an autonomous federal service registered as a legal entity. Our Service is competent for the signposting and treatment of questions and complaints regarding the operation of the electricity and natural gas markets and the handling of disputes between end customers and the electricity and natural gas companies.

Based on the mandate given to us, on the details of the complaints received, and on the experience we have gained through our mediation activities, we have formulated the following policy advice with application of Article 27, §6, second paragraph, of the Law dated 29 April 1999 concerning the organisation of the electricity market.

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Prices & Tariffs

➔ Simplify the energy prices charged by suppliers to the volume-based prices (Euros/kWh)

by including fixed fees (subscription costs), green electricity costs, and combined heat and power (CHP) units, etc. in the volumetric energy price (Euros/kWh) in order to facilitate price comparison.

In its annual monitoring study of prices on the electricity and natural gas markets for households and small professional consumers, the federal regulator CREG notes that the complexity of *“the market makes it increasingly difficult for consumers to choose: extra fixed costs, conditional discounts, levels of consumption with individual prices, percentage shifts in consumption (day/night), contracts of indefinite duration with a fixed energy price that can change after a period of time (for example: after 1 year, 3 years), etc. This has made the energy market unnecessarily complex, which means consumers who do not participate actively in the energy market, or those who have already taken cautious steps, are in danger of dropping out.”*

The first step to remedy this complexity and facilitate price comparison between energy contracts and energy suppliers could be to reduce tariff structure of energy companies to one single volume-based tariff in Euros/kWh.

(Re-)introduce the so-called “safety net regulation” for variable and fixed energy prices

whereby the CREG monitors any price increases and tariffs of new energy contracts by benchmarking prices with neighbouring countries. At the beginning of 2013, the federal government introduced the safety net mechanism to enable thorough monitoring of energy prices.

The CREG monitors the correct indexing of prices and compares any price increases with those of comparable consumers in neighbouring countries. Electricity and gas prices for families and SMEs should not be higher than those in neighbouring countries.

The Michel government decided to stop the safety net mechanism on 31 December 2017.

➔ **Expand beneficiaries of the (automatic) social rate to the same categories as beneficiaries of the social heating fund.**

This will almost double the number of beneficiaries (450,000 for electricity and 270,000 for gas) and will have an impact on the federal contribution of 1.5508 Euros/MWh for electricity and 0.5816 Euros/MWh for gas with which the “Protected customers” fund that is managed by the federal energy regulator CREG is funded. The estimate of the additional cost is based on a doubling of the families entitled to a social rate. This means an additional cost of 5.43 Euros/year for a family with an average annual electricity consumption of 3,500 kWh and 13.38 Euros/year for a family with an average annual natural gas consumption of 23,000 kWh. According to the 2018 CREG annual report, the requirements for protected customers related to electricity and gas in 2018 amounted to 113 million Euros and 50.3 million Euros respectively. A doubling of the number of beneficiaries of the social rate would therefore require additional financing of more than 160 million Euros. However, it is up to policymakers to decide whether this financing is provided via household and company energy bills, via general government funds, or via the taxpayer.

The wider access to the right to the social tariff could offer affordable energy prices to approximately 1 million vulnerable families, which corresponds to the number of families who live with the risk of falling into energy poverty in Belgium (21.7% of the families in Belgium according to the Energy Poverty Barometer of the Koning Boudewijnstichting [King Baudouin Foundation]).



Sales & Marketing Practices

➔ Prohibit door-to-door sales and sales on public and private roads

Since 2014, the Ombudsman Service has been observing a growing number of complaints about sales practices involving door-to-door sales and sales outside general sales areas, which are being used even more actively, sometimes more aggressively, by some energy suppliers in an increasingly competitive energy market. Telephone sales and other remote sales via independent and non-independent sales agencies and agents are also on the rise.

