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# Amendments to the Electricity Market Act

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# Introduction

The Ministry of Economy has launched a public consultation on the e-Consultation Portal for the "Draft Proposal of the Act on Amendments to the Electricity Market Act, together with the Final Proposal of the Act." The consultation is open for comments until June 12, 2026.

The American Chamber of Commerce in Croatia (AmCham) welcomes the adoption of the Act and the overall direction of the proposed amendments aimed at strengthening consumer protection, developing the electricity market, and further integrating renewable energy sources and new energy services. At the same time, members of AmCham's Energy and Environment Committee have identified several areas where the regulatory framework could be further improved in order to ensure transparent, market-based, and predictable conditions for all market participants.

# AmCham's Comments

## Development of a Competitive Electricity Market

Despite the formal liberalization of the electricity market, a significant share of consumers continues to rely on the universal service. Such a market structure may limit the further development of competition, innovative services, and more active customer participation in the market. As highlighted by the European Commission in its latest European Semester Spring Package, Croatia continues to have one of the most concentrated retail energy markets in the European Union and the second-lowest number of active electricity suppliers among EU Member States. Furthermore, available data indicate that Croatia's supplier switching rate, at less than 2%, remains significantly below the levels observed in more developed EU energy markets. According to the 2025 Eurobarometer survey[1], approximately 38% of EU consumers changed their electricity supplier at least once during the previous three years. In practice, this translates into annual switching rates of roughly 5% to 15% in many Member States, with even higher rates recorded in the most competitive markets. Croatia's switching rate of less than 2% is therefore considered a very low level of consumer engagement and market competition. As a result, greater attention should be given to this issue within the proposed amendments to the Electricity Market Act.

It is therefore necessary to further improve the regulatory framework to ensure equal and predictable market conditions for all suppliers and to support the continued development of a competitive and resilient electricity market. In this context, a gradual transition toward greater reliance on market-based price formation is recommended, including the introduction of a clear, predictable methodology for determining regulated components, while simultaneously preserving effective and targeted mechanisms for the protection of vulnerable customers.

Clear and stable rules encourage investment, innovation, and the development of new energy solutions, while enabling companies to plan their business activities over the long term. In addition, further efforts should be made to promote the development of new services and innovative market models, including aggregation, demand-side management, dynamic pricing models, energy sharing, and digital energy services. In doing so, equal access to consumption data and market infrastructure should be ensured for all market participants.

Consumer protection measures, particularly those aimed at vulnerable and energy-poor consumers, should be targeted, transparent, and market-neutral. Such measures should not unduly distort competition or create asymmetric conditions among suppliers. To strengthen market competition and empower end consumers, the process of switching electricity suppliers should be further simplified and accelerated. The objective should be a fully digitalized and transparent process that enables consumers to switch suppliers within 24 hours of meeting all necessary requirements.

[1] https://europa.eu/eurobarometer/surveys/detail/3354

## Universal Service

AmCham believes that the universal service should primarily serve as a protection mechanism for consumers who genuinely require such protection, rather than acting as a long-term substitute for market competition. It is therefore essential to establish a clear methodology for determining the universal service tariff and to ensure effective regulatory oversight of its application and implementation.

In most mature EU electricity markets, supply provided under a public service obligation serves as a temporary safeguard mechanism, while long-term electricity supply is delivered through competitive market arrangements. The universal service tariff formed by the regulator serves as an important benchmark for the functioning of the electricity supply market and directly affects the suppliers' ability to compete effectively. A clear and predictable pricing methodology therefore reduces regulatory risk for suppliers and encourages competition between universal service providers and market-based suppliers. A review of practices across EU Member States demonstrates a range of approaches to market organization and consumer protection. Countries such as Slovakia, Poland and the Czech Republic have developed models that provide various forms of access to domestic generation assets and market-based supply mechanisms with the aim of strengthening competitiveness and security of supply.

The most competitive electricity markets are characterized by a clear separation between the social function of consumer protection and the market-based mechanisms governing electricity supply, as well as by the limited and time-bound application of regulated prices. Access to domestic generation capacity through market-based mechanisms is an important prerequisite for price stability and supplier competitiveness and should be available to all market participants under equal and transparent conditions. Regulated prices should have a clearly defined transitional function, with a gradual shift toward market-based price formation as the long-term objective of market development, in line with the regulatory direction of the European Union's electricity market framework.