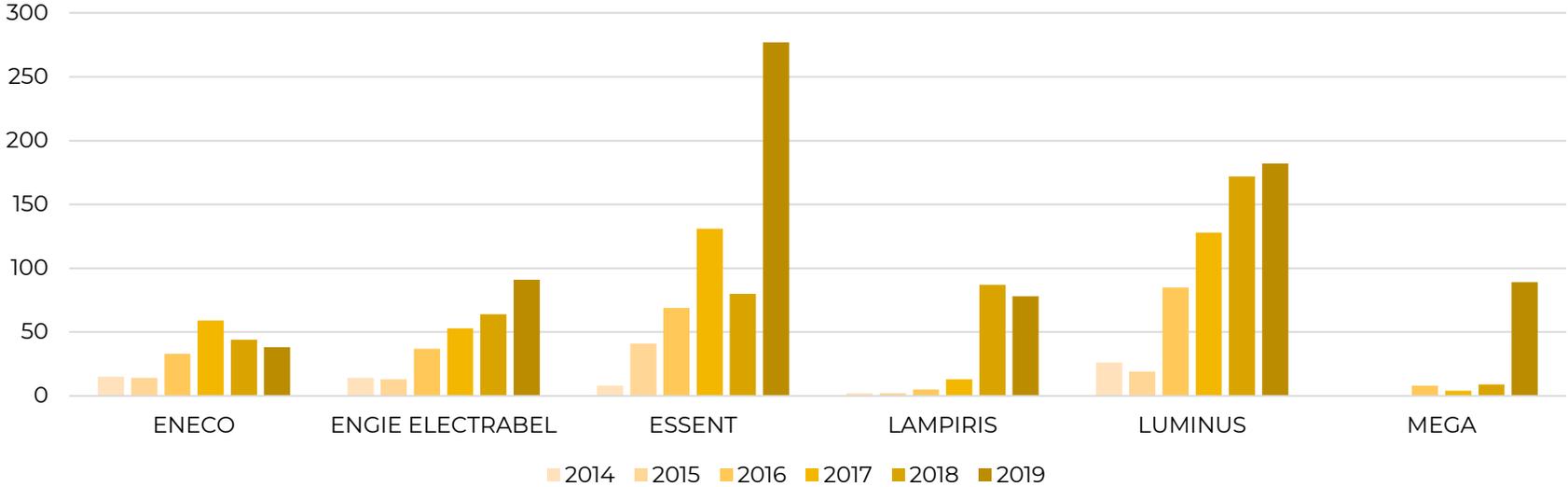
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The evolution of the total number of complaints concerning sales practices is as follows:

Year	Number of complaints
2014	178
2015	251
2016	261
2017	428
2018	483
2019	804

The Ombudsman Service has therefore noted a year-on-year increase in these disputes. We have also noticed an increase when we look at the complaints for each energy supplier that applies such practices.

Evolution between 2014 to 2019



A general ban on such practices was not possible since this was not in line with the European Directive on Unfair Commercial Practices (Directive 2005/29/EC of the European Parliament and of the Council dated 11 May 2005 concerning unfair commercial practices of businesses towards consumers in the internal market).

The European “New Deal for Consumers” now clarifies which rules Member States may introduce to protect the legitimate interests of consumers against particularly aggressive or misleading marketing or sales practices in sales outside sales areas (article 3 (2) of Directive (EU) 2019/2161 of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, Official Journal EU December 18, 2019).

Member States will therefore be allowed to introduce their own legal proportional and non-discriminatory provisions to protect consumers from aggressive and misleading practices selling at the door or in public places.

➔ **Expand the consumer agreement to SMEs for energy**

(non-residential users with an annual consumption of max. 100,000 kWh gas and max. 50,000 kWh electricity)

SMEs and self-employed (retailers, chip shops, bakers, etc.) do not enjoy the same protection as households, since they are regarded as professional end users. After all, it is the contractual conditions, as well as the Civil Code, that apply in the event of disputes. Practice shows us that these small SMEs or small self-employed people, who are considered to be professionals by law and the consumer agreement, often do not have the required knowledge to cope with the issue they face. The invoices they receive are often simply passed on to an accountant who arranges the bookkeeping. However, the accountant does not help them to look for a cheaper supplier, and cannot help them when they are confronted with, for example, late invoicing by the supplier. When the federal legislation concerning the electricity and natural gas market was revised in 2012, a number of provisions were introduced that also apply to SMEs. For example, a ban was introduced on charging termination compensation in the event of premature termination of the energy supply contract by the customer, a ban that protects not only household customers but also SMEs. A legal definition of SMEs was also introduced in 2012 that did not include additional rights to protection against certain market and sales practices of energy companies. Making the consumer agreement also applicable to energy SMEs would resolve this.

➡ **Limit backbilling by the supplier to the disadvantage of the consumer to 12 months after receipt of the (corrected) meter reading.**

The general terms and conditions of the suppliers ensure a final statement is drawn up every year, unless the supplier has not received the measurement data. However, these same general terms and conditions usually do not contain any special provisions about what should happen if that obligation has not been met.

The Ombudsman Service regularly receives complaints in connection with settlement invoices that have been sent after a long period of time as a result of internal invoicing problems of the supplier, those invoices sometimes go back several years. This can have a big impact. A late invoice can unexpectedly increase the energy debts of consumers who continue to remain obliged to pay current invoices. Moreover, this practice completely contradicts the set-up of the current system of invoicing, which proposes optimal distribution of payment obligations with regard to energy debts.

In addition, late invoicing prevents consumers from being able to contest certain elements of the invoice, not least with regard to the possible revision of the stated measurement data. Such an arrangement limiting backbilling to a certain period of time also applies in France and the United Kingdom.



Collection & Recovery of Energy Debts

➔ **Extend the payment term for energy invoices to at least 30 calendar days.**

This period is currently set to 15 calendar days, but this is not in line with the periodic income consumers normally receive, which is a period of 30 calendar days.

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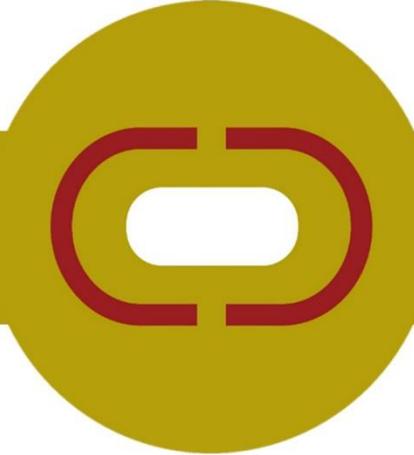
➔ **No administrative costs or negligence interest charged with a repayment plan.**

When consumers with payment problems request a payment plan from a supplier, this is often not the only debt they are faced with.

Flat-rate costs and charged interest for a repayment plan can then place an extra burden on the family budget that has already been put under pressure.

Free telephone numbers to reach energy suppliers and distribution system operators:

Most energy companies can only be reached by telephone via a paid number, and sometimes long waiting times force customers to use on-line questionnaires and to submit their complaint on-line. However, not all customers have the digital capabilities to deal with this and are looking for a listening ear for their questions and for the resolution to the problems they may be facing. This proposal also stems from the commitment of a number of energy companies through the customer-friendliness charter that entered into force on 1 January 2012.



Operation & Statute of Ombudsman Service

➔ **Broadening the energy disputes for which the Energy Ombudsman Service is responsible.**

In the coming years, the Ombudsman Service expects an increase in the offers from energy suppliers of products and services that in most cases still have some connection with energy, but no direct connection with the supply of electricity or natural gas (today the main issue is the supply of petroleum products, wood, pellets, digital energy-saving applications and thermostats, maintenance and repair contracts for heating installations or solar panels, as well as an expansion of the range to be promoted through the European Clean Energy Package). The authority over those kind of disputes by the Ombudsman Service may be open to interpretation if these products and services are offered by third parties (aggregators, employees, intermediaries, subcontractors, etc.), and not by energy suppliers. Nevertheless, it seems desirable that the Energy Ombudsman Service should also be competent for all disputes about products and services that directly or indirectly relate to the operation of the energy market, regardless of the supplier or company offering these products or services. After all, consumers do not always make the distinction between the company as an energy supplier and/or provider of other products and services.