## Guaranteed Supply

AmCham believes that guaranteed supply tariffs should reflect actual market conditions and that the conditions governing access to guaranteed supply, its duration, and the procedure for its termination should be clearly defined, including the criteria for the entry and exit of end customers from this regime. Such an approach ensures that guaranteed supply is not misused and prevents inappropriate switching between market-based and guaranteed supply arrangements, while avoiding the creation of incentives for the long-term use of guaranteed supply in place of competitive market offers. This helps safeguard market stability, ensures business predictability, and protects the rights of end customers in accordance with applicable regulatory standards while encouraging consumers to take an active role in selecting their electricity supplier.

## Interventions in the Event of Market Disruptions

AmCham supports the possibility of temporary interventions in exceptional circumstances, but believes that the conditions governing their application should be clearly defined in advance and remain predictable. All interventions, including price caps, should be subject to clearly defined criteria governing their introduction, duration, and termination. In addition, a transparent, binding, and timely mechanism for compensating suppliers for any resulting costs. Such compensation should fully reflect all actual and regulatorily recognized costs incurred, without delay. The absence of full and timely compensation undermines the market neutrality of interventions and additional regulatory risk for suppliers. AmCham therefore proposes a minimum period of three months between the adoption of an intervention measure and its entry into force. Advance notice, to the extent permitted by the circumstances, allows suppliers sufficient time to adapt their operations and plan their activities accordingly, thereby contributing to overall market stability.

Article 5 of the proposed Act, which is of fundamental importance to the legal position of electricity suppliers, stipulates that suppliers are to be compensated for supplying electricity below cost "in a transparent and non-discriminatory manner," without providing any additional elements that would make this obligation enforceable in practice.

The provision fails to address several issues that are essential for suppliers' business planning and legal certainty, including:

- Within what timeframe compensation must be paid following the submission of a claim, and what legal remedies are available to suppliers in the event of delayed payment or refusal of compensation?
- Whether compensation covers only the difference between the regulated and market price of electricity, or also includes the administrative and operational costs associated with implementing the measure?
- Which authority is competent to resolve disputes concerning the amount of compensation or entitlement to compensation, and whether an expedited procedure is available?

## High Market Concentration

Given the high concentration of end customers served by the dominant supplier, it is important to ensure a level playing field for all market participants and to foster the development of a dynamic and competitive electricity market. Clear deadlines and responsibilities should be established for the Croatian Energy Regulatory Agency (HERA), which, in cooperation with the competition authority, is required to conduct a review of the functioning of the electricity market at least once every three years. The purpose of such reviews should be to identify and remove barriers to further market development and to strengthen competition. Key barriers to market development include, among others, the methodology for price formation and the insufficient incentives for customers to enter into market-based supply contracts and gradually transition from guaranteed and universal supply arrangements to competitive market offers, which would reduce dependence on regulated forms of supply in the long term and strengthen market competition.

## Status of Vulnerable Customers

AmCham supports the protection of vulnerable and energy-poor customers and the use of appropriate social protection mechanisms in the energy market. To ensure that the system remains effective and sustainable, eligibility criteria for receiving assistance should be clear, objective, and targeted at those who genuinely require support. At the same time, regulatory obligations associated with implementing protection measures should be proportionate to each supplier's size, market share, and customer portfolio. This would prevent disproportionate administrative and financial burdens from being placed on small and medium-sized suppliers, while ensuring a level playing field and preserving effective market competition.

While AmCham recognizes the rationale for protecting vulnerable customers through restrictions on disconnections, it is equally important to establish an effective, timely, and predefined mechanism for the full reimbursement of costs incurred by suppliers, including the administrative and operational costs associated with implementing such measures. Furthermore, the framework should contain safeguards against potential abuse and provide legal certainty for suppliers. This should include compensation for the costs of judicial and administrative proceedings that may extend over lengthy periods during which suppliers are unable to apply standard market-based debt recovery or disconnection measures. At the same time, the principle must be maintained that suppliers should not bear the cost of social protection measures without appropriate compensation from clearly identified and predefined funding sources.

In addition, with regard to the prohibition on customer disconnections under Article 14 of the proposed Act, the new provision prohibits disconnection "in full" and without any time limitation. At the same time, the proposed Act does not provide any compensation mechanism for a supplier that is required to continue supplying electricity to a non-paying customer whom it is legally prohibited from disconnecting.