Such an extension of the authority of the Ombudsman Service is in line with the fourth European Electricity Directive, which has approved the crucial role of ombudsmen in the energy sector, including third parties (traders, energy service providers, aggregators and all providers of contracts with energy components, including bundled offers, tenders and local energy communities) to be instructed to commit to out-of-court dispute settlement.

Make it legally possible to file a complaint by phone.

If consumers wish to submit a complaint, they will first be sent a letter of correspondence by post or email containing a summary of the complaint made by telephone, which they will then have to agree with and return to the energy company as a (non)-admissible complaint. The possibility of simply making a complaint only by telephone does not currently exist, but the Ombudsman Service has noted that more than 5,000 questions and complaints about energy companies are answered by telephone each year without this additional workload being matched by an adjusted personnel framework or additional financing. In order to further assist (vulnerable) consumers and to be allowed to charge a fair contribution from the energy companies for those complaints, the Ombudsman Service proposes to continue to deal with telephone complaints in writing to the extent that the end customer concerned agrees.

➡ Provide the legal option for submitting a collective legal claim on its merits.

The legal mandate of the Energy Ombudsman Service is limited to individual dispute settlement, while a collective legal action or legal action for collective recovery is not possible according to the Wetboek Economisch Recht (WER) [Law on Economic Rights].

Such legal action can only be brought by the Consumer Ombudsman Service, and then only with a view to a collective settlement (Article XVII.39, 3° WER). In that area too, the Energy Ombudsman Service wishes to point to possible strengthening of the WER by:

- 1) providing the Consumer Ombudsman Service, as well as the individual Ombudsman Services qualified by the Federale Overheidsdienst (FOD) [Federal Public Service] Economy, in particular the Energy Ombudsman Service, the possibility to forward a collective claim as an entity for out-of-court dispute settlement in order to act like a **group representative** for consumers in the case of a violation of the electricity and gas law, which would be more efficient than an individual legal claim by a single consumer;
- 2) limiting this legal action for collective recovery to a collective settlement, but also by giving the individual ombudsmen an opportunity to conduct **a proceeding on the merits** before the Enterprise Court in Brussels (currently this substantive procedure can only be conducted by recognised members of the Consumer Council, such as consumer organisations).

An alternative to strengthen the role of an energy Ombudsman Service could also be to

➡ **offer regulators the (legal) opportunity to take structural action against energy companies**

based on the complaint data and experiences that the Energy Ombudsman Service shares with the regulators.

Through the institutional division of powers between (federal and regional) energy regulators who are responsible for the organisation of the regional energy markets and the approval of the transmission and distribution network tariffs, and the federal powers of the competent administrations in terms of invoicing, market practices and consumer protection, which can also be further addressed at regional level, it is possible that certain structural issues raised by the federal energy Ombudsman Service receive insufficient follow-up or recognition simply because the competent regulators and administrations refer them to each other within their own competences. According to the Energy Ombudsman Service, improved coordination between the different federal and regional regulators and administrations could already help, but where consultation and agreements clash with their limits, a thorough and independent action by regulators and/or legislators could mean better and faster resolution of the problems and situations that energy end users are facing in the complex (institutional) organisation of the energy market(s).

The examples in which energy regulators could make binding decisions with regard to energy suppliers of electricity and natural gas in an autonomous and independent manner on the basis of the complaint data and policy advice from the Energy Ombudsman Service are as follows:

- The imposition of a single volumetric energy price in Euros/kWh that also includes other (fixed) fees such as subscription costs and costs for green energy. A separate indication of subscription costs or fixed fees in Euros/(starting) year and the charging of separate costs for green electricity and CHP (only in Flanders) as an

energy component makes the energy invoice complex and prevents the comparison of the prices and tariffs of suppliers and the changing of energy contracts;

- A regulatory framework for additional products and services that are increasingly being offered by energy suppliers (such as petroleum products, firewood, pellets and numerous energy services such as installation and maintenance of heaters, solar panels, batteries, digital energy-saving tools) to relieve energy consumers or prosumers;
- A system of backbilling that limits the period for invoicing (the corrected) energy consumption to 12 months from the receipt of the (corrected) meter reading by the energy supplier.



Status of the Energy Ombudsman

➔ **Parliamentary status through the (re)appointment in the relevant committee in the Chamber**

of Representatives having regard to the legal requirements of the Ombudsman's independence and impartiality.

In order to ensure that a public sectoral ombudsman can carry out its duties independently, has authority, is impartial, can formulate policy advice, and has very thorough professional knowledge, certain aspects of the status are indispensable. These include incompatibility with remunerated public or political mandates and independence with regard to companies, professional federations, governments and public authorities.

As the Energy Ombudsman has not been reappointed for more than 5 years, he prefers to ask the legislator in particular to provide for (re)appointment by the competent parliamentary committee. This will ensure transparency of a (re)appointment procedure that can be guaranteed by the representatives of the people. Leaving this (re)appointment procedure exclusively to the executive power runs the risk that ombudsmen are in danger of conflicting with the competent policy makers if the latter are not seen to be independent from the ombudsman and therefore its policy advice, which may be critical.

Finally, the Energy Ombudsman Service is a requesting party for the protection of the titles “Ombudsman” and “Ombudsman Service” at national or European level. Under the so-called European Alternative Dispute Resolution (ADR) Directive, it is possible that qualified or non-qualified entities also use the name “Ombudsman” and “Ombudsman Service” even though the legal duties of an ADR entity may differ materially from an Ombudsman Service. An ADR entity does not necessarily have the duty of addressing structural issues to sectors, policy makers and legislators through policy recommendations or opinions, while this is one of the core tasks of Ombudsman Services in sectors handling disputes over basic services or network economies. The Dutch-language Energy Ombudsman prefers to put it as follows: *“An Ombudsman Service is usually a qualified ADR entity, while a qualified ADR entity is not necessarily an Ombudsman Service”*.

Overview

- ➔ Simplify the energy prices charged by suppliers to the volume-based prices (Euros/kWh)
- ➔ (Re-)introduce the so-called “safety net regulation” for variable and fixed energy prices
- ➔ Expand beneficiaries of the (automatic) social rate to the same categories as beneficiaries of the social heating fund

Prices & Tariffs



- ➔ Extend the payment term for energy invoices to at least 30 calendar days
- ➔ No administrative costs or negligence interest charged with a repayment plan
- ➔ Free telephone numbers to reach energy suppliers and distribution system operators

Energy Debts



Sales & Marketing Practices



- ➔ Prohibit door-to-door sales and sales on public and private roads
- ➔ Expand the consumer agreement to SMEs for energy
- ➔ Limit backbilling by the supplier to the disadvantage of the consumer to 12 months after receipt of the (corrected) meter reading

Operation & Statute of Ombudsman Service (& Energy Ombudsman)



- ➔ Broadening the energy disputes for which the Energy Ombudsman Service is responsible
- ➔ Make it legally possible to file a complaint by phone
- ➔ Provide the legal option for submitting a collective legal claim on its merits
- ➔ Offer regulators the (legal) opportunity to take structural action against energy companies
- ➔ Parliamentary status through the (re)appointment in the relevant committee in the Chamber

Contact

Energy Ombudsman Service

Mr Eric Houtman, Energy Ombudsman

Koning Albert II-laan 8 box 6, 1000 Brussels

Tel: +32 (0) 2 211 10 60

Fax: +32 (0) 2 211 10 69

www.ombudsmanenergie.be

www.linkedin.com/company/odesme



Ombudsdienst
Service de Médiation de l'-voor **ENERGIE**