We therefore propose that the Act or implementing legislation specify: (i) a maximum duration of the disconnection prohibition for each customer, together with a mandatory escalation mechanism involving the competent social welfare authorities; (ii) an obligation for the competent social welfare authority to decide, within a prescribed timeframe, whether to assume responsibility for the debt or approve the disconnection; (iii) a legal presumption whereby the failure of the authority to act within the prescribed deadline is deemed to constitute approval of the disconnection; and (iv) a compensation mechanism with an identified source of funding and a mandatory payment deadline.

As a comparative example, we refer to the German model, under which the supplier is required to notify both the customer and the competent social welfare authority in writing of its intention to disconnect the supply. The social welfare authority may, within a prescribed period, assume responsibility for the outstanding debt and thereby prevent the disconnection. Any costs arising from this process are borne by the social welfare system rather than by the supplier. This model clearly separates the social protection function from market-based supply mechanisms and provides suppliers with legal certainty.

The proposed Act also prohibits the disconnection of customers who have submitted a complaint pursuant to Article 20 (13) or who are involved in an out-of-court dispute resolution procedure. The proposal merely states that the competent authorities must act "without delay" and are required to "prevent any abuse of rights," but it does not establish any deadline, sanction for abuse, or definition of what constitutes abuse.

We therefore propose that: (i) a maximum period of protection against disconnection during the complaint procedure be established (for example, 90 days); (ii) clear and objective criteria be introduced to define when the submission of a complaint constitutes an abuse of rights; and (iii) suppliers be granted the right to recover costs in cases where abuse is established.

The proposal further introduces a range of measures that HERA, suppliers, and system operators are required to undertake in order to prevent disconnections. However, the proposed Act does not differentiate these obligations according to the size or market share of individual suppliers, thereby creating an asymmetric regulatory burden. We therefore propose the introduction of proportionate obligations based on market share, in line with standard regulatory design practices across the EU.

## Flexible Connection Contracts

Article 7 prescribes that the transition from a flexible connection to a firm connection shall be ensured "based on established criteria."

We propose that the Act or the HERA rules referred to in paragraph 3 explicitly define: (i) objective criteria and timelines for the transition to a firm connection (for example, linked to the implementation of the network development plan); and (ii) the legal consequences for the system operator in the event that the expected connection date specified in the agreement is not met, including the user's right to compensation or to terminate the agreement without penalties.

Article 7 also permits flexible connections as a permanent solution in areas where "network development is not the most efficient solution." However, the proposal does not define who is responsible for determining such inefficiency or the criteria on which that assessment should be based. We therefore propose that this determination be made explicitly by HERA through a dedicated regulatory procedure, including public consultation and a mandatory review every four years, in order to prevent the creation of permanently constrained areas where there is no obligation to develop the network infrastructure.

## Defining Clear Deadlines and Accountability Mechanisms

AmCham recommends introducing clear deadlines and accountability mechanisms governing the adoption of the following decisions:

- decisions on the level of grid connection charges,
- decisions on electricity transmission tariffs that enable the investments necessary to maintain and develop the transmission grid;
- decisions on electricity distribution tariffs that enable the investments necessary to maintain and develop the distribution grid;
- decisions on tariffs for guaranteed electricity supply;
- decision on the fee for the organization of the electricity market,
- and other relevant decisions.

The deadlines for adopting these decisions should be clearly prescribed, known in advance, and binding, with clearly defined consequences in the event of delays. This is essential to avoid regulatory

uncertainty and to enable market participants to plan their business and investment activities in a timely manner.

The timely adoption of such decisions enhances regulatory predictability, reduces investment risk, protects the interests of end customers, and contributes to the stability and long-term sustainability of the electricity system. Consistency and timeliness in regulatory decision-making are key prerequisites for a well-functioning market framework that supports investment and long-term market development.

We also welcome the introduction of mandatory deadlines for the adoption of key regulatory decisions by HERA. However, the sanction provided under Article 26, namely a "serious breach of duty" by the President or members of the Management Board, is insufficient because it: (i) does not provide project developers or suppliers with any direct legal remedy; (ii) does not regulate the legal status of the applicant while the decision remains pending; and (iii) does not establish liability for damages suffered by thepplicant as a result of delayed decision-making.

We therefore propose that the legislation establish: (i) the applicant's right to initiate proceedings for administrative silence and to request an order compelling the adoption of a decision through an expedited procedure before the Administrative Court; (ii) the right to compensation for damages caused by delays in the adoption of a decision; and (iii) the possibility for HERA to issue interim measures in cases where procedural obstacles prevent a decision from being adopted within the prescribed deadline.

